



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Presumption as to Dowry Death: An Analysis of Section 113B of Law of Evidence Act, 1872

Chestha Kapoor^a

^aSymbiosis International University, Pune, India

Received 25 December 2022; *Accepted* 06 January 2023; *Published* 11 January 2023

"One woman dies every hour owing to the dowry system on average in India." Women in this male-dominated patriarchal structure of Indian society are subject to grave violence and violation of human rights. The Dowry system is one of the factors which is responsible for the increasing rate of violence against married women. This system is so deeply rooted in our society that it leads a woman to die because of all the prolonged violence she faces in demand for Dowry by her husband & in-laws. In the wake of curbing the social evil of Dowry's death, the legislators have introduced section 304B in the Indian Penal Code. And, since dowry death cases are typically committed in the privacy of residential homes in secrecy, it gets challenging to gather independent and direct evidence to penalize a person under 304B; thus, the Parliament introduced section 113B in the Evidence Act to strengthen prosecution in dowry death cases by allowing presumption to be raised if specific basic facts are established. In light of the above-mentioned, this research paper attempts to analyse section 113B of the Indian Evidence Act critically and compares sections 113A & 113B. Further, the researcher concludes the paper & gives a few suggestions as to how section 113B can be enforced in a better way.

Keywords: *married woman, dowry death, presumption, section 113b.*

INTRODUCTION

Dowry is a pernicious system that has tormented society for many years and generations. In her book, *Sita's Curse- Stories of Dowry Victims*, the author Seema Sirohi aptly described Dowry as *"a transaction that was unfavourable to the woman. In truth, it's a sale in which customer happiness isn't promised even after the purchase payment has been made. Ironically, even after marriage, the buyer is required to continue making payments in cash and in-kind to commemorate ceremonial occasions, celebrate births, and observe festivals."*

Therefore, even after marriage, most husbands and in-laws continue to demand dowries and harass women physically and mentally. This leads to a significant amount of mental stress, anxiety, and suffering, which forces women to kill themselves as a consequence of the physical abuse they endure. Dowry's death in a layman's sense can also be understood with the example of the latest *Movie Raksha Bandhan (2022)*. In which a woman committed suicide under duress, her in-laws used to make demands, such as asking her maternal's to give them a refrigerator despite having collected the Dowry during the wedding. Dowry death is an even bigger evil that exists today.

Thus, in 1961, The Dowry Prohibition Act ¹was passed to eliminate the dowry scourge. This Act cannot be seen as particularly successful because the problem of dowry demand and dowry deaths persists in significant numbers even today. Due to this reason, the 91st Report of the Law Commission (1983) on "Dowry Death and Law Reform" recommended the addition of sections 304B to the Indian Penal Code and 113B to the Indian Evidence Act. Subsequently, the Dowry Prohibition (Amendment) Act of 1986 added these sections.

The Presumption as to Dowry Death is addressed in Section 113B of the Indian Evidence Act of 1872. "According to the provision, *"the court shall presume that such a person has caused the dowry death" if it can be proven that the person in question subjected the deceased woman to Cruelty or harassment soon before her death as a result of or in connection with any dowry demand. The provision explains that to understand this section, "dowry death" shall have the same meaning as it has in section*

¹ Dowry Prohibition Act 1961

304B."² Therefore, Section 113B of IEA is always read with section 304B of IPC. And According to Section 304B of the Indian Penal Code, "*where the death of a woman occurs within seven years of her marriage, and it's been proven that soon before her death, she was subjected to Cruelty or harassment by her husband or any relative of her husband for, in connection with, any demand for Dowry, such death shall be called "dowry death," and such husband or relatives shall be presumed to have caused her death.*"³ Further, in conjunction with the introduced sections, this paper will try to elaborate upon them in the subsequent parts of it.

NATURE OF PRESUMPTION IN SECTION 113B:

The term "Presumption" is not explicitly defined in the Indian Evidence Act of 1872. According to the definition laid down in Cambridge Dictionary, "*The Presumption is the legal term for a fact of believing something as being true.*" In its most inclusive sense, the presumption can be defined as an inference made by the process of likely reasoning from something proven or taken for granted that is either affirmative or disaffirmation of the truth or untruth of a questionable fact or proposition. Further, Presumptions are broadly classified into two types.

