

Dowry & Its Legal / Regulatory Framework - A Philosophical Analysis

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Abstract: *Introduction: India is known to the world as the house to the most culturally diverse and demographically-unique population, it is also acknowledged as the world's fifth largest economy. Owing to its large population and rich natural resources, India is soon to become one of the world's biggest industrial hubs, of manufacturing, import and export. India has also created countless breakthroughs in science, technology and medicine. Our country is however, plagued by many ancient practices, practices found both discriminatory and immoral, practices which have been operated in the name of religion and customs, among many of these practices one that has still run deep in our country's veins is Dowry. Dowry is a prominent practice found in the Hindu religion, in simple terms it is basically a gift usually found in the form of cash, gold or property, this practice was predominant during the medieval times in our country, most importantly with further developments Dowry had become a legal necessity to get married. This research paper is aimed at understanding the philosophy behind Dowry and how the other laws and provisions enacted to combat dowry has worked and operated in these modern times. One must keep in mind that this is was deemed to be a customary practice by many scholars at the same time it was found highly discriminatory, especially to Hindu women. The main of this paper will be to understand how dowry as a custom had operated in India and how the various laws enacted to inhibit have fared against this and in conclusion to understand the underlying philosophy of both the customs and the laws. Research Problem: Dowry as a customary practice is not protected the same way other customary practices are owing to the fact that it is discriminatory. What is the philosophy of dowry and is inhibiting it the right thing to do?*

Keywords: Dowry, Sati, Cultural oppression of women, Discriminatory practices in India, History of dowry, Sabirimalai Temple, Legal steps taken to prevent and punish dowry

1. Introduction to the Research Paper

1.1 Introduction to the Topic

The word 'dowry' had originated from the Latin word 'Dotarium' which means to endow or portion out. The origin of dowry as a practice predates its first instance of being recorded; it was first recorded around the 12th century during the Norman conquests in England.

The origin of dowry as a practice in India is unclear. One eminent scholar Stanley J. Tambiah in his book *Bride wealth and Dowry*, believes that dowry as a system was restricted to the upper castes such as Brahmanas while bride wealth was restricted to lower caste, the same was in coherence with the holy text, *Manu Smriti*. One must understand that the two terms contain differences, its simplest and strictest difference being, the brides wealth is an amount given to the girl's father in exchange for his daughter, dowry is a gift given by the bride's family to the groom for their familial needs.

Our research paper here is concerned only with dowry, its origins as a system in India, its roots in customs, the various socio-cultural impacts of it and a discussion on the various case laws enacted to prevent the adverse impacts of dowry.

1.1.1 History of Dowry in India

From our discussions on the work of Stanley J. Tambiah, dowry was a system that has been recorded as old as the Manu smriti itself around 3500 BC.

Dowry has been referred as 'Yautraka' which means a kind of material gift which confirms that two people have joined in a matrimony. The girl in marriage was given away upon getting a price that was called 'Sulka'. It means that the

parents were compensated for their loss of their daughter after her marriage.¹

The famous royal advisor and scholar Chanakya described dowry as-

*"Means of Subsistence or jewellery constitutes what is called the use of property of a woman. It is no guilt for a wife to make use of this property in maintaining her son, her daughter in law or herself, if her absent husband has made no provision for her maintenance."*²

As we can see above dowry was only a means for the widow to maintain herself in the absence of provisions by her husband. But this changed when our English invader brought the concept of Feudal system or the concept of 'private' ownership of land.

The British had simultaneously prevented ownership of land by women, hence any dowry given to the wife will automatically go to the husband, and with developments in time this became a consideration for marriage and was bound to be misused by the husband and his kin.³

Sadly, enough dowry soon became a tool for the groom's kin for a demand for wealth and riches in exchange for marriage, the first protests against dowry was seen during

¹Soumi Chatterjee, *Concept and Evolution of Dowry*, Vol.7 (IJHSSI) 85, 86-87 (2018) [http://www.ijhssi.org/papers/vol7\(1\)/Version-2/M0701028590.pdf](http://www.ijhssi.org/papers/vol7(1)/Version-2/M0701028590.pdf)

²Tambiah, Stanley; Goody, Jack, *Bridewealth and Dowry*, 68-69m (Cambridge UK: Cambridge University Press, 1973).

