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DOWRY, DOWRY LAWS AND THE STILL EXISTING CONCERNS

Authored By- Cyriac Joseph

Abstract

Dowry is one of the long-rooted cause violence against women in India. There are various reasons why this practice still exists in our country and one of the major reasons for the same is the problem that exists within those laws that are supposed to protect women for dory related issues. The vague, ambiguous nature of the laws made it so easy for the culprits to escape and these flaws really made the life of women more difficult. Even after various amendments and modifications it's a sad reality that the problems still exist. Apart from the problems with the laws, the attitude of people towards dowry is another reason why this still exist. Many people don't realise the fact that this system of dowry is taking us backwards and is only creating hardships to women and to healthy family relationships. Through this paper we look at the history of dowry, laws related to dowry, the problems existing with dowry laws and the ways to tackle the long existing problems of dowry.

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Introduction

Even in this 21st century there is no way other than to accept the fact that Dowry is still practising in India and the number of Dowry Deaths are increasing without a halt even after these tough days of Covid Pandemic. It is such an important topic to be discussed taking the fact that this so-called custom is still taking the lives of poor women and breaking the healthy relationship of thousands of families. The principle legislation in India which deals with Dowry and all related aspects is the Dowry Prohibition Act of 1961. As a part of increasing the effectiveness of this legislation the government has introduced two amendments to this act, one in 1984 and the other in 1986. Giving, taking or demanding of dowry in any sort is punishable under this act. The ineffectiveness of this Act can easily be identified by the earlier statement itself as even though this act prohibits all sorts of giving, taking and demanding of dowry this practise still continues to haunt. It can easily be stated that Dowry is the long-lasting contingent disease that our society is facing. It is truly horrifying to believe that even after all these sorts of trauma and tards this practise still exists in most parts of our country without any hesitation.

The saddest part of this Dowry practise is that, it is totally taking off the values of marriage and is transforming the marriage concept itself into some sort of exchange between the families. Here women are turning into a material and the main reason why many marriages happen is because they are keener towards dowry and not about having a stable relationship. When we look historically in India, we can understand that the concept of Dowry itself is entirely different from the way in which it is existing now a days. Dowry is also known as 'Streedhan' and this is the combination of two words Stree and Dhan, Stree means women and Dhan means wealth. It tries to explain the concept of Streedhan as women being the wealth of families and this concept of Streedhan is as giving women things in form of money, land, property or any sort of gifts during the time of her marriage from her family for the welfare of this newly married women. It is so ironic that this concept and tradition of something that used to be acting as safeguarding the rights of women are now acting as the biggest burden for the entire women community.

Basic Understanding And History Regarding Dowry

The tradition and system of Dowry have a huge history in India and this practice of Dowry can easily be defined as the things including property, goods, money, jewellery etc that the bride's family gives to the family of the groom during the time of marriage or any time associated with that and this Dowry mainly acts as a condition towards marriage. Dowry is not just cash and property, anything including vehicles, utensils, electrical appliance all comes under dowry. Many a times this system of Dowry puts lots of pressure and burden on the heads of bride's family. The legal definition of Dowry is given under the Dowry Prohibition Act of 1961 and it says that, "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 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 [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) applies.¹

When we look into the Indian History in search of dowry, we can understand that, there are arguments towards both the ends regarding the existence of dowry. Many claim that there wasn't anything like dowry and there is another group as well which claim that this dowry system has been there for a long period of time. Many documentary evidences suggest that rather than this dowry system the system that existed during the beginning of the 20th century was bride price. A famous German-American historian and Professor at Harvard University. Michael Witzel claims that as per the Ancient Indian Literatures, during the Vedic period, the practice of dowry wasn't significant. Many of the historians, philologists, mythologist and Indologist agree with this claim and it shows that this practice of providing things to the bride and groom's family were there but was different from the way it exists now. Most of all these claims are based on the interpretation of ancient Literatures, Smritis and Vedas.²

At the same the observations made by the eyewitnesses regarding dowry will give us a different understanding. One of the eyewitness records from [Alexander the Great](#) conquest (ca. 300 BC) as recorded by Arrian and Megasthenes. The first book by Arrian explains a condition which was of lack of dowry. Arrian in his first book states that "the people of Ancient India took marriages in way with certain principles and they are not concerned about dowry and fortune, and the only things they care about is the beauty of the bride and also the advantages of the coming person and

¹ The Dowry Prohibition Act, 1961

² Muni Buddhmal, TerapanthkeDrudhdharmiShravakArjunlaljiPorwal, KesrimaljiSuranaAbhinandaGranth, 1982, p95

nothing else.”³In his second book Arrian states that, “Indians marry without giving or taking dowry in any manner and the common way that exists is when a girl is at here marriageable age she will be put forward by her father to the public to be selected by the victor in any of the manly exercises including wrestling, running and boxing.”⁴ Thus, from this we can understand that the claims of the practice of dowry in India have two sides were one group believes that it was predominant whereas the other believes that it wasn’t been that dominant.

