



---

## Need to reform laws related to dowry with changing dimensions of Indian society: A critical analysis

Ravi

Research Scholar, Department of Law, Shri JJT University, Jhunjhunu, Rajasthan, India

---

### Abstract

Over the most recent couple of decades, women in India have confronted the offences related to domestic violence, wife battering, cruelty, dowry and dowry death in a more intense form than the past. From time to time piecemeal changes have been brought about in the legislative framework in order to deal with issues and offences related to dowry. Numerous laws have been enacted and implemented to curb these dowry related crimes against women as well as to raise the status of women. In spite of such legislative efforts, the women are still being oppressed in the society because of the continuance of the evil of dowry which is somehow directly or indirectly responsible for most of other kinds of violence against women. The dowry prohibition laws aim to keep a check over the custom of giving and demanding dowry in connection to the marriage since this custom has acquired an ugly form of a tool of oppression and harassment of the bride and her parents. In many cases, the failure of bride's parents to meet dowry demands result in occurrence of some severe crimes against the brides like cruelty, dowry death, abetment to suicide etc. The non fulfillment of dowry demands result in coercion, harassment, infliction of mental and physical torture to women and in extreme cases they may be strangled, poisoned or burnt alive.

**Keywords:** dowry death, domestic violence, wife battering, cruelty, harassment legislative framework etc

---

### Introduction

Initial legislative attempts related to dowry prohibition Though dowry was in its whispering stage, the first attempt related to dowry prohibition was done with the enactment of Sindh Deti-Leti Act, 1939. It prohibited the giving and taking of any valuable article or dowry beyond permissible limit prescribed by the list enumerated by the panchayats or provincial governments. The next step was Bihar Dowry Restraint Act, 1950 and The Andhra Pradesh Dowry Prohibition Act, 1958. Although the provincial enactments could not bring the desired results, but they stimulated the general public to raise a voice against dowry as the dowry system started strangulating the peace of society. Perhaps the Central government felt that The Hindu Succession Act, 1956 may be a suitable alternative to the eradication of dowry system as many provisions in the Act were made with regard to the women. All these enactments appeared to be really pro-women but due to the lack of effective awareness, and proper utilization, most of the Acts merely remained on papers rather than curbing the menace of dowry.

In view of the persistent nature of the problem and thereby adverse consequences of dowry system, The Dowry Prohibition Bill, 1959 was introduced on 24th April, 1959 with an objective of eradicating the evil of dowry system. The underlying object behind this bill was to prohibit the giving and taking of dowry in connection to the marriage.

On 24<sup>th</sup> April, 1959, The Dowry Prohibition Bill, 1959 was introduced by the government. After a discussion and introduction of several changes, it was further moved to the joint committee.<sup>11</sup> Finally the bill was taken into the consideration at a joint sitting of Rajya Sabha as well as Lok Sabha and was passed on 1st July 1961. Therefore after a long awaited time period, The Dowry Prohibition Act, 1961 was finally enacted to curb the menace of dowry with an objective of eradicating this practice. This Act is considered to be a remedial as well as a penal statute simultaneously. Originally, there were ten Sections in the Act and afterwards Sections 4A, 14 8A15 and 8B16 were further added by the Amendment. Section 2 defines the term Dowry<sup>6</sup> and Section 3 prescribes the punishment for giving and taking dowry.

**Dowry is 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 parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, on or before or any time after the marriage in connection with the marriage of the said parties, the definition of Dowry does not include dower or mahr in case of persons who are governed by Muslim Personal Law (Shariat). The Amendment Act of 1984 has deleted the Explanation I of Section 2. However Explanation II explains that the meaning of the term valuable security<sup>l</sup> is same as given in the Section 30 of I.P.C.

There are generally three types of the traditional presents that can be given to a bride in a Hindu marriage: -

- Property or valuable articles that are given with an intention that those would be exclusively and personally used by the bride like her personal jewellery, clothes etc.
- Articles or property of dowry which may be for common utilization or use by her and the other members living in her matrimonial home.
- Articles or property exclusively given as gifts to her husband or the in-laws and other members of her husband's family. There is no control of the bride on such items and valuable property, once it is gifted. Consequently, the third type of gifts, property or valuable articles given exclusively to the husband or his relatives after delivery would pass into their ownership and obviously cease to be the property of the bride. The first category of gifts are generally considered as 'Stridhan', however the second and third category may fall under the ambit of dowry if the other essentials of Section 2 are fulfilled.

