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A STUDY ON LACUNA CAUSING INEFFECTIVENESS OF DOWRY PROHIBITION ACT 1961

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Abstract

This paper undertakes a doctrinal and socio-legal study of the lacunae causing the ineffectiveness of the Dowry Prohibition Act, 1961, with particular attention to the continuing prevalence of dowry demands, harassment, cruelty, and dowry deaths in India.

The research analyses the legal framework governing dowry by examining the Dowry Prohibition Act, 1961, the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhinyam, along with the earlier corresponding provisions under the Indian Penal Code, Criminal Procedure Code, and Indian Evidence Act. The paper identifies important lacunae in the present framework, including inadequate penal deterrence, ambiguity in certain provisions, insufficient institutional accountability, lack of specialised enforcement machinery, underreporting due to social stigma, and the absence of effective victim-support systems. It recommends strengthening punishment, improving procedural safeguards, enhancing victim protection, and creating a more responsive enforcement structure so that the law may achieve its original purpose of preventing dowry and protecting women from exploitation and violence.

Keywords: *Dowry Prohibition Act, dowry death, cruelty, underreporting, victim protection, enforcement, constitutional equality, social reform.*

Introduction

The instances of Dowry Death witnessed recently are alarming. Dowry Death in common parlance is the death caused directly or indirectly by the husband or his relatives or both to the married women. As per NCRB between 2017 and 2022, there were 7,000 dowry fatalities in India on average per year; however, underreporting probably contributed to the higher actual figure. These cases frequently have sluggish investigations and few convictions. It is to be noted that fatalities are high even after enactment of The Dowry Prohibition Act, 1961, a legislation in existence for 64 years. This questions the effectiveness of the Act.

This Study shall deal with the evolution, cultural practice, loopholes pertaining to procedure, lack of statutory enforcement, recommendations to strengthen the Act further and enhance the effectiveness.

Objectives:

- To examine the legal framework of The Dowry Prohibition Act, 1961 and other incidental and ancillary statutes
- To determine and assess the systemic issues and procedural flaws in the way that police and judicial institutions apply legislation pertaining to dowries
- To understand the reason behind under reporting of instances of dowry harassment.
- To suggest practical legal and administrative changes that can improve the criminal justice system's efficiency, uniformity, and accessibility when handling instances involving dowries.

Research Problem:

Even though there exists a special legislation enacted by the Centre named the Dowry Prohibition Act, 1961 and corresponding rules framed by the states, there lacks effectiveness. The problem lies with the social stigma to not convey the hardships faced by women by means of dowry harassment. This stigma makes women believe it to be new normal and such harassments remain under-reported. In other instance upon reporting, she loses her peace and faces further threats and backlashes in the society for taking a legal step, lacking victim protection. Additionally, the complainant faces long procedural delays, which creates a barrier to find a legal remedy.

Research methodology:

Doctrinal or non-empirical method has been used to conduct this research. This involves critical examination of existing laws. This kind of research helps lawyers, judges, and scholars interpret legal provisions, predict outcomes, and offer solutions within the boundaries of established legal authority.

Literature Review

Sunil Kumar Shukla, in article titled “A Critical Analysis of The Dowry Prohibition Act in India” has analysed about evolution of dowry, correlated section 304B IPC 1872, and sections 3 and 4 of The Dowry Prohibition Act 1961 also examined the effectiveness of the same.

Soumi Chatterjee, in research paper titled “Concept and Evolution of Dowry” has dealt the evolution of dowry in India and in countries like Pakistan and Bangladesh. Section 498A of the IPC and misuse of the same has been identified.

Pranshu Pathak, in “The dowry prohibition Act in India: A critical analysis” has analysed various loopholes in the existing legal framework for dowry harassment including Sections 304B and 498A of the Indian Penal Code.

Karuna Sindhu, ‘Critical Analysis of The Dowry Prohibition Act, 1961: Successes, Failures, And Future Directions’ has analysed the existing legal framework for dowry prohibition and provided various recommendations for reforming the society through amendments to The Dowry Prohibition Act, 1961.

Hypothesis

Hypothesis 1

Increase in the rate of reporting of Dowry Harassment may help to decrease dowry death and enhance the effectiveness of the legislation.

Hypothesis 2

Penal Inadequacy towards demand of dowry can be a reason for ineffectiveness of the Act.

