

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

DOWRY: THE DARK TRUTH ABOUT **INDIAN SOCIETY**

SUBMITTED BY- ANSHUMAN BISARYA

ABSTRACT

This paper would delve into the social evil of dowry that has loomed for 60 years over the Indian society and have taken the lives of countless innocent Indian women who have been subjected to inhuman behaviour that they did not deserve to suffer in the first place. The paper would be looking into Dowry and history of dowry in Indian context. The paper would be discussing the legislations brought in with the objective to vanquish this social evil. The paper would look into how effective these legislations have been. The paper would look into some of the notable cases in context of dowry such as Pawan Kumar v State of Haryana, Pratibha Devi v Suraj Kumar and many other cases and the problems that arise out of following practice of dowry on the Indian women. The paper would look also into stridhan and its difference from dowry and attempt to observe and understand the distorted understanding of the Indian society which now overlooks the sanctity of marriage and treats it as a business deal and as a tool to fulfil their insatiable greed.

Key words: greed, dowry death, burning brides, harassment, social evil

RESEARCH QUESTION:

- 1) Is Dowry a social evil of the bygone era, or is it?
- 2) Why is dowry prevalent today as well?
- 3) How can people's attitude towards dowry be changed?

INTRODUCTION

Family is the nucleus of the society. It is essential in the society for a variety of reasons chief among them is that it is an institution which eulogizes the hallmark of love, bonding, harmony and understanding. Marriage is a catalyst to the creation of family. However, there have been some social evils that have crept into and corrupted this 'sacred institution'. The institution of marriage suffers from a major social evil i.e., Dowry and there have been many instances where for the dowry the husband subjects the wife to physical as well as mental cruelty on wife. Women

are ill-treated, harassed, and in some unfortunate cases, killed, and divorced simply because they didn't bring dowry or could not satisfy the greed of husband and her in-laws. There was a growing cause of concern for the social cancer 'dowry' spreading itself and claiming innocent lives. There were instances of bride burning. For a country like India where women are often elevated to status of Goddess, this is abysmal and shows the double-faced nature of the Indian society. And much to the dismay of the lawmakers, the practice of dowry still persists in the Indian society albeit more discreetly. Dowry practise is still prevalent in India and it has been accepted as a part of tradition and custom in the Indian society. However, with the passage of time, citizens have done their bit to resist the practise of dowry but the society at large, irrespective of classes and financial status, dowry still is prevalent but it has transcended in the form of gifts and has departed from what it meant in earlier times for the women and now it has just become a tool to satisfy the greed of the husband and his family members and because it has integrated itself and found its acceptance at deep levels of the society, it continues to go without much problem despite laws being there especially to tackle and counter this problem but people with back-door channelling and acceptance of dowry and has normalized it as tradition and custom that must be performed and has subsequently enabled dowry to go in and find its way in the Indian society.

I. POSITION OF DOWRY IN LAWS

This section would look into where dowry finds itself in Indian laws and why was there a need to bring legislations aimed to curb the practice of dowry.

Section 2 of the Dowry Prohibition Act lays out the definition of dowry. It states "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) applies."

Section 3 of the Dowry Prohibition Act says "If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with the fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more."

Cruelty has many facets as can be observed. It depends on a number of factors mental and physical

parameters, socio-cultural background, family background of woman etc.¹

Section 4 of Dowry Prohibition Act states “Penalty for demanding dowry- If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees”

Section 498A-Husband or relative of husband of a woman subjecting her to cruelty — whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty. Cruelty as defined by Section 498A “cruelty means (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. (b) Deals harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”

Section 304B of the Indian Penal Code states “Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called dowry death, and such husband or relative shall be deemed to have caused her death. Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

Section 113A of the Indian Evidence Act, 1872 states “Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.”