#### **Difference between Dowry and 'Stridhan'**

The word 'Stridhan' literally means property of a woman. This concept has originated from Hindu Smritis, the traces of its origin are also found in Dayabhaga and Mitakshara school of Hindu law. Centuries ago, gifts given to the bride at the nuptial fire, at the bridal procession, gifts given as a token of love by in-laws as well as gifts given by her own parents and relatives were considered to be her Stridhan'. For determining the issue that whether a particular kind of property acquired by a woman is covered under the ambit of Stridhan or not the source of acquiring that property has to be scrutinized. However, the gifts made to the bridegroom or his relatives by the parents or relatives of bride during and after marriage are not considered as stridhan.

Stridhan is quite often misunderstood or misinterpreted as dowry even though the judiciary has time to time made a clear-cut distinction between the two. Dowry signifies the presents given to the married couple or the bridegroom as well his relatives in connection to the marriage by the bride's side however Stridhan is the property or valuables exclusively given to the bride or meant for the bride only.

Dowry is a property or valuable security given or agreed by the bride's side to the bridegroom or his family members before, during or after marriage, by pressurizing or demanding while Stridhan is a voluntary gift by the parents or family of the bride which is exclusively given to the bride as a venturing stone to building up her own assets and strengthening her household. When the wife entrusts her Stridhan property with the dominion over that property to her husband or any other member of the family and the husband or such other member of the family dishonestly misappropriates or converts to his own use that property, or willfully suffers and other person to do so, he commits criminal breach of trust. Therefore stridhan and dowry are not synonyms as stridhan is permitted but dowry is clearly prohibited under the law.

#### **Meaning of the Expression- 'given or agreed to be given'**

The legislative intention is clear that there should not be any grey area left in the definition for any manipulation by the people. There is no such loophole left where the people may resort camouflage methods and take dowry articles either before the marriage or after the marriage. Henceforth, the expression given or agreed to be given has been incorporated very wisely. This expression is used to give a wide coverage to the demand of dowry and impliedly covers the acceptance to such demand as well.

The scope of the term dowry is widely defined so as to include all kinds of properties, valuable articles, gifts, cash etc., given, taken; agreed to be, agreed to be taken; given directly or indirectly. The word dowry' can be any valuable article, cash, and property etc; given or agreed to be given in connection with the marriage. It is within the scope of this Section if such valuables are given exactly at the time of the marriage or even before the time of marriage and even afterwards when the marriage has already occurred. Dowry in the meaning of the expression contemplated by Dowry Act is a fulfillment of demand or a demand for any valuable article, property or security having an inseparable connection with the marriage. It may be understood as a consideration for marriage from the bride's parents or relatives to the bride-groom or his parents or even may be to the other relatives for an agreement to marry the bride and keep the nuptial relation harmonious. However, where there is no connection or nexus with the consideration for the marriage of such a demand, it does not amount to a demand for dowry.

The Supreme Court has strictly remarked that furnishing of a list of ornaments and other household articles such as refrigerator, furniture, electrical appliances etc., at the time of the settlement of the marriage amounts to demand of dowry within the meaning of Section 2 of the Dowry Prohibition Act, 1961. But in a situation where the legal validity of a marriage cannot be established, a demand of dowry in respect of such a marriage is not legally recognizable.

#### **Distinction between Mahr, Dower and Dowry**

Mahr, dower and dowry are entirely different concepts. While on one side dowry is a social evil against woman and is prohibited by law, on the other side, the object of dower is to provide financial security to a woman during and after her marriage and it is legally well permitted.

Mahr differs from dowry in both legal as well as social aspects. According to the Muslim Personal Law, 'Mahr' is a predetermined amount of money, assets or benefits that is bestowed with the wife which she is entitled to collect from husband. The underlying object is to provide independence to the wife and enable an indirect check over the husband's arbitrary power of taking divorce.