1.8 Research Limitations:

This research has focussed only on the loopholes causing ineffectiveness of the legislation from women’s perspective. The research does not cover the misuses made under the label of dowry harassment. However, the guidelines and safeguards for preventing misuse is considered and discussed in places where there arises necessity.

Analysis Of Existing Legal Framework For Dowry.

The Dowry Prohibition Act,1961 read with BNS ,then IPC are in the vogue to define offences and punishment. BSA and BNSS shall rule the procedure for appreciation of evidence and trial proceedings respectively. This chapter shall examine all related legislation relevant to Dowry Prohibition.

The Dowry Prohibition Act, 1961

Definition of Dowry

The definition of Dowry shall be the core for understanding what acts shall fall under dowry, wrong perception can result in misuse of the legislation.

Nature of offence.

Section 7 of the Dowry Prohibition, 1961 mentions the offence to be cognizable, non bailable, non-Compoundable. Cognizance of offence is taken when

- (i) its own knowledge or a police report of the facts which constitute such offence, or
- (ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognised welfare institution or organisation

only by Judicial Magistrate – I class / Metropolitan Magistrate. However, the limitation for taking cognizance of certain offences in chapter 38 of BNSS or 36 CrPC shall not apply here.

Punishments:

Penalty shall be imposed in two instances

- giving and taking of Dowry (Section 3 of the Act)
- Demanding Dowry(Section 4 of the Act)

In both the instances the word any person has been utilised giving broad interpretation

In the latter, penalty shall be imposed on any person whoever directly or indirectly demands has been mentioned which provides a scope for interpretation on circumstances that can be direct or indirect.

For the former imprisonment for at least 5 years and fine not less than Rs.15,000/- or dowry amount whichever is higher. If the Judicial officer is satisfied to impose imprisonment less than 5 years he shall record the reasons in the judgment.

For the latter imprisonment for not less than 6 months but may extend up to 2years and fine that may extend up to Rs.10,000/-.

Procedure and Evidence:

A police Complaint for demand of dowry or giving or taking of dowry shall be made, for which FIR shall be made after due diligence. The Nation Commission for Women has provided helplines which can be reached out, who in turn will help them to file complaints on behalf of them as they shall fall under welfare institutions as mentioned in the Act and aid in the trial. The burden of proof shall be on the person who denies the allegations made against him and not on the prosecution. This is mentioned in Section 8A of the Act.

Dowry Prohibition Officer:

Section 8B of this Act deals with dowry prohibition officer, who shall be appointed by the State Government to perform the following duties

- Compliance of the Act
- Prevent the taking or abetting the taking of or the demanding of dowry
- Collect evidence for prosecution of the offence under the Act

Other laws in relevance to Dowry

There are no explicit provisions in prohibition of Dowry other than the said statute. But BNS, 2023 and then IPC 1872 has provisions regarding dowry death, domestic violence in the form of torturing demanding dowry. Section 80 BNS, then section 304B of IPC for dowry death where a woman dies within 7 years of marriage. Section 85 BNS, (498A IPC) can be read with section 3 & 4 the dowry prohibition act 1961. All these provisions come handy only when there is demand of dowry post marriage. The first instance is only when death caused due to dowry harassment.

The Sec- 118 BSA, 2023 (then Sec 113B IEA, 1972) provides provision for presumption of dowry death. The same extract is given below for reference;

“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.”

Explanation.--For the purposes of this section, "dowry death" shall have the same meaning as in section 80 of the Bharatiya Nyaya Sanhita, 2023.¹

¹ Bharatiya Sakshya Adhiniyam 2023, section 118- Presumption as to dowry death

The provision provides the concept of presumption be applied to death of a women within 7 years of marriage when evidence showcasing that the deceased women was subject to cruelty for or in connection to dowry soon before her death. The word soon before death has been described and discussed by court in various circumstances, which shall be discussed in the upcoming chapters.

Inference from the analysis of existing law:

It is very much clear from the analysis of the existing legal framework that, details for appreciation of evidence, procedure are established to conduct trials post death of a women due to dowry harassment. Pre Marriage Dowry demand is not focussed when compared to the former. The legal framework does not only fail from preventing dowry demands/ transaction of dowry, rather did not wake up to deal with consequence of Dowry Death which is ultimately the brutal death of a women.

