



## DOWRY DEATH AS DEFINED IN THE BHARTIYA NYAYA SANHITA, 2023: AN ANALYSIS OF THE LEGAL FRAMEWORK

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### Abstract

This research paper critically examines the proposed repositioning of the "dowry death" provision within the Bhartiya Nyaya Sanhita, a new legal code under consideration, which entails moving it from "Offences Affecting Life" to "Offences Related to Marriage." The study delves into the potential ramifications of perceptions of crime severity, legal interpretation, and societal values through a meticulous comparative analysis of these placements. It argues for the justifiability of retaining "dowry death" under the sub-chapter "Of Offences Affecting Life," contending that such categorisation accentuates the gravity of the crime, aligning with international standards on violence against women. In this context, the research explores the broader implications of the proposed reclassification, public discourse, and the fight against gender-based violence. It considers how such a shift might influence the legal community, including practitioners, judges, and law enforcement officials, as they interpret and enforce the provision. The study underscores the need for a balanced approach that weighs legal principles, societal perspectives, and the overarching objectives of the legal code. It concludes by emphasising the importance of thoughtful consideration in placing such provisions, as they carry implications beyond mere categorisation.

### 1. Introduction

In the heart of every society, women stand as the pillars of strength, resilience, and grace. Yet, they often find themselves caught in the web of deeply entrenched patriarchal norms, where their rights are disregarded, and their safety jeopardised. The recent discussions surrounding the repositioning of "dowry death" within the legal framework in Bhartiya Nyaya Sanhita have shed light on the challenges women face in their quest for equality and justice. "Dowry death" is not just a legal provision; it represents the stark reality of gender-based violence that women endure, particularly within the confines of marriage. It is a term that should evoke collective outrage, a symbol of the urgent need to dismantle the oppressive structures of patriarchy. For generations, the practice of dowry has been a reflection of societies where women are viewed as commodities, traded

from one family to another. This practice not only diminishes the worth of women but also perpetuates inequality and discrimination. It is a manifestation of how deeply rooted patriarchal norms have been in our culture. Dowry is a cultural practice that involves the transfer of assets, property, or valuable gifts from the bride's family to the groom's family upon marriage. Although its origins are rooted in historical and social contexts, dowry has taken on various forms across different cultures and regions. Initially intended to provide financial security for the bride or contribute to the newlywed couple's household, dowry practices have evolved and have been influenced by factors such as social status, economic considerations, and traditional norms. However, the practice has often been associated with adverse outcomes, particularly in cases where it perpetuates gender inequalities and leads to exploitation, harassment, and violence against



women."Dowry death" is a term that specifically refers to a grave consequence of dowry-related issues. It pertains to cases where a woman dies under suspicious or unnatural circumstances within a few years of marriage. It is found that the death is a result of cruelty or harassment by her husband or his family in connection with dowry demands. These deaths are deeply troubling manifestations of gender-based violence, representing a disturbing intersection of cultural norms, economic factors, and unequal power dynamics within marriages. The term highlights the serious nature of such crimes, which result in the loss of human life due to the perpetuation of harmful dowry-related practices. The legal and societal responses to dowry deaths underscore the need for comprehensive efforts to address the practice of dowry and the broader issue of violence against women within the context of marriage.

### **Before we dive into the discussion of repositioning dowry death in "Bhartiya Nyaya Sanhita", let's look at "Dowry Death in the Indian legal context".**

In the Indian legal system, "dowry death" is considered a separate and distinct offence from offences relating to marriage, even though it happens in the context of marriage because it involves a heinous crime where a woman's life is taken due to the conflicts associated to dowry and marital demands. This offence highlights the gravity of violence and abuse that can be perpetrated against women within the context of marriage. In the context of the Indian Penal Code (IPC), "dowry death" is addressed under Section 304B under the sub-chapter "Of offences Affecting Life". This section specifically deals with cases of dowry-related deaths. Here's how it is defined.