³Gurudev, *The Origin of Dowry System in India*, hitxp.com (May.22, 2012, 07:14 PM), <https://www.hitxp.com/articles/history/origin-dowry-system-bride-woman-india-british/>

the 1980s, a state where dowry had become a violent menace in society leading to the brutal torture and murder of many brides. The mere incorporation of laws was deemed ineffective by many socialists; female empowerment movements demanded that education and instilling of insight in the society would be the first step towards its eradication.⁴

1.1.2 Laws dedicated to eradication of dowry:

- a) The Dowry Prohibition Act, 1961
- b) Protection of Women from Domestic Violence Act, 2005
- c) Indian Penal Code, 1860
 - Dowry Death (section 304 B)
- d) Indian Evidence Act, 1872
 - Presumption as to dowry death (Section 113 B)

It is important to note that out of all these acts only one of them is dedicated to dowry prohibition while the other contains provisions for the same. We will however be having a detailed discussion on all the enactments.

1.2 Research Problem

Dowry as a customary practice is not protected the same way other customary practices are owing to the fact that it is discriminatory. What is the philosophy of dowry and is inhibiting it the right thing to do?

1.3 Research Questions:

- 1) How is dowry a customary-discriminatory practice when compared with other similar practices?
- 2) How have the various dowry prevention laws enacted over the years fared against dowry?
- 3) If dowry is an ancient custom why is not protected the same way other customs are?
- 4) What is the relation between dowry, customs and tradition from ancient India?

1.4 Research Objective

- 1) To compare other customs which are discriminatory with dowry.
- 2) To understand how the various dowry laws enacted over the years have worked against dowry.
- 3) To look at the philosophical conflict between ancient customs and modern legal concepts.
- 4) To establish a relation between dowry, customs and tradition.

1.5 Methodology

Doctrinal research methodology: This is what one may consider a “typical” legal research methodology; it involves a collection and analysis of case laws, statutes, provisions and other typical legal resources. This will be widely used in our paper as it involves a comparison of the various statutes involved with dowry and case laws.

⁴Dr. S. C Tripathy & Vibha Arora, Law relating to Women and Children 4 (Central Law Publication 2017).

1.6 Scope and Limitations

The scope of this paper advances to natural law with special emphasis on laws created based on customs; it aims to understand the philosophical aspect of customary laws and laws made by people. This paper also expands upon the philosophy of modern law, especially aspects such as equality.

This paper is limited only to the natural and custom-made laws, it does not however look to develop upon the origin and historical aspects, and the main aim of this paper is to reflect upon the philosophy of customary laws and modern aspects of law.

1.7 Hypothesis

Dowry is a customary practice of India with deep roots in tradition, it can also be considered an important part of ‘positive law’ in regards to marriage laws, the provisions enacted for preventing and penalising dowry deaths and harassment is enough. Dowry can be included as a consideration for marriages.

2. Literature Review

1) The Burning Bride: The Dowry Problem in India.

Author: Wanda Teays

Source: JFSR Vol. 7, No. 2, Indiana University Press, 29-52, (1991)

This Article succeeded in directly addressing the needed issue of this paper. The author of this article calls dowry a ‘systematic disorder’ in the country. Fortunately, this paper also talks about the origins of dowry, it also compares the customary and legal definitions of dowry. This article has proved invaluable to the current research paper.

2) Law, Custom, and Crimes against Women: The Problem of Dowry Death in India.

Author: John VanWilligen and V. C. Channa

Source: Hum. Organ. Vol. 50, No. 4, Society for Applied Anthropology, 369-377, (1991)

This article is similar to the one discussed above, it also talks about the origin, the state and how dowry came to be what it was in society today. The authors of this article had also talked about how Dowry Prohibition act and related enactments have been wholly inefficient and the only way society can be preserved is by proper education. A brief criticism of dowry prohibition can be seen in the article.