Interference of Judiciary

There are several instances where judiciary has played greater role in providing interpretation or construction of several definitions, words for effectiveness of justice. Notable precedents are examined to understand the same.

Definition of Dowry before the eyes of Judiciary:

In the case of Bachni Devi Vs the State of Haryana², the apex court held that

“The definition of the expression `dowry' contained in Section 2 of the Act cannot be confined merely to the `demand' of money, property or valuable security "made at or after the performance of marriage" as is urged by Mr Rao. The legislature has in its wisdom while providing for the definition of `dowry' emphasised that any money, property or valuable security given, as a consideration for marriage, "before, at or after"

However, in this case, the definition of dowry was clarified in in the instance of the case filed u/s 304B of the IPC i.e. dowry death.

In the case Appasaheb &Anr vs The State of Maharashtra³ the dimension of defining dowry turned very much narrower. The excerpts are mentioned below

“A demand for money on account of some financial stringency or for meeting some urgent

² (2011) 4 SCC 427

³ (2007) 9 SCC 721

domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood.”

However, this was overruled by three judge bench decision in the case of *Rajinder Singh vs. State of Punjab*⁴. Dowry definition was given further clarity and upon the right circumstances it must be utilised.

...We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise.”

In the case of *Satvir Singh V the State of Punjab*⁵, the Supreme Court held that dowry should be any property or valuable security agreed or agreed to be given with the marriage, customary gift or payment in connection with the birth of the child or other ceremonies unrelated to the marriage ceremony do not fall within the ambit of dowry.

View on the Burden of Proof and presentation of evidence.

In the case of *Pandurang Shivram Kawathkar V. State of Maharashtra*⁶, it was held by the Bombay high court that where any person is prosecuted for taking or abetting in the taking of any dowry u/s 3 or demanding of dowry u/s 4, the burden of proving that he had not committed any offence under that section shall be on him.”

The case even dealt with plea of alibi. It stated that plea of alibi is required to be proved with absolute certainty so as to completely exclude the possibility of presence of that person claiming at the place of occurrence is null.

The concept of plea of alibi in connection to discharging burden of proof has been ruled in the case of *State of Maharashtra V. Narasingrao Gangaram Pimple*⁷ that when the prosecution succeeds in discharging the burden, it shall be on the accused to show his plea of alibi.

Courts now require a firm evidentiary threshold—material proof, corroboration, and specific attribution of acts to each accused. Mere accusations, without independent substantiation, no longer suffice.

⁴ (2015) 6 SCC 477

⁵ (2001) 8 SCC 633

⁶ (2001) DMC 448

⁷ AIR (1984) SC 63

Directions given by the Court – for Dowry Prohibition

In the case of State of U.P. v. Ajmal Beg⁸, the following directions were given by the Supreme Court . The directions are given below:

- The Central and the State government provide necessary changes in the curriculum, highlighting that no party is superior in the institution of marriage and both have equal rights.
- Proper appointment of dowry prohibition officers, provide awareness and resources for performance of their duty, as mentioned in DPA,1961
- Provide training to police and judicial officers to create sensitivity for genuine cases and differentiate it from frivolous one.
- The High court to take list of pending cases u/s 304B ,498A of IPC and expeditiously dispose cases without delay
- The District Administration along with the District Legal Services Authorities, by engaging and involving civil society groups and dedicated social activists, have been requested to conduct workshops/awareness programs at regular intervals.

Requisites for prosecution

The minimum criteria so as to take the case to the next stage is mentioned below on considering various stages of scrutiny to avoid misuse of the legal provision.

In Rajesh Sharma v. State of U.P. ⁹ the Supreme Court reminded magistrates that FIRs under Section 498-A or the DPA should not be registered in a routine manner. Prosecution is warranted only where the complaint discloses a coercive dowry demand or life-endangering cruelty—not where the parties are locked in an acrimonious but civilly resolvable conflict over assets or marital breakdown.

Doctrine of Filters for Prosecutorial Fairness

The prosecutorial framework under Section 498A IPC and Sections 3–4 DPA now requires:

1. Cohabitation: Was the accused physically and relationally proximate?
2. Proof: Is there corroboration via documents, messages, or witnesses?
3. Timeliness: Is the complaint proximate to the incidents, not a belated counter-blast?

