

Dowry Death

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Abstract: *Marriage is an integral part of society, a source of joy and festivities as well as of new beginnings. Yet, one of the longest standing evils associated with marriage from a woman's point of view in the Indian society is the Dowry system. Despite a lot being said and done against the custom, it is still prevalent in the 21st century, in both subtle and obvious ways. The word 'dowry' means the property and money that a bride brings to her husband's house at the time of her marriage. At the beginning it was voluntary custom, but later on took the shape of a tool to exert pressure on the bride and her parents, in the name of social practice and honor. The dowry at present is a source of both joy and curse in the society. It is also a joy to the husband and his relatives who get cash, costly dress and utensils, furniture, bedding materials, etc. But, it is a curse to the bride's parents who have to bear enormous cost to satisfy the unreasonable demands of the bridegroom's party. A demand of dowry does not diminish even after marriage. The in-laws of the bride are very much ready in Indian homes to inflict harassment, insults and tortures-both mental and physical. When more pressure is put on the bride's parents, their dear daughter has no other option but to commit suicide to avoid more insult and torture at the hands of the members of her husband's family.*

Keywords: dowry, dowry prohibition act 1961, dowry death, marriage, social practice and family honor

1. Introduction

"Who makes dowry a pre-condition for his marriage, not only shows disrespect to women but also humiliates his own nation, education and womanhood and such young person's should be socially boycotted".

Mahatma Gandhi

On an average a bride is burnt every hour in the country, courtesy-Dowry. This age old ritual has come a long way from being a token of love for the daughter to a social menace. Although paying and accepting of dowry has been illegal in India, for 55 years under the Dowry prohibition Act (amended in 1984 and 1986) 1961 but, the provisions are rarely enforced and the evil practice is still rampant and thriving. Despite anti dowry laws and the constant media campaign against dowry, this social evil is behind the deaths of thousands of women in the country every year. This article is an attempt to have an insight into the origination of this social evil that has commercialized nuptial vows and to identify the ways out.

Definition¹

Dowry can be defined as the money, good or property that a woman brings to her husband at the time of her marriage. It is the payment in cash or some kind of gifts given to a bridegroom's family along with the bride. Generally, it includes cash, jewelry, electrical appliances, furniture, bedding, crockery, utensils and other household items that help the newlywed set up her home. This age old ritual has come a long way from being a token of love for the daughter to a social menace.

Origin

The dowry system did not stand as an impediment in daughter's marriage in ancient India. In pre historic times daughters were regarded as chattel and it was the bride's father and not the bridegroom's, who was regarded as justified in demanding a payment at the time of marriage.

The bridegroom carried away the bride and deprived her family of her services. He could not have dreamt of demanding a further dowry or donation. Thus dowry system was generally unknown in early societies, and the same was the case with ancient Hindus. In rich and royal families there was a tradition of giving gifts to son in law at the time of marriage. However, these presents can hardly be termed as dowry for they were voluntarily made after the marriage out of love and affection. These properties formed the 'stridhan' of the women voluntarily given by the parents to help the daughter in her rainy days. However, an offshoot of the same grew in the evil practice of dowry. The parents of a bride twisted this concept of stridhan for invoking greed, in the mind of groom's parents and offered to satisfy the same just to provide comfortable and settled life for their daughter. Otherwise the Smritis contain no reference of any pre-nuptial contract of payments to be made by the bride's father to the bridegroom or his family. The concept of dowry system is associated with the belief of marriage as a "dana" or gift of the daughter. The Hindu Shastras² recommended that the bride be adorned with jewellery and then be gifted away, also known as "dana" or "kanyadana". However the act dana remained incomplete till the receiver was given "dakshina" in this case the husband. Hence the bridegroom was given something in cash or kind along with "kanyadan", referred to as "varadakshina". Another view point is that the practice of dowry seemed to have been fuelled to overcome the bias in the Mitakshara system. The Mitakshara system or the law of inheritance prohibited women from getting any share in parental wealth; hence the system of favoring the daughter with handsome dowry seemed to have been introduced to overcome this restriction.

The various excuses for upholding the demand of dowry are

- A lucrative appointment, good footing in a learned profession or good education enormously improved the social and economic status of a youth and made him immensely eligible son-in-law.
- It is a prestige issue for the family.

