

DOWRY SYSTEM IN INDIA: ISSUES AND CHALLENGES

Dr. Pratima Devi
Assistant Professor
Department of Law
M.D. University, Rohtak, Haryana (India)

Abstract: Marriage without dowry in Indian society is unthinkable even in 21st century. Dowry system is followed by almost all persons of the country rich or poor, illiterate or educated, employed or not, high caste or low caste, the girl must bring the dowry on her marriage. This evil of dowry is increasing day by day because the rich people give dowry to their daughters by naming it as a gift which will help them in future. We have various anti-dowry laws but no legislation till date has succeeded in the curbing the menace of dowry. This paper focuses on the various factors responsible for this evil and suggests some valuable suggestions and also throws light upon latest judgments related to dowry system in India.

Key words: Dowry, Implementation, extravagance, harassment, cruelty.

I. Introduction

In ancient times, marriage was considered as sacrosanct union of two souls. Both husband and wife were the essential segment of the family. Position of women was good in the society. With the passage of time, the position of women went off changing adversely and consequently various evil customs like child marriage, polygamy, sati pratha, deteriorate the condition of women. Unapproved marriage among Hindu has always been considered a Kanyadan, be it a marriage in any form. In ancient time, there was eight forms of marriage prevailed in our society. Out of these eight forms of marriage four form of marriage are approved forms of marriage and other forms of marriage are unapproved. In approved forms of marriage that is Brahma, Asura, Daiva, Prajapatya, dowry is given voluntarily by the bride's parents as a symbol of love and affection at the time of marriage. In 4th century B.C. and the last century A.D., the practice of dowry was prevalent in different form. It was considered that the sanctity of marriage tie was not based on virtue and affection but payment of 'sulk' the fee which the husband pays to the parents of his wife.¹ Later on this practice took a reverse turn and developed into the system of dowry as we find it presently wherein the parents of bride give dowry to the bridegroom.² At present, marriage has become more and more commercial affair when the father of the bride was forced to give dowry as demanded by bridegrooms' parents otherwise the marriage to be cancelled.

II. Historical Development

The ancient marriage rites in the Vedic period are associated with kanyadan or the ceremony or giving away the bride. According to the Hindu Shastras, the meritorious act of dan or ritual gift is incomplete till the receiver is given something, in cash or kind which constitutes varadakshina. Thus, kanyadan became associated with vardakshina, i.e., the cash or gift in kind by the parents or guardian of the bride to the bridegroom. it is submitted that vardakshina, has not been prevalent among all Hindus. It has prevailed only among certain cases of Brahmins. Apart from the Brahmins, no other class of Hindus has the rite of vardakshina. Even among the Brahmins its non-performance does not affect the validity of marriage. If saptpadi and vivaha homa are performed marriage was valid among all classes of Hindus.

III. Meaning of Dowry

The modern definition of the Dowry in India is a payment of cash and other valuable gifts from the bride's family to the bridegroom family upon marriage. Undoubtedly to define dowry is a most difficult task. But an exercise has to be made by different dictionaries. Dowry means marriage goods, which the wife

*Assistant Professor, Department of Law, M. D. University, Rohtak-124001, Haryana, e-mail: prof.pratimasingh@gmail.com.

¹ Shastri Shakuntala Rao, Women in Sacred Laws, 1953, vol. 13, p. 86, publisher: Bhartiya Vidya Bhawan.

² Prof. R. K. Raizada, Women and The Law: Problems and Prospects, 1st edn., 1996, Rohtak: Bright Law House, p. 134.

brings to the husband in marriage.³ Dowry is a gift given by brides' parents to her at the time of marriage like jewelry, cloths other items of comfort like AC, Refrigerator, Bed, Kitchen utensils, TV etc. According to Cambridge Dictionary, dowry is property which a woman brings to her husband at marriage. According to Webster Dictionary, it means, "Money, Goods or estate that a woman brings to her husband at marriage". Under the Dowry prohibition Act, 1961, the definition is very wide.

