

The Emergence of Dowry Prohibition act, 1961 and its Failure.

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Abstract: Dowry as a concept has many versions in different countries. Where in some countries the husband give dowry at the time of marriage, in many other countries the bride has to pay her bride price or brides wealth to get marriage. With the change and evolution of time, the cause towards dowry has also evolved from noble in earlier times to abusive in the recent times. India has enforced many anti-dowry laws to eradicate the evil of dowry but at first the parent act, The Dowry Prohibition Act, 1961 was enforced which was drafted while keeping in mind only to tackle or handle the issue and not to eradicate it from society. As a result the parent act proved to be a failure. The legislators failed to acknowledge the gravity of the ten situation of society in regards to dowry issue and also did not pay much head to the penal provisions which may be tackled the issue of dowry in society in a better way. In this article, the emergence and the various loopholes in the act and the major reasons because of which the Act failed and the crime of dowry accelerated is discussed.

Key Words - Dowry, Dowry Prohibition, Loopholes, Failure etc.

The Dowry Prohibition Act, 1961.

I. Definition

As per the Act is 'Dowry' means¹

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 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.'

Explanation: The Expression 'Valuable Security' has the same meaning as section 30 of the Indian Penal Code, 1860.

The definition in the act gives many angles as the meaning of dowry. It not only explains dowry as such but also 'bride price' and 'bride wealth'. There are certain things that the act does not talk about that is gits exchanged at the time of marriage irrespective of the size and amount, by either party are not included and this feature of the act has come under severe criticism by experts.²

In view of the immense change that concept of dowry has gone through over the years, it will be very unrealistic to exclude the gift exchange of one party to the other in a marriage from the definition of dowry.³

II. Major Amendments

There were two major amendments in the Criminal law of India. First in the year 1984 and the other in the year 1986.

a) *The Amendment Act of 1984.*

Section 2 which is the defining clause was amended. The section says,

'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 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.

Explanation II - The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

Earlier to the Amendment the clause mentioned "As consideration for the marriage of the said parties" but after the amendment it was changed to "In connection with the marriage of the said parties", this is because earlier it was very difficult to ascertain what

¹ Section 2 of the Dowry Prohibition Act, 1860.

² Das Veena, 'Sociology of Law- A Trend Report in I.C.S.S.R'; A Survey of Research in sociology and Social anthropology, Vol 2 (1973) ICSSR, New Delhi.

³ Saini S. Debi., 'Dowry Prohibition: Law, Social Change and Challenges in India'; available at

https://www.researchgate.net/profile/Debi_Saini/publication/260249763_Dowry_Prohibition_Law_Social_Change_and_Challenges_in_India_The_Indian_Journal_of_Social_work_Vol_XLIV_No_2_pp_143-151/links/00b7d5364916fdb5d6000000/Dowry-Prohibition-Law-Social-Change-and-Challenges-in-India-The-Indian-Journal-of-Social-work-Vol-XLIV-No-2-pp-143-151.pdf,

accessed on 17-05-2018 at 10:05 P.M.

exactly constituted of consideration of marriage. Hence, the language in the section was changed so that any payment given in cash or in kind could be included within the term Dowry. The amendment also enhanced punishment for the offence for giving and taking of Dowry.

In the case of *Yogendra Kumar Bansal v. Smt. Anju*⁴ the court held that, 'Dowry means any property given or agreed to be given by the parents (or any other) of a party to the marriage or before marriage or at any time after the marriage in connection with marriage'. In this case the husband demand dowry in the form of Rs 50,000/- after some days of marriage from the girl's father and when the demand was not fulfilled she was subjected to torture. So, here it will be taken as the dowry was demanded in connection with marriage and it was a demand of dowry even if it was demanded after some days of marriage.

Even after the Amendment Act, 1984 changed few things to make the Dowry prohibition Act, 1961 more effective, it still failed to recognise few points such as the punishing both offender and the victim will not solve the problem. In fact, it will enhance the issue as the victims will be reluctant to approach law and take legal redressal, as the victims too will come under the category of offender. The Act missed out on the fact that the victims had no consent to give dowry and that it was obtained through coercion.

Another noteworthy point is the defendants often go scot free as they would easily prove that whatever property or times were given in marriage were gifts and they had no demands of their own, due to lack of evidentiary support the petitioners would lose the suit and justice would be denied.

b) *The Amendment Act of 1986.*

Under this amendment the definition of dowry was further amended and made as 'the demand made at the time of marriage or before the time of marriage or after the time marriage'. This elaboration made dowry demand even more difficult. It clearly meant that dowry demanded at any time before, during or after marriage was punishable under the act. The Amendment Act, further enhanced the punishment for dowry to imprisonment upto 5 years and fine of Rs 15000/- or amount of dowry whichever is more for both giving and taking of Dowry.