¹ Gourav Kumar, *A study on misuse of Section 498A of the Indian Penal Code*, 1860, 2, INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES (2019)

II. WHY WAS THERE A NEED TO COME UP WITH ANTI-DOWRY LAWS?

The situation of burning brides was widespread and there were lots of incidents coming up on the national stage which created a huge uproar among the public (ironic since public themselves are engaged in such practices). News showing the badly burnt bodies of young brides and this got the attention of the nation and was covered widely by the media. These incidents and reports of it were first dismissed but later on as the gruesome practices against the women unfolded, it got people's attention. These were also referred to as "stove-deaths" as it was firstly believed that the husbands and his family would "throw stove-kerosene" on the brides and they would get burn injuries often tragically taking their lives.² The Indian government taking note of the situation setup a Law Commission. Here is the opening paragraph from the 91st Law Commission Report published in 1983 titled Dowry Deaths and Law reform: Amending Hindu Marriage Act, Indian Penal Code and Indian Evidence Act.

The despotic situation of women in her marital home being the victim of mental stress and cruelty and sometimes even being beaten up for dowry or to bring in more dowry and in some instances, even death gave rise to huge uproar which led to resentment towards the judiciary. The growing number of horrific instances of bride burning further added an impetus to call out for an action to curb this social evil. An amendment was introduced in the year 1983 to curb this social cancer. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the working of the Dowry Prohibition Act, 1961. The Parliament taking note of the social evil spreading and affecting the society decided to act. It came out with an amendment to make an impact and lessen the number the dowry deaths. It came out with Criminal Law (Second Amendment) Act, 1983 and added new legislations to keep a check on the social evil. Subsequently, section 304B was inducted in the Indian Penal Code, 1860. By the same Amendment, section 113-A was introduced to the Indian Evidence Act with the objective to raise presumption regarding abetment of suicide by married woman. Section 113A deals with "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 has 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."³

² Chitwan Verma, *Criminology and Socio-Cultural Aspects of Anti-Dowry Law in India: A Feminist Critique*, EDP SCIENCES, pg. 1 (2014)

³ Indian Evidence Act, 1872 § 113A

III. DOWRY: SOCIAL EVIL OF BYGONE ERA OR IS IT?

This section of the paper would look into the prospect of whether dowry as a social evil has been eliminated from the society or not. It is disheartening to put forth that despite laws being promulgated and enacted to tackle the social disease called dowry and the malaise that it brings to the society has not been totally eradicated. The Indian women are still subject to harassment for dowry and giving dowry still is in practice. This can be seen from the National Crimes Research Bureau that dowry still prevails in our Indian society. In the present times, stridhan in its traditional sense has seen a deviation and now the lines between stridhan and dowry are being intertwined and blurred.⁴ Dowry today has taken the shape of expensive material possessions and cash and the concerning part is that “transaction is made in the name of the bride” but it is the husband and his family who is on the receiving end of it and they are the ones who actually possess and enjoy the contents of the “transaction”.⁵ Dowry deaths stood at 4836 for 1990 and doubled to 8383 for the year 2009.⁶

In fact, the NCRB data showed 91,202 dowry deaths in the timeline of January 2001 to December 2012 and out of that number, 84,013 were convicted under the Dowry Prohibition Act, 1961. And to add to the lot, about 21,922 cases were pending from 2001 and that number increased to 29,669 in the year 2012.⁷ These statistics show a grim photo and show that the despite laws being there, this condemnation of women arising out of greed is still taking innocent lives.

IV. DOWRY PROHIBITION ACT: SUCCESSFUL IN DEFENDING THE INDIAN WOMEN?

This section of the paper would discuss whether the Dowry Prohibition Act which was enacted in the year 1961 have slowed or restrained the social disease of dowry. However, the NCRB data and the numbers and the cases indicate that Dowry Prohibition Act have not made the dent that was hoped for after its enactment. It was hoped that it serves a deterrence effect to the greedy Indian families who subject women to inhuman behavior for fulfilling their insatiable greed. Many scholars have put forth that the 7 years’ period should be removed from the section and

⁴ Monobina Gupta, *Marching Together: Resisting Dowry in India*, pg.29 (2009) http://www.jagori.org/wp-content/uploads/2009/07/dowry_infopack.pdf