Originally, under the Act it was defined as "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 person, at or before or after the marriage as consideration for 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." The Dowry Prohibition (Amendment) Act, 1984, has substituted the words "as consideration for the marriage" with words "in connection with the marriage." These words widen the meaning of dowry but remain the essential character of dowry i.e. it is not merely what the bridegroom and the groom's family demand or take or agree to take, but also the other way round, i.e. whatever is demanded or given or agreed to be given by the groom or groom's family to the bride and bride's family.

A court judgement clarifies the legal definition of dowry as "Dowry in the sense of the expression contemplated by Dowry Prohibition Act is a demand for property of valuable security having an inextricable nexus with the marriage, i.e. it is a consideration from the side of the bride's parents or relatives to the groom or his parents and/or guardian for the agreement to wed the bride to be.

The wedding presents by parents, relatives, and friends and at or about the time of marriage can still be given. The wedding gifts have not banned and their giving, do not constitute any offence under the Dowry Prohibition (Amendment) Act, 1984. The definition of dowry does not include them. The fact of the matter is that the traditional gifts made at or about the time of marriage is an accepted practice not merely among the Hindus but also among other religions. Thus, in simple words, voluntary and affectionate presents are not caught in the definition of dowry and giving and taking them does not constitute dowry offence.

IV. Present Position of Dowry Practice

In the Indian society, dowry is called Dahej in Hindi language and Jahez in Arabic. In far eastern parts of India, Dowry is called Aaunnpot. Dowry is a payment of cash gifts from the bride's family to the bridegroom's family upon marriage. It may include cash, jewellery, electronic appliances, furniture, utensil, car and other household items etc.

In India, the dowry practice puts big financial load on the bride's parents. Since wedding in India are a time for big celebrations in each family, they tend to be very lavish. Accordingly Indian marriages usually involve considerable expenditure and accompanying wedding presents from relatives in both sides of the family. This normal expenditure which is done willingly and varies from one family to another depending on the wealth, status etc. Dowry also varies by economic strata in India. Upper caste families are more likely to engage in the dowry system than the lower caste. This could be in part due to women's economic exclusion from the labour market in upper case community.

When dowry evolved in ancient Vedic period, it was essentially followed by the upper caste to benefit the bride who was unable to inherit property under Hindu Law. To counter this, the bride's parents provided the bride-groom with dowry which would be registered in the name of bride. This dowry was seen as stridhan. Also an important distinction is the fact that while the upper caste practiced dowry, the lower castes practiced bride price to compensate her family for the loss of income. In the modern era, the concept of dowry has evolved and Indian families no longer practice the traditional Vedic concept of dowry. This is because with the passage of time, bride 'price' (sulk) gradually disappeared and dowry became the prevalent form of transfer. In the present modern time the practice of dowry requires the bride's parents to transfer valuable goods to the groom's parents in the consideration for the marriage and the expenditure occurred for the education and the position of the groom.⁴ Many times as part of this mutual give and take an attempt is made by the groom's family to dictate the quantum of dowry along with specific demands for valuable items. In such circumstances, there is an element of exerting coercion on the bride's parents and this is what has come to be recognized as the menace of dowry in today's times. Dowry does not refer to the voluntary

³ English Dictionary, Wharton's Law Lexicon of British India, 4th edn., p. 364.

⁴ http://en.wikipedia.org/wiki/Dowry_System_in_India.

presents which are made to the bride and the groom; rather it is what is extracted from the bride or her parents.

All over the world parents of bride and bridegroom make presents to the couple. Their relatives and friends also do so. The question of presents depends upon the status of the parents, relatives and friends. There is nothing like a simple marriage. Parents, friends and relatives do make presents and they cannot think otherwise. Take for instance, friends and relatives do give something to the couple or to the parents of the bride or bridegroom by way of "sagun" which is a "must". Even when a relative or a friend is not able to attend the marriage, he sends "sagun" through some one, if one is attending a wedding or a wedding reception, he or she will certainly give 'sagun'. Similarly, parents on both sides and near relatives are bound to make presents. Wedding dresses for the bride and bridegroom are a must. Giving of some household utensils, some dresses, bedding, and some furniture is almost mandatory. This is done willingly. But, in some cases an attempt is made, and in most cases successfully, to dictate to the bride's father or guardian (it could also be the other way round, but it is usually not so) the quantum of each item of dahez, and most often than not, demands are made for cash, or for articles, small or big, such as television, car, scooter and like. The bride's father is persuaded, coerced or compelled to give cash as well as articles if he has to marry his daughter with a 'suitable' bridegroom. These demands verge on extortions. And these demands may not cease on the completion of marriage. Post-marriage demands are also made.

