

Dowry –A socio legal study

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ABSTRACT

The Dowry system, which is as old as the human civilization itself, is a deep rooted social practice. In modern times the incidence of dowry demands often resulting in dowry deaths have been rising at an alarming pace. Death under unnatural circumstances of newly married women due to dowry is a daily headline of every newspaper and TV channels. Several steps have been taken by law makers to curb the menace. The Dowry Prohibition Act was enacted in 1961 to regulate and control the evil practice of giving and taking dowry. Section 304-B, section 498-A were added to the Indian Penal Code, 1860, section 174(1) and section 174(3) of Criminal Procedure Code, 1973 were amended, and section 113-A was added to the Indian evidence Act, 1872 with the aim of prohibiting the demand of dowry and protecting the women from dowry related crimes. In spite of these legal provisions to prevent dowry related violence, the practice of dowry continues unabated. Education of women and awareness of their rights can pave the way for eradication of this evil system.

Key Words : Women, Family, Hindu marriage, Dowry, Law, Punishment, Awareness

INTRODUCTION

Once Dr. B R Ambedkar¹ said that “I measure the progress of a community by the degree of progress which women have achieved. “Swami Vivekanand,² speaking on the importance of women in society said “Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind.”

The word family brings to one’s mind the feeling of love, affection, care, attention and understanding each other. However, today the situation of the family is quite different. In many families the treatment meted out to women is inhuman, uncivilized and brutal in nature. Women face problems due to discrimination and indecent behavior by the male dominated society. It is ironic that in spite of about 70 years of independence, India is not yet able to throw away the shackles of social problems. Many social practices prevailed in India in ancient times, like child marriage, Sati, Dowry, purdha system etc. which are presently considered as barbaric and inhuman in nature, and as social evils. To eradicate these evils several new laws have been enacted and

1. Bhimarao Ramji Ambedkar, was an Indian jurist, economist, politician, and father of Indian constitution, who fight against the rights of women.
2. Narendra Nath Dutt, Was an Indian Hindu monk, Social reformer, philosopher and reformer.

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existing laws have been amended. These laws have not been able to penetrate the closed doors of the home where women are discriminated and tortured. Once upon a time it was believed that “the home is where the heart is” but now “home is where the money is.” The money is the root of all evils.

In the present paper an analysis of the existing laws relating to dowry is made in order to highlight the defects and deficiencies. Based on the analysis, suggestions for reforms in existing laws and their implementation shall be put forth.

Position of women in India:

Since time immemorial women have been considered as a suppressed group. They have been dominated by the male members of the home, such as the father or husband or son etc. The patriarchal pattern of society confined the women to the status of inferior sex, subordinate to the male. In olden days the status of the women in some fields was not only equal but also superior to that of men. Gradually the position of women declined and the status came down to that of slaves. That period is described as Dark Age for women’s development.

By the beginning of the nineteenth century, women in India suffered social, political, legal, religious discrimination. During this period, the impact of western ideas on Indian society brought a new ray of hope for women. Social reformers like Dayananda Saraswati and Raja Rammohan Ray, emphasized the need for abolishing the barbaric practices of sati, Child marriage and widow re-marriage etc. Through their efforts the Government’s attention was drawn to the said plight and exploitation of women. This resulted in legislative enactments to save women from the crimes perpetrated against women in the guise of social custom.³ However, the dowry problem continued to haunt women as before.

International norms and guidelines for the protection of women :

Exploitation and discrimination against women are global phenomena. Throughout the world, feminist movements have taken up the problems faced by women in their day-to-day life in different forms. There are no restrictions under the charter of United Nations Organization on the eligibility of man and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.⁴ Women rights are the rights which are minimal to every human being. She is entitled to enjoy her life, liberty and equality within the jurally postulations to have protection. Rights of women are not of recent origin, it emerged from the international charters at the time of post Second World War. In the Universal Declaration of Human Rights and the convention on Human Rights and provide their protection at the international level. Right to life, right to freedom from fear and right not to be exploited are some of the most important rights which the human beings need to be guaranteed at the national and international level. On the ground of women’s right since 1948, the United Nations have incorporated a series of treaties and conventions to achieve the goal of organizations that unique and equal legal and political rights to women across the globe, they are:

- i. Universal Declaration on Human Rights, 1948;
- ii. Convention on the Political Rights of Women; 1953
- iii. Convention on the Nationality of Married Women; 1957.
- iv. Declaration on the Elimination of Discrimination against Women; 1967.

