

# A Critical Analysis of Dowry Prohibition Act 1961 And its Efficacy

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## ABSTRACT

The Dowry Prohibition Act, 1961 was enacted by the parliament with the object to prohibit presenting, obtaining and demanding dowry from any party to the marriage and make penal provisions for the persons so offering, accepting or assisting. The act defines 'DOWRY' and recognizes any act related to dowry as an offence. The National Women Commission in 2009 proposed a recommendation for amendment as to the definition of dowry and protection officers appointed under the Domestic Violence Act to carry out the duties of dowry prohibition officers. Due to the representation received against the proposed amendment, the bill for the proposed amendment is currently being examined in light of the deliberation made. This research paper aims to explain the lacunas that exist in the current Act and sought to provide a plausible solution for the purpose which has been totally defeated in contemporary times and since the law has been enacted by the parliament it has gone through several amendments to meet the demands of the changing scenario but the lack of enforcement machinery has proven to be a great resistance in achieving the main objective of the Act. Spread of education so far has failed to decrease the instances of dowry given, taken or demanded and incidental crimes like dowry death (section 304B), cruelty (498A, IPC) are occurring at the rate more frequently than normal. This research article seeks to furnish suggestions for the problems in the light of recommendations made by the National Women Commission and day-to-day obstacles that come in the implementation of this Act.

Key words: Dowry, Prohibition, offence, legislation, punishments, etc.

## 1. INTRODUCTION

The social evil of dowry is profoundly fixed in our society. The offences of dowry, dowry-death, dowry murder, dowry-suicides, and the demand for dowry are the dreadful crimes loyal in conflict to the women. Women in all societies are the transmitters of the earlier period society and conditions of their human beings. From womb to tomb, women are made to pay extremely for their maturity, and excluding a few steps are taken to make humans respect. Discrimination of women starts with their birth. Women are the absolute award of God to humanity. She has the power to generate what is right and wrong, what is disagreeable. Women produce children; women are mothers and better halves; women do the cooking, washing, edging and wash they take care of man and are small to gentleman authority; they are largely disqualified from far above the ground situation occupations and from position of his status in the family. These generalizations apply, to some amount, to almost every human society.

Undoubtedly the conflict for crime equality has been one of the important worries of the women's movement all over the world. In India, on account of that drawn out lower back, ladies have been considered as the broken segment of the

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society and that they were disregarded for centuries. At some stage in the country it is a wide conflict for Independence. About this Gandhi ji gave opinion about independency of womens he says that- "I am uncompromising inside the be counted of women's rights. The distinction in sex and physical shape denotes no distinction in reputation.

## 2. VIOLENCE AGAINST WOMEN IN INDIA

This discrimination is primarily based on social creation of natural differences. A charge and effect of any form of discrimination is violence. Violence against women could be very a improved quality to deal with abandoned in our society. Violence in disagreement to women is a made from social values, social status of women, and crime protector that women it is said that growth of a society is thought from the respect of women to get in that civilization. Speak me of Indian society, the status of women right here is not something we can show off about it. The issues connected to women are being raised and discussed in a variety of flora in the recent times. Of these aggression against women' is gaining more and more support and gratitude the world over. But in spite of the passing of laws, formulation of reformative legal processes, situation of legal aid to the needy, wide use of the provision of Public Interest Litigation, behavior of Family Courts, Women/Family therapy centers, etc., women in India has a long way to go in concretizing their Constitutional goal into truth.<sup>1</sup> Dowry deaths also are end consequence ones of exchange, historically dowry is destined to be a present Marriage is a dating among two households, and it was no see from an economic perspective. However as social values misused human beings urbanized a extra consumerist mind-set. Aspirations for higher financial fame caused groom to insist for a dowry. Dowry have become a method to an give up: higher economic circumstance, and as a result higher fame in thrilling to observe is that as rapid social exchange takes vicinity, social values exchange. The offence of Dowry-deaths, Dowry-murders, Dowry suicides, demand of dowry and are the dreadful crimes devoted in opposition to the women. These offences have created an environment of insecurity for women inside the society. Amongst all communities Hindu network is the maximum affected one. Dowry has unfold like a catching ailment and now assumed alarming proportions. Women who is called the better 1/2 of man or ardhagini, is clutch in the shake of dowry.

## 3. CONCEPT OF DOWRY

1. Dowry or Dahej is the price in coins or/and type by using the bride's own family members to the bridegroom's circle of relations along with the freely giving of the bride (known as Kanyadaan) in Indian marriage. Kanyadanam is a critical a part of Hindu conjugal rites. Kanya means daughter, and Dana technique present.

2. A dowry (also called trousseau) is the cash, items, or property that a women brings to her husband at the time of marriage. It contrast with Bride value is paid to the bride's parents, and dower, that is possessions established at the bride herself by the groom on the time of marriage. The same lifestyle may arise at the same time exercise by both dowry and bride rate. Dowry is an historic custom, and its existence can also properly predate information of it.