Dowry Laws

The premier legislation in India against Dowry is the Dowry prohibition Act of 1961. In order to increase the effectiveness as well as the rage of this act it has been amended twice, once in 1984 and the other in 1986. As per the amendments happened in 1986 it makes the judicial magistrate as well as the police to investigate every unnatural death of a women happened after less than 7 years of the marriage. Currently as per this act, the giving and taking of dowry is totally prohibited and violation of these laws mentioned are punishable with imprisonment between 6 months and 2 years and also with a fine up to ten thousand rupees or the value of the given or taken dowry, whichever is greater. Dowry related violence against women is criminalised in India by the Indian Parliament and as per the Indian Penal Code also the crimes against women by her husband and relatives in relation to dowry is perishable. The Indian Penal Code also says are dowry deaths are offences which are punishable up to 7 years of imprisonment. In addition to the Indian Penal Code, now the Code of Criminal Procedure and the Indian Evidence Act also talks about dowry related crimes. As per the provisions of CrPC, it is mandated that a police investigation must be done on the death of women happened under un-natural circumnutates within 7 years from the date of her marriage. And now as per the Indian Evidence Act a presumption of dowry death is created whenever a woman is dead had suffered cruelty and harassment relating to dowry soon before her death. Sad reality even after all these laws is that the number of women who are subjected to cruelty and other harassments in relation to dowry and even dowry deaths are not decreasing but in fact is actually increasing these days.

The Dowry Prohibition Act of 1961 has consolidated all those anti dowry laws that existed during the time of the enactment of this legislation. Section 3(1) of this act prohibits all sorts of giving, taking or abets in giving of dowry and is punishable for imprisonment of a term with minimum 5

³[Arrian](#), *The Invasion of India by Alexander the Great*, 3rd Century BC

⁴Arrian, *Indika* in Megasthenes and Arrian, 3rd Century BC

years and a fine more than fifteen thousand or the value of the received dowry, whichever is greater.⁵ Dowry is explained under Section 2 the Act and it says that dowry is property or anything as security which is given or agreed to be given in relation to the marriage. Section 3(2) of the act says that nothing mentioned previously in this section in relation to giving, taking and all of dowry will be applicable to 'presents' which are given or taken without any demand during the time of the marriage.⁶ Demanding dowry directly or indirectly is punishable as per this act including an imprisonment of not less than 6 months and a fine of ten thousand rupees. The act also says that the agreements made for the dowry are void ab initio in nature and all dowry that are received by persons other than the marrying women must be transferred to the concerned women. It is mentioned under the act if at all a person is charged with an offence under this act, the burden of proving vests on the person itself and not on the women or her family.⁷

Dowry Under IPC, Crpc & Evidence Act

As mentioned earlier criminal statutes including the Indian Penal Code of 1860, The Code of Criminal Procedure, 1973 and the Indian Evidence Act of 1872 all mentions about the dowry as a punishable offence. Section 304(B) of the IPC talks about Dowry Death and this section says that whenever a women in dead as a result of bodily injury or harm or burn or the death is caused under an unusual circumstance and is happened within 7 years of her marriage and there's sufficient evidence which can prove that she was subjected to cruelty and harassment from her husband or their family in demand of dowry, then that death will be called as dowry death and the husband and his family will be considered as responsible for the same. Adding on Section 113(B) of the Indian Evidence Act talks about presumption as to dowry death. And Section 113(A) of the Indian Evidence Act mentions about presumption as to abetment of suicide by a married women and abetment of suicide is an offence as per Section 306 of IPC. Many who were escaping from conviction under the Dowry Prohibition Act came into the lights through these 304B IPC and 113B Evidence Act. Along with this, Section 498(A) of IPC talks about husband or relative of husband of a women subjecting her to cruelty.⁸

Another important legislation that talks about the concerns of women and in relation to Dowry is the Protection of Women from Domestic Violence Act of 2005. This Act was enacted to provide a civil law remedy for the protection of women from domestic violence. The act covers all forms of

⁵Section 3(1) of Dowry Prohibition Act of 1961

⁶Section 3(2) of Dowry Prohibition Act of 1961

⁷Agrahari, Gunjan (2011). *Law Relating to Dowry Prohibition, Cruelty, and Harassment: An up-to-Date, Lucid, and Exhaustive Commentary with Case Law on the Dowry Prohibition Act, 1961*. Delhi: India Law House. pp. 36–55.