⁵ B. Pramilla, *A Critique on Dowry Prohibition Act, 1961*, 76, INDIAN HISTORY CONGRESS pg. 844 (2015)

⁶ Crime in India, National Crime Research Bureau (NCRB), Ministry of Home Affairs (1990 and 2009)

⁷ Ignatius Pereira, *Rising Number of dowry deaths in India: NCRB*, The Hindu, (last visited 21st April 2021) <https://www.thehindu.com/news/national/rising-number-of-dowry-deaths-in-india-ncrb/article4995677.ece>

acknowledge that the abuse and the cruel and harassment do not come along with an expiry date.⁸ Furthermore, after its enactment, the problem of dowry still pestered and, in some cases, took lives of innocent women. The Joint Parliamentary Committee in the year 1982 identified 2 major reasons on why this Act could not achieve what it set out to achieve. First was the vagueness of the language used for explaining what dowry would construe. Section 2 of the Dowry Prohibition Act gives room for the practice to be continued as it would be very tough to prove that whether the presents given were in consideration for the marriage and that nobody would willingly come out to admit that they did this because the giver of dowry also has to face the brunt of punishment. Second defect as identified was that the Act lacks “effective enforcement instrumentality”⁹ The reasons identified are absolutely correct and the Committee correctly read the mind of the Indian society. No family especially most of the parents of the woman would ever dare to do anything that could implicate the husband and his family and thus disrupt their own daughters’ matrimonial homes. This Act was enacted with the noble objective to shield the Indian women from the greed of her husband and her in-laws however, it has not been entirely successful but the entire blame should not be put on the Act. The Indian society’s mindset is also to be equally blamed for not utilizing and unleashing the full effectives of this legislation. The idea of dowry has been ingrained in the minds of the Indian society that they have normalized this practice even though it is not legal.

V. CONCLUSION AND SUGGESTIONS

Dowry as a social evil can be seen from the pages of the Indian history but this history is nothing to be proud of or celebrate for. In fact, it is something that we should be ashamed of. For years, The Indian society has subjected innocent brides and their family to go through the emotions, the anxiety, the misery, the pressure and the pain that they did not deserve in the first place. The real problem is the society at large itself, it has normalized the practice of dowry, either out of fear to secure a good matrimonial home for their daughter or has started treating it as a social convention. This social evil has manifested itself to the core of our society. In addition to treating dowry taking as a social convention, groom’s side have started effectively auctioning the grooms and the family who is willing to pay the highest dowry and fulfil their demand is the one. As witnessed in few cases, the parents mortgage their house and assets or sell them off in order to pay for the dowry demands of the groom and his family. The poorest strata being the biggest victim of this situation.

⁸Saniabou Musa, *Dowry Murders in India: The Law and its Role in the continuance of the Wife burning phenomenon*, 5, NORTHWESTERN INTERDISCIPLINARY LAW REVIEW pg. 227 (2012)

⁹ Supra Note 59 at pg.79

The poor who already have lesser financial means and see the girl child as nothing but a financial liability does their best to fulfil the dowry demands so that they don't have to face the society and the stigmatization that may ensue if their daughter is unmarried and is with them. The poorest take loans that they might not be able to repay and arranging money by other means often push both the parents and their daughters to the brink of death because the demands for dowry never stop and the inability of the parents to fulfil those demands drive them to take their own lives. As identified by the Joint Parliamentary Committee in 1982, there are issues with language with certain key terms of the section such as dowry and as identified by the National Commission Report, there is a grey area that can be exploited. The groom and his family can coax the bride's family to cough up dowry as and when they demand under the guise of presents. Neither side will own up that they committed an illegal act and especially the parents of the daughter who would not do anything that could put the marriage of their daughter in jeopardy. The Legislative must work on these recommendations and make sure that there are tighter regulations and next to nil grey area while also preserving the aspect of stridhan that the Hindu customs give to the parents. Both the government and the people in this case can collectively vanquish this evil.