V. Causes of dowry system

Now a day, the menace of dowry has become a social evil in modern Indian society leading to the oppression on women, physical violence on the bride, causing a financial and emotional stress on the parents of the bride, marital conflict and so on. This monster of dowry exists even today in the society even though it is an offence under Dowry Prohibition Act, 1961. Following are the various causes responsible for dowry practice in India:

1. Greediness- Dowry is result of greediness of the people. It is extortion in the name of custom and compensation for the cost of groom's education, his financial upper position is a key feature of Indian marriages. Dowry demands are put forward shamelessly and expected to be met with silence.
2. Illiteracy of girl child- Lack of education is another factor for this evil of dowry. A large number of girls are intentionally and deliberately kept away from education either due to certain superstitious or from belief that educating a girl will take away from their sanskars of a good wife
3. Show off in the society- Dowry is also a tool for showing off their financial position in India. Ones' reputation in society is often calculated by the quantity of Dowry and how much money, one spent in daughter's wedding. This practice makes a bridegroom saleable item in the marriage market.
4. Position of women in society- Even in the 21st century the position of women is lower than men.
5. Patriarchal nature- The dowry system is the manifestation of the patriarchal nature of the society where men are considered superior to women in respect of physical and mental capabilities. With the development, scrim of such patriarchal society, women are often considered second tier citizen, fit to assume only domesticated roles. Such perceptions are often associated of them being treated as a burden in economic terms first by the father and then by the husband. This thinking is further compounded by the dowry system which fuels the belief that girl child is a potential cause of drain of family finance.
6. Caste system- Caste system prevalent in the society and this caste system is also contributory factor for dowry system in India. Practices by caste endogamy and clan exogamy have, to be kept in mind while arranging a suitable match. The parents are always preferred matches have to belong to same caste, different clan and same or higher social standing. These choices or you can restriction in the mind of parents restrict the more option then these restriction lead to the society to similar consequences for demanding dowry from girl's parents.
7. Financial dependence on husband- Majority of women are economically dependent. And when cruelty by husband and in-laws starts due to lack of dowry then the girl has to look to her parents who advise her to show tolerance and wait so that problem may be solved with time.
8. Joint family- Joint family includes mother, father, children and other relatives like uncle and aunt. In such type of family, mother- in- law who are too possessive and feel that their sons are snatched away satisfy themselves by raising dowry issue and starts using the son against wife.

9. Son preference- Dowry is widely considered to be both a cause and the consequence of son preference. The practice of dowry inevitably leads to discrimination in different areas against daughters and makes them vulnerable to various forms of violence.

VI. Anti Dowry Laws

(a) The Dowry Prohibition Act, 1961

The first enactment relating to anti dowry law was the Dowry Prohibition Act 1961 and this enactment came into force from 1st July 1961. It marked the beginning of a new legal framework of dowry harassment laws effectively prohibiting the demanding, giving and taking of dowry, although providing dowry is an offence. The Act provides for a penalty under section 3 if any person gives takes or abets giving or receiving of 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. The penalty for giving or taking is not applicable in case of presents under which are given at the time of marriage without any demand having been made. The act provides penalty for directly or indirectly demanding dowry and provides for a penalty involving a prison term of not less than six months and extendable up to two years along with fine of rupees 10,000. Dowry agreements are void ab initio under Section 23 of the Indian Contract Act, 1872, if any dowry is received by anyone other than the women, it should be transferred to the women. The burden of proving that an offence was not committed is on the persons charged and not on the victim or on her family. Under its power to frame rules for carrying out its objectives under the Act, the Government of India has framed the maintenance of list presents to the Bride and Bridegroom Rules, 1985, there are also several State level Amendments to the Dowry Prohibition Act.