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3. Dowry (Dahej/Hunda) as all of us recognize is paid in cash or type by way of the bride's circle of relatives to the groom's circle of relatives in conjunction with the giving away of the bride (Kanya-dana). The ritual of Kanya-dana is an vital thing in Hindu marital rites. Kanya=daughter, Dana=present.

Dowry tool in Indian Marriages may be called the economic thing of the wedding. The practice of giving dowry curved into very not unusual amongst every person of all international locations. A woman receives all the home utensils that are important to installation a own family. Dowry device in India turned into widespread because the Vedic length. In Epic period gifts from parents, brothers and relatives and relatives were known as women's property-stridhan. Problem is not any greater restricted to 1 or 2 states or north Indian states but win roots in the soil of Southern in addition to eastern states too. The main problem is that it is made to all sections, lessons, castes, societies and communities. It accepted even to tribal societies known for ancient equality and gender equality and to Muslim community too. Strong legislation, legal guidelines and ladies's actions, every try and face up to it has been dissatisfied by the extensive social authorize accorded to this unlawful practice.

#### **General law(Indian Penal Code, 1860)**

**304B. Dowry Death-** (1). Where the death of a woman is caused by any burn or bodily injury or occurs otherwise then 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.

(2). Whoever commit Dowry death shall be punished with imprisonment for a term which shall no be less than seven years but which may extended to imprisonment for life.<sup>2</sup>

*The offence of dowry death in Section 304B, IPC does not fall into the categories of the offences for which death penalty has been provided in the Penal Code. Dowry death is different from the offence of murder. The death of a bride may fall under both the categories of offences, namely, murder and dowry death, in which case, a death sentence may be awarded for committing the offence of murder in appropriate cases depending upon the facts and circumstances of each case.*<sup>3</sup>

**Causing miscarriage-** Whoever voluntarily caused a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if a woman be a quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation---A woman who causes herself to miscarry, is within the meaning of this section.<sup>4</sup>

<sup>2</sup> Indian Penal Code 1860 sec 304 B

<sup>3</sup> 202 law commission report: Proposal to amend section 304 B of IPC

<sup>4</sup> Indian Penal Code 1860 sec 312

**354. Assault or criminal force to women with intent to outrage her modesty:-**Whoever assaults or uses criminal force to any women, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two year, or with fine, or with both.<sup>5</sup>

**498A. Husband or relative of husband of a woman subjecting her to cruelty:-**Whoever, being the husband or the relative of the husband of a woman, subject such woman to cruelty shall be punished with imprisonment for a term which may be extend to three year and shall also be liable to fine.

#### **4.CRUELTY IN MARRIAGE:**

**Cruelty is enumerated under Section 498-A in the Indian Penal Code:**

**This may be due to the fact that the definition allows for wide interpretation and can be seen as an easy opportunity. A burden of requirement of proof needs to be imposed on the party that allows for only certain cases to be accepted. Since the number of cases being accepted into courts is the reason for ineffectiveness, it may be suggested to permit allowance forailable, cognizable cases that are compoundable with permission of courts. There should also be punishment for parties in case of proven misuse of this section.**

In the 237<sup>th</sup> Law Commission Report, planned to add **sub-section (2A) to Section 320 CrPC**. The future condition will ensure that the offer to compound the offence is voluntary and free from pressures and the wife has not been subjected to ill-treatment after the offer of compounding. Incidentally, it underscore the need for the Court playing an active role whereas dealing with the application for compounding the offence under Section 498-A.<sup>6</sup>

#### **Section 509 : Word, gesture or act intended to insult the modesty of a woman**

Whoever, intend to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or infringes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.<sup>7</sup>

#### **6.The Dowry (Prohibition) Act, 1961:**

As per **section 2** of the Dowry Prohibition Act 1961

"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.<sup>8</sup>

In the case of **Soni devraj Bhai Babar Devraj Bhai v. State of Gujrat**<sup>9</sup> supreme cited the observation of Pt. Jawahar Lal Nehru to show the role of legislation in dealing with the dowry asa a social evil as follows: legislation cannot by itself normally solve this deep rooted social problem.In the above case the supreme court observed that the

<sup>5</sup> Indian Penal Code 1860 sec 354

<sup>6</sup> 237 Law commission report: Compounding of (IPC) Offences (2011).

<sup>7</sup> Indian Penal Code 1860 Sec 509

<sup>8</sup> Dowry Prohibition Act 1961 sec2

<sup>9</sup> AIR 1991 , 28 August.

social evil of dowry has been the bane of Indian society and continues to persist in spite of dowry has been the bane of Indian society. Yet the legal sanctions in the form of its prohibition and punishments are some steps in that direction. Thus, the Dowry Prohibition Act 1961 has been made to achieve these goals.

### **Stridhan**

Stridhan is, generally speaking, what a woman can claim as her own property within a marital household. It may include her jewelry (gifted either by her family or by her in-laws), gifts presented to her during the wedding or later, and the dowry articles given by her family.