In *Saburannessa v. Sabdu Sheikh*, AIR 1934 Cal 693 it was clearly held by the Calcutta High Court that dower is an obligation imposed as a mark of respect for the women and not a consideration for the performance of the contract of marriage. 'Jahez' is a term used in Islam for dowry and it is strictly prohibited under the Islamic Law. 'Jahez' is regarded as a social and cultural evil in Islam and highly condemned. However the concept of 'Mahr' is considered to be an epitome of women empowerment under Islamic Law. It is considered as a right which is conferred to the wife/bride unlike the evil of dowry where a wrongful liability is imposed on the wife/bride or her family. Mahr is viewed as a tool for providing equality to the women in a different sense and giving a voice to them. Mahr has a significant importance in Muslim marriages as it acts as a tool to provide protection to the women against the discretionary abuse of the unlimited power of divorce conferred with the husband.

### **Punishment for Giving or Taking Dowry**

Section 3 and 4 provide punishment for giving or taking dowry as well as demanding dowry which may extend to five years sentence and a minimum fine of fifteen thousand rupees or the fine equal to the amount of the total value of such dowry. Any person directly or indirectly demanding dowry, from the parents or other relatives or guardian of either side, shall be liable for a minimum sentence of six months and a maximum imprisonment of two years along with ten thousand rupees fine. Hence mere demanding any kind of dowry before marriage even without the fulfillment of such a demand is also a punishable offence. The Punjab and Haryana High Court also opined that if any kind of list of jewellery or any other household item is furnished before marriage as a settlement of conditions of marriage, it amounts to the offence of demanding dowry and the persons involved are liable to be convicted under Section 4. Giving or receiving dowry or even abetment for giving or receiving dowry, after the commencement of this Act is prohibited by Section 3 of the Act. However, there shall not be any retrospective application of the Act.

### **Essentials of Section 2 must be satisfied to Invoke Section 3 and 4**

It is essential that to bring a case under the ambit of Section 3 or 4, the ingredients of Section 2 must be fulfilled. It means that there must be a demand of dowry or giving or taking of dowry. Precisely, the valuables or property in question must be covered under the definition of Dowry' as given in Section 2. Moreover, such a demand must be of the valuables, property or money agreed to be given in relation to the marriage of parties. If the evidence on record is adequate to prove that the accused received a sum of two thousand rupees and ten gram of gold during marriage and same were demanded as dowry and were not accepted as gifts, thereby, conviction under Section 3 and 4 is confirmed.

In a related case, *Bhoora Singh v. State of Uttar Pradesh* 1993 Cri LJ 2636 All. a letter was produced as evidence which was written by the deceased to her father. The repeated incidents of her ill-treatment, harassments and threats of dire consequences for nonsatisfaction of demands of dowry given by her in-laws were clearly mentioned by the deceased in that letter. After some time of writing that letter, she was burnt to death by her in-laws by setting her on fire. The Court held that the evidence was sufficient to hold that an offence of demanding dowry under Section 4 had been committed.

Section 4 A puts a ban on any kind of advertisement on giving or taking of dowry. It penalizes any offering any share in the property or any cash or both or any other interest as consideration in connection to the marriage by any person in the marriage of his son/ daughter or any other relative; by publishing or giving or circulating any advertisement in a newspaper, periodical, journal, or through any means of media. The minimum imprisonment for this offence is six months and the maximum is five years, or a fine of maximum of fifteen thousand rupees. However, the court may, if finds adequate, then may impose an imprisonment of less than six months after recording special reasons in the judgment. Section 5 clearly states that any kind of agreement that constitutes giving or receiving dowry is void. Therefore, such kind of agreement is not enforceable under law. In case of void agreements, the law refuses to give effect to it, it means that even if an agreement to give or take dowry is carried out, the person promising to pay dowry cannot be legally forced to pay the dowry which he has promised and therefore if the promisee seeks to enforce it, the Court will not help him. Section 6 is the result of the Joint Committee Report presented by both houses of Parliament at the time of legislation of Dowry Prohibition Act, 1961. Consequently, changes were made by virtue of the Amendment Acts of 1984 and 1986. The prime objective was to wipe off the social image of the women of being an economic burden and to improve their financial condition by protecting their material assets.

