

A STUDY ON INDIAN DOWRY PROHIBITION ACT

Adv. Nainshree Goyal

LLM (International Business Law), Pursuing CS
ICSI, Delhi, India

Abstract: Dowry is illegal as per Dowry Prohibition Act 1961. But it is still existing in some form or the other, in some part of the country. The aim of the paper is to understand the hidden form of dowry and bring it within the definition of “dowry” as per the statute, so that this social evil can be abolished completely and females can have equal rights in the society. This is to ensure healthy lives for both the gender and smooth coordination between law and society.

Keywords: Dowry, Social Evil, Females, Definition, Still Existing.

Introduction: *Historical Aspect*

Dowry: the concept of dowry in historical times started when girls were not educated. In its purest form, dowry means any wealth that the girl gets with her, during the marriage to her husband's house. This includes any gifts, precious ornaments and even *stridhan*. Historians trace back the tradition of dowry to the *kanyadana* concept along with the moral basis of *stridhana*. Initially, marriage incorporated kanyadana which is that the father presented his daughter as a gift or “Daan” to the groom at the time of their marriage. In addition to the bride, the accompanying of gifts enhanced the social status of the bride's family; however, it was not necessary. “It subscribed to the view that the unmarried daughters were to be given a quarter of their brothers' share of patrimony for the purposes of their marriage,”. The historians claimed the existence of dowry came from the fact that the father would divide the property in the will for all his children. But daughter will get married and go in other family and hence, her name should not be in the will. Thus, her share should be given to her when she parts as “Conjugal fund”. By this concept, came into existence *stridhan*, and dowry system evolved with time, as described by Manu.

The form in which a bride is wed is reflected by her caste and class status, which in turn determines the value of the dowry. The Business class which were the rich ones gave the heftiest. These are called as “Baniya” or “Marwaris”.

Dowry was actually a kind of love-gift by the upper caste families to their daughters during the wedding but during the medieval period the demands for dowries became a precursor for marriage. The demand for dowries spread to the lower caste, and became a prestige issue. Ancient vedic scholar Manu, described dowry as essentially a payment of cash or gifts from the bride's family to the bridegroom's family upon marriage. Then it changed to cash, jewellery, electrical appliances, furniture, bedding, crockery, utensils and other household items that would help the bride and bride groom set up the house and begin a new life. This trend became stricter with time and very expensive affair for the bride's family.

Current Trend: “The term dowry can be treated with some ambiguity within Indian culture as its meaning is both contentious and complex. There is some vagueness as to whether this handover of money is to be recognized as a gift, an early inheritance or an extortion from the groom's family.”

Dowry, It's a taboo now. Everybody is modern. They go on travel plans, shopping around in modern well-built malls, wear latest fashion couture. Every girl is educated with minimum of graduation degree. And dowry is illegal as per dowry prohibition act 1961. So, nobody encourages dowry. But what is the insight of the Indian society?

Has dowry been completely abolished? what is the new form of dowry?

The scenario today is that girl's family today also accumulates for the girl's marriage as financial security of not knowing how the boy's family would be. This fear is strong even when the statute gives strict fine and imprisonment on asking for dowry. This fear is a proof of existence of dowry ritual in a hidden form, not under-covered in front of law.

Is that failure of the execution of the statute? It is the social custom taking a modern form taking advantage of the loopholes in the statute.

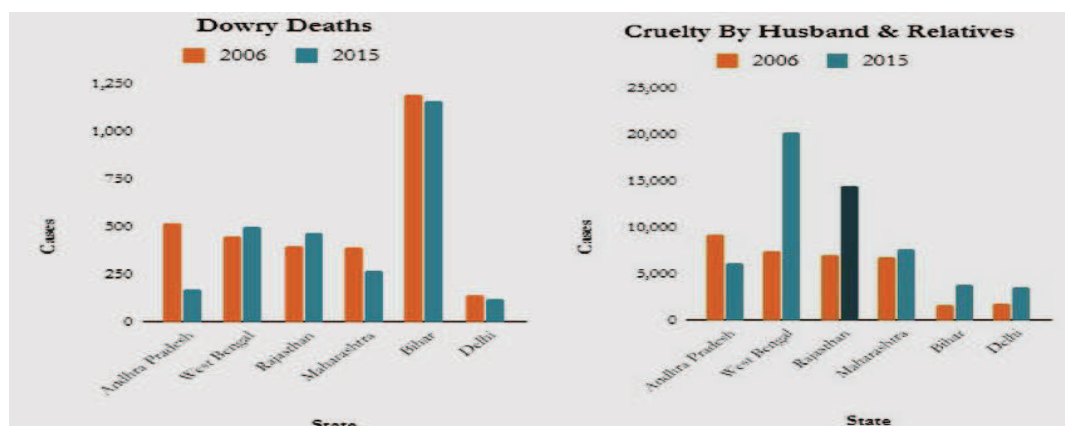
The current tradition is where, the girl should be educated. But her family will still be giving in the garb of "social reputation and standing". These maybe in form of gifts or maybe just out of custom and tradition. There are cases where the girl's family are fearful and are willing to give without the boy's family asking for their daughter's happy future and married life. But there are also situations where the boy's family ask for "gifts" for relatives and *baraatis*.