3) The Institution of Dowry in India: Why It Continues to Prevail:

Author: Sonia Dalmia and Pareena G. Lawrence

Source: JDA, Vol. 38, No. 2, College of Business, Tennessee State University, 71-93, (2005)

Unlike the previous article which deal with the problems faced by women due to dowry and how dowry is a social

menace, this article answers the question as to why dowry is still prevalent even in today's modern India. Using data on marriage transactions and on the personal and family traits of marital partners the article demonstrates that payments of dowry serve to equalize the measurable differences in individual characteristics of the bride's and groom's and their respective households.

4) Dowry and its Link to Violence Against Women in India: Feminist Psychological Perspectives

Author: Mudita Rastogi and Paul Therly

Source: Trauma, Violence & Abuse, Vol. 7, No. 1, Sage Publications, Inc, 66-77, (2006)

This article unlike the rest deals with, the psychological aspect of taking and giving dowry and the psychological state of the women who was the victim to the practice. One of the authors' themselves directly witnessed the groom's father asking for a gift of a 'car' and the bride's father had immediately obliged without any protests. While this paper might not directly help us with the paper it does however allow the readers to have a deep insight on how dowry affects woman on a personal level rather than a societal-one. A very engaging and enlightening read.

5) Dowry 'Inflation' in Rural India: A Statistical Investigation.

Author: Vijayendra Rao

Source: Popul Stud, Vol. 47, No. 2, Taylor & Francis, Ltd, 283-293, (1993)

The abstract of this article itself allows one to understand that its objectives are to understand the reason for an 'inflation' in the dowry cases that have taken place especially in rural areas. The statistics is stretched across six villages in southern-central India. The paper seeks to explore upon factors like 'marriage squeeze', financial status of the parties to a marriage, age of the bride and other demographic factors, the analysis also leads to interesting results.

3. Customary Practices on the same threshold as Dowry

3.1 Sati

Roop Kanwar was the 18-year-old girl, worshipped as a goddess in two villages of Rajasthan and the last recorded case of 'sati', 32 years ago.⁵ She one of the victims to the most horrifying "traditions" of India.

Sati was recorded around the 510 CCE in an ancient city in today's Madhya Pradesh. The 'Rajputs' are a clan of feudal lords who were ardent practisers of Sati and was also widespread in various regions of Rajasthan. The word was derived from the Hindi word 'suttee' which meant 'chaste woman'. Women were said to be indoctrinated to believe

⁵Hamza Khan, *India's Last Known Case of Sati: 'She ceased to be woman... was a goddess'*, Indian Express (Sep. 22, 2019, 6:49:02 AM), <https://indianexpress.com/article/india/she-ceased-to-be-a-woman-was-a-goddess-6016915/>

that their destiny lies in committing to their husband's cause forever.⁶

Hindu purists and traditional fundamentalists aggressively advocated this practice, it was not until 1829 that sati was legally put to an end by the joint efforts of Raja Ram Mohan Roy and Lord William Bentick, the latter was also the governor general of India.

So now the question arises, *what was the philosophy behind Sati?*

Hindu nationalist has forever believed to have associate tradition images with *motherhood*, political theorists argue that this is not only an image for tradition but also something to associate with womanhood, the gender notion of nationalists show us that women are something to be controlled and protected.

In some arguments, most nationalists have also said to have built a 'symbol of nationalist honour' around the image of womanhood which when disgraced brings shame to the nation. It is argued that such image was indoctrinated by Hindu purists over the years and sati is one of them.

*"The young widow needs to be tamed and her sexual desires controlled. Therefore, to maintain her chastity the only way that remains is to burn her alive-"*⁷

Propagators of purist's ideas have argued that this is tradition and contain cultural sentiments; the stand taken by the anti-sati protestors was that this is a grotesque form of torture which inflicts unimaginable pain to the victims of this 'tradition'.

The first cultural evidences of Sati can be found in many religious texts.