1. **Presumption of Fact;** &
2. **Presumption of Law.**

Presumptions of law are also known as Natural Presumptions, those acknowledged without the need for proof in specific contexts or circumstances where the court assumes some facts. Presumptions of fact are those that are established based on facts, groups of facts, or from the collection of information, and they are known as Artificial Presumptions. **Section 4** under the Indian Evidence Act 1872 ⁴ defines the terms "*May Presume,*" "*Shall Presume,*" & "*Conclusive proof.*"

Whenever the Act provides that the hon'ble court *may presume* a fact, it means that it is left to the discretion or opinion of the court to make a Presumption according to the circumstances of

² Indian Evidence Act 1872, s 113B

³ Indian Penal Code 1860, s 304B

⁴ Indian Evidence Act 1872, s 4

the case. And, whenever the Act provides that the court *shall presume* a fact, it means that no discretion or option has been left with the court to not make a Presumption. Presumptions that include shall presume are presumptions of law. In this situation, the court gets bound to take the fact as proven until evidence is given to disprove it. Further, whenever the Act provides conclusive proof, it means that the court has no discretion at all to call upon a party to prove a fact that is declared by the Indian Evidence Act to be conclusive evidence of another fact. May Presume & Shall Presume are *rebuttable presumptions*, and, Conclusive proof is an *irrebuttable presumption*.

Thus, it can be said that the *presumption in section 113B is a presumption of law* since section 113B uses the word Shall and not May. So, *it becomes obligatory for the courts to raise a presumption that the accused has caused the "dowry death" upon proof of the essentials mentioned in the section itself; however, this presumption is rebuttable*. Even though this may seem to be a radical departure from the acknowledged standards of criminal law, the legislature has still made this presumption a necessary presumption of law that is, of course, rebuttable because they felt that to completely eradicate dowry deaths from our country, the Presumption under Section 113B should be made mandatory.

ANALYSIS OF ESSENTIALS THAT ARE INHERENT TO RAISING PRESUMPTION UNDER SECTION 113B WITH JUDICIAL PRONOUNCEMENTS

In *Krishna Lal v Union of India*⁵, it was held that, Although mandatory in nature, the provisions of this section merely direct the court to draw the presumption of dowry death **upon evidence of the events listed within it**, shifting the onus of proof to the accused to establish that the married woman was not cruelly treated by her husband just before she passed away. Thus, the presumption under 113B can be raised when the offence is tried only under section 304B of IPC. and to try an offence under 304B the following essential conditions shall be fulfilled:

⁵ *Krishna Lal v Union of India* (1994) Cr LJ 3472

- The woman must have died from burns or another physical injury, or it *happened outside of the course of normal circumstances*. According to this element, it is inferred that death should be *Non-Natural*.
- The death of women shall occur within *seven years of marriage*.
- The woman was *subject to or exposed to Cruelty or harassment*, however, since the term cruelty is not defined either in 304B IPC or 113B IEA, thus it is to be understood from *section 498A of IPC*, "*which defines Cruelty as any intentional behaviour that poses a serious risk to the woman's life, limb, or health (whether physical or mental), or that is likely to provoke suicidal ideation in the woman, or harassment of the lady to force her or any person connected to her to comply with any unlawful demand for any property or valuable security*⁶." It was also stated in, *Pawan Kumar v State of Haryana*⁷ that torturing mentally is also Cruelty and, if proved, would attract section 113B.
- The woman was subjected or exposed to Cruelty or harassment *by her husband or his relatives; for example*, if any person other than her husband or his relatives, said that the neighbour of the woman, has taunted or harassed the woman about Dowry she got or she should have brought wouldn't attract this section.
- The Cruelty or harassment faced by the woman *was for or in connection with any type of demand for Dowry*. It is mandatory to establish that the woman was facing Cruelty due to Dowry or anything connected to Dowry, as stated in *Prema S. Rao v Yadla Srinivasa Rao*⁸. If a married woman was facing Cruelty because of some other reason, then it would attract other sections of IPC but not 304B.
- It is also mandatory to establish that such Cruelty or harassment was "*soon before her death*." The idea of proximity text contains the phrase "soon before her death," which is utilized in the substantive sections 304B, IPC, and 113B of the Evidence Act. The phrase "soon before her death" is not defined, and no specific period has been mentioned. It is left to the discretion of courts to decide the time frame that falls under the definition of "soon before," taking into account the particulars of each case. Also, The effect of Cruelty

⁶ Indian Penal Code 1860, s 498A

⁷ *Pawan Kumar v State of Haryana* (1998) 3 SCC 309

⁸ *Prema S Rao v Yadla Srinivasa Rao* AIR (2003) SC 11

based on dowry demand and the relevant death must be directly related in some way, as it was stated in *Kaliyaperumal v State of Tamil Nadu*⁹ that the claimed action of Cruelty would not be relevant if it had happened long ago and had not disturbed the woman in question's mental stability. So, if the above-mentioned essentials are established by the prosecution, the presumptions can be raised. And this was reiterated by the hon'ble courts in the following judgments:

