

Socio-Legal Dimensions of Dowry as a Matrimonial Offence

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The available literature on evolution of Indian culture and civilization reveals that although the ancient writers pretended to record their revered admiration for the womanhood yet in actual practice women have always been suppressed and exploited by the dominant male members of the society. Law of Manu insisted that woman must constantly worship her husband as God, though he may be a wicked person or a womaniser. According to him, an ideal woman is one who does not break the bonds of her matrimonial home. The salvation and happiness of a woman thus revolved round her virtue and chastity as a daughter, wife and a widow. In the male dominated society, woman has always been kept in subjugation by her husband because by nature, she is supposed to be weak and meek.

Genesis

It is in this background that, among other atrocities, the family violence relating to marriage led to a number of matrimonial offences resulting into exploitation of woman in the name of marriage. With the advance of time, crimes such as bigamy, adultery¹ etc. were made punishable under the penal law in order to save the institution of marriage and for retaining matrimonial peace. It must, however, be stated that dowry² and cruelty³ were not initially recognized as matrimonial offences until the enactment of the Dowry Prohibition Act, 1961 and insertion of section 498-A in the Indian Penal Code by the Criminal Law (Second Amendment) Act, 1983. In fact, dowry system has been known to be in existence ever since the inception of the institution of marriage in India and has been in vogue through the ages. Giving away presents and gifts in marriage by the parents of the bride has been a common practice in different castes and communities of the Indian society. Although the word 'dowry' was never used while negotiating a marriage, but in common practice it meant property which the bride brings to her matrimonial home at the time of marriage.

In ancient India, the institution of marriage was held in great esteem and was considered to be a sacrament. Giving away daughter in marriage constituted one of the sixteen sanskaras leading to salvation of man and it was believed that without the punya of Kanyadan, a man's life is never complete. Kanyadan was accompanied by some hard cash, gold ornaments and usual household things.

These were given as gifts to the bridegroom as vardakshina; but it was purely a voluntary practice without any coercive over-tones⁴. There are references to this voluntary practice of giving presents in the form of clothes and ornaments to the bridegroom or his parents in MANUSMRITI⁵. The dharmshastras - also laid down that the ritual of kanyadan was an integral part of the marriage ceremony and the marriage was not complete until the bridegroom was given Vardakshina by way of some gift or presents as token of love and affection for the latter. It also served as a kind of security or financial protection to the bride in her adverse circumstances. But the practice essentially remained voluntary in nature and there was neither any compulsion for the bride's parents nor demand from the bridegroom's side for dowry. The sanctity of this socio-religious practice was retained until the beginning of the 19th century when due to the rising trend of materialism and craze for money, the concept of Vardakshina gave way to the commercialisation of marriage institution and the devil of dowry emerged as a major social evil in the Indian society.⁶

Social Dimensions of Dowry Menace

The social dimensions of dowry are far and wide. It not only affects adversely the marital relationship and social status of women, but increasing dowry demand, at times, even forces girls of marriageable age to commit suicide out of sheer frustration or for mitigating the suffering and mental tension of their parents. Again, many girls are compelled to remain unmarried because their parents cannot meet the huge dowry demands of the prospective bridegroom.

It hardly needs to be mentioned that the menace of dowry is essentially an outcome of the rapid industrialisation and commercialisation which have changed the standard of living of the people and resulted into disintegration of the family system. With the unprecedented growth in population many youths are left unemployed thereby causing unequal distribution of money and imbalances in social status⁷. The consequential dearth of well-settled or earning bridegrooms has, to some extent, been responsible for dowry to perpetuate as social custom in the Indian society. The spread of education and drastic anti-dowry laws have not been able to contain the menace of dowry from extending its tentacles even to those castes and communities which were traditionally known to be averse to dowry system. The quantum and magnitude of dowry, however, varies according to the social status, profession and future prospects of the bridegroom and the sociocultural background of the families of the spouses.