⁸Nangia, Anshu (1997). "The Tragedy of Bride Burning in India: How Should the Law Address It?". *Brook. J. Int'l L.* **22**: 637, 676.

physical, verbal, emotional, financial, and sexual abuse, and is a component of anti-dowry legislation to the extent that it is one of the causes of domestic violence. Section 3(b) of this Act says that any person who harasses, harms or injures a woman with a view to coerce her or any other person in relation to her to get any demand for dowry which is unlawful will be considered as committed domestic violence.⁹

Issues Existing Withdowry Laws

While we are looking at the loopholes and issues that are existing with these Dowry Laws and its implementation, we can understand that the major reasons why these Indian statutes are so ineffective in preventing dowry related issues and they are mainly due to the vague statutory language of these laws, the flaws that happened resulting in the non-enforcement of these existing laws, the traditional and cultural attitude that are existing even these days towards the women and also mainly the economic discrimination that exists against women.

Vague statutory language being one of the major problems with the dowry laws is for real. The definition of dowry in the Dowry Prohibition Act itself is vague when they exclude gifts and presents from the purview of dowry which made it so easy to continue practising dowry. Even the punishments prescribed under this act is of minimal nature which reduces the seriousness of this issue. The main purpose of this act was itself to prohibit the practise of dowry but the provisions in this act itself made the major purpose into a dead lock situation. Section 6 of the Act says that dowry will be for the benefit of the wife or her heirs, doesn't it same as the promoting the practice of dowry? Another ineffectiveness that can be seen in this legislation is that as per Section 8B of this Act, there must be Dowry Prohibition Officers(DPO), but now we can see that it is only few states which have taken the initiative to appoint this DPO's and many states haven't. the general public is not aware about these sorts of posts and even the officers are clueless about their functions and duties because of the vague nature in which their appointments are mentioned under the act.¹⁰

Even though Section 498A and Section 304-B were inserted long before into the IPC, till The Protection of women against Domestic Violence Act have come into picture in 2005, none properly mentioned about the relief to the victim. Another important issue is regarding the non-enforcement of existing laws. Many a times the police and other responsible authority to look into the matter of dowry doesn't care much and because of their lack of care and effectiveness majority number of dowry

⁹Suman. Nalwa and Hari Dev. Kohli (2011). *Law Relating to Dowry, Dowry Death, Cruelty to Women & Domestic Violence*. New Delhi: Universal Law Pub. Co. pp. 362–364.

¹⁰Dowry Prohibition Act- Attempting legal solution to a social problem Times of India Blog, <https://timesofindia.indiatimes.com/blogs/legally-speaking/dowry-prohibition-act-attempting-legal-solution-to-a-social-problem/> (last visited Apr 28, 2022)

crimes are not getting reported and recent studies also suggest that the actual number of dowry deaths in India is twice the number of reported dowry deaths. Another major reason why our statutory laws are ineffective is because of the cultural attitudes towards women. This is one of the major reasons why it is getting so difficult to implement dowry laws in a better manner in India. From the early days of a girl child itself she will be taught in such a way that one day she will have to start living in the life of her husband and the person who is going to marry her will be selected by her parents and family. Religion in India teaches in such a way that wife must always be devoted to their husbands and they are not supposed to talk against them. Even many families consider women having divorce as something of shame and all these make it so difficult for women to come out of their tough situation. As this results in many cases of domestic violence and dowry harassments under cover, it is difficult to serve justice in a fuller manner even if the implementation of these laws is done properly.¹¹

Ineffectiveness As An Issue

One of the major reasons why this curse of dowry death still haunts India is because of the ineffectiveness of Dowry Laws in India. Even after huge awareness and campaigns conducted by various political and social forums the trend that we can witness is that the cases of dowry harassments and dowry deaths are increasing and never shown a dip. Sad reality is that in many parts of India dowry deaths are unchecked.¹² Social stigma, still existing economic discrimination against women all leads to these ineffectiveness of dowry laws. Even though the laws have great powers still the problem happens when the concerned authorities including the police and courts don't perform to the mark which they are actually supposed to do. The misuse that's happening with these dowry laws itself can show how ineffective these laws are. It is because of this ineffectiveness these laws are prone to misuse. The wide range of allegations regarding the misuse of 498A of IPC is just an example.¹³

