CAUSES & EFFECTS OF DOWRY ON INDIAN SOCIAL SYSTEM

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ABSTRACT

Marriage in India is steeped in traditions and deep-rooted cultural belief practices are passed down by word of mouth and in some case, with the changing times. There is, however, one custom that stubbornly resists change the dowry system in India, It has roots in medieval times when a gift in case or kind was given to a pride by her family to maintain her independence after marriage. During the colonial period, it became the only legal way to get married, with the British making the practice of dowry mandatory. A dowry is transfer of parental property, gifts or money at the marriage of a daughter. Dowry contrasts with the related concepts of bride price and dower. While bride price or bride service is a payment by the groom or his family to the bride's parent's dowry is the wealth transferred from the bride's family to the room or his family, ostensibly for the bride. Similarly, dower is the property settled on the bride herself, by the groom at the times of marriage and which remains under her ownership and control. Dowry prohibition Act, 1961 was enacted to prohibit in giving or taking of dowry and related offences. Dowry death, in 1986 a new offence know as dowry death was inserted in the IPC by the virtue of Section 304-B. The provision under Section 304-B are more stringent than provided under Section 498-A of IPC,1860.

KEYWORDS: Dowry, Dowry Deaths, Dowry Prohibition Act 1961, Gender discrimination, Caste, Social pressure, Domestic Violence, Cruelty, International Conventions

INTRODUCTION

Dowry is an ancient culture throughout the world which exists even in the present modern era. When it comes to the geographical existence of dowry it exists in almost all parts of the world. But the practice of dowry is mostly prevalent in the Asian countries like India, Pakistan, Bangladesh, Nepal, Sri Lanka, Afghanistan, Iran, Turkey etc.

Dowry is the process of giving the consideration by the family of bride to the family of groom, during the ceremonies of. It could be in any form like money, movable property, immovable property or any form of gift. The social system of our country has been evolved in such a way that when it comes to marriage the first thought that strikes the mind of people is the amount and type of dowry to be given or to be accepted. Being illegal, why dowry is prevalent in the present Indian society? Dowry, the most prevalent social evil, is the harsh reality of India today. "Women commit suicide every day because of dowry dispute". According to a survey by NCRB "dowry accounts for 32.4% of crime against women"³The aim of this article is to analyze the present scenario of dowry in India along with the historical background. Also, this article research focuses on the evolution of dowry system from 'gift for bride' to 'essential consideration in marriage for the groom and family'. "As long as she is wise and good, a girl has sufficient dowry."⁴ (**Plautus**). This study focuses on the Indian marriage? Dowry is being declared as an immoral and inhuman act and also against the law of India but still everything exists. The situations are totally opposite when we compare the things on paper and the ground reality. This is an alarming situation which needs immediate attention of the society and government.

INTRODUCTION

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⁴ Quotation by Plautus

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DEFINITION

There are various definitions of dowry given by various acts and various thinkers. Here we would analyze the definition provided by The Dowry Prohibition Act, 1961. Section 2 of The Dowry Prohibition Act reads as follows:

Definition of Dowry

The term "dowry" as defined in this Act refers to any property or valuable security that is given or agreed to be given, whether directly or indirectly.

- (a) One party in a marriage may give something to the other party in the marriage. Or
- (b) The law permits gifts or transfers of property from a parent or any other individual to either spouse or to any other person

The term "marital property" refers to any assets acquired by the parties involved before or after marriage, excluding dower or mahr for individuals subject to Muslim Personal Law. (Shariat)²⁵

As defined by A Comparative Study of the Domestic Domain at Cambridge University, a dowry is a transfer of parental property to a daughter during her marriage, as opposed to after the owner's death. It serves as a form of conjugal fund, with varying characteristics, and provides a financial safety net for women and their children in case of a neglectful husband.

Dowry is called by different names in different local languages- Dahej in Hindi, Jahez in Urdu, Varadhachanai in Tamil, Streedhanam in Malayalam, Jahizie in Persian and Arabic, Daj in Punjabi, Daijo in Nepali, Joutuk in Bengali, Çeyiz in Turkish, Miraz in Serbo-Croatian and in various parts of Africa is known as Serotwana, Idana, Saduquat or Mugtaf.