There is yet another reason for dowry being taken as a compensatory measure. The parents who were required to give dowry for marrying their daughter tend to accept an equal amount or perhaps more, at the time of their son's marriage.

Thus, those who are compelled to give dowry are bound to feel aggrieved and think that there is nothing wrong if they accept it when it is their turn.

Dowry is primarily an evil associated with marriages in Hindu society, but the practice has made inroads in many sections of the Muslim and the Christian communities. The menace has also permeated into the Sikh community, but not to the extent as among the middle and upper class Hindus. Despite legal restraints, dowry continues to be a basic component of marriage system although its form, magnitude and the associated atrocities on the women vary according to the customary norms of the different communities.

Anti-Dowry Laws

The unabated miseries and injustices caused to the young brides and their parents prompted our Parliament to bring an anti-dowry legislation in the form of Dowry Prohibition Act,⁸ 1961. Although some states⁹ already had their state laws enforcing legal restrictions on dowry, a central legislation, uniformly applicable throughout the country, was much needed to curb this menace.

Section 2 of the Act defines 'dowry' as any property or valuable security¹⁰ 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 mehar in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

The definition of dowry as given in the Act is quite comprehensive and prohibits not only giving and taking of dowry but also tries to stamp out the practice of demanding dowry in any form either before or after marriage. It, however, permits customary presents to bride or bridegroom but they have to be entered in a list maintained in accordance with the rules made under the Act.¹¹

Section 4 of the Act prohibits and penalises demand of dowry as consideration for a marriage between the parties thereto. This provision, however, created some doubts as to whether the articles or presents given after marriage, unless it was agreed at the time of marriage, would constitute consideration for marriage or not. The controversy has now been settled by the Supreme Court in its historic decision in *L.V. Jadhav Vs. Shankar Rao*¹², wherein the term 'dowry' used in section 4 has been interpreted to mean any property or valuable security if

consented to be given on the demand made. The Apex Court further clarified that there is no warrant for taking the view that the initial demand for giving of property or valuable security would not constitute an offence of dowry and that an offence would take place only when the demand was made again after the party to whom demand was made agreed to comply with it.

Section 3(l) of the Act, as amended in 1984 and 1986, provides that a person who gives, takes or abets dowry, shall be punishable with imprisonment for five years and a fine which shall not be less than Rs. 1 5,000/- or the amount of the value of such dowry, whichever is more. The offence of dowry under the Act is cognizable, non-bailable and non-compoundable. The complaint in a dowry case can be made within ten years¹³ of the marriage. The court can take cognizance of the offence either suo motu or on a police report or on a complaint made by the aggrieved person, his/her relative or parent or by a recognised welfare institution or Organisation.¹⁴

A new section 8-A has been inserted in the Act by the Dowry Prohibition (Amendment) Act, 1986 which has shifted the burden of proof on the accused in a dowry case to prove that he did not commit the offence u/s 3 or 4 of the Act. In other words, where a person is prosecuted for taking or abetting the taking of any dowry u/s 3, or the demanding of dowry u/s 4, the burden of proving that he had not committed the offence under these sections shall lie on him.

The Act also provides for setting up of Family Courts for the trial of dowry cases and also for restoration of dowry and stridhan property to the woman in connection of whose marriage it was given. Thus section 6 of the Act provides that if any person other than the bride has received the dowry, it should be transferred to her within three months of the marriage and in case of a minor bride, within three months after she has attained the age of 18 years. A person who denies a woman her dowry-property, shall be guilty of the offence of criminal breach of trust u/s 405/406 of the Indian Penal Code.¹⁵ The Supreme Court, in Prabha Rani Vs. Suraj Kumar¹⁶ categorically observed that stridhan property of a married woman, even if it is placed in the custody of her husband or in-laws, they would be deemed to be trustees and, therefore, are bound to return the same when demanded by her. With a view to avoiding any likely future dispute regarding stridhan property, it is provided that the presents made at the time of marriage should be entered in the list to be maintained in accordance with the rules made under the Dowry Act.