- In the case of *Keshab Chandra Pandey v State*¹⁰, the Hon'ble Court held that presumption under section 113B of the Indian Evidence Act shall be raised only when the essentials to this presumption are proven by the prosecution.
- In the case of *Shanti v State of Haryana*¹¹, when the decedent's death occurred within seven years of marriage, the decedent's in-laws hastily cremated the decedent rather than notifying the decedent's parents of the death. The prosecution was able to prove that the victim had been treated cruelly. Because it was impossible to claim from the actions of her in-laws that the death was a natural one. Thus, the Presumption under Section 113B was raised.
- In *Hem Chand v State of Haryana*¹², it was determined that the presumption under this section will be applied in full force because the death was due to strangulation; the evidence proved that Dowry was being requested, and the accused husband was also abusing his deceased wife.
- In *Baijnath & Others v State of Madhya Pradesh*¹³, the Supreme Court explained the necessary elements of dowry death, i.e., to prove that the woman must have been subjected to Cruelty in connection with dowry demand soon before her death by the accused. And, if this element is shown by the prosecution beyond a reasonable doubt before the hon'ble court, then the court will have to presume without its discretion that the accused is the only one who has committed the offence of dowry death.

⁹ *Kaliyaperumal v State of Tamil Nadu* AIR (2003) SC 3828

¹⁰ *Keshab Chandra Pandey v State* (1995) Cri LJ 174 (Ori)

¹¹ *Shanti v State of Haryana* (1991) 1 SCC 371

¹² *Hem Chand v State of Haryana* AIR (1995) SC 120

¹³ *Baijnath & Others v State of Madhya Pradesh* (2017) 1 SCC 101

BURDEN OF PROOF IN THE CASE OF DOWRY DEATH

According to section 113B, the burden is on the accused to lead positive evidence or establish the circumstances to negate the presumption. This also attracts *section 106*¹⁴ of the Indian Evidence Act, where it is stated that the accused must prove a fact within his specific knowledge to establish his innocence. Also, in the case of *Balram Prasad Agarwal v State of Bihar*¹⁵, where a woman was drowned to death in her matrimonial home, her in-laws were only present in the home at that time. The Supreme Court laid down that *burden of proof is on the in-laws* to prove what happened that led to her death. Similarly, in *Kundula v State of A.P.*,¹⁶ it was stated that in cases of Dowry death, a presumption is there that the person who had custody of the deceased, has the burden will be on him to prove the facts. Thus, if the accused fails to rebut the prosecution case, the presumption shall be raised.

However, the prosecution under Section 304B of the IPC cannot avoid the burden of proving that the harassment to Cruelty was connected to the demand for Dowry and that it occurred "soon before her death," as Section 113B mandates that the prosecution must first satisfy the essential conditions before raising the presumption, and the accused must then prove their case beyond a reasonable doubt before Section 106 also applies. As was held in the case of *Mangal Ram & Anr. v State of Madhya Pradesh*¹⁷, when the woman committed herself within five years of her marriage, it might be inferred that this is the situation. For roughly two to three years, she resided with her parents. She returned to her marital home within a month and then committed suicide by jumping into a well. However, her husband's and her in-laws' harassment during this month has not been proven beyond a reasonable doubt. Thus, the presumption couldn't be raised against the accused in these situations. It is widely accepted that the burden of proof under Section 106 of the Act only shifts to the defendant when the prosecution offers evidence that, if accepted, would result in a conviction.

¹⁴ Indian Evidence Act 1872, s 106

¹⁵ *Balram Prasad Agarwal v State of Bihar* (1997) 9 SCC 338

¹⁶ *Kundula v State of AP* (1993) 2 SCC 684

¹⁷ *Mangal Ram & Anr v State of Madhya Pradesh* (1999) Cri LJ 4342

COMPARATIVE STUDY OF SECTION 113A AND SECTION 113B:

By Section 113A, the court *may assume*, taking into account all other circumstances of the case, that the woman's suicide had been assisted by her husband or by any relative of her husband if it is established that she committed suicide within seven years from her marriage date and that her husband or that relative had treated her cruelly¹⁸. Upon analysing both the sections, section 113A, and Section 113B, it can be inferred that the employment of the phrase 'may presume' in section, 113A signifies the presence of a presumption of fact and whereas Section 113B is a presumption of law. Further, section 113A is not relating to any particular subject; however, section 113B is specifically subjected to dowry deaths. Additionally, Section 113A contains the phrase "may presume," which gives the court the option of supposing a fact or declining to do so.