¹<http://www.legalblog.in/2011/02/dowry-death-meaning-supreme-court.html>

²https://en.wikipedia.org/wiki/Marriage_in_Hinduism accessed on 20th February 2019

- *Hum to ladkewalehain and we have the right to demand dowry.Sigh!*
- We have spent so much on our son's education, so it is only justified that we ask for dowry.
- The girl is not beautiful, and hence asking for the higher Dowry amount is only legitimate.
- These are several notions that have ruled the minds of the ladkewalas waiting for a sincere 'Shift+Delete' command.

Legislation

In India the legislature enacted The Dowry Prohibition Act 1961 (hereinafter referred to as 'Act'). However the Act failed to curb the evil practice and it continued to be practiced throughout the country in the name of customs and as a means of establishing one's social prestige and rank.

The Act sought to define Dowry as anything given as consideration for the marriage. However, It excludes the presents in the form of clothes, ornaments, etc., which are customary at marriages, provided the value thereof does not exceed Rs.2000, with a view being necessary to make the law workable. The Act prohibits not only giving and taking dowry but also raising a demand for the same. However, besides the fact that punishment prescribed for demanding, taking and giving dowry were very low, the Act also contains so many loopholes.

The Act has been amended twice, first in 1984 and for the second time in 1986 to cure its defects and make it more effective.

1984 Amendment Act

The definition as given in sec 2 was amended to give it an expansive view and the words "as consideration for the marriage of the said parties" were substituted with "in connection with the marriage of the said parties" so that any payment whether in cash or in kind given before, at or after the marriage can be included in dowry as it was very difficult to determine what constitutes consideration for marriage. Also the punishment for the offence of giving and taking dowry was enhanced.

*In the case of Yogendra Kumar Bansal v. Smt Anju*³ the Allahabad High Court said that "Dowry means any property given or agreed to be given by the parents (or any others) of a party to the marriage or before marriage or at any time after the marriage in connection with marriage". Thus where the husband demanded an amount of Rs 50,000 by way of dowry some days after the marriage from the wife's father and in the event of her not being able to give that amount was subjected to torture, it would mean that the amount was demanded in connection with the marriage and it was a demand of dowry even though it was demanded after marriage. The phrase "in connection with marriage" however is ambiguous and has not been interpreted in a uniform manner. The question of whether gifts received under coercion/ pursuant to demands being made, after the completion of the marriage ceremony, but during the course of the marriage, are included in the definition of dowry

³https://indiankanoon.org/doc/163609906/accessible_on_25th_February_2019

remains unanswered

1986 Amendment Act⁴

The definition of dowry under section 2 was further amended to include the demands made at or before or any time after the marriage. The punishments were made more stringent and prescribed a term imprisonment for 5 years and fine of Rs.15, 000/- or the amount of the value of dowry, whichever is more for giving and taking dowry. The 1986 Act introduced new sections 8-A and 8-B. Sec. 8-A says that the burden of proving that one has not committed offence u/s. 3 (giving or taking of dowry or any abetment towards it) and u/s. (demanding dowry) is on the person charged.

In Order to provide more teeth to dowry prevention laws, the Government made it mandatory for couples to make a list of gifts exchanged during the ceremonies of marriage. The Dowry Prohibition (Maintenance of List of present to the Bride and Bridegroom) Rules were introduced in 1985 in pursuance of the same purpose. It clearly stated that the list of gifts, in form of a sworn affidavit, has to be notarized, signed by a protection officer or a dowry prohibition officer and kept by both the parties. Failing this can invite heavy penalty including a three- year term in jail for not only bride and groom but also their parents.

The legislation was further complemented with suitable amendments in the Indian Penal Code 1860 (hereinafter referred to as IPC) by inserting Sec 498A and Section 304 B . Provision to this effect has been added in the Indian Evidence Act, by adding Section 113-B since the year 1983 and Section 198A in the Code of Criminal Procedure, 1973. A conjoint reading of the above mentioned provisions lays that in the case of suicide by a married woman, within 7 years from the date of her marriage, the Court may presume that such suicide has been abetted, encouraged by her husband or his relatives.