3. Ramya R.Kurup, Empowerment of women in India, Competition Success Review, Feb, 2004. p.47

4. Article 8 of charter of UNO, 1945.

- v. Convention on the Elimination of all forms of Discrimination against Women; 1979.
- vi. Declaration on the Elimination of violence Against Women; 1993.
- vii. Optional Protocol to the convention on the Elimination Discrimination against Women; 1999.
- viii. Commission on the status of Women;⁵

The United Nations through many programmes attempts to uplift and develop, in various ways, the status of women in the field of education, politics etc., including the position in social life also. The Universal Declaration of Human Rights was adopted in 1948. ⁶(UDHR). The main object of the declaration is that the equality before law. Article 1 of UDHR says that, all human beings are born free and equal in dignity and rights. Article 7 provides equality before law and equal protection of law. There are many declarations relating to women to eliminate discrimination. The General Assembly of U.N. on November 7, 1967 adopted a declaration⁷ on the elimination of discrimination against women. In order to implement the principle set for the declaration, a convention on the elimination of all forms of discrimination against women was adopted by General Assembly on Dec-18, 1979. General Assembly Resolution 34/180 December, Dt 18 1979] Article-10 of the declaration on elimination of discrimination against women, 1967, states that all adequate measures shall be taken to ensure to women married or unmarried with men in the social and economic grounds especially.

Marriage and Dowry:

The dowry system is connected with the concept of marriage and family. It is the basic institution of the society. It is very difficult to say certainly when the dowry system originated but some believe that it originated from Rome as wedding gift.

During the Vedic period there were three main categories of marriages such as Brahma, Asura and Gandharva. The Rig-Veda stated that the bridegroom was given sufficient dowry at the time of marriage, which is popularly known as “*Varadhakhina*”. This form of marriage is called “Brahma”. It is most approved form of marriage.⁸ Jurist Maine said that all the three categories of marriage were not a sacrament but a contract. In *Brahma* form, it was a gift: in *Asura* form, it was sale and in *Gandharva* form, it was an agreement.

According to Hindu law, marriage is a holy” *Samskar* “(sacrament) and not a contract unlike Muslim law. Hindu marriage is one of twelve *samskars* or sacraments done for purifying the body from inherited taint. It is a religious necessary rather than a mere physical luxury. It continues to be so even after the enactment of the Hindu marriage Act 1955. The provisions of the Act are not inconsistent with the underlying spirit of the Hindu marriage which creates an indissoluble tie between the husband and wife.

The “Vedas” declare that marriage is a “union of flesh with flesh and bone with bone” A wife is half of the body of her husband, equally sharing the fruits of pure acts. Manu said “Divine blessing abide in the household when female members are honoured. When they are not honoured

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- 5. Dr Kamal jeet Singh & Sasha Chauhan Kanwar, Human Rights of study A Need of Separate Study, Naya deep, Vol,12,Issue-1,Jan-2011.
 - 6. S.C Tripathi, Women and Criminal Law, Central Law Publications, 2nd Edition, 2016. at p 5.
 - 7. General Assembly Resolution 2263(xxii),Dt.Nov.7,1967
 - 8. Priya Neha, Hindu marriage :A shift from Sacrament to Contract, All India Reporter ,2005,p.337.

no act or ceremony bears its proper fruits. The family perhaps in no time. Where the female members pass their days in sorrow. Blessed in the family in which the husband is pleased with the wife and wife with the husband". The maxim "*conjunctio martis et peminiae est de nature*" means, keeping husband and wife together is the law of nature and the maxim "*viret unior concenture in lege unapersona*" means that the husband and wife are considered one in law.