HISTORICAL BACKGROUND

When we look at the history of dowry in the Indian context, there are divided opinions of various researchers. Some believe that it had been in practice since time immemorial but at the same time some believe that it started later on in the Indian society. The dowry system can be traced back to the Vedic age in India, where it was prevalent among the upper caste Hindus. The Code of Manu sanctioned the practice of bride wealth, but dowry was considered more prestigious and was mainly practiced among the Brahmanic caste.⁶

Dowry has evolved between the period of ancient and medieval India. It originated as "love gifts" and "streedhan" in the ancient India but it evolved as a necessary prerequisite for marriage in the medieval period. The dowry has taken its present form after the invasions of middle-east and western world. Prior to that it was just a gift for the welfare of bride and there was no compulsion of giving it.

There are many documents which prove that in Ancient and early medieval period there was no compulsion and even it was restricted. Some of these texts are been mentioned below:

- In the book 'The invasion of India' by Alexander the Great (300 BC), Aryan mentioned-"They (these ancient Indian people) make their marriages accordance with this principle, for in selecting a bride they care nothing whether she has a dowry and a handsome fortune, but look only to her beauty and other advantages of the outward person."⁷
- In Chapter on Matrimony in India (1035 AD), Al Biruni noted that during wedding celebrations, no formal gift exchange was settled between the bride and groom. Instead, the groom would give a

⁵ Section 2 of The Dowry Prohibition Act, 1961

⁶ Manu Smriti

⁷ Book- The invasion of India by Alexander the great(300 BC)

present to the bride as he deemed appropriate, along with a marriage gift in advance. While the groom could not claim the gift back, the bride had the option to return it if she did not wish to proceed with the marriage."⁸

The Above texts from historical documents are evidence that in ancient India and during the early invasions, the concept of dowry did not exist. The property of wealth that was given was just a form of gift and blessing for the bride to have a happy and prosperous married life.

CAUSES OF DOWRY IN INDIA

When it comes to causes of dowry, there are many social and economic causes. Following are the major causes:

- **Customs and traditions:** The majority of the cases of dowry in India take place just to adhere the customs and traditions of their community. Dowry has been a part of custom in most of the parts of India and people stick to them even though the repercussions are bad.
- Fear of ill treatment: many families in India prefer giving dowry to get rid of the insecurity of ill treatment of their daughters by their in-laws. Giving dowry is considered as a security of their daughter.
- **Illiteracy:** lack of awareness and education leads people to believe in giving and demand dowry. This unawareness makes people believe that women do not have equal status as men and they are been treated as a burden.
- Within caste marriage: the practice of getting married within same caste or clan limit the number of desired grooms. This intensifies the problem and the desired grooms demand dowry as they are few in numbers.
- **Difference in status of both families:** there is an urge in the Indian society to marry their girl in a family for higher status than theirs. This situation leads to the situation of dowry demand from the groom's family.
- **Societal pressure:** Dowry has evolved in such a way that it defines the status of the family. The most common phenomenon is that the status of family is measured by money spent on the daughter's marriage. The more educated and well-settled the groom is, the more is the amount of dowry decided.
- **Social structure:** The patriarchal nature of Indian Society leads to a misconception that women are inferior to men and they are considered as burden on the family and giving dowry is one kind of compensation for transferring the burden.

EFFECTS OF DOWRY ON SOCIAL SYSTEM

Since dowry is considered as the social evil, the effects are tend to be on a negative side. This has lead to many social problems which can be disastrous for our social system. The below mentioned are some of the effects of the dowry practice.