#### **i. The Indian Penal Code 1860 – Section 304B: Dowry Death:**

"S. 304B. Dowry death.–(1) Where the death of a woman is caused by any burns or 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 relative 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. Explanation.–For the purposes of this sub-section, 'dowry' shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."<sup>1</sup>

#### **ii. The Dowry Prohibition Act, 1961 (28 of 1961) – Section 2: Dowry:**

"S. 2. Definition of 'dowry'– In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly–

1. by one party to a marriage to the other party to the marriage; or
2. by the parents 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 2 [or any time after the marriage] 3 [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."<sup>2</sup>

#### **2. Proposed Shift in Bhartiya Nyaya Sanhita**

On 11 August 2023, three bills were proposed to replace the existing criminal laws in India. The bill replacing the "Indian Penal Code, 1860" is "The Bhartiya Nyaya Sanhita, 2023", which brings significant changes.

The proposed changes in the new bill, Bhartiya Nyaya Sanhita, involve moving the provision related to "dowry death" from Section 304B under the chapter "of Offences Affecting Human Body"<sup>4</sup> and sub-chapter "Of Offences Affecting Life" to Section 79 in the new act under "Of Offences Related to Marriage,"<sup>5</sup> raise important questions about the appropriate placement of



this provision. This is where the proper arrangement of sections in codes or acts comes in.

Can the placement of sections affect the impact and significance of the crimes? If yes, how?

### **A. Appropriate Placement of Sections in Legal Codes**

The strategic placement of sections within a legal code is essential for crafting effective legislation. This practice involves structuring and organising provisions logically and cohesively. Appropriate placement enhances the law's clarity, understanding, interpretation, and implementation. Critical considerations for this practice include communicating legislative intent and prioritising essential provisions. Such placement fosters a seamless logical flow, aiding judges, lawyers, and the public in comprehending the law's structure.

Moreover, it ensures clarity and accessibility, minimises confusion, and maintains consistency during amendments. The arrangement reflects contextual relationships between legal concepts, facilitates cross-referencing and supports efficient legal research.

Additionally, the order of sections can convey legislative priorities, historical context, and changes in societal norms. Ultimately, the placement of sections constructs a coherent and navigable framework, facilitating practical interpretation and application of legal provisions.

### **B. Can Dowry Death be Placed Under Marriage Related Offences?**

The placement of dowry death within the legal code has ignited discussions regarding the appropriate categorisation of this heinous crime. Formerly classified under "Offences Affecting Life," its current positioning within the sub-chapter "Of Offences Relating to Marriage" prompts a re-examination of its implications on legal frameworks and societal attitudes. While proponents argue that this relocation highlights

the crime's association with marriage, closer scrutiny reveals potential drawbacks that necessitate a nuanced assessment of this change.

"Dowry death" is a distinctive and disturbing form of violence against women, unfolding within the intricate tapestry of marriage. This crime encompasses the intentional killing or abetting of a woman's suicide due to harassment or cruelty stemming from dowry demands. By placing "dowry death" under the broader "Of Offences Relating to Marriage" category, lawmakers aim to underscore the crime's intricate connection to marital dynamics. However, this change isn't without its share of concerns. The risk looms that the relocation might inadvertently dilute the offence's gravity. This could occur as the uniqueness and seriousness of "dowry death" become obscured within the shadow of numerous marital-related crimes.

Inadvertently, this could lead to interpretations that weaken the specific intent and consequences inherently linked to dowry-related violence.

The relocation of "dowry death" within the legal code, transitioning from its previous classification under "Offences Affecting Life" to its current position within "Offences Relating to Marriage," triggers profound queries about its ramifications on legal categorisation, societal attitudes, and the valuation of women's lives. This alteration is pivotal and warrants meticulous consideration. While its new placement emphasises the crime's intimate link with marital dynamics, it raises valid concerns.

This shift prompts a comprehensive exploration of the underlying reasoning for this change and its potential impact on the legal framework and broader cultural paradigms. The decision to place it within "Offences Relating to Marriage" strives to underline its context, acknowledging the intricacies that can arise within the institution of marriage. However, it's essential to tread carefully, as this reclassification might



inadvertently obscure the gravity and uniqueness of the offence.

Contrastingly, "dowry death" shares notable characteristics with other offences categorised under "Offences Affecting Life." Placing it within this section not only underscores the intentional taking of human life but also aligns seamlessly with the intent of this category. The nature of "dowry death," including its deliberate perpetration and consequential fatality, aligns closely with the essence of offences affecting life. This positioning is a testament to the gravity of the crime, sending a resolute message about the sanctity of life and the imperative for accountability.