The Section 6 provides that if dowry is received by any person other than the bride, such a person must transfer it to the woman within a stipulated time and on failure to do so, the person is punishable with imprisonment or fine. Secondly, if the woman/bride entitled to such property dies before receiving it, then the legal heirs of the woman are entitled to claim it. Thirdly, if such woman dies within seven years of her marriage in unnatural circumstances, then such property shall be transferred to her heirs. Failure to do so shall attract imprisonment or fine under Section 6. Thus, by virtue of this Section, dowry is to be for the benefit of the bride or her legal heirs and any violation for the same amounts to criminality and shall be punishable. Section 6 of the D.P.A. aims at the benefit of such woman/wife/bride whose property has been illegally retained by her husband or any other person receiving such property on her husband's behalf and when they are not ready to return back such property to her. However it is no where mentioned under Section 6 that the dowry items can be claimed back by the wife only after the marriage is dissolved. It cannot be assumed that the parents of the bridegroom take dowry from the parents of the bride only for and on behalf of the bridegroom. So they cannot always claim that they do not

receive any dowry. In fact, it is being observed very often that the parents of the bridegroom are greedy who actually want to have the dowry and take dowry. Therefore, parents of the bridegroom can be summoned for committing an offence under Section 6.

The person receiving dowry assets is legally liable to transfer these assets to his wife within a prescribed time period. On failing to do the same, the wife may file a complaint against him even at a place where she is residing and the husband can be prosecuted on such complaint.

### **Need to Reforms Laws Related to Dowry**

The violence and crimes against women have always been a matter of great concern for the legislature. Not only the laws related to gender justice and protection of women, are time to time passed but such laws are also reviewed periodically. Various amendments are suggested and incorporated in the laws affecting women to meet the emerging needs of society as well as nation. The occurrence of dowry offences' is one such manifestation of imbalanced power equations and gender violation, to which the married women are subjected.

Section 304B of Dowry Death and Section 498A were added under which any cruelty committed by the husband or in-laws were penalised with a sentence of up to three years by Criminal Law Amendment Act, 1986. In 1983 the necessity for inserting of these offences had been strongly realized by the Law Commission in its 91st Report. Again Section 113A and Section 113B of the Evidence Act were inserted for curbing the increasing rate of dowry murders. The major objective behind these insertions was to overcome the challenges faced by the prosecution to prove the offence by providing a presumption. Section 306 also covers the aspects of abetment of suicide of married women by husband and in-laws. It states that where a suicide is committed by a married woman within seven years of marriage, the court may presume that her husband and in-laws had abetted her to commit suicide by virtue of Section 113A of Evidence Act.

The socio-cultural reasons are undoubtedly responsible for the failure of the law to combat the problem but another aspect is that in the provision of dowry death there are still some drawbacks in drafting the substantive law and procedural aspects like that of difficulty in gathering the evidence for convicting the main culprit. When poor or middle-class parents cannot give their daughters an expected dowry in such situations, very often the bride suffers cruelty and harassment after her marriage for not bringing expected dowry. Even many times, such cruelty results in dowry death. In such cases it is evident that no complaints were made in the initial stage of demanding of dowry or even after the marriage of the bride. The cases of dowry deaths or suicide where brides end their lives than reporting such cases to the police clearly question the lack of faith on legal framework for dowry prohibition and failure of Anti-Dowry laws. Again many times the prime accused is acquitted by the courts as the charges are not proved or due to inadequate evidence.

It must be remembered that the offences related to dowry usually take place within the enclosed four walls of houses where it is not easy to gather any independent and direct evidence related to the commission of the offence. Therefore, the law makers have tried to strengthen the hands of prosecution by introducing Sections 113A and 113B in the Evidence Act. Section 113A and 113B permit a presumption to be raised if certain foundation facts are established and the death of women has been caused within seven years of marriage.

Section 113B of Indian Evidence Act was inserted by the Amendment Act of 1986. The gruesome crime of dowry death is usually committed within the four walls of the house, the act is generally manipulated in such a way that it may seem to be either suicide or accidental death. Therefore, it is almost impossible for the prosecution to produce evidence or witnesses. Thus, the legislature was compelled to introduce such a Presumption against the accused and therefore Section 113B was inserted simultaneously with Section 304B of I.P.C. Under Section 113B when it is shown that soon before the death, the woman had been subjected to cruelty or harassment by the accused for the dowry the court shall presume that the accused had caused the dowry death and the burden is on the accused to rebut the presumption. But still there is a way ahead to legislate and implement such provisions in coherence with practical needs as well as social acceptability.