Gifts given by the parents of the bride are considered "stridhan", i.e. property of the woman, traditionally representing her share of her parent's wealth

In the case of **Bhai Sher Jang Singh vs. Smt. Virinder Kaur**<sup>10</sup> The Punjab and Haryana high court had ruled that groom's side is bound to return back all the items including property, ornaments, money, and others belongings offered by bride's side at the time of marriage. The court found that the Bhai Sher Jang Singh and his family have committed an offence under sec 406 of IPC by committing criminal breach of trust by the ornaments and others which were entrusted to her husband for safe custody and which he has dishonestly used.

**Section 4** of the said Act says that,

4. Penalty for demanding dowry- 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. Provided that the Court may, for an adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.<sup>11</sup>

**Section 3** of the Act, both the giver and the receiver are sought to be punished.

Penalty for giving or taking dowry- Section 3 re-numbered as sub-section

(1) 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

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment of a term of less than five years

(2) Nothing in sub section (1) shall apply to, or in relation to,

(a) Presents that are given at the time of a marriage to the bride (without any demand having been made in that behalf).

(b) Presents which are given on the time of a marriage to the bridegroom (without any demand having been made in that behalf).

<sup>10</sup> AIR 1979 Cri. L J 493

<sup>11</sup> Dowry Prohibition Act 1961 sec 2

provided that such affords are entered in a listing maintained according with the policies made below this Act, complete in addition that where such affords are made by using or on behalf of the bride or any character associated with the bride, such offers are of a standard nature and the fee thereof is not immoderate having regard to the financial fame of the individual by using whom, or on whose behalf, such presents are given. This Act prohibit the request, payment or taking of a dowry, "as consideration for the marriage", where "dowry" is defined as a gift demanded or given as a precondition for a marriage. Gifts given without a precondition are not considered dowry, and are legal. Taking or giving of dowry can be punished by an imprisonment of up to six months, or a fine of up to Rs. 15,000 or the amount of dowry either is higher and imprisonment up to 5 years. It replace several piece of anti-dowry legislation that had been enacted by various Indian states.

### **Protection of women from domestic violence act**

Domestic Violence remains one of the most prevalent yet largely invisible forms of violence. Contrary to the general belief, Domestic Violence is not controlled to certain social sections. Domestic Violence occurs in many forms- physical, emotional, sexual, economic, verbal etc. Woman faces Domestic Violence as a daughter, sister, wife, mother, or a partner in her lifetime. As per the NCRB Report 2003, 36.1% of the total reported crimes against women relate to domestic violence. As per NFHS (2) 1998-99, 1 in 5 married women in India experience domestic violence from the age of 15. Prior to Protection of Women from Domestic Violence Act (PWDV) Act 2005, under the civil law, for acts of domestic violence a married woman can initiate proceeding for divorce/ judicial separation. However, this fails to provide any kind of immediate relief and protection to the woman. She remains at the mercy of her parents/ relatives. Also it leads to problems of costs and delays in litigation. Most commonly used provision of criminal law in dealing with cases of Domestic Violence is Section 498A of the Indian Penal Code. It makes cruelty to a wife by her husband or relatives an offence and attracts a maximum punishment of three years on conviction. Limitation of this provision is that it is not aimed at providing reliefs, namely maintenance, shelter, etc. It is confined to the prosecution and possible conviction of the offender. The Protection of Women from Domestic Violence Act 2005 was brought into force by the Indian government from October 26, 2006. The Act was passed by the Parliament in August 2005 and assented to by the President on 13 September 2005. As of November 2007, it has been ratified by four of twenty-eight state governments in India; namely Andhra Pradesh, Tamil Nadu.

### **7.Conclusion**

In keeping view with Hindu mythology, marriages are made in heaven , though mother-in-law, sisters-in-law, husbands and different respected ones are being an increasing number of worried within the breaking of the marriage for the lust of dowry. Dowry dying, murder, suicide, and bride burning are signs and symptoms of strange social problem and are an unlucky development of our social set up. At some stage in the previous couple of decades India has witnessed the black evils of the dowry failure system in a greater

sharp shape in almost all parts of the us of a considering that it's far practised by means of nearly every section of the society. it is almost a remember of day -to-day occurrence that not most effective married ladies are careworn, humiliated, overwhelmed and forced to devote suicide, depart husband, and so on., tortured and sick treated but lots are even burnt to death because mother and father are not able to satisfy the dowry demands of in-legal guidelines or their husbands. It's miles quite obvious that the brand new family member can also have little volition to exercising and in the sort of situation cannot regard her personal matters to be hers. Such remedy finds roots within the traditional Hindu perception that children are the 'assets' in their parents accordingly, together with the son, his bride is also treated as the assets of the family in which the dowry she brings is applied as consistent with the desires of the in -legal guidelines and in maximum instances for marrying their daughter, leaving the bride completely on the mercy of the husband and his race. Very frequently dowry is seem as greater essential than the women herself. Modest idea is given to her procreative strength which appeared to have been the unique basis of marriage. She is an increasing number of being considered as a practical tool of collecting routine wealth and fortune.