- **Decline of social status:** women are considered as burden and they are being discriminated for the same. This practice is a major contributor when it comes to status of women and its decline.
- Low self esteem in women: when women are been treated as a burden in society and they are not been appropriately educated, this hurts the self esteem of women and their self worth.
- Female feticide and gender imbalance: marrying a girl, in a society where dowry is prevalent, comes as a burden for the family because it involves a lot of financial transactions. Thus, people don't prefer the birth of a girl child. This phenomenon leads to the gender imbalance as the number of males automatically increases as compared to the female counterparts of the society. The gender ratio of Haryana was 833 females for every 1000 males in 2015 and 2016. The ratio has improved to 930 till July 2022, yet, it is below the ideal gender ratio that is 1:1.⁹
- **Gender Discrimination:** dowry, being the heaviest financial burden on the bride's family, indirectly promotes the discrimination of girl child from their birth. They are not been treated as equal to boys, they are not been educated properly, they are not been taken care appropriately. In many case they are

⁸ Book- chapter on matrimony in India(1035 AD)

⁹ Data by Govt. of India

often been killed after their birth (female infanticide) and before the birth (female feticide). As per the reports, about 4,60,000 girls were missing at birth in India between 2013 and 2017. Female feticide accounts for two-thirds of total missing girls and the remaining by female infanticide.¹⁰

• Violence against women: It has been observed that in many cases the demand of dowry keep on increasing even after the payment at the first place. This demanding nature eventually turns into violence against the bride. Women are tortured physically and mentally and many are been burnt and killed. The women who can not go through the torture commit suicide.

As per the data of National Crime Records Bureau(NCRB) published in 2019- a woman becomes a victim of dowry death every hour.¹¹

TYPES OF DOWRY CRIMES

The newly married women are the main targets of dowry related violence because she is economically and socially tied to and dependent on her new husband. Below mentioned are the most prevalent types of crimes caused because of dowry practice:

- **Fraud:** There are many cases reported in which the groom marry the girl for the sake of dowry and then they abandon the bride and fly away to some other country or went missing. This situation is very well explained in a Canadian documentary of 2005 named, Runaway Grooms. This film exposed the acts of Indo-Canadian men taking advantage of Indian dowry system. They temporarily come to India to marry and return to Canada without bride as soon as they secure the dowry possessions.¹²
- **Cruelty:** it is a form of harassment and torture to a woman for the reason of forcing her to meet a demand for dowry in the form of property or valuables or immovable property. This cruelty could be of physical, mental or emotional nature. Emotional torturing may be accompanied with physical assault.
- **Domestic Violence:** domestic violence is the most prevalent form of dowry crime. It includes abusive and threatening behavior which may consist of physical, emotional, mental, psychological and sexual violence. These acts are been prohibited under the Protection of Women from Domestic Violence Act, 2005.
- Abetment to suicide: continuous torture for demand of dowry makes the victim emotionally and mentally weak. She loses herself worth and at last situation arises when ending the life seems to be easy than living the miserable life. These situations left women helpless and the commit suicide. This is called abetment to suicide which is punishable under the Indian law.
- **Dowry murder:** many a time the bride is been killed by burning or by conspiring the death. This is the ultimate stage of harassment for dowry demand. The family of groom kill the newly married when their post-marriage demand of dowry is not fulfilled. This shows the evil and greedy face of our society.

WHAT IS DOWRY DEATH?

The Supreme Court of India, in the case *Kamlesh Panjiyar vs State of Bihar*, 2005, has outlined the essential elements¹³ of dowry death under Section 304-B of the Indian Penal Code, 1860. Following are the elements defined by the Apex Court:

- The death of woman must have occurred within seven years of her marriage.
- She must have been subjected to harassment or cruelty by her husband or any of the relatives.
- The cruelty mentioned above must be for or in connection with the demand of dowry.
- The woman must have suffered the same harassment or cruelty soon before her death.

DOWRY RELATED LAWS

Dowry, being the origin of many crimes against women, is been prohibited under the Indian law. There are multiple acts and conventions which protect the women against such crimes. Following are the most important acts that protect the rights of women against dowry and related crimes:

¹⁰ Data published by Govt. of India in 2018

¹¹ NCRB data related to dowry crimes published in 2019

¹² Canadian Documentary film- Run away Grooms(2005)

¹³ Kamlesh Panjiyar VS State of Bihar (2005)

- Dowry Prohibited Act, 1961
- Protection of Women from Domestic Violence Act, 2005
- Criminal statutes Indian Penal Code, Criminal Procedure Act and Evidence Act
- International Conventions