### **Amending Anti-Dowry Laws for better Implementation**

The threat of Dowry has turned into a social danger in present day India prompting the persecution on women, physical brutality on the brides, causing money related and emotional burden on the family of the bride, conjugal clash, etc. This practice is a deep-rooted evil in the society which is persisting since ages and flourishing day by day. Prior, instances of dowry deaths, and burning of brides for dowry demand were registered by the police as mishaps or suicides. By 1977-78 after many decades it was finally understood that the major part of the deaths of married females which were enrolled as incidental deaths or instances of suicides were, truth be told, murder or abetted suicides. It took over 10 years for the governing body to make dowry death an offence under the Penal Code and to prescribe sentence for the guilty parties. The form to which the evil custom of dowry has transformed since last twenty-five years has no traces in the traditional and age-old marriage rituals. The requirement for insertion of the provisions was realized by the Law Commission of India in its 91st report which was submitted on 10th August, 1983 on —Dowry Deaths and Law Reform. Section 304B, I.P.C. 228 and Section 113B Evidence Act were inserted by the —Dowry Prohibition (Amendment) Act, 1986. The occurrence of incidents of bride burning and dowry deaths occupies a prime position yet for years it was considered a digression of certain Indian societies. Each citizen must attempt to be refreshed with the existing Acts and statutes passed by the legislature and should appropriately use them when there is a critical need to practice their rights.

### Conclusion

After independence, “The Dowry Prohibition Act, 1961” was enacted and it strived hard to eradicate this evil. Some amendments were also done time to time, to increase the efficacy of this enactment. Undoubtedly, the enactment of this Act was a positive step to curb the menace of dowry and to prohibit a deep-rooted social evil. But unfortunately, all went in vein as the Act had failed in bringing the desired results.

Apart from that various other provisions were introduced in the penal laws like the offence of cruelty, dowry death, abetment to suicide, criminal breach of trust etc. These provisions have been given the biting teeth through the insertions of presumptions to shift burden of proof on the accused in the evidence law. To provide relief in the cases of wife bettering, a separate Act, “The Protection of Women from Domestic Violence Act, 2005” had been enacted.

Various bodies like National Commission for Women, Law Commission of India as well as certain committees like Malimath Committee have time to time suggested many changes and recommendations in the laws to increase the effectiveness and implementation of these laws. But surprisingly the suggestions given by National Commission of Women in 2005 were neither taken seriously and nor were adopted at all. The prime inclination of these recommendations was towards making the dowry related laws, especially the offence of dowry death more stringent. It has been suggested to treat this offence equivalent to murder enhance the minimum punishment, and even enhance the time limit of seven years time span after marriage.

### References

1. Abbott Elizabeth. A History of Marriage: From Same Sex Unions to Private Vows and Common Law, the Surprising Diversity of a Tradition, 22 (Seven Stories Press, New York, 2011).
2. Agarwal ML, Transcendental Vision of Sri Ram, 55 (Indra Publishing House, Bhopal, 2006).
3. Altekhar, Anant Sadashiv, The Position of Women in Hindu Civilization, 69 (Motilal Banarasidas, New Delhi, 1987).
4. Anand RL and Sethi Gargi. The Prohibition of Dowry Act, 1961, (Law Publishers, Allahabad, 1962).
5. Baruah, Arunima. The Soft Target-Crime Against Women 149 (Kilaso Books, New Delhi, 2004).
6. Bharti, Dalbir, Women and the Law (A.P.H. Publishing Corp., New Delhi, 2002)
7. Diwan, Paras, Law relating to Dowry, Dowry Deaths, Bride Burning, Rape and Related Offences (Universal Law Publishing Co. Pvt. Ltd., Delhi, 2002).
8. Gandhi BM, Indian Penal Code (Eastern Book Company, Lucknow, 2014)
9. The Constitution of India, 1950
10. Dowry Prohibition Act, 1961
11. Dowry Prohibition (Amendment) Act, 1986
12. Protection of Women from Domestic Violence Act, 2005
13. The National Commission for Women 1990
14. [www.indiankanoon.org](http://www.indiankanoon.org)
15. [www.lawcommissionofindia.nic.in](http://www.lawcommissionofindia.nic.in)
16. [www.manupatra.com](http://www.manupatra.com)
17. [www.mha.gov.in](http://www.mha.gov.in)
18. [www.ncrb.gov.in](http://www.ncrb.gov.in)
19. [www.ncw.nic.in](http://www.ncw.nic.in)
20. [www.wcd.nic.in](http://www.wcd.nic.in)
21. [www.india.gov.in](http://www.india.gov.in) › my-government › constitution- india