The transfer of "dowry death" to "Offences Relating to Marriage" beckons questions about the perception of its severity. The risk emerges that incorporating it into a broader array of marital-related offences, risks implying that it's a natural part of marital dynamics, akin to offences like bigamy, downplaying its severity. This might dilute its distinct intent and consequences. However, "dowry death" isn't an inherent marriage outcome; it results from specific dowry-related abuse that can lead to a woman's intentional killing or suicide. This heinous act should not be equated with less severe marriage-related offences. Its previous classification under "Offences Affecting Life" accurately highlighted its gravity, distinguishing it from other marital transgressions.

Beyond the legal realm, repositioning "dowry death" may inadvertently reinforce harmful gender norms. It is crucial to acknowledge that dowry-related violence is deeply entrenched in patriarchal structures that objectify women and cast them as commodities within marital transactions. Placing "dowry death" under the umbrella of marriage-related offences without underlining its lethal implications could unintentionally propagate the notion that women's lives are dispensable when faced with societal pressures or marital conflicts. Such an interpretation could severely undermine ongoing efforts to combat violence against

women and challenge deeply ingrained discriminatory attitudes.

Furthermore, the new placement might unwittingly accentuate detrimental gender norms. The act of dowry-related violence is rooted in patriarchal structures, perpetuating the objectification of women and subjecting them to economic and social pressures within marital bonds. Integrating "dowry death" into a section alongside various marriage-related offences without adequately highlighting its lethal consequences, might inadvertently insinuate that women's lives can be compromised in the face of marital discord or societal constraints. This potential interpretation contradicts the profound efforts to eradicate gender-based violence and promote gender parity.

In conclusion, repositioning "dowry death" within the legal code is a thought-provoking transformation. While seeking to encapsulate the crime's contextual backdrop, it is imperative to balance recognising its context and preserving its distinct identity as a severe manifestation of gender-based violence within the broader legal framework.

The shift could inadvertently diminish the emphasis on the seriousness of "dowry death," thereby influencing legal interpretations, sentencing procedures, and society's comprehension of the weight of dowry-related violence. The previous classification under "Offences Affecting Life" aligned aptly with the crime's specific nature, reflecting its intentionality and outcome regarding human life. This placement set "dowry death" apart from other marital offences, emphasising its unique heinousness.

### **C. Consequences of placing Dowry death in the category of "offences related to marriage"**

"However, despite the above measures, the issue of dowry harassment was still prevalent. Additionally, there was a growing trend of deaths of young brides in suspicious circumstances following demands of dowry.



The need for a stringent law to curb dowry deaths was suo motu taken up by the Law Commission in its 91st Law Commission Report. The Law Commission recognized that the IPC, as it existed at that relevant time, was insufficient to tackle the issue of dowry deaths due to the nature and modus of the crime".<sup>5</sup>

To discuss why it might have been more justifiable to place "dowry death" under "Offences Affecting Life" rather than "Offences Related to Marriage," we can consider several factors. There are a few reason why "dowry death" is a separate offence and not simply included under a broader category of offences related to marriage:

- **Diminished Focus:** By not treating "dowry death" as a distinct offence, its severity and unique nature may not be adequately highlighted. Placing it within a broader category could reduce the emphasis on addressing this specific form of violence against women.
- **Underreporting and Dilution:** Dowry-related violence is deeply rooted in some societies. Treating it as just one offence among many related to marriage might downplay its significance. This could discourage reporting and result in the dilution of the legal response to dowry-related crimes.
- **Legal Clarity:** Placing "dowry death" within a general category could confuse legal interpretation. The distinct elements of the offence might not receive the required attention, potentially resulting in misapplication of the law.
- **Deterrence:** The separate provision for "dowry death" serves as a deterrent due to its explicit recognition of the gravity of the crime. Merging it with other offences might weaken this deterrent effect, as the distinct punishment and focus on dowry-related violence could be lost.
- **Accountability:** A dedicated provision for "dowry death" ensures that cases of this nature are specifically addressed and treated with the seriousness they deserve. Merging it

with other offences could lead to cases being overlooked or not treated as distinct instances of violence. It helps society understand the distinct factors contributing to such crimes.