The working of the Dowry Prohibition Act over the years has shown that the main difficulty in the effective implementation of the Act is the lack of proper enforcement machinery, besides active co-operation of the appointment of Dowry Prohibition Officers. Consequently, a new section 8-B was inserted by the

Dowry Prohibition (Amendment) Act, 1986, providing that the State governments may appoint such officers as they deem fit and specify their areas, powers and functions.¹⁷ The State Government is also empowered to appoint an advisory Board consisting of not more than five social welfare workers including at least two women, from the area in respect of which such officers exercise jurisdiction.

Dowry Demand & Cruelty Against Wives

Although section 4 of the Dowry Prohibition Act provides penalty for demanding dowry, mere demand is not an offence unless dowry is either actually given or agreed to be given. If mere demand of dowry is to be brought within the purview of this section, then the word 'dowry' as defined in section 2 of the Act shall have to be redefined in the light of sub-section (b) of section 498-A of the Indian Penal Code which says that harassment of the woman with a view to coercing her or any person related to her, to meet any unlawful demand for dowry or on account of failure on her part or any person related to her to meet such demand, shall constitute cruelty within the meaning of section 498-A of the Penal Code. Though every demand of dowry whenever repeated constitute a separate offence, if it is repeated after the marriage of the spouse, the person repeating such demand shall be deemed to have committed an offence under section 4 of Dowry Act.¹⁸

The magnitude of the criminality involved in the dowry cases and the growing number of dowry deaths and bride-burning reflect the barbarity so deeply embedded in our social system. Customarily, Indian marriage is sacrament and considered to be a union not only of two bodies but also of two souls in which the bride is transplanted in the family of her husband. Since she comes from a totally different environment, a conflict of family culture, family status and living standard is bound to affect the behavioural pattern of the spouses and amongst their relatives. These inequalities result into the demand of dowry from the husband's side which creates tension and differences between the husband and the wife and their relatives. It is an irony of fate that the bride who should be dearest to her husband and her in-laws, becomes the victim of the dowry offence and her own husband or his near relatives become the offender due to social, economic or psychological reasons. The age-old gender bias permeating in the orthodox customs, traditions and beliefs is the root cause of this malaise.

Traditionally, the voluntary giving of jewelry, presents and even cash by the bride's parents to the bride- groom or his relatives was considered to be a symbol of showing respect to the family of the groom. However, in course of time this voluntary consideration transformed into a matter of right for the family of the bridegroom and now a days dowry is being demanded by the husband and his

parents, not only before or at the time of the marriage but even years after it. The refusal on the part of wife or her parents generates tension between the two families and the wife is harassed and subjected to cruelty which at times leads to murder. Obviously, women are the main sufferers of this malady. It is for this reason that the number of dowry deaths has swelled to alarming proportions in recent years.¹⁹ The available statistics indicate that more than 4500 dowry-deaths are taking place every year in India.²⁰ A television report further claims one dowry death per hour in the country.²¹ A comparative study on dowry deaths reveals that the incidence of bride burning and murderous assaults on women in the northern regions of India is substantially higher than those of southern region. The menace of dowry still remains a burning problem despite drastic changes introduced in the Dowry Act by the amendment of 1986.

Dowry as an IPC Offence

The alarming increase in dowry deaths, suicides and bride burnings agitated the minds of Parliamentarians so as to devise stringent measures to curb this evil. The harassment meted out to the newly married brides and their ill-treatment in the hands of their in-laws not only disturbs the peace of her family but also maligns the very institution of marriage which was once regarded as sacred. It is rather agonising to note that persons who are socially and legally enjoined to protect the person and honour of their wives or daughters-in-law commit brutality on them with impunity. The legislators, therefore, thought it expedient to insert a new section 304-B in the Indian Penal Code making dowry death an IPC offence, punishable with not less than seven years, which may extend to imprisonment for life.²² This section defines 'dowry death' as follows:

"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."