The Act made an addition of section 8A and 8B. According to Section 8A- the burden of proof will lie on the accused, who needs to prove the fact that he has not committed an offence under section 3 of the Dowry Prohibition Act (giving or taking of dowry or abetment towards it) and under section 4 of the Dowry Prohibition Act (demanding Dowry).

According to Section 8B- Dowry Prohibition Officers.-

(1) The State Government may appoint as many Dowry Prohibition Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act. - (1) The State Government may appoint as many Dowry Prohibition Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act."

(2) Every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely:-

(a) To see that the provisions of this Act are complied with;

(b) To prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry;

(c) To collect such evidence as may be necessary for the prosecution of persons committing offences under the Act; and

(d) To perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

(3) The State Government may, by notification in the Official Gazette, confer such powers of a police officer as may be specified in the notification on the Dowry Prohibition Officer who shall exercise such powers subject to such limitations and conditions as may be specified by rules made under this Act.

(4) The State Government may, for the purpose of advising and assisting Dowry Prohibition Officers in the efficient performance of their functions under this Act, appoint an Advisory Board consisting of not more than five social welfare workers (out of whom at least two shall be women) from the area in respect of which such Dowry Prohibition Officer exercises jurisdiction under sub-section (1).

The Amendment Act, further made the listing of gifts by both Bride and Groom's family mandatory. The Dowry Prohibition (Maintenance of List of Present to the Bride and Bridegroom) Rules were introduced in 1985. It has been clearly mentioned that the list be stamped, notarised and signed by the Dowry Prohibition Officer or the Protection Officer and be kept by both the parties. If the list is not prepared according to the rules of the Act, then the offenders can be imprisoned for a period of 3 years.⁵

III. Loopholes in the Act

In the pre independence period, the status of woman was that of an object. Earlier the British took away her right to possess any property and it was next to impossible for her to retain any sort of wealth with her. Whatever *Stridhan* she received at the time of her marriage, went to her husband. This gave rise to greed within men and started demanding more stridhan. A time came when it believed that if a father paid more stridhan (which would eventually be husband's property) he would find a better boy for his daughter. This too was the reason behind the increase of greed in the mind of husbands and his relatives. Slowly, it became a tradition. So, the shift of concept of bride price where the father was paid by the husband to stridhan/dowry, where the father paid to the husband took few centuries long. Before the enactment of the Dowry Prohibition Act, 1961, the tradition of dowry had become so deep rooted that it was next to impossible to uproot. The government made the required move by enforcing the Act, but unfortunately the act turned out to be a failure. The Act, banned Dowry to be given or taken in marriages. The legislators completely forgot that dowry was just not some random fashion in marriage, it was treated like a ritual. It became a tradition in not just among hindus but in all religions and across the country. People did not accept the banning of dowry quite well and continued with the

⁴ Allahabad Law Journal 914, 1989.

⁵ Gupta Richa., 'the Evil of Dowry in India : A Legal Insight', International Journal Of Law, Vol 3 Issue 4 (2017), pg- 58.

same. In fact, the dowry crimes increased as the Act was unable to provide any punishment for those who committed grave criminal offences on accounts of dowry. Though the reasons of failure are many but here are a few major ones:

a) The act was majorly **enacted to tackle the menace of dowry and not eradicating the crime**. Just banning the act would have solved the purpose and it did not. The crime rate increased with double the speed and just banning the exchange of dowry was a minute and weak step, which could stop the crimes from happening.

b) Though every household faced the menace of dowry but only **very few cases were reported**. Dowry was treated as a custom and tradition. The groom's family believed that dowry was a right that they inherited with the birth of a male child and that the girl's family was bound to pay whatever they demanded or else the girl would remain unmarried or not find a good husband and matrimonial house.

c) Section 2 provides the definition of dowry⁶. The definition so provided is **vague in nature**. It says that presents in the form of cash, ornaments, clothes and other articles, are not to be deemed as dowry unless they are made as consideration for the marriage.⁷ It is impossible to prove that the articles so asked by the groom's family were dowry because the girl's family would accept it as it is the question of wellness of the girl in her matrimonial house. The act states that if the above mentioned articles are given as present to the girl then it does not come under the purview of dowry, and so huge amount of cash, jewellery, furniture and other consumable goods were asked by the boy's family under the shadow of gifts presented to the bride by her brothers or father but actually these were dowry disguised as gifts.

d) Under the Act, **definition of dowry is confusing**. The act gave a chance to the greedy minds to be greedier. As mentioned above that certain articles if given as present will not be considered as dowry. In India, affectionate gifts by family and friends are given to the bride at the time of her marriage since time immemorial. The act does not prohibit the giving of gifts or punishing giving of gifts, this gave a chance to the groom's family to take dowry in the form of gifts to the bride, which obviously would go the groom and his family.