Thus, since early times, Hindu marriages and dowry are closely related to each other and are still practiced today. This system of giving Dowry is very common among all people of all communities. In contemporary society the evil practice of dowry is spreading its tentacles into other religious communities like Muslim, Christian, Parsi etc.

In 1961, the dowry system was prohibited by the Dowry Prohibition Act 1961. The main aim and object of the Act is to prohibit the evil practice of giving and taking dowry. Dowry is the payment in cash or in kind by the bride's family to the bridegroom's family. Along with the giving away of the bride, it is called "*Kanyadaan*" which is very important part of the Hindu marital rites." *Kanya*" means daughter and "*daan*" means gift. Dowry is recognised as the property of women and called "*Stridhan*". Speaking about stridhan, Kautulya says: "Means of subsistence of jeweliery constitutes what is called the property of the women. It is no guilt for wife to make use of this property, maintaining her son, her daughter- in - law or herself, in case of her husband's absence or his state of poverty, she does not worry about her and her children's maintenance."¹⁰

Legal provisions relating to Dowry :

Law is the only way to improve the condition of women. The makers of the constitution wanted to give better life through the law. The Preamble seeks to ensure justice, equality and liberty; Part III of the constitution of India contains a long list of fundamental rights assuring equality to women. Many women related legislations have been enacted to protect women from crimes. These include: Hindu Re-marriage Act 1856, The child marriage restraint Act-1929, The special marriage act, 1954, The Hindu marriage Act-1955, The Immoral traffic (prevention) Act, 1955, The maternity benefit Act, 1961, (Amended in 1995), Dowry prohibition Act, 1961, The medical termination of pregnancy Act, 1971, Commission of sati (prevention) Act, 1987, Pre-natal diagnostic techniques (Regulation and prevention of misuse) Bill 1991. The criminal law (Amendment) Act 1983 has amended the Indian penal code 1860 and The Indian evidence Act 1872. The protection of women from Domestic violence act 2005 has been passed, and the working women (prevention of sexual harassment at the work place) Bill 2006 has been introduced in the parliament.

Section 304-B was added to the IPC ¹¹ to deal with dowry deaths. When the death of a married women is caused by any burns or bodily injury or, under abnormal or suspicious circumstances within seven years of marriage duration and it is clearly shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband or in laws for, or in connection with, any demand for dowry, such death shall be called as dowry death. Whoever commits dowry death shall be punished with imprisonment for a minimum term of seven years which may extend to imprisonment for life. The word dowry for the purpose of sec 304-B carries the same meaning as in section 2 of dowry Prohibition Act 1961.¹² Section 498-A of IPC deals with

9. M.P. Tondon, Family law in India, Allahabad Law Agency 5th edition, p. 48

10. www.indianetzone.com.Dowry system (Last visited on 30.08.2018 at 06.21 pm)

11. The Indian Penal Code 1860.

12.. Bachnidevvs.State of Haryana AIR 2011 SC 1089: Criminal Law Journal 1634.

cruelty, harassment or torture perpetrated by the husband or relative of husband. It provides, whoever being the husband or the relative of the husband or in law of a woman, subjects such women to cruelty or harassment or torture shall be punished with imprisonment for a term which may extend up to three years and shall also be liable to pay fine. If the death was preceded by cruelty or harassment by the relative of husband for connection of dowry demands if the connection between the two established mere occurrence of death was enough to attract the section 304-B of IPC though death may not have been caused by the relatives.¹³ The cruelty can be either mental or physical torture. Section 176(1) of Cr.P.C¹⁴ provides for inquiry by an Executive Magistrate into the cause of death, and section 174 (3) of the Cr.P.C. provides as follows:

When the case is of nature referred to in cl-1 or cl-2 of sub sec 174 the nearest magistrate is empowered to hold inquest. When

- (i) The case involves suicide by women within seven years of her marriage,
- (ii) The case relates to death of women within seven years of her marriage in any circumstances raising a reasonable suspicion. That some other person committed an offence in relation to such women, or
- (iii) The case relates to the death of women within seven years of her marriage and any relative of the women has made a request in this behalf, the police officer will forward the body for autopsy to the nearest medical officer for opinion.