DOWRY PROHIBITION ACT, 1961

- > This Act consolidated the various anti-dowry laws passed by various States.
- It says that dowry is defined as any property or valuables given or agreed to be given in connection with marriage.
- > Dowry agreements are considered as void *ab initio*.
- Section 3 of the act provides penalty for giving, taking and abetting the dowry. The punishment could be imprisonment for minimum 5 years and a fine more than Rs.15000 or the value of dowry received, whichever is higher.¹⁴

PROTECTION OF WOMEN & DOMESTIC VIOLENCE ACT, 2005

- This Act was passed in order to provide a Civil law remedy for protection of women from domestic violence.
- The domestic violence covers all the forms of physical, emotional, economic, verbal and sexual abuse which forms the subset of anti-dowry laws.
- > The various types of remedies under this act are:
 - 1. **Custody orders:** for granting the custody of a child;
 - 2. Compensation orders: payment to the victim;
 - 3. **Residence orders:** dispossessing the perpetrator and help victim regaining access to residence; and
 - 4. **Protection orders:** prohibiting a person from committing domestic violence.¹⁵

CRIMINAL LAWS FOR PROTECTION AGAINST DOWRY

The criminal laws of India have been comprehensively amended for the purpose of adding dowry as a punishable offence.

Indian Penal Code, 1860

Section 304-B was added in order to make dowry death a specific offence in 1986. The basic condition is that the death is occurred within 7 years of marriage and the women must have suffered cruelty and harassment before marriage. The offence is now punishable with a minimum imprisonment of 7 years which may extend to life imprisonment.¹⁶

Section 498-A of IPC was specifically included in 1983 to protect women from cruelty and harassment. The person who performs cruelty shall be punished with an imprisonment which may extend up to 3 years and shall also be liable to fine.¹⁷

The court, on its discretion, may impose murder charges under Section 302 of IPC against the perpetrators of the dowry death.

Indian Evidence Act, 1872

Section 113-B was added by an amendment in the year 1986 to support the other criminal statutes in order specifically deal with dowry death. It creates a presumption that the death is dowry death if before death; the woman had been subjected to cruelty on account of dowry demand. Section 304-B of IPC,1860 along with section 113-B has enabled the conviction of many people who are not been caught by the Dowry Prohibition Act, 1961.¹⁸

Code of Criminal Procedure, 1973

¹⁴ Dowry Prohibition Act,1961

¹⁵ Protection of Women from Domestic Violence Act,2005

¹⁶ Section 304B of IPC,1860

¹⁷ Section 498A of IPC,1860

¹⁸ Section 113-B of Indian Evidence Act, 1872

It mentions that the courts can take cognizance, in the prosecution of offences under Section 498-A of IPC,1860 only when the court receives a report from the police or a complaint by the victim or her family.¹⁹

INTERNATIONAL CONVENTIONS ON REMEDIES AGAINST DOWRY

India is a member to several international conventions which provides the remedies to the dowry problems. Following are the most important instruments of which India is a party:

- Convention on the Rights of the Child(CRC)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- International Covenant on Economic, Social and Cultural Right (ICESCR)
- International Covenant On Civil and Political Rights (ICCPR)
- Universal Declaration on Human Rights (UCHR)

LANDMARK JUDGMENTS RELATED TO CASES OF DOWRY KAMLESH PANJIYAR VS STATE OF BIHAR, 2005²⁰

The Supreme Court in this case provided the essential elements of Dowry Death under section 304B of IPC. These elements are already been mentioned earlier in this study

Facts of the Case: Jaikali Devi and the appellant married, with a dowry of Rs 40,000. During the second Bidai, a she-buffalo was requested but not provided. Jaikali Devi had previously complained of mistreatment by her husband and family. Her brother heard rumors about a potential dowry death.

Judgment of the Case: The Sessions Court determined that the case did not involve natural death and the husband was convicted under 304-B of IPC, resulting in a 10-year sentence. The husband appealed the decision in the High Court.

The conviction was upheld by the high court, resulting in a reduction of imprisonment to 7 years. Subsequently, an appeal was made to the Supreme Court.