The most famous texts the *Vedas* are never seen to give direct details about sati, the *Rigvedas* for example tell us that a widow should cleanse herself of sorrow and must be dutiful, even to her dead husband.

The *Atharvaveda* however instructs a widow to step into the funeral pyre along with her husband, so she may join him in the afterlife. Similarly, another religious text called the *Purana* has a clear statement regarding sati, which says that it is the duty of a woman to immolate herself in her husband's pyre.⁸

At this point one can understand that sati was a practice glorified by customs and propagated by holy texts, so indeed sati did have a strong cultural and religious foundation, however owing to the fact that it victimised women and was

⁶ Gayathri Mishra, *Roopa Kanwar-Last Known Case of Sati in India & Its Relevance Today*, Feminism in India (Aug. 7, 2020, NA), <https://feminisminindia.com/2020/08/07/roop-kanwar-last-known-case-sati-india-relevance-today/>

⁷*Id.*

⁸ Mohammed Shamsuddin, *A Brief Historical Background of Sati Tradition in India*, Vol: 3 (IJPR), 46, 51-52 (2020), <https://dergipark.org.tr/en/download/articlefile/1170035#:~:text=T he%20Sati%20is%20part%20of, along%20with%20her%20husband's%20body.>

strongly discriminatory, the best course would be to remove it from society, this led to the establishment of 'The Commission of Sati (Prevention) Act, 1987'. This act proved fundamental to the prevention and control of sati, punishing and penalising acts such as attempt to commit, abetment of sati and finally the glorification of sati.

3.2 Sabarimalai Temple Issue

This is far by one of the most popular Supreme Court cases to take place in decades, in simpler words; it is the conflict between legal morality and elements like gender equality against customs and traditions.

The sabarimalai temple had prevented woman under the age of 10 to 50 years from entering the temple, the reason cited being, the deity, Swami Ayyappa, is a 'Naishtika Brahmachari' (celibate) and therefore, an epitome of purity which should not be violated by menstruating women. Based on this, Rule 3 (b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965, restricts prohibits women by prohibiting them from entering the Sabarimala temple premises.⁹

The Young Lawyers' Association challenged this stand by the temple authorities and the Kerala government had appealed to the Supreme Court.

We shall start by looking at the arguments on both the sides.

1) Arguments Against entry of women:

- The unique nature of this temple is the celibate lord Ayyappa, whose celibacy maybe polluted by the presence of mensurating women.
- The temple authorities have every right to barre women from entering the temple in accordance with Article 26 (b) of the Indian Constitution.¹⁰
- The next stand taken was that one particular case, Riju Prasad Sarma v. State of Assam; it was held that customs in protection under Art 25 and 26, must be seen as restraints against any dispute arising from chapter III of the constitution.¹¹

-Hon'ble SC held that- "*it is well settled that Article 25 (2) (a) and Article 26 (b) guaranteeing the right to every religious denomination to manage its own affairs in matters of religion are subject to and can be controlled by a law contemplated under Article 25 (2) (b) as both the Articles are required to be read harmoniously.*"¹²

2) Arguments supporting entry of women:

- The basic essence of natural law is equity, justice and good consciences, all people are equal in the eyes of the constitution and must be given access.

⁹Shruti Chaudhary, *The Sabarimala Verdict: In the conflict of customs and law, which one should prevail?* Vol.2 (IJHSSI) 01, 01-02 (2018) <https://www.ijlmh.com/wp-content/uploads/2019/03/The-Sabarimala-Verdict.pdf>

10 26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(b) to manage its own affairs in matters of religion;

¹¹Riju Prasad Sarma v. State of Assam, (2015) 9 SCC 461.