**Social Message:** Separate legal provisions send a societal message about the gravity of certain offences. A specific "dowry death" provision communicates society's stance against this particular form of violence, emphasising that it will be dealt with severely.

### 3. Repositioning in the Context of Patriarchal Society and Gender-based Violence

- **Impact on Women's Rights and Safety:** The practise of dowry and the associated issue of dowry deaths have long been manifestations of gender-based violence against women in patriarchal societies. By considering the placement of "dowry death" within the legal framework, we are directly addressing the rights and safety of women. The repositioning of this provision has the potential to influence how seriously society and the legal system take violence against women within the institution of marriage. It raises questions about whether the law adequately acknowledges and safeguards the rights of women who are victims of such violence.
- **Patriarchal Influence on Dowry:** Dowry is deeply rooted in patriarchal structures that often view women as commodities and subordinate to men. The continuation of dowry practises reflects how entrenched these gender norms are in society. The repositioning of "dowry death" within "Offences Related to Marriage" without emphasising its gravity may inadvertently perpetuate the idea that women's lives are expendable when it comes to resolving conflicts related to dowry. This reinforces patriarchal attitudes that devalue women and their rights within marriage.
- **Visibility of Gender-Based Violence:** The separate recognition of "dowry death" as a distinct offence has been instrumental in shedding light on the prevalence of gender-based violence within marriages. Placing it



within "Offences Affecting Life" highlighted the gravity of this issue and sent a message that such violence would not be tolerated. However, relocating it to a broader category might diminish its visibility, making it less apparent that women continue to face violence and discrimination within marital relationships.

- **Legal Framework and Gender Equality:** The repositioning of "dowry death" prompts discussions about the legal framework's role in promoting gender equality. It underscores the importance of laws that protect women's rights and safety within marriages. The placement of this provision should reflect society's commitment to addressing gender-based violence and promoting gender parity.

- **Challenging Patriarchy:** The discussion surrounding the placement of "dowry death" is an opportunity to challenge patriarchal norms and attitudes that contribute to violence against women. It calls for a nuanced approach that recognises the distinct nature of dowry-related violence and seeks to eradicate it by addressing the root causes, such as unequal power dynamics and economic pressures.

### Conclusion

The placement of "dowry death" within the legal code, specifically the shift from "Of Offences Affecting Life" to "Off Offences Relating to Marriage," necessitates a careful evaluation of its implications. While the reclassification aims to emphasise the crime's connection to marriage, it introduces potential drawbacks related to the perception of severity, reinforcement of gender norms, and legal interpretation. The original placement within "Offences Affecting Life" highlights the unique and grave nature of the offence, recognising its lethal consequences and intent. Ultimately, deciding where to place "dowry death" within the legal framework should balance acknowledging its contextual setting and preserving its distinct identity as a severe form of gender-based violence within the broader societal and legal context. While placing "dowry

death" within a broader category of "offences related to marriage," it's essential to consider the potential consequences and ensure that the severity, distinct elements, and societal context of dowry-related violence are adequately addressed within the legal framework.

In conclusion, the repositioning of "dowry death" within the legal framework is not just a matter of categorization; it has profound implications for women's rights and their status in society. It highlights the ongoing struggle to combat gender-based violence and challenges deeply ingrained patriarchal norms that perpetuate such violence. The decision regarding the placement of this provision should prioritise the safety and rights of women and send a clear message that violence within marriages will be met with the full force of the law, irrespective of societal norms. It represents a critical step in the broader fight for gender equality and the elimination of violence against women.

### End Notes

<sup>1</sup> Bare act, The Indian Penal Code 1860.36, (Universal's New Delhi, India).

<sup>2</sup> Bare act, The Dowry Prohibition Act, 1961, NO. 28 of 1961.

<sup>3</sup> Bare act, The Indian Penal Code 1860.36, (Universal's New Delhi, India).

<sup>4</sup> The Bhartiya Nyaya Sanhita, 2023, No. 45 of 2023 available at <https://bprd.nic.in/WriteReadData/userfiles/file/202312280517175164416BNyayaS.pdf>

<sup>5</sup> MANU/SC/0361/2021 Satbir Singh and Ors. vs. State of Haryana (28.05.2021 - SC)