(b) Criminal Laws prohibiting Dowry

The Indian criminal laws were comprehensively amended to include dowry as a punishable offence. Section 304B of the IPC, 1860 which made dowry death a specific offence punishable with a minimum sentence of imprisonment for seven years and maximum imprisonment for life. It provided that if the death of a woman is caused by burns for bodily injury occurs in suspicious circumstances within seven years of her marriage and there is evidence to show that before her death she was subjected to cruelty or harassment or his relatives regarding the demand for dowry, then the husband or the relative shall be deemed to have caused her death. For the Section 113B of the Indian Evidence Act, 1872, creates an additional presumption of dowry death when it is shown that before her death, the woman had been subjected to cruelty on account of dowry demand. Section 304B IPC along with Section 113B of the Indian Evidence Act have enabled the conviction of many who were not caught by the Dowry Prohibition Act, 1961. Section 113 A of the Evidence Act provides a similar presumption of abetment of suicide in case of death of a married woman within a period of seven years of her marriage. In addition, the Judiciary also includes a murder charge under Section 302 IPC as this allows courts to impose death penalty on perpetrators of the offence. Section 406 IPC pertaining to offence for the criminal breach of trust, applies in cases of recovery of dowry as it is supposed to be for the benefit of the woman and her heirs.

Further Section 498A IPC was specifically included in 1983 to protect women from cruelty and harassment. The constitutionality of Section 498 A was challenged before the Supreme Court of India on grounds of abuse, that it gave arbitrary power to the police and the court. However, it was upheld in *Sushil Kumar Sharma v. Union of India*.⁵ The Code of Criminal Procedure, 1973 provides that for the prosecution offences under Section 498A IPC the court can take cognizance only when it receives a report of the facts from the police or upon a complaint being made by the victim or her family.

(c) Protection of women from Domestic Violence Act, 2005

This Act was passed in order to provide a civil law remedy for the protection of women from domestic violence in India. The Domestic Violence Act encompasses all forms of physical, verbal, emotional, economic and sexual abuse and forms a subset of the anti dowry laws to the extent it is one of the reasons for domestic violence. Section 3 of the Act specifically incorporates all forms of harassment, injury and harms inflicted to coerce a woman to meet an unlawful demand for dowry. Some of the common remedies under the domestic violence act include:

- (i) Protection orders- prohibiting a person from committing domestic violence.
- (ii) Residence orders- dispossessing such person from a shared household

⁵ AIR 2005 SC 3100.

- (iii)Custody orders- granting custody of a child and
- (iv)Compensation order- directing payment of compensation.
- (d) International conventions

India is a party to several International Human Rights instruments which provide theoretical remedies to the dowry problems. These conventions include the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Covenant on the Elimination of all forms of Discrimination against Women (CEDAW) and the convention on the rights of the child (CRC). CEDAW codifies the rights most relevant to the discussion of dowry related violence, the rights of women. However, there are issues of non-international and cultural relativism which impede the use of international law to combat dowry deaths.

VII. Judicial Trends

There is growing criticism that dowry laws are often being misused, particularly 498A IPC which is observed by many in India as being prone to misuse because of mechanical arrest by police. The Nisha Sharma dowry case was an anti dowry law case in India. It began in 2003, when Nisha Sharma accused her prospective groom, Munish Dalal of demanding dowry. The case got much coverage from Indian and International Media. Nisha Sharma was portrayed as youth icon and role model for other women. The case ended in 2012, after the court acquitted all accused. The Chief Judicial Magistrate observed that Nisha was in a relationship with another person Navneet, whom she really wanted to marry.⁶

Section 498A IPC was challenged but upheld by the Supreme Court of India in 2005. In 2010, the Supreme Court lamented about the possible misuse of anti-dowry laws in *Preeti Gupta & Another v. State of Jharkhand & Another* and recommended a detailed investigation.⁷ Based on the Supreme Court's observations, the Indian parliament set up a committee headed by Bhagat Singh Koshyari. In July 2014, in the case of *Arnesh Kumar v. State of Bihar & Anr.*,⁸ a two-judge bench of the Supreme Court reviewed the enforcement of section 41(1)(A) of Cr. P. C. which instructs state of following certain procedure before arrest, and went on to observe that the 498A had become a powerful weapon in the hands of disgruntled wives where innocent people were arrested without any evidence due to non-bailable and cognizable nature of the law. The decision received criticism from feminists because it weakened the negotiating power of women.⁹ Others welcomed the decision as landmark judgment to uphold the human rights of innocent people. An organization Save Indian Family Foundation was founded to combat abuses of IPC 498A.