In the case of *Reema Aggarwal v. Anupam and others*⁸, the Supreme Court observed that, 'Thus there is great confusion between Dowry and Stridhan. The Act, clearly does not show the meaning and differences of Stridhan and Dowry. The confusion between dowry and Stridhan is causing a lot of difficulties not merely in framing legislation but also in its judicial interpretation. The distinction between the two is that dowry is essentially a property which is extorted or extracted from the bride or her parents while presents are those which are voluntarily and willingly given. It is only the Dowry Prohibition Act which makes stridhan in the sense that it lays down that dowry must be handed over or transferred to the wife.'

Further, the Supreme Court clearly explains the difference between Stridhan and Dowry as, 'Stridhan means and includes dowry as well as presents given to the bride. Section 6 of the Dowry Prohibition Act, covers only dowry and not the other part of stridhan given to the bride.'⁹

Therefore, we come to the conclusion here, that the primary factor that distinguishes stridhan from dowry is **the act of coercion** of father/brother/family of the bride to give certain gifts to the girl. The act of coercion is the crime that needs to be eradicated from society.

e) One of the main factors that was reason for the failure was the act mentions the listing of the gift articles¹⁰ (according to the rules mentioned under the act) given to bride at the time of her marriage, there should be two lists one would remain with the girl and the other with the boy, this would not prove how much gift were given. The list can be tampered and there wouldn't be any proof. The failure of the act is where **the act fails to mention that these lists should be legally registered**. The registration would make the gifts legally eligible and there can be no tampering with the list. Further, even the bride opts for separation from her matrimonial home, it can be easier for her to prove what stridhan she received at the time of her marriage, so that the same can be taken back.

In the case of *Anekjan Bibi v. Shajamal Ali*¹¹, in this case the complainant found it very difficult to recover her belongings from her matrimonial house after her separation from her husband. She was allegedly driven out by her in-laws from her matrimonial house and was subjected to cruelty by her husband on accounts to recover dowry from her father. She filed a suit against her in-laws in order to recover her stridhan, but due to the lack of a registered list she couldn't prove the amount of property she received by her father/family at the time of marriage and was unable to recover her stridhan.

f) The Act provides **punishment to both the offender and the victim**.¹² The act fails to recognise that the dowry that was given by the girl's family was under the coercion of the groom or his family. The Dowry Prohibition Act is a sole act which punishes the victim, as a result the victims of the crime became reluctant to take the help of law as they too would be prosecuted for giving dowry. This was one of the reasons why the number of registered cases of dowry was so low in the society.

⁶ "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.

Explanation II: The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

⁷ http://shodhganga.inflibnet.ac.in/bitstream/10603/114294/16/16_chapter%206.pdf, accessed on 19-05-2018 at 12:16 P.M.

⁸ (2005) 3 SCC 199.

⁹ *Pritam Singh v. State of Delhi*, 2004 (4) RCR (Cr) 566 (Del).

¹⁰ Clause (a) and (b) of Subsection 2 of section 3 of the Dowry Prohibition Act, 1961.

¹¹ CR Case No. 2358/06. (CJM Court, Mangaldoi) Darrang, Assam.

¹² *Section 3 of Dowry Prohibition Act, 1961*- 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 fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more.

g) Punishment for dowry mentioned in the Act, is inadequate. The Act mentions an imprisonment for a term which shall not be less than six months but which may extend upto two years and also be liable to fine which may extend upto ten thousand rupees.¹³ The punishment mentioned need to be amended and made more stringent as per today's situation. The inadequate amount of punishment makes the act more inefficient.

h) The Act mentions that no court will take cognizance of an offence except upon its knowledge or a police report of the fact that constitutes such offence or by the person aggrieved by the offence or a parent or other relative or by some recognised welfare organisation¹⁴. The limitation of time mentioned in the act, fails to recognise simple fact that in Indian society the bride or the family of the bride is always reluctant to file complaint against the groom or his family. Though it is true that any person who is aware of the commission of the offence may come forward to file a complaint but that does not happen as people who are related to the victim always thinks of the wellbeing of the girl in her matrimonial house. The Act, fails to mention who would be the person or relative has not been defined by the Act, the relatives can also be distantly related particularly where there is no close relative who is interested in filing a suit.