Section 113-A Indian Evidence Act deals with presumption as to abetment of suicide by married women.

When the question is whether the commission of suicide by women had been abetted by her husband or any relative her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and her husband or such relative of her husband had subjected to cruelty, the court may presume, having regard to all the other circumstances of the cases, that such suicide had been abetted by her husband or by such relative of her husband. Section 113-B of IEA¹⁵ deals with presumption as to dowry death.

When the question is whether a person had committed the dowry death of a women and it is shown that soon before her death such women had been subjected by such Person to cruelty or harassment for or in connection with, any demand for dowry, the court shall presume that person had caused the dowry death. Shall presume means that the court is directed by this Act to presume, which is irrebutable presumption. The Supreme Court explains the term “soon before ‘which occurs in section 113-B of the Indian Evidence Act. “soon before” is a relative term and it would depend upon the circumstances of each case there is no strait jacket formula which can be laid down by fixing any time to constitute a period of’ soon before”.¹⁶

In spite of all the above protective legislations, violence against women continues to rise every year, in India. The NCRB data shows an increasing trend of dowry cases. Most of the crime against women happens in the married life of women. Domestic Violence, marital rape, sati, dowry torture, bride burning etc. During 2016, IPC crimes have increased by 0.9% SLL crimes have increased by 5.4 % over 2015. The crime rate in percentage share of IPC was 61.6% while

13. GovindaPradhanvs State, 1991.Cri Ij.268 at 269(MP); Ajit Singh vs. State of Haryana, 1997. 659 (P&H)

14. TheCriminal Procedure Code, 1973.

15. The Indian Evidence Act, 1872.

16. Kans Raj vs. State of Punjab, AIR 2003, SC 1324.

percentage share of SLL cases was 38.4% of total cognizable crimes during 2016. Total number of cases reported 3.38.954 in 2016, only dowry death cases were 7621, where as 30450 murder cases were reported. 88008 cases of kidnapping and abduction and 38947 cases recorded under rape. 9683 cases were reported under Dowry prohibition Act 1961. 2337 cases were reported under Immoral traffic Act-1961. 437 cases were reported under protection of women from Domestic Violence Act 2005. 326 cases reported under Prohibition of Child Marriage Act 2006¹⁷.

Government schemes for the women and girl child:

Dowry is the main cause of female foeticide and infanticide, because the parents worry for the future which starts from the birth of the girl child. They feel “If we don’t kill her today; tomorrow she will kill me financially or someone else will burn her for the sake of dowry.” Our Government has played a vital role in promoting the welfare of women and the girl child. Government of India Ministry of Women and Child Development implements several schemes for the upliftment of women and girl child. These include:

SwadharGreh Scheme for women: It is a rehabilitation scheme for women victim’s who is in need of support to lead their life with dignity. It helps to widows, destitute women and aged women also.

Ujjawala scheme: This scheme is being implemented by the Government since March 2016 with the aim and object of providing free LPG connection to every house hold.

Beti Bacho, Beti Padhao: This was launched in January 22 2015 by the Government as a joint initiative of the Ministry of women and child Development, Ministry of Health and Family welfare and ministry of Human Resource Development under coordinated and convergent effort to empower the girl child. The main object of the scheme is to arrest the constant decline in girl child sex ratio and promote women’s empowerment. In order to improve the women statute in the country¹⁸.

Sukanya Samridhi Account: It is the extension of the scheme of Beti Bachao, Beti Padhao. The aim of the scheme is to provide the future of the girl child will be economically secured.

Support to Training and Employment Programme for the Women scheme (STEP): It provides competencies and skill to enable women to become self employed/entrepreneurs.