The Supreme Court has established that in cases of dowry death, direct evidence is not required and there was no defense record presented to explain the injuries on the neck of the deceased.

RAJINDER SINGH VS STATE OF PUNJAB, 2015²¹

The Punjab and Haryana High Court explained the meaning of "soon before death" with respect to Dowry death.

Facts of the Case: Salwinder Kaur, who was married to Rajender Singh, died after consuming Aluminium Phosphide pesticide a few months into their marriage. According to her father's testimony in court, Salwinder's husband demanded money for house construction, which he was unable to provide at the time but promised to pay after harvesting the crop. In the meantime, Salwinder was allegedly tortured and harassed.

Judgment of the Case: The father of the deceased stated to the counsel that his daughter did not make any complaints within a year of marriage. After examining the evidence, the trial court convicted the appellant under section 304B and sentenced them to 7 years of rigorous imprisonment.

The High court of Punjab and Haryana affirmed the conviction and dismissed the appeal. The court noted that the term "soon" does not necessarily imply immediate action and that time frames should not be the sole consideration.

REEMA AGGARWAL VS ANUPAM, 2004²²

This case is a landmark case which talks about the legality of dowry demand with respect to an invalid marriage.

Judgment of the Court: In this case the court introduced a new concept according to which 'dowry is only linked with marriage and the provisions of dowry death applies only applies to married persons only'. The court held that in a case where the validity of a marriage is illegal and in question, the dowry demand in such invalid marriage is legally non-recognizable.

¹⁹ The Code of Criminal Procedure, 1973

²⁰ Kamlesh Panjiyar vs state of Bihar [AIR 2005]

²¹ Ravinder Singh vs State of Punjab [AIR 2015]

²² Reema Agarwal vs Anupam [AIR 2004]

VIJETA GAJRA VS STATE OF NCT DELHI, 2010²³

In this case it was held that foster sister is not "relative" with respect to the meaning of Section 498-A of IPC to fix liability for causing cruelty against the complainant.

MISUSE OF DOWRY RELATED LAWS

The nature of dowry related offences in India is Non-bailable and Cognizable. This nature of dowry laws leads to its misuse. The section 498A of IPC is the most misused law as the arrest by the police in the offences of this section is prompt. According to the National Crime Records Bureau data of 2012 - "approximately 2, 00,000 people were arrested related to dowry offences out of which 47,951 were women. Only 15% of the accused were convicted and 85% accused were acquitted."²⁴

The burden of proof is on the accused. The accused have to prove that they did not demanded dowry and have not committed any form of harassment and dowry crime. This is one of the most significant reasons for people trying to misuse these laws.

The laws are criticized for being ineffective as there many cases of dowry deaths and murders which went unreported. The statutes are too vague and can easily be interpreted in multiple ways, this leads to the acquittal of actual offenders and conviction of innocents when they are unable to prove their side of story.

GROUND REALITY

The prevalence of dowry demand in India today is because of the loopholes present in the law. The vagueness of the statutes is the biggest reason for the existence of dowry. Also, dowry in today's era is been demanded secretly and it is given in the forms of 'gifts' to the bride, groom and the family. The mask of 'gift' over 'dowry' leads to the existence of this social evil in present scenario. There is a dire need to clarify the difference between gift and dowry so that dowry can clearly be noticed by the authorities and courts in case of any dowry related case. Also the patriarchal natures of society have a mindset that when a boy is born, he is the key to wealth and when a girl is born, she is considered as a burden.

CONCLUSION

Evidences suggest that in early Indian society there was no existence of Dowry. There was a practice in which the bride was provided valuables by the groom's family. Lately, when the societal norms evolved due to the invasions, the practice of dowry started as a financial security of women. Lately the trend of dowry had become an essential condition for marriage.

This practice has given rise to the many crimes against women which are related to dowry demand. The occurrence of these crimes has led to the amendments in Indian Criminal Law and many laws were made for the protection of women from dowry related offences.

Dowry is a practice which has negative outcomes at the societal and personal levels. This immoral practice can only be curtailed by the amendments to clarify the meaning, proper implementation of law and also by changing the mindset of people. The overall mindset of society needs to be changed in order to stop these offences against women.

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