"Dowry is legally and morally wrong, but this is part of tradition and social custom. this is just to ensure happiness for all." "They are not asking for dowry. They are gifts for relatives of the boy's family. They must have certain value or they must be upto the mark for the family to appreciate. This is part of the tradition. This is not at all dowry. This is just to ensure that the girl's family has a good name in boy's family. This is to ensure that the girl is treated well in the boy's family". This is not dowry as it is claimed.

Does this mean that if not given gifts as per the social trend, the girl will not be respected or treated well? This means, the gifts are the means to keep the girl happy. Then, how is this concept of gifts out of custom and tradition different from early age dowry. This is exactly how dowry deaths in historical days took place. That due to less "dowry/ gifts" or of lesser value, the girl is not treated well. She is either murdered or she commits suicide resulting in dowry death.

And to bring it to your notice, this tradition is not only in middle class families, but also upper class, higher income group families. Because as claimed, this is family custom and tradition maintained to have good social standing. This can be seen majorly in Marawaris, Baniyas and Punjabi families. But other castes are also following this pattern but not with so much compulsion and zeal.

According to the latest figures issued by India's National Crime Records Bureau (NCRB), dowry-related crimes have been on the rise over the past years. Whereas 6,851 dowry deaths were reported in the country in 2001, that number had risen to 7,618 in 2006 and reached 8,233 in 2012. The conviction rate in these cases, however, remained at only 32 percent. In 2015 alone, 7,634 women were killed over dowry, or an average of 22, died each day in dowry-related cases. At the same time, more women died on account of dowry harassment in 2015 (7,634) than in 2005 (6,787). The yearly number spiked at 8,455 in 2014–23 deaths on average each day, or nearly one every hour.



Source: National Crimes Record Bureau 2015

Dowry Prohibition Act:

Definition Under the Act:

S 2. Definition of "dowry".—In this Act, "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 2.....the expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

IPC 30. "Valuable security"

The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right.

S. 6 Dowry to be for the benefit of the wife or heirs.

(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman –

- a. if the dowry was received before marriage, within three months after the date of marriage; or
- b. if the dowry was received at the time of or after the marriage within three months after the date of its receipt; or
- c. if the dowry was received when the woman was a minor, within three months after she has attained the age of eighteen years, and pending such transfer, shall hold it in trust for the benefit of the woman.

Reading the sections and interpreting them leaves us with a wide definition for dowry. Anything given or taken by any party involving valuable security or any property moveable or immoveable, is dowry. Also, in case anything is given or taken, it should all be for the woman, the concerns for the guests and other relatives does not come into the picture. Every other gift must be given to the woman itself.

This clearly brings the gifts as discussed above within the ambit of "Dowry". The question is when the law defines it, why isn't the Indian society aware/ progresses. This shows a gap between social trend and law.

Result of Dowry: One of the reason of female foeticide in India is dowry. Families don't have enough financial capability and find it a huge burden to give dowry during the wedding, and if not fulfilled it will bring lot of bad name in society. This develops the want for male child, who can take care during old age and not female child, whose wedding will add to financial burden.

Dowry gives direct relation to rise in crime like dowry death. A "dowry killing" occurs when a new wife is murdered by her husband or in-laws if they are unhappy with her, or the wife commits suicide. The male dominant crimes and suppression of female voices are resultant of dowry.

Domestic violence after marriage is on hike due to insufficient dowry as demanded. Many injustices happen to woman due to insufficient dowry. Bride-burning being one of them. Many families, because of these reasons, feel the girl to a burden and abort them.

Conclusion: Dowry is illegal and comes with a punishment. But looking at the social scenario, it is very much prevalent. Society has very conveniently found other word for dowry as "gifts" and further maintaining this social trend of dowry. The Dowry Prohibition Act is very wide and does not clearly defines the new definition of dowry leaving the scope for this social evil to grow and prosper. This gap between society and statute must be filled by covering the new age gifts when demanded under purview of "Dowry".

References:

1. Sheel, Ranjana (1999) *The Political Economy of Dowry*. New Delhi: Manohar Publishers (46)
2. Dhillon, Amarpal, "The Hindu Dowry system (Origins)", June 21, 2008, <http://www.mahavidya.ca/2008/06/21/the-hindu-dowry-system-origins/>

3. Mahavidya "The Hindu Dowry system", <http://www.mahavidya.ca/2008/06/21/the-hindu-dowry-system-origins/>
4. Madan Karuna, "Dowry, an Ancient Indian Practise", *The Gulf News India*, Sept 7, 2013 <http://gulfnnews.com/news/asia/india/dowry-an-ancient-indian-practice-1.1227759>
5. Kaur, Karina, "How the Practice of Dowry Makes Life Hell for A Bride (And Creates More Social Evils)". Youthkiawaaz, March 14, 2016
6. National Crimes Record Bureau
7. Amol Deo Chavhan, "Health Problems of Village Women's: A Conflict Issues" *Human Rights International Research Journal: ISSN 2320-6942* Volume 2 Issue 1 (2014), Pg 12-14
8. The definition of domestic violence is stated in S.3 of The Protection of Women from Domestic Violence Act
