

LEGALFOXES LAW TIMES

DOWRY SYSTEM IN INDIA – A SOCIO-LEGAL PERSPECTIVE

ANALYSIS

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INTRODUCTION

The system of Dowry giving by the bride's family and taking by the bridegroom's family has been a part and parcel of India's marriage system for a very long time. When a girl is given in marriage¹, dowry is also demanded by the bridegroom's family. It may be in the form of **cash, durable goods, or movable properties. It is evil to the society – the system of dowry.** Demand for Dowry is a punishable offence in India as the Government seeks to stop the demand for dowry to be given at weddings.

SOCIAL PERSPECTIVE OF DOWRY

For time immemorial, while giving their daughter in marriage, the bride's family adorn her **gold jewellery** amongst other things given on the occasion of the wedding. But, most of the time turn out to be a demand by the boy's family that causes a **huge financial strain on the girl's family at the time of marriage.**² Though the history of Dowry is not very clear, it may be seen that the families receive and give dowry so as to showcase wealth among the families. This becomes a social problem when the girl's side is forced to give Dowry that is **beyond their means and unreasonable** for the financial position they are currently in. For the sake of the society, and to meet the demands of the bridegroom's side