The amending Act of 1986 has also amended the First Schedule of the Code of Criminal Procedure, 1973, making dowry death a cognizable offence.²³ A new section 113-B has been inserted in the Indian Evidence Act which reads as follows:

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 has caused dowry death.²⁴

Section 113-A²⁵, which has been inserted in the Evidence Act by the amendment Act of 1986 relates to the presumption regarding abatement of suicide by a married woman when it is shown that she committed suicide within a period of seven years from the date of her marriage and that her husband or relative of the husband had subjected her to cruelty.²⁶ In such circumstances the court may presume (having regard to all the other circumstance of the Case) that such suicide has been abetted by her husband or by such relative of her husband.

The Criminal Law (Amendment Act, 1986 has made subjecting a woman to cruelty)²⁷ by husband or his relatives, an offence punishable under the Indian Penal Code with imprisonment for a term which may extend to three years and also with fine. The offence is cognizable, non-bailable and triable by the Magistrate of the First Class. The purpose of the amendment is obviously to plug the loopholes in the existing law relating to dowry and dissuade people from indulging in such murderous criminal acts.

Judicial Trend

There has been a plethora of judicial pronouncements on dowry cases ever since the enactment of the dowry prohibition law. But even the drastic changes introduced by the amending Acts have not been able to contain this menace; on the contrary, it is on a constant rise. Expressing its concern Premchand²⁸ observed as under:

"Degradation of society due to pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husbands and their parents and relatives, resulting in an alarming number of suicidal and dowry deaths by women, has shocked the legislative conscience."

In this case, the husband persistently demanded money from his wife and quarreled with her everyday over it . Reacting adversely, the wife said that she would prefer death to that sort of life. The husband, thereupon, responded by saying that he would feel relieved if she died. The wife, thereafter, set herself afire. The Supreme Court held the husband guilty of instigating his wife to commit suicide.

It must be stated that the mental torture caused to the wife due to maltreatment for bringing less dowry would amount to cruelty within the meaning of the newly created section 498-A I.P.C. even if the girl does not commit suicide.

As regards the restoration of dowry and "stridhan" property, the Supreme Court over-ruled the view that, upon entering the matrimonial home, the ownership of property became joint with her husband or his relatives. The Court observed that even if such property is placed in custody of her husband or in-laws, the latter would be deemed to be trustees of the property and hence would be bound to return the same if and when demanded by her.²⁹ The Court also noted that it was distressing to see a helpless woman being turned out of her home without the ornaments, money and clothes etc., which actually belong to her.

In *State of Punjab Vs. Amarjit Singh*,³⁰ the Supreme Court did not stick to the technicalities of the rules regarding the recording of the dying declaration and accepted a newly married woman's statement made to the Assistant Sub-inspector that her husband had set her on fire and held the accused guilty of the offence of dowry death u/s 304-B of the Indian Penal Code.

The apex court was once again called upon to lay down the indications of the offence under section 304-B IPC in *Shanti Vs. State of Haryana*³¹ and noted the following:

1. the death of a married woman should have been caused by burns, bodily injury or otherwise other than under normal circumstances;
2. such death should have occurred within seven years of her marriage;
3. she must have been subjected to cruelty or harassment by her husband or any of his relatives; and
4. such cruelty or harassment should have been for or in connection with demand for dowry.

In a bride-burning case, namely, *Lichhmadevi Vs. State of Rajasthan*³² the neighbours had taken Pushpa, a young bride, to the hospital where she died. The mother-in-law and husband of the deceased hardly showed any signs of grief and they had even refused to take her to the hospital for treatment. While in hospital, the deceased made a statement to the doctor that her mother-in-law had poured kerosene and set her on fire. She repeated the same statement to two witnesses before the police. The High Court of Rajasthan, reversing the acquittal order of the Sessions Court, Jaipur, convicted the mother-in-law for murder under section 302 I.P.C. On appeal, the Supreme Court upheld the conviction describing the victim's murder as 'dastardly and diabolic.' The Apex Court further observed that the extreme penalty of death sentence was justified in case of the person who perpetrates a crime without any human consideration but in view of the difference of opinion between the Sessions Judge and the High Court

regarding the guilt of the accused in the instant case, the sentence is reduced to one of imprisonment for life.