¹²*Id.*

- Art 25 of the constitution allows an individual to determine his/her religion.
- Art 21 grants personal liberty to the Individual, except in procedure established by law.
- The deity, 'Naishtika Brahmachari' is also worshipped by women of all ages in their houses, and also in other Ayyappa temples, then why does Sabarimalai prevent worship by women?
- Branding menstruating women to be 'impure' is highly discriminatory, it has nothing to do with purity and is merely a biological phase in women.
- This prevention is directly in conflict with Art 14 of the constitution which ensure equality and equal protection of all law to all individuals in the country.
- The temple receives its funds from Consolidated funds, from the state, this makes it a public and not a private property.¹³

Upon simplification of the following arguments, one can spot out the basis of the arguments-

- 1) The unique nature of Naishtika Brahmachari, the reason why the temple is popular.
- 2) The practice is against right to equality and is only found in Sabarimalai and no other Ayyappa temple.

The people against this discrimination have a strong point of argument, the argument that this practice is only observed in Sabarimalai. This also means that customs become the strongest argument of the temple authorities, the argument that people's ancient tradition and practices must be given weightage and cannot be ignored by mere laws. Fortunately, these laws happen to be fundamental rights.

The Hon'ble supreme court held that woman of all ages must be allowed to enter the temple following a 4:1 majority, the bench stated that devotees of Ayappa have not been known to constitute a separate religious denomination, their only religious tenet is Hinduism.

The bench had gone on to strike down section 3 and 4 of the Kerala Hindu Places of Public Worship Rules 1965, stating that the same was *ultra vires* of the rule of law. Perhaps the genius takes on issue by the court was branding mensuration as an 'impurity' on the same threshold as that of 'untouchability', the same which is prohibited by rule of law, in conclusion the court ruled that an individual's biology taken as a factor for barring them from any place is unconstitutional.¹⁴

Until now, the courts have always favoured the rule of law over any custom, no matter how ancient or important it maybe. It is apparent that the same has been seen in dowry. However, our in this project is analyse the lawmakers' decision of eradicating dowry, is dowry a social menace worth eradicating? The answer lies not only in its philosophy but also in the manner in which dowry is seen in modern India.

¹³Shruti Chaudhary, *supra* note 9.

¹⁴Indian Young Lawyers Assn&Ors v. State of Kerala 7 Ors , 2018 SCC OnLine SC 1690

4. An analysis of statutes enacted in order to prevent Dowry

In this chapter we will be looking at the important points of all the enactments and will discuss the results in the following chapters.

4.1 Dowry Prohibition Act, 1961: This act was one of the first measures taken against dowry. It is also important to note that this is the only act dedicated to the prevention of dowry. Let us look at the definition of dowry given in this act.

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

- (a) by one party to a marriage to the other party to the marriage; or
- (b) by the parent 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 or any time after the marriage 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)¹⁵

The keywords in this act are 'property' or 'valuable security'. Any matter that can be included under these ambits can be considered 'dowry'.

For a clearer explanation we shall have to look at section 3 which deals with penalties for taking or giving dowry, this section gives us the objects that need not be considered under dowry.

(2) Nothing in sub-section (1) shall apply to, or in relation to, —

- a) Presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf): Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;
- b) Presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf): Provided that such presents are entered in a list maintained in accordance with the rules made under this Act: Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.¹⁶

The unique nature of this act however lies within section 6.

Section (6) Dowry to be for the benefit of the wife or her heirs. —

¹⁵ The Dowry Prohibition Act, 1961, § 2, No. 28, Acts of Parliament, 1961 (India).

¹⁶ The Dowry Prohibition Act, 1961, § 3, No. 28, Acts of Parliament, 1961 (India).

Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman—

(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman—

- 1) If the dowry was received before marriage, within three months after the date of marriage; or
- 2) If the dowry was received at the time of or after the marriage, within three months after the date of its receipt; or
- 3) If the dowry was received when the woman was a minor, within three months after she has attained the age of eighteen years, and pending such transfer, shall hold it in trust for the benefit of the woman.¹⁷

Similar to cases of child marriage, an agreement to conduct a child marriage is void, but upon concealment of the fact that one of the children is a minor and upon marriage taking place, the marriage is voidable at the instance of the party who is the minor.¹⁸

Similarly, an agreement to dowry is void, but dowry given is dowry accepted, and this is accepted for the benefit of the wife and her heirs.