⁸ (2025) SCC Online SC 2801

⁹ (2018) 10 SCC 472

4. Criminality: Is the dispute truly criminal in nature, not a civil contest over maintenance or property?

This layered jurisprudence ensures that Section 498-A IPC and Sections 3–4 DPA remain precise tools of justice, not blunt instruments of vengeance.

Identification of Lacuna

It is observed that in above cases alleged cruelty due to dowry demand is the very essence of the case, but it is pathetic to see that the victims are deceased, it is their legal heirs who wish to seek justice. As a civilised society there is a complete failure in providing protection to women against an age-old social evil.

There is high reporting of dowry death in the modern era, women are forced to keep mum about dowry harassment, which explodes at the very last stage. This social stigma that women must bear such harassment and generalizing and giving upper hand to bridegroom and their family is one of the root causes for dowry harassment coupling with dowry death and in some instances lead to suicide of women. It is important to review existing law.

- Lack of effectiveness in the enforcement of DPA, 1961.
- From analysing the legislation, section 4 of the same Act speaks about penalty for demand of dowry, which is lower when compared to penalty for giving and taking of dowry. The crime, dowry death, begins with the demand from a party to marriage. In that sense, the legislators must have imposed stringent penalty for demand of dowry itself. The Act of demanding dowry can commence prior /post/ during solemnization of marriage. Imposing penalty very much lower to Section 3 remains illogical and baseless.
- As stated, Dowry may be demanded at any time of marriage. In several instances demand is identified post marriage, in that circumstance the statute fails to provide safe guards for a woman, post her complaint about the harassment. This may act as ground for her divorce but shall not help her in continuing her marital life with her husband or maintain peaceful relationship with her in-laws.

Evaluation of Hypothesis

This dissertation deals with the following hypothesis to understand and enhance the instances of demanding and taking dowry.

Evaluation of Hypothesis 1

1. Increase in the rate of reporting of Dowry Harassment may help to decrease dowry death and enhance the effectiveness of the legislation.

- Decriminalising giving of dowry may enhance the possibility of reporting the offence of demanding and /taking dowry

The transaction of dowry begins with the demand from one of the parties to marriage, either directly or indirectly. The other party due to this aggressive act tend to accept such demands either to ensure the bride or bridegroom has a good married life or pay dowry out of coercion or threat. It could be clearly observed that, one party has undue influence over the other in the institution of marriage.

The party who is already subservient to this institution is even made subservient to the legal framework by calling the person who pays dowry out of fear for his child's future or threats, coercion made in harming his interest on his family business or reputation in the society or other circumstances which forces him to commit such act. The DPA, 1961 is not victim friendly instead adds burden to the victim.

The Kerala Law Reforms Commission has put forth decriminalising giving of dowry in DPA, 1961 as one of the amendments.

The demand of dowry can occur in three instances and all the three are punishable before law

- Demand of dowry before marriage
- Demand of Dowry at marriage
- Demand of Dowry post marriage.

The last-mentioned aspect results in dowry harassment in matrimonial house, which due to social stigma and other factors silently turns into dowry death. It is upon this instance that dowry harassment comes into light. Unfortunately, the Act is used as an axillary provision in prosecution of the accused but never comes handy in protecting women who is under such torture.

- Enhancing victim protection provisions in the statue may increase reporting rates

The major factor for non-reporting of the dowry harassment in the matrimonial house is lack of victim protection upon reporting. The victim protection scheme must also be applicable

when the information of demanding or receiving dowry is obtained by the protection officer prior or at marriage.

Safeguards like residence, protection order for the victim must accompany by default without any application for such relief by invoking any other statute.

The protection and residence order may be similar to provisions provided in Protection of women from Domestic Violence Act 2005.

Evaluation of Hypothesis 2

2. Hypothesis 2: Penal Inadequacy towards demand of dowry can be a reason for ineffectiveness of the Act.

It is evident from dowry death cases that predominantly demand of dowry is the initial stage prior to receiving it. The gravity of the offence being high is yet viewed less seriously by this Act. Demanding dowry satisfies all the elements of crime. There is a definitive human involvement. Intent to receive valuable security from the other party is mens rea, Act of demanding is actus reus. The demand may be direct or indirect which is interpretative based on facts and circumstances. The demand is bound to cause physical or mental injury or both. Cutting the crime at the nip, helps to absolve dowry death and make this legislation work effectively.