Again, in *Bhagwat Singh Vs. Commissioner of Police, Delhi*³³, The Supreme Court pointed out that normally a young woman of education, intelligence and character would not resort to set herself ablaze and embrace death unless provoked and compelled to take that desperate step by the intolerance of her misery. Therefore, accused in the bride-burning needed to be dealt with sternly.

An overall view of dowry violence and torture suggests that socio-psychological factors and suffocating surroundings of young wives are the main causes of this malady. In case of bride burning, the defence story generally tries to establish death due to fire accident destroying all the possible clues of deliberate burning. Therefore, there is need for an expeditious investigation in such cases within the frameworks of the amended provisions of the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act. The law has got to be augmented and geared up to combat the evil of dowry to prevent further degradation of the society.

Conclusion

Ironically, dowry demands have spurred the rate of divorce petitions and contributed to an irretrievable breakdown of marriages, leaving women to suffer badly. In fact, the very sanctity of marriage has been thrown to winds and it has now assumed the form of a commercial bargaining. The dowry menace has also contributed to sex delinquency to some extent, as many girls are compelled to lead a promiscuous life just to earn enough for meeting dowry expenses of their marriage.³⁴ In recent years, it has been seen that not only brides but even the teenaged girls, knowing fully well that their parents will not be able to arrange dowry, are drawn to commit suicide out of sheer frustration and desperation.³⁵

The problem of dowry is associated with the institution of marriage where the security and the life of a girl for the rest of her life is involved. It would, therefore, be expedient that dowry-related crimes, excepting dowry deaths, and bride-burning, should be tried by Family Courts³⁶ which provide a more congenial atmosphere for both parties to settle their differences amicably. It may also be suggested that besides punishing the erring husband or his relative, as the case may be, with a term of imprisonment, he should be deprived of certain civic rights such as disqualifying him from holding any public office or contesting election etc. That apart, his name should be widely publicised in local newspapers and the amount of fine imposed on him should be equivalent to the value of dowry property taken or demanded by him.

The investigation in dowry cases should preferably be entrusted to women police officers as far as possible because they are expected to be socially and psychologically more equipped to handle such cases.

Dowry being a socio-legal problem, cannot be tackled by law alone unless members of the society come forward and actively co-operate with the law-enforcement agencies. There is the urgent need to create social awareness and mobilise public opinion against dowry through an intensive educational programme at all levels, particularly in the rural pockets. More recently, a number of voluntary (non-governmental) agencies and social organisations are doing a commendable work in helping the dowry victims and exposing the perpetrators of this crime with the necessary help of community assistance and guidance. The legal aid workers, including the law teachers and students, should also take the initiative in the dowry eradication campaigns through an intensive legal literacy programme not only in the cities and the towns but in remote village areas as well.

Of late, with the growing importance of human rights jurisprudence, the Human Rights Commission is also seized with the problem of crime against women and its expanding dimensions. Timely intervention by the local agencies of the commission in dowry-related crimes would certainly contribute to improving women's conditions and bringing about peace in the matrimonial homes. The Women Commission, established in 1993, should also take a lead in this direction. The Commission should, however, be endowed with statutory powers and authority to bring the culprits of dowry crimes to book and provide adequate to dowry victims.

Notes

1. These offences are contained in chapter XX of the Indian Penal Code, 1860 as offences relating to marriage.
2. Section 2 of the Dowry Prohibition Act, 1961 defines 'dowry'. The Act was amended in 1983 and 1986 providing for stringent punishment for dowry.
3. The Criminal Law (Second Amendment) Act, 1983 makes 'cruelty' a punishable offence (Section 493-A IPC).
4. Report of the Joint Committee of Parliament on working of Dowry Prohibit Act, 1961; Ch.1, Para 1:1 (1982).
5. Manusmirti verses 27 to 31, 33 & 34.