5. Results

- 1) Definition of Dowry.
- 2) Cases which may not come under dowry.
- 3) Transfer of dowry received to benefit of wife and heirs.

5.1 Protection of Women from Domestic Violence Act, 2005:

This act is not dedicated to dowry prevention but one section talks about harassment related to dowry demand.

- a) Definition of domestic violence. —For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it.
- b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or¹⁹

Results: Provision to prevent harassment and physical violence relating to dowry demand.

5.2 The Indian Penal Code, (Dowry Death, Sec 304B)

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

¹⁷ The Dowry Prohibition Act, 1961, § 3, No. 28, Acts of Parliament, 1961 (India).

¹⁸ The Prohibition of Child Marriage Act, 2006, § 3, No. 25, Acts of Parliament, 2006 (India).

¹⁹ The Protection of Women from Domestic Violence Act, 2005, § 3 (b), No. 43, Acts of Parliament, 2005 (India).

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.²⁰

While the connection between a dowry and an allegation of harassment is very narrow, this would require a thorough police investigation for the same and the establishment of a connection is largely based on the effectiveness of the investigation.

Results: Dowry death is seen as the offence only when evidences of harassment and cruelty are established along with a demand of dowry by husband and his kin.

5.3 Indian Evidence Act, 1872 (Section 113B):

113B. Presumption as to dowry death. —When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.²¹

This section on the other hand confers powers to the court to presume dowry death in cases where there are evidence of harassment or cruelty, this is almost similar to the act discussed above.

From these entire acts one can understand the various measures taken against commitment of Dowry crimes. However, this analysis is incomplete without justifying the need to act against dowry, or rather why did dowry become a social menace. In the next few chapter, we will look at the natural law aspects of dowry and its cultural developments.

6. Dowry - An Overview

We have reached the penultimate chapter of our discussion, in this chapter we will look at how dowry is a ‘custom-made’ tradition, or try and answer the question as to whether dowry is a form of natural law.

6.1 Overview of Narad Smriti

The word ‘smriti’ literally translates to ‘that which is remembered’ or based on memory, in other words these are rules laid down by human intellect. These are believed to be texts handed down by ‘Rishi’²². Shrutis are another form of text, which is said to be of ‘holy origin’ or divine revelation through sages.

Narad Smriti is an even ancient form of Manu Smriti; it contains 1028 verses and has two commentaries in its name one by Asahaya (AD650-750) and another by Bhavasvamin (AD700-1000).

Some of the subject dealt with the text are *madana* (recovery of debts), *upanidhi* (deposits and lending), *dattapradanika* (gifts and resumption thereof), *abhyupetya-asusrusa* (breach of contract of service), *Asvamivikraya* (sale without ownership), *samayasya-anapa-karma* (violation of convention of guilds), *simabandha* (settlement of boundaries), *dayabhaga* (partition and inheritance), *Stripumsayoga* (marital relations), crimes and punishments, *Vyavahara* (social conduct). Unlike Manu, Narada supported the remarriage of widows, gambling with state control and charging levy.²³

The Narad Smriti states five categories of marriages, *Bramhivivah*, *Dev vivah*, *Prajapthivivah*, *Arshavivahand* *Asuravivah*.

The interesting thing about this distinction between terms is that they are differentiated on the kind of gifts given for dowry.

- 1) *Bramhivivah*: when a groom is invited to the bride’s household, gifts, ornaments and wealth are given in accordance with the parents of the bride.
- 2) *Daivvivah*: A pair of a bull and a cow is given to the bride groom by the bride, in the works on one commentator, *Kalpataru*, this gift of a cow and a bull given by the father of the bride, belongs to the bride.
- 3) *Prajaptayavivah*: In this case a girl’s gives her daughter in marriage to the groom. In contrast to *brahmana* marriage, it is the father who goes in search of the groom, along with gifts.
- 4) *Arshavivah*: This was the kind of marriage that was seen in epics like *Mahabaratha*, where girls were given to sages in exchange for cows, kings and other royal members never failed to agree to this as sages were seen as powerful and enlightened men.
- 5) *Asura vivah*: This is a lowly form of marriage, were the groom is not suitable to the bride, but is allowed to get married when he is able to giving as much wealth and property as he can.²⁴

The common aspect from all of these kinds of marriages is that they involve a ‘bride’ and an exchange for that bride in the form of monetary reward or property with monetary value.