Penal adequacy means the principle that a criminal sentence or legal intervention must be proportionate, fair, and sufficient to match the gravity of the offense, ensuring the punishment fits the crime while fostering a just legal system. It acts as a safety valve to ensure liability is reasonable. In the subject matter under analysis, it is clear that that demand of dowry is the most common foundation for enhanced dowry related crimes including dowry death. Hence it is important that this offence be treated in par with the offence of receiving dowry.

In support of the above contention, deterrence could also be used as a tool to curb such offences, for which enhancing the punishment could be used as a method.

- **Why to apply Deterrent theory of punishment?**

The deterrent theory of punishment is predicated on the idea that applying harsh and specific penalties deters people from committing crimes. It is based on the idea that the potential advantages of criminal behaviour are outweighed by the dread of punishment, resulting in a decrease in criminal activity. The goal of deterrence is to uphold social order by establishing a legal system in which offences are punished severely and quickly.

There are two kinds of deterrence, general and specific deterrence. General deterrence aims to prevent crime by making an example of offenders. The theory is that when a criminal receives harsh punishment, society as a whole understands the repercussions and is deterred from committing similar crimes.

Deterrence can bring fear amongst person who tend to demand dowry or receive dowry upon demanding to the party subservient to them. This can help to keep families to marriage on the equal footing especially for brides. Here general deterrence shall be applied.

Suggestions and Conclusion

Considering the above reasons, it is necessary that the punishment levied for the offence of demanding dowry directly or indirectly as specified in the section 4 of the Dowry prohibition Act 1961, be increased to rigorous imprisonment that extend to more than 2 year As discussed in the previous chapters of this research, The Dowry Prohibition Act, 1961 comes with a set of boon and bane. This research reveals the lacuna in the legislation causing the statute to be ineffective in curbing dowry death and other dowry related offences prior, during and post marriage. The following suggestions are provided upon identifying the lacuna and understanding victims' hardships.

Lacuna in Dowry Prohibition Act 1961

Upon extensive reading of statutes and analysing the current trends through various reports , case laws the following loopholes in the existing DPA,1961 was identified

- Underreporting demand or taking of dowry before, during or post marriage
- Lack of comprehensiveness in the statute.
- Penal inadequacy for demand of dowry.
- The statute lacks victim friendly approach
- The functions of Dowry prohibition officer are vague with no proper silhouette for states to craft rules.

Suggestions

On observing the above-mentioned loopholes following suggestions are crafted.

Before delving into suggestions, it is important to understand the instances of demand and taking of dowry. Dowry is generally demanded or received at marriage, during talks to initiate marriage, immediately after marriage or even after years of marriage. Be it any mentioned

circumstances women, the aggrieved party hesitate to make complaints due to social stigma that women must bear such pressure. The existing legislation criminalises taking of dowry and does not provide any protection for aggrieved women post providing complaints to the competent authority.

Enhancing the reporting rate of the offence shall be the first step to enhance the effectiveness of the legislation. Following are few suggestions to achieve the same.

- Decriminalising the act of giving dowry. In society where bride /women always seen subservient to the bride groom and his family, the former family is always under fear of their child being subject to cruelty if failed to oblige the demands of the other party to marriage.
- The legislation must enact provisions that can protect aggrieved women post providing complaint. As in rural areas, women being treated subservient, when files a complaint would further be threatened or coerced to withdraw the same. Provisions that provide victim protection by default will increase confidence to come forward and report such crimes.
- The Act remains silent about the kind of trial that would be conducted upon taking cognizance. It is only state rules that provide timelines to complete investigation. The Act has failed to address mechanism of appeal that could be preferred after orders being passed.
- It is observed that, predominantly it is the demand of dowry that act as seed for enhanced dowry related crimes. In section 4 of the DPA, 1961 the punishment provided is comparatively lower in relation to gravity of crime. The Punishment must be raised to a term which may extend up to at least 3 years, thereby this can be treated even more seriously

Conclusion:

From this research it is observed that Dowry Prohibition Act, 1961 requires amendments in the following manner for better effectiveness and to prevent enhanced instances of dowry harassment offences including dowry death.

The legislation must decriminalise giving of dowry to enhance reporting of dowry demands, design victim friendly provisions like victim protection schemes for aggrieved women that shall run in default post filing complaint with the competent officer. The Act must also provide mechanisms for appeal upon passing of orders by judicial magistrate.