On 19 April 2015, the Indian government sought to introduce a Bill to amend Section 498A IPC based on the suggestions of the Law Commission and Justice Malimath committee on reforms of criminal justice. News reports indicate that the proposed amendment will make the offence compoundable and this would facilitate couples to settle their disputes.

The Apex Court in *Rajesh Sharma v. State of U.P.*¹⁰ held that every complaint under Section 498A should be scrutinized by a family welfare committee after which arrest should be made. Even in July 2017, two judge bench of the Supreme Court said that no arrest can be made till such committee has submitted its report. This direction has now been done away by the Apex Court in *Social Action Forum for Manav Adhikar v. Union of India*¹¹ held that there is no need for a family welfare committee to examine complaints and that Police officers based on facts of the case and govern by legal provisions, should decide on their own. The court restored the powers of the police to act on complaints of dowry harassment under Section 498A. The bench was hearing a plea filed by the 'NGO Nyayadhar' an organisation formed by a group of women advocates in Ahmednagar district of Maharashtra, seeking sharpness in Section 498A, claiming that the otherwise helpful instrument in the hands of victim women has become valueless.

VI. Suggestions

⁶ On 29 February 2012, a district court in Gautam Budh Nagar district acquitted Dalal and his family due to lack of evidence supporting the charges.

⁷ AIR 2010 SC 3363

⁸ AIR 2014 SC 2757

⁹ Indira Jai Sing, Concern for the dead, condemnation for the living, economic & Political weekly, July 2014, p. 49; Why women need 498A, economic & Political weekly, vol. XLIX, no. 29, July 2014; Prashant K. Trivnd, Smriti Singh, Fallacies of a Supreme Court Judgment: Section 498A and the Dynamics of Acquittals. December 2014, Economic & Political Weekly. p.44

¹⁰ 2017 SCC Online SC 821, decided on 27.07.2017

¹¹ 2018 SCC Online SC 1501, decided on 14.09.2018.

1. The law relating to dowry should be amended properly.
2. There should be immediate protection by way of shelter home, health issues, proper food must be provided to every woman to escape from the violence with an assurance of life outside the home.
3. Equal property rights should be made effective and strictly enforced by law.
4. The law enforcing Agencies like judicial officers, police personnel need to think on the circumstances in which the woman had died other than favouring her in laws side the parents of women should be able to approach them without any fear files and with full confidence.
5. Press and media is the fourth pillar of the state it should play its role effectively by wide publicity on TV radio newspaper regarding women related laws. This role can be helpful so far being the offence of dowry death and cruelty at grass root level.
6. What is needed is to awaken the women towards her rights. Amelioration of women both economically and socially would understandably be a major factor to awaken them. Very large numbers of Indian women are illiterate and ignorant, exploited and subjected.
7. Economic independence to a possible extent would not only give a woman the courage to take decisions independently but also enable her to learn about the presence and functions of existing social institution and her rights. Hence, in addition to running adult education centers for literacy and vocational training institutes ought to be instituted at block level where young and middle aged woman could be imparted various professional trainings like sewing, knitting, food processing, mechanical and technical education, so that they would be able to achieve economic independence.
8. There should be a legislative attempt to control the auxiliary expenses on marriage. There should also be fix a limit upon the decoration expenditure or number of guests in the barat and also in reception.

VIII. Conclusion

No doubt that from time to time amendments have been made in the Dowry Prohibition Act to remove the defects which existed in the parent Act. To make it effective, changes have been introduced in other laws also. But even then the problem is not solved. Because dowry problem is not so simple and it is deeply rooted in our society. Reasons responsible for it are social and economic in nature. Law alone cannot bring the desired change. So, in near future, we cannot stop dowry being given and taken because people will not observe such law. Unless change in social attitude is there, full eradication of the practice of dowry is not possible.