In case *Lajpat Rai Sehgal v. State*⁵ - Section 4(2) of Code of Criminal Procedure, 1973 (herein after referred to as CrPC), deals with the enquiry at trials etc. under any other law. Thus the crimes under the Dowry Prohibition Act are to be tried, investigated and enquired under the provisions of Cr.P.C. The Act also provides for Dowry Prohibition Officers under sec 8B to ensure the effective implementation of the provisions of the Act.

Another relevant legislation strengthening the above mentioned provisions was the enactment of Protection of women from Domestic Violence Act, 2005 enacted in the year 2005. The legislation took the cognizance of most hidden form of cruelty against the women taking place in their home itself. Some measures are also taken by the international community for eradication of domestic violence against women and declared 25th November as the International day to prevent violence against women.

⁴www.legalblog.in/2011/02/dowry-death-meaning-supreme-court.html accessed on 28th February 2019

⁵<https://www.legalcrystal.com/case/680550/lajpat-rai-sehgal-vs-state> accessed on 3rd March 2019

Advantages of Dowry System in India

Though the practice of dowry is legally criminalized, condemned publicly and morally despicable, it continues to persist as a significant segment of society argues that the practice of dowry has its own advantages. Some of the arguments in favor of dowry are discussed here under:

- 1) **Dowry helps newly married couple to establish their family:** The supporters for the practice of dowry claim that the valuables, money goods and articles brought by the bride at the time of marriage help the newly married couple to set up their new home and also enables them to equip their home with necessary accessories.
- 2) **It makes marriage of ugly looking girl easy:** Dowry serves as an inducement for luring a suitable bride groom for the marriage of an unattractive, uneducated and aged girl. A huge amount of dowry acts as effective and useful method for alluring a suitable bride groom for the bride.
- 3) **Supports the Higher Education of poor boys:** The practice of dowry has often been justified on the grounds of sponsorship for higher education of the prospective bridegroom. It solves the financial problem of poor young bachelors and gives support for higher education. Alternatively the parents of the groom pursue marriage of their son as a means of reimbursement of what they have spent on the education of their son.

Disadvantages of Dowry System in India⁶

The despicable custom has assumed an alarming proportion reducing the sacrament of marriage to just a merciless business transaction and has been the origin of many evils in the society. It tags a young maiden as an unwarranted liability and groom a salable commodity and has become a socially established norm of draining the wealth from the family of the bride to that of the groom.

- 1) **Dowry causes great economic burden on bride's family:** The practice strikes most harshly to the middle and lower income families who live hand to mouth to utilize their resources for the fulfillment of basic necessities of life like education and health. The pressure to keep up with the societal norms, force such families either to borrow money or to mortgage or dispose of their property. Thus the marriage of a daughter becomes the source of agony for the parents, which they keep on carrying over the years. Very often the change is irreversible. The situation creates a vicious circle in the society where parents as an escape route to the mentioned problem become non-hesitant to indulge in practices like female feticide, child marriages and selling of women for servitude and prostitution etc.
- 2) **Dowry undermines the institution of marriage:** The practice of dowry in the guise of custom has degraded the status of woman to a commodity capable of being sold and bought. It has reduced the institution of marriage primarily an economic relationship in which the opinion of a girl has no meaning and groom's choice of wife is determined by one's ability to pay rather than on mutual respect and love between bridegroom and bride. Thus the system aggravates rather than healing class distinctions.

⁶<https://www.studymode.com/subjects/advantages-and-disadvantages>-accessed on 3rd March 2019

Present scenario

The cases of dowry deaths have increased by 4.6% during the year 2014 over the previous year (8,083 cases). A total of 8,501 victims were reported under 8,455 dowry deaths cases in the country during the year 2014. 29.2% of the total cases of dowry deaths were reported in Uttar Pradesh (2,469 cases) alone followed by Bihar (1,373 cases). The highest crime rate in respect of dowry deaths was reported in Bihar (2.8) followed by Uttar Pradesh (2.5) as compared to the national average of 1.4. The cases registered under this Act have decreased by 6.2% during the year 2014 as compared to the previous year (10,709 cases). Maximum such cases were reported in Bihar (2,203 cases) followed by Uttar Pradesh (2,133 cases), Karnataka (1,730 cases) and Jharkhand (1,538 cases). The highest crime rate (9.6) was reported from Jharkhand as compared to 1.7 at the national level.