IV. Some other factors responsible for the failure of the Dowry Prohibition Act, 1961.

a) Delay in Judicial Process is one of the causes for the ineffectiveness of many Acts along with the Dowry Prohibition Act, 1961. The Judicial system is one of the primary pillars of our nation. In every trial court of our country there are hundreds who wait for years for disposal of their cases. The huge back log of cases disappoint and discourage the people, especially poor people and helpless women in society. The lesser number of Judges in courts is a big problem. The other problems in Indian Judiciary are like, there are long vacations and the judges go on long holidays and the court remain unattended for days. The lawyers seek adjournment on very petty matters, witnesses don't appear on the said date of hearing. These factors also causes the delay in decision of ourts.

b) The indifferent view of administrators is also responsible for the failure of the implementation of the act. It is a very sad state when the administrators themselves hold a very loose attitude towards offenders. In the case of *All India Women's Democratic Association v. State of Haryana and others*¹⁵, it has been stated that even after three months after the Supreme Court holding the conviction of Satish Kumar for murdering his wife, he was out and not put behind the bars of jail.

c) There is no proper trained Officer. The Dowry Prohibition Act, has talked about tackling the social evil of dowry by banning it, the Act, does not provide any officer who is specially trained in matters of family as it is a very sensitive matter and thus, the authority who might deal with such sensitive matters as per the act, is not properly trained in family matters¹⁶. The Police officers who deal with such family matters are neither trained not do they possess appropriate attitude towards such matters. Many times the cases are not registered under the FIR files and they are noted down under the General Complaint files to avoid immediate investigation. The police show lazy and careless attitude towards family matters until there has been any deaths or grave bodily injury. There have been cases where the accused gets acquittal due to lack of proper evidence and this all due to the inefficient police investigation. As said by Prof. Srinivas¹⁷,

'The Police as I mentioned earlier is ill paid, ill qualified, incompetent, indifferent and corrupt and it is not unfair to say that they frequently look how they can benefit from the tragedy that has occurred'.

Undue delays in Investigation, framing of charges, badly harms the administration of the criminal justice system. As observed by Madhav Menon¹⁸,

'The undue delays in investigation framing of charge sheet and conduct of trial is another big problem where the blame is shared by the Judiciary.'

V. Proceeding of Dowry Offences under the Code Of Criminal Procedure¹⁹.

Investigation	By Whom	Object and Name	Oath
Investigation	By Police or other Authorised Person (Other Than Magistrate)	Collection of evidence for the purpose of an injury or trial.	Oath cannot be administered to the person examined or interrogated.
Inquest	a) By Police under Section 174	a) Ascertainment of the cause of death in cases of suicide, unnatural death,	Police cannot administer oath to person

¹³ Section 4 of the Dowry Prohibition Act, 1961- 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.

¹⁴ Section 7 of the Dowry Prohibition Act, 1961.

¹⁵ Barua Mrinmayee., 'Judicial Activism – A New Matrix of Social Justice: Public Interest Litigation as a Catalyst', (unpublished Doctoral Thesis, Guahati University, Guahati, 2001) pg- 245.

¹⁶ Section 8B of the Dowry Prohibition Act, 1961.

¹⁷ Srinivas M.N., 'Some Reflection on Dowry'; (1984) Oxford University Press, New Delhi, Pg- 31, available at http://shodhganga.inflibnet.ac.in/bitstream/10603/114294/16/16_chapter%206.pdf, accessed on 19-05-2018 at 10:05 P.M.

¹⁸ N.R. Madhav Menon., "Towards Making Criminal Justice, Human Rights, Friendly Policy Choices and Institutional Startegies.", in C. Rajkummar and K. Kochalingam edition, Human Rights, Justice and Constitutional Empowerment (2007), New Delhi, Oxford University Press, Pg- 420-36.

¹⁹ Available at http://shodhganga.inflibnet.ac.in/bitstream/10603/186957/9/09_chapter%202.pdf, accessed on 19-05-2018 at 10:54 P.M.

		death caused in commission of crime, etc., Police is required to get the post mortem done in cases of bride burn, suicide, in other cases where there is doubt regarding the cause of death.	summoned for inquest by court.
	b) By magistrate under section 176.	Inquest by Magistrate is Mandatory in cases of a) Death of a person while in police custody b) death in case of bride burning or suicide. Inquiry into cases of death as mentioned in (a) is at the discretion of the Magistrate.	Magistrate may administer oath to a person to be examined by him.
Inquiry	By a Magistrate or Court	Judicial Determination of any question (other than one relating to the guilt or innocence of a person in respect of any offence alleged against him) under the code.	Oath can be administered to the person to be examined.
Trial	By Magistrate or Court	Judicial Determination as to the guilt or innocence of any person accused of any offence.	Oath can be administered to the person to be examined.