¹¹Dowry laws: Loopholes and Possibilities of misuse Legalservicesindia.com, <http://www.legalservicesindia.com/article/2034/Dowry-laws:-Loopholes-and-Possibilities-of-misuse.html#:~:text=Currently%20the%20Act%20prohibits%20the,term%20of%20imprisonment%20of%20between> (last visited Apr 28, 2022)

¹²Manchandia, Purna (2005). "Practical Steps towards Eliminating Dowry and Bride-Burning in India". *Tul. J. Int'l & Comp.*

¹³Bumiller, Elisabeth (1991). *May You Be the Mother of a Hundred Sons: A Journey Among the Women of India*. Ballantine Books. p. 59.

Ambiguity As An Issue

The ambiguity created under this Dowry Prohibition Act can be seen from the definition of dowry provided in the act itself. The act defines dowry in such a vague manner “a demand for property of valuable security having an inextricable nexus with marriage.” There are various instances in which the cases were dismissed because the court found that the said case doesn’t fit into the definition provided by the act. The definition of dowry gets even complicated through the existence of gifts and presents as an excluding factor from the purview of dowry. Another major loophole that is created by this act is the time requirements mentioned under this Act. As per the act, a murder to constitute into a dowry death then the death must have happened within the first 7 years of the marriage. That itself is vague and ambiguous in nature as what kind of a certainty can we provide that the conflict for dowry will be happening only in the first 7 years and not after? These sorts of loopholes actually helped many from escaping conviction. Statistics of dowry murders in India shows that this assumption of 7 years is such a blunder and actually a pretty dangerous one to make.¹⁴

The second timing requirement made under this Act is that the death must have happened in some time ‘soon’ after the demand or harassment for dowry has occurred. This provision and timings are also vague in nature and had also created huge confusions in courts as well. In the case of *Kans Raj v. State of Punjab*,¹⁵ the Supreme Court held that one month in between the harm or threat in relation to dowry and the death will be coming under the ‘soon’ aspect. But in the case of *Sham Lal v. State of Haryana*,¹⁶ the court held that 2-week gap between the harm or threat in relation to dowry and the death is too long to be included under the ‘soon’ aspect. The reasonable way in which this issue of timing requirement can be resolved is only through striking down those timings. Here from these instances itself we can understand how confusing and ambiguous these laws are and these flaws itself is the major reason why we are struggling to tackle this huge social issue of dowry.

¹⁴ DOWRY-MURDERS IN INDIA: THE LAW & ITS ROLE IN THE CONTINUANCE OF THE WIFE BURNING PHENOMENON- Sainabou Musa-pg- 238

¹⁵ Id. at 816 (citing *Kans v. State of Punjab*, 556 LRI 3 (2000))

¹⁶ Id. at 817 (discussing *Sham Lal v. State of Haryana*, 1997 Cr. L.J. 1927)

Conclusion & Suggestions

The history of Dowry as a custom, issue, social problem all takes us hundreds of years back and now even in this 21st century we are discussing about the ways in which we can curb this system. This itself can show how rooted dowry as a system is existing here in our country. Be it tradition, custom or whatever but we all can agree to one fact that everything must be existing for the welfare and betterment of the society and not for the degradation or for the burden of anybody. Even though we can point out some positive missions like using for the benefits of women and all, Dowry never acted as somethings which made the women stood up. It always restricted them and only acted as a burden towards the family of the women. Many a times this practise had come to an extent were the marriage had turned to a property transfer were women is the property. The demand for dowry and the cruelty that women facing in demand and in relation to dowry is just something common in India. The seriousness of this rises when we realise the fact that we have a legal mechanism for the curbing of dowry and even made dowry a prohibited practise. Just think how disastrous this legal mechanism must be to have this dowry system still existing and dowry deaths happening. The fact that dowry deaths haven't even reduced during these pandemic days must make us ashamed more than anything. We are people who talks about progress and equality and we must realise one fact that progress doesn't happen when women are suffering. It will only happen when everyone is having equal rights an equal protection. Thus, in order to achieve welfare and progress we all must realise the amount of burden this dowry as a social issue creates and must come forward and say no to dowry.