2. Judicial Trends

In the case of *L.V. Jadhav v. Shankar Rao Abasahab Pawar*⁷- The Apex Court observed that having regard to the object of the Act the whole meaning of the term Dowry should not be introduced in section 4, held that a liberal structure has to be given to the word Dowry used in this section.

The object of Sec 4 of Dowry Prohibition Act 1961 is to discourage the very demand for the property or valuable security as consideration for a marriage between the parties thereto. Sec 4 prohibits the demand for giving property or valuable security which if satisfied, would constitute an offence under sec 3 read with sec 2 of the Act. Thus the ambit and scope of sec 3 and 4 of Dowry prohibition Act, 1961 are different from the ambit and scope of sec 304B IPC

It was observed in *Raja Lal Singh v State of Jharkhand*⁸ the expression soon before her death occurring in Sec 304B IPC is a relative term. It can refer to a period either immediately before death of the deceased or within a few days or few weeks before death. There cannot be a rigid period of time which can be mechanically applied in each case. There must be existence of a proximate or live link between the effect of cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned connection of dowry and continue up to the period of soon before her death

In *State of Rajasthan v Jaggu Ram*⁹ the Supreme Court held that where the death occurred within one and the half years of marriage, with evidences of cruel treatment and harassment starting immediately after marriage and continued until death, the High Court erred in acquitting by giving undue weightage of some discrepancies, ignoring the fact that she suffered head injuries at her in-laws place and

⁷<https://indiankanoon.org/doc/1751199> accessed on 7th March 2019

⁸<https://indiankanoon.org/doc/1870126> accessed on 8th March 2019

⁹https://www.law.cornell.edu/.../state_of_rajasthan_v_jaggu_ram accessed on 11th March 2019

died of them, her parents not informed and crimination was done in hush-hush manner.

In case *Sidramnarayan Batane v. State of Maharashtra* - In the present case, both the parties to the marriage were not well off, they did not have large lands or assets and were not in a state to incur a lot of expense on the marriage. However an amount of Rs. 1,10,000/- was given which was not held to be called as Dowry as it was the expense, which was spent on the marriage ceremony.

In the case of *Madan Lal v. Amar Nath* the court stated that "property given either to secure an agreement to marry or given at the time of marriage in exchange for of as the reason for the marriage, as it were. It, may also include property given subsequent to the marriage but expressly deferred as the reason for the marriage but "would not include property that may pass hands subsequent to the marriage, even months or years after it, merely to save the marriage from being broken or to smoothen the course of matrimonial life, or to keep the family of the in-laws of the wife better disposed towards her".

In case *Babulal Sao v. Moolchand Jain*¹⁰. It was held that giving of gifts before formalization of wedding, these gifts are included in the definition of Dowry and the same is annulled under this section of the act. The word 'dowry' has to be understood as is defined in sec 2 of the Dowry Prohibition Act, 1961. Thus there are three occasions related to dowry, i.e. before marriage, at the time of marriage and at an unending period.

Under section 6 of the act it has been said that if any dowry given to any individual other than the bride, then it will be transmitted to her within the specified time period. In case it is not transferred it will be held to be a crime under the act and penal action should be taken. Also till the time the property is held with a person, he or she will hold it as a trust, further this section explains that if the female expires before receiving the property, her heirs will be entitled to claim it.

In case *Sakhi Mandalani v. State of Bihar*¹¹- Section 3 and 4 of the Dowry Prohibition Act make out separate offences, but in the present case it was the claim for Dowry joined with cruelty and harassment which establishes the foundation of the prosecution case. Once the main part of the charge under S. 304-B was not found to be established, it was not possible to conduct prosecution under Section. 3 and 4 of the Dowry Prohibition Act:

Recently the Supreme Court in the matter of *Appasaheb and anr. V state of Maharashtra* held that "Demand for money on account of some financial stringency or for meeting some urgent domestic expenses cannot be termed as a demand for dowry as the said word is normally understood. dowry means any property or valuable security to be given or agreed to be given either directly or indirectly at or before or

any time after the marriage and in connection with the marriage of the said parties hence a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential "

In *Kamesh Panjiyar v State of Bihar*¹² the Supreme Court observed that the marriages are made in heaven is an adage. A bride leaves the parental home, leaving behind sweet memories there with a hope that, she will see a new world full of love in the groom's house. She leaves behind not only her memories but also her surname, gotra and maidenhood. She expects not only to be a daughter in law, but a daughter in fact. Alas! The alarming rise in the number of cases involving harassment to the newly wed, for dowry shatters their dream. In-Laws are characterized to be out-laws for perpetrating terrorism which destroys the matrimonial home. The terrorist is dowry, and it is spreading tentacles in every possible direction.