If the court declines to exercise discretion, it may order the parties to establish the fact through the presentation of evidence, or if the court finds out that the situation is appropriate for raising a presumption, the fact will be presumed established until it is refuted by the opposing party or until further evidence of it is requested. Whereas, in section 113B, the word shall presume has been used to make the provision more stringent and gives no discretion to the courts until and unless the prosecution proves the essential evidence.

CRITIQUE OF SECTION 113B

To make it easier to punish the guilty and inculcate fear in the hearts and minds of those bent towards crime, the law – both substantive and procedural – has gone to extreme lengths. Thus, despite the legislature's best efforts, the issue persists and may perhaps get worse. Firstly, Since there has to be a conjoint interpretation of section 113B of IEA & 304B of IPC, the language used in section 304 B has always flummoxed courts. It was realized, that the phrase "soon before" was being used to exonerate persons accused of dowry deaths because it was not defined anywhere so it has to be interpreted by the courts & courts have always gone for a strict interpretation of the section as it is a criminal statute. However, the courts are now giving a liberal interpretation

¹⁸ Indian Evidence Act 1872, s 113A

to this phrase. Like, in *Parvati Devi v The State of Bihar and Ors*¹⁹, the Supreme Court stated that it should be noted that the phrase "soon before" would not just generally imply that just before the death, it implies that the time between the alleged Cruelty or harassment and the death in issue should not be very long and there should be a "*Proximate and live Link*".

Additionally, Amidst a 1989 amendment to Section 304B of the Indian Penal Code (IPC) that shifted the onus of proof to the husband and his relatives, the process of obtaining a conviction is still difficult due to legal loopholes and the victim's family's inability to prove a connection between dowry demands and the victim's death. Since the victim is frequently barely alive, it is frequently impossible to accept the dying declaration. Even once it has been taken, *the police management is poor and negligent, making it possible for a crafty defence to dissect it during the trial.*

Further, again the Conjoint interpretation of these sections reveals that the ambit of Dowry is only restricted to the definition of *section 2 of the Dowry Prohibition Act 1961*, "*which states Dowry refers to any property or valuable security given or agreed to be given by one party to a marriage to the other party to the marriage, or by parents of either party to a marriage, by anyone else to either party to a marriage or by anyone else to either party to a marriage, at or before or at any time after the marriage in connection with the marriage of the said parties.*"²⁰

This again poses a problem as the *definition does not include customary payments in connection with the birth of a child or other ceremonies* as stated in *Satvir Singh v State of Punjab*²¹, which is not directly in connection to the marriage but is indirectly related to the marriage and affects both the physical and mental health of a woman, also sometimes the in-laws deceive in the name of customary payments.

Furthermore, The researcher tends to criticize that the term of 7 years, described by the section, is a little unreasonable. A question can be raised, *what if a woman dies after seven years because of the torture she faced in connection to Dowry?* Lastly, the researcher feels that *the enforcement*

¹⁹ *Parvati Devi v The State of Bihar and Ors* Crl App No. 574/2012

²⁰ Dowry Prohibition Act 1961, s 2

²¹ *Satvir Singh v State of Punjab* (2001) 8 SCC 633

of this section is below expectations, with a marginal impact on society. A consistently followed and increasingly glamourized custom cannot be wished away by just criminal sanctions and legislative contrivances.

CONCLUSION AND SUGGESTIONS

The Supreme Court correctly noted in *Bhagwant Singh v Commr. of Police, Delhi*²², that "*young women of education, intelligence, and character do not set themselves on fire to welcome the embrace of death unless driven and pushed to that desperate measure by the harshness of their anguish.*" Thus, in light of this statement, it can be concluded that since the accused in the cases of dowry death is the one responsible for provoking the death of a woman, section 113B has been rightly introduced to make a mandatory presumption against the accused in cases of dowry death. Due to the difficulty of obtaining evidence in dowry death cases, this presumption has greatly assisted in resolving this issue. However, this section poses some pigeonhole loopholes, as discussed above. Thus, a law can be ahead of public opinion, but, if the gulf is too broad, there is every likelihood of its non-observance and violation.

Therefore, The courts may, in suitable situations, *rely on the real import of the words, taken in their customary connotation*, to resolve such difficulties where rigid interpretation of the phrase "short before death" leads to absurdity or goes against the spirit of the legislation. Additionally, *a publicity drive should be mounted* to inform people about the level of the deleterious consequences of this practice, and the *enforcement scheme should be made preventive*. Exemplary punishment, including deprivation of social and political rights, *a change in the definition of Dowry to include customary gifts*, and enforcement through its agencies may be some of the areas to be stressed and focused on.

²² *Bhagwant Singh v Commr of Police, Delhi* (1983) 3 SCC 352