In ancient Hindu marriage we can see two important customs, *Kanyadhanand* *Vardakishna*, the former was a process where the father presents his daughter gifts such as jewellery and ornaments, the latter where the father of the bride gives a gift to the bridegroom, this tradition however

20 The Indian Penal Code, 1860, § 304B, No. 45, Acts of Parliament, 1860 (India).

21 The Indian Evidence Act, 1872, § 113B, No. 01, Acts of Parliament, 1872 (India).

²²Vedic term for ‘accomplished’ and enlightened, they are considered great ‘yogis’, sages who are believed to have achieved the height of knowledge and supreme truth. Their teachings are composed of hymns and are passed down through generations.

²³Hindu Encyclopaedia, https://vedapurana.org/single.php?s=308&word=Narada_Smriti&secure (last visited Mar. 25, 2021).

²⁴SanskritMagazine, <https://www.sanskritmagazine.com/indian-religions/hinduism/ashta-vivaah-eight-types-of-marriages-in-hinduism/> (last visited Mar 25, 2021).

has managed to survive and has now evolved into a unwritten 'consideration' for marriage.²⁵

From all of this one can understand, in simplest terms that dowry was indeed a customary practice, deeply rooted in Hindu tradition. But like all other traditions, dowry as a practice is highly discriminatory. The very idea of monetary compensation, property or gifts being given in exchange for a bride, irrespective of whether it is given to the bride's or the groom's kinsmen is objectification of women in all aspects.

The next question that is put before us is, how severe is dowry? is it really worth the measures taken?

6.2 Effects of Dowry, statistical analysis:

A look at an official statistics report released in 2019 by Ministry of Home Affairs had given the country a shocking revelation.

This report allowed us to look at a state and union territory-wise cases registered under **Section 304 B (Dowry Death)** of the IPC for the year 2014 to 2016. There were a total of three divisions, Cases Registered (CR), Persons Arrested (PAR) and Persons Convicted (PCV), let's take a look at the results (All India);

| (All India) | 2014 | 2015 | 2016 |
|-------------|-------|-------|-------|
| CR | 8455 | 7634 | 7621 |
| PAR | 23598 | 19973 | 20545 |
| PCV | 4054 | 4624 | 3400 |

This is a similar result under '**Protection of Women from Domestic Violence Act, 2005**'.

| (All India) | 2014 | 2015 | 2016 |
|-------------|------|------|------|
| CR | 426 | 461 | 437 |
| PAR | 693 | 540 | 556 |
| PCV | 13 | 27 | 28 |

These results were obtained from a report released by the Ministry of Home Affairs.²⁶

The National Library of Medicine had conducted a study on the dowry deaths in south India for the year 2012.

This prospective study was carried out on 140 cases. Results revealed that majority of the victims (83%) were young aged between 18 and 26 years, childless (65.7%) and mostly died within 4 years of marriage (77.2%). About 80% of the victims were illiterates (53%), house wives of rural background (62.9%) and from middle socio-economic group (81%). Husband alone or along with in laws (75%) and joint family (85%) were mainly responsible for death. The common causes of death implicated are hanging, burning and poisoning. Mostly the place of occurrence was in-laws

²⁵Archit Bharadwaj, Taran Deep Arora, The Dowry Prohibition Act, 1961, PGSEM, 3 (2007), http://www.saveindianfamily.org/images/stories/IIMB_law_project.pdf

²⁶Ministry of Home Affairs, <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2019-pdfs/ls-25062019/502.pdf> (Mar.25, 2021).