In case *Vikas v. State of Rajasthan* - This inherent social evil necessitates to be measured not only by operative application of the Dowry Prohibition Act, 1961, but also by the Society. The Community or Society has to find new ways and means of monitoring and regulating this evil of taking and giving of Dowry. It seems that instead of regulating payment and receiving of Dowry in one or some other form, it is growing even in the educated class of people. Maybe, it is growing to a level because of gathering of black money with few and others having less money; means follow the same out of obligation.

3. Amendments

- 1) Amendments Introduced in the Code relating to relevant law who may file complaint (**Sec. 198A, Cr.P.C.**) With other amendments, Section 198A was added to the Criminal Procedure Code authorizing persons aggrieved to file complaint for offence punishable under Section 498A relating to cruelty against the woman against the husband and other relatives. This section gives details of the person on whose 119 complaint cognizance can be taken. In short, these persons should be related to the lady in near relation.
- 2) **The Act of 1983, 498A** created a new offence in the Indian Penal Code, Section 174, Criminal Procedure Code was also amended by the same Act (Section 3) to secure post-mortem in case of suicide or death of a woman within seven years of the marriage. Keeping in view the legislation has also amended and inserted sections 113-A and 113-B in Indian Evidence Act for raising the presumption of dowry suicidal death and dowry related death.
- 3) **Indian Penal Code as Section 304B**¹³ by the Dowry Prohibition (Amendment) Act, 1986 with effect from November 19, 1986. The provisions under Section 304B, Indian Penal Code are more stringent than that provided under Section 498 A of the Penal Code. The offence is cognizable, non-bailable and triable by a Court of

¹⁰<https://indiankanoon.org/doc/501022> accessed on 13th March 2019

¹¹www.lawyersclubindia.com/experts/Dowry-case-243506.asp accessed on 19th March 2019

¹²<https://indiankanoon.org/doc/1466771> accessed on 21st March 2019

¹³<https://indiankanoon.org/doc/653797> accessed on 25th March 2019

Session. In view of the nature of the dowry offences that are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence necessary for conviction is not easy to get. Accordingly, the Amendment Act 43 of 1986 has inserted Section 113 B in the Evidence Act, 1872 to strengthen the prosecution hands by permitting a certain presumption to be raised if certain fundamental facts are established and the unfortunate incident of death has taken place “within seven years of marriage”.

- 4) **The Amendment Act 43 of 1986** has inserted Section 113 B in the Evidence Act, 1872 to strengthen the prosecution hands by permitting a certain presumption to be raised if certain fundamental facts are established and the unfortunate incident of death has taken place “within seven years of marriage”.

Articles

- To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (**Article 39 A**)
- The State to make provision for securing just and humane conditions of work and for maternity relief (**Article 42**)
- The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (**Article 46**)
- The State to raise the level of nutrition and the standard of living of its people (**Article 47**)
- To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (**Article 51(A) (e)**)
- Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (**Article 243 D(3)**)
- Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (**Article 243 D (4)**)
- Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (**Article 243 T (3)**)
- Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (**Article 243 T (4)**)
- Recovery of dowry articles is no ground to deny anticipatory bail – **Anil Mehra Vs. State of UT Chandigarh, II(2000) DMC 235.**¹⁴

4. Conclusions

However despite rapid privatization, liberalization and globalization dowry has become the one of the gravest social evil today. The data depicts a clear picture as to how this menace is growing with the passage of time and shockingly the practice is more rampant in urban area among the educated people. Surprisingly the situation is not that grim in lower strata of society because there the woman is engaged in economic activities and are supplementing the family income. On the other hand woman in high income and affluent families are subjected to more of such practices in the name of honor and reputation of the family. Legislative and non – legislative measures are to be taken for the eradication of dowry practice. Although we have a separate legislation in the shape of Dowry prohibition Act,1961 since more the five decades but the points to be considered are that our laws are made at the apex level by the parliament which remain confine to certain elite classes and does not reach to the people at the grass root level.

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