One Stop Center (OSC) scheme: This was launched in 1st April 2015. It aims to facilitate access to an integrated range of services including medical aid, police assistance, legal aid/case management, psychological counseling and temporary support services. There are many Governmental schemes like C.B.S.E Scholarship scheme, 2016, Balika Samridhi Yojna, 1997, National Nutrition Mission (NNM), 2017, Universalisation of Women Helpline, 2015, etc. for girl child and women by which they get benefits and secure their life.

Conclusion and Suggestions :

Dowry system in India is one of the unsolved problems. In spite of the global campaign for elimination of violence against women. There has been alarming increase in the rate of dowry death cases. The phenomenon of dowry has spread not only to every part of the nation but also to all sects, caste and communities. Though the dowry system is not prevalent ever. The present

17. Crime In India, 2016 , National Crime Records Bureau, New Delhi Available at - <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf> (Last accessed on 16.11.2018 at 1.10 P.M)

18. <https://www.indiacelebrating.com>>..(Last accessed on 16.11.2018 at 1.10 P.M)

society has become very materialistic and consumer driven. Marriage has become a profitable business which puts the bride on debit side and the bridegroom on the credit side. Dowry has become the way of betterment for those in the process of climbing up. The people need more money to develop their economic standard for changes in personal life style, living standard and social status. They want to grow rich overnight which often causes the violent attitude towards women resulting in an increase in crime rate against women over the year. Every day in India the women are murdered by their new husbands or by in-laws for failing to bring a sufficient dowry to the in-laws. In the name of dowry thousands of women are murdered, maimed disfigured or burnt alive.

The dowry is a burden for the father of the girl and it need not to say of the situation they are facing. Often the father of the girl commits suicide because he fails to arrange for the dowry demanded by the parents of the boy. Sometimes the girl herself commits suicide for the same reason; years have passed but reasons prevail in modern India till date. Due to dowry, the parents are sometimes bound to marry the girl to a man who is almost of her father's age. The parents sometimes commit cheating or forgery, to arrange the dowry in order to get their daughters married. Many instances in the history of India, shows that the girls remains unmarried, because of the dowry demanded is too high to meet. The Dowry problem is closely related to the own home, if we are to fight discrimination and injustice against women, we must start from the home, if women cannot be safe in her own house then she cannot be expected to feel safe anywhere.

Following steps should be taken to eradicate the dowry system:

1. The parent should make strong determination to make their girl highly educated by employing their money for this, not for dowry.
2. Girls should think not to marry at the cost of dowry as she is not a source of money to anyone.
3. People must have overcome traditional religious taboos, social practices etc. Which have no value at all in this new era.
4. People need to change a new way of thinking and their philosophy about the girl. A new type of attitude is required for the progress of women. All are equal; there should not be any discrimination between the men and women in society.
5. Our society is swaged away by the idea that if they give dowry, their name and fame in the society is elevated.
6. In our country there are many voluntary organizations which are not working properly and they are not helpful to the victims of dowry.
7. Literacy programme for women needs attention for their awareness about legitimate rights.
8. Special enactment may be made to prompt interim payment of maintenance to the victims and special compensation in all cases of dowry should be given to the victims according to the paid dowry amount.
9. Criminals victimizing women need deterrent punishment and are to be dealt with strictly because they not only violate law, but also violate the societal norms.
10. The woman herself should be bold enough to get their inherent rights and she must know how to defend herself in all matter, she should be free from all bondages'.

Law is the basic tools to eradicate the social evil like dowry and dowry death. The legislations must make that type of law which is more in favours of the women so that they are enabled to raise their voice to claim their rights properly.

It is very difficult to completely eradicate this type of social evil like dowry, which is totally in

DEEPA MUDULI

the blood and vein of the society , But through the instrumentality of law, it is the only way to suppress the evil to some extent .The law, awareness and education can decrease the number of crimes rate . To bring changes in the society the joint efforts of the society is required. Only education and the awareness of dowry Act among the people of the society can ripe out about the evil effects of the system and can help remove the thousand year's bad practice of dowry system from our country permanently.