6. Paras Diwan: 'The Dowry Prohibition Law; 27 JILI (1985) p.564.
7. Subbarao K.: Social Justice & Law (1974) p.109.
8. The Act consists of ten sections in all and came into force on July 1, 1961. It extends to whole of India except the state of Jammu and Kashmir.
9. The Bihar Dowry Restraint Act, 1950; The Andhra Pradesh Dowry Act, 1958; The Jammu & Kashmir State Dowry Prohibition Act, 1960 etc.
10. The expression 'valuable security' has the same meaning as in sec.30 of IPC.
11. Section 3(12) and 3(2) of the Dowry Prohibition Act, 1961.
12. AIR 1983 SC 1219.
13. Prior to Dowry Prohibition (Amendment) Act, 1984, this period was only one.
14. Ibid section 7. For the purpose of this section, 'recognised welfare institution or Organisation' means one which is so recognised in this behalf by the Central or the State Government.
15. Bhai Sher Jang Singh Vs. Virender Kumar, (1975) Cr. L.J. 493 (P&H).
16. AIR 1985 SC 628.
17. The powers and functions of Dowry Prohibition Officers are contained in clause(a)to(d) of sub-section (2) of sec.8-B of the Act.
18. Shankar Prasad Shaw Vs. State (I 991) Cr. L.J. 639.
19. National Crime Record Bureau reported that number of dowry deaths was 4962 in 1992 which swelled to 5582 in 1993. This data relates to only to those dowry deaths which have been reported to the police. The unreported cases must have been many more than this.
20. Findings of the seminar on Women's Health & Child Development held in Srinagar on May 17, 1992.
21. National Telecast on Doordarshan dated January 12, 1995 .
22. Inserted by Dowry Prohibition (Amendment) Act, 1986 (w.e.f. 19-11-1986).

23. Inserted by section 10 of Act No:43 of 1986.
24. Ibid
25. Ibid Section 12.
26. For the purpose of sec.113-A of the Evidence Act, the word 'cruelty' shall have the same meaning as in section 498-A of the Indian Penal Code.
27. Section 498-A defines 'cruelty' as any wilful conduct which is likely to drive-the woman to commit suicide or to cause grave injury or danger to her life, limb or health, whether physical or mental. It also includes any harassment caused to a woman with a view to coercing her or any person related to her to meet an 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. (see sub-clause (a) and (b) of sec. 498-A).
28. AIR 1989 SC 1661.
29. Pratibha Rani Vs. Suraj Kumar, AIR 1965 SC 628
30. AIR 1988 SC 2013.
31. AIR 1991 SO 1226.
32. AIR 1988 SC 1785.
33. (1983) 24 DLT 125
34. A recent survey conducted by National Academy of Administration, Mussode suggests that even well educated girls are living a promiscuous life either be- cause they have remained unmarried for want of meeting the dowry demand or for earning money to meet the dowry demand and free their parents.
35. Raghunath Patnaik's article entitled 'Dowry As A Social Evil'; 31 JILI (1989) 570.
36. The Family Courts Act, 1984.

These young women were euphemistically called "Comfort Women" because they were to provide "comfort" - that is, sexual pleasure to the Japanese soldiers. The legal grounds for holding Japan accountable in international law, and critique of the legal mechanisms that have been used to obtain redress for former Comfort Women shall also be examined. II. The origin of comfort women. 36 Ustinia Dolgopol and Snehel Paranjape, Comfort Women: Report of a Mission (Geneva: International Commission of Jurists, 1994) at 135 [hereinafter Report of a Mission]. 42 - dalhousie journal of legal studies. had suffered this crime against humanity were thirty-five Dutch women forced into prostitution in the Dutch East Indies (now Indonesia). JURISPRUDENCE AND LEGAL THEORY book. Read reviews from world's largest community for readers. Complete jurisprudence including legal theories. Let us know what's wrong with this preview of JURISPRUDENCE AND LEGAL THEORY by N.V. Paranjape. Problem: It's the wrong book It's the wrong edition Other.