*house. Suicidal deaths accounted in 57% and the rest being homicide. At the end some potential risk factors and their remedial measures suggested.*²⁷

From this particular study we can infer that most of the victims, almost 83% of them were between 18 and 26, brides under 24 have very less chances of being completely educated. This inference can be supported by the next statement, "About 80% of the victims are illiterates." It is also revealed that 62.9% of the victims were from rural area.

It also important to note that numbers from both reports are collected years after the enactment of anti-dowry laws. It is still unclear as to how many cases have gone unrecorded, the mere enactment of laws has proved to be inefficient, what is required is an education in the matter and stringent preventive measures rather than laws for penalty and establishment of dowry.

We shall now move on to the last chapter of the paper.

7. Conclusion and Discussions

7.1 Discussion of results

We can draw the following results of our previous discussions: -

- 1) Dowry is indeed a customary practice with traditional roots; its details have been recorded in various ancient-holy scriptures, used for holy-teachings over the years.
- 2) Basic philosophy of dowry was to provide measures of sustenance for the widow and her heirs in case the husband had not made any.
- 3) Dowry had originated in the classic Hindu-marriage gifting-practices, namely, *Kanyadhanand Vardakishna*. These concepts though being voluntary and an act of affection have evolved into an unwritten consideration for marriages.
- 4) The various kinds of marriages explained under the *Vedas* involve, gifting of valuable property in 'exchange' for the bride. Such assertion is highly sexist and discriminatory.
- 5) The various dowry prevention laws have not fared well in the battle against dowry, owing to the sheer numbers decades after the enactment of such laws, the measures must be even more stringent and concentrated on preventive measures, rather than punitive.

Now let us look at the statement of Hypothesis.

"Dowry is a customary practice of India with deep roots in tradition, it can also be considered an important part of 'positive law' in regards to marriage laws, the provisions enacted for preventing and penalising dowry deaths and harassment is enough. Dowry can be included as a consideration for marriages."

Now our question is, whether dowry can be considered 'positive law'?

²⁷Sachidanada, et al, Analysis of Risk Factors of Dowry Death- A South Indian Study, (Nov. 16, 2012, 10:04 AM), <https://pubmed.ncbi.nlm.nih.gov/23622482/>

Positive law is man made law or rather law *made* rather than *discovered*.²⁸ This type of law is not universally applicable unlike natural law; positive law is enacted in a way to suit the demographics and the cultural elements of a state.

Dowry on the other hand is 'Divine Positive Law', divine positive law is law created by man but is believed to be passed on to these law makes via divine connection with the almighty.

"Divine positive law is the only way God's people know how to worship him correctly. God is not "*worshipped with men's hands*" (Acts 17:25), all forms of worship devised by man are detestable to him, this is the basis of the second commandment and the Regulative Principle of Worship."²⁹

The reason why one should consider dowry as 'divine positive law' is because of its origins.

Manu smriti and holy texts such as Vedas are said to be written by supreme sages and holy men who are believed to have written down these laws by divine connection to God through penance. Moreover, dowry as a system was practiced by almost all royal families and caste below Brahmins.

The next question is, whether the enactments to prevent dowry is required? And should dowry be accepted as a regular marriage practice?

Regardless of its divine origins, dowry has become a staple of all marriages even though it has been declared wholly illegal, dowry as a system has allowed one party to harass another for expensive gifts that they may not be able to provide for. Owing to the sheer number provided by statistics released by the government and public authorities, one can conclude that dowry is hugely damaging and puts married women and their kin at vulnerable position.

7.2 Conclusion

Family is established as the foundation for a healthy society, the generic idea of family which includes a man, a woman and children, until today theorists have listed out many challenges to the structure of a family, be it un-orthodox relations like homosexual family structures, live-in relationships or medical issues like STDs or infertility, dowry has plagued the society since time immemorial, the very idea of considering dowry a 'custom' must be negated by modern ethics of marital relations.

Families these days claim to be 'modern' and 'metro' yet they cling on to the idea of dowry being a necessary step for marriage.

As a believer in the strength of marriage and the role it plays in society as an important contributor to the rearing and development of human resource, I think we must abandon this ancient idea and move on to newer frontiers and respect the institution called 'family'.

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