VI. Present Scenario

In a report by the Business standards in 2015²⁰, the National Commission of Women has recommended certain amendments in the Dowry Prohibition Act, 1961. Some of the primary changes are²¹:

- Amendments to define Dowry*: As discussed above, the meaning of dowry in the Dowry²² Prohibition Act is very vague and need proper terminology to define what is dowry and how is it different from Stridhan.
- Make registration of list compulsory*: The list of gift received at the time of marriage shall be listed²³ but the getting the list legally registered is also very important to avoid any discrepancies in the future.
- Separate Provisions to deal with giving and taking of Dowry*: The Act is at fault to hold the offender and the victim accused simultaneously²⁴. There should be separate provisions and punitive measures to deal with offenders and a victim who is coerced to give dowry. The Act, must take into account that the victims do not give dowry at their own will and if they willingly give certain items to the girl or the groom that will not fall under the category of dowry.
- Penalties for non-maintenance of list of gift at the time of marriage*: at the time of marriage a list shall be maintained by both the bride and the groom's family under the rules provided by the Act. This rule is a legal mandate. The Act, must penalise those who fail to maintain the list of gifts at the time of marriage.
- Insertion of a new clause under which a woman can file a suit at the place where the offence was committed or where she permanently or temporarily resides.
- Protection officers appointed under the Protection of Woman against Domestic Violence Act, 2005 to carry out the duties of the Dowry Prohibition Act, 1961.

Media Reports

Although the prohibition of dowry and enforcement of strict laws gave proved a great deal in curbing the evil of dowry, still the social menace prevails at a large scale and this cannot be stopped until and unless the minds which think that getting dowry in

²⁰ Available at http://www.business-standard.com/article/government-press-release/status-of-recommended-amendments-in-dowry-prohibition-act-1961-115072301059_1.html, accessed on 19-05-2018 at 11:04 P.M.

²¹ Available at http://www.business-standard.com/article/government-press-release/status-of-recommended-amendments-in-dowry-prohibition-act-1961-115072301059_1.html, also available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=123603>, accessed on 20-05-2018 at 08:25 A.M.

²² Section 2 of the Dowry Prohibition Act, 1961.

²³ Section 3 of the Dowry prohibition Act, 1961.

²⁴ Ibid.

marriage is their birth right only because they are men, the crime will persist. As per *India Today*, a man named Pushpendra who belongs to Uttar Pradesh cancelled his wedding only because he was not given 2 lakh rupees as dowry.²⁵ The NDTV²⁶ reports that there have been 7048 deaths in Uttar Pradesh in last three years only because the demand of dowry wasn't fulfilled. According to a government report²⁷, the number of cases reported under Dowry Prohibition Act in Uttar Pradesh was 2766 during the year 2015. It accounted for 27.96% of the number of cases reported under Dowry Prohibition Act in India during the year 2015.

The media is considered as the fourth pillar of our constitution, and is also one of the primary reasons for the wide spread awareness of the Anti-Dowry Laws into general public.

VII. Conclusion

At the time when the Act was enforced, it is observed that it was mainly with the motive to handle or tackle the problem of dowry and not to uproot or eradicate it completely. It is was a major failure, as the dowry cases accelerated even after the enforcement of the Dowry Prohibition Act, 1961. The cases of abuse just didn't remain to verbal but it became physical and even murder in the name dowry. The Act was not enough to tackle such criminal activities, as it did not hold any strict punitive provision whereby the offenders may be subjected to harsh imprisonment for put upon heavy fine as compensation for damage. The Act, in fact was so weak that later Section 498A and 304B had to be inculcated in the Indian Penal Code alongside the parent Act because the Parent act alone could not have provided justice to the victims of dowry violence.



²⁵Published on December 20th 2015, available at <https://www.indiatoday.in/fyi/story/dowry-non-payment-prompts-this-man-from-uttar-pradesh-to-cancel-his-wedding-278129-2015-12-20>, accessed on 22-05-2018 at 10:24 A.M.

²⁶Published on 31st July 2015, available at <https://www.ndtv.com/india-news/over-24-000-dowry-deaths-reported-in-last-3-years-union-minister-maneka-gandhi-1202537>, accessed on 22-05-18 at 10:37 A.M.

²⁷Published on 02nd June 2017, available at <https://community.data.gov.in/cases-reported-under-dowry-prohibition-act-during-2015/>, accessed on 22-05-2018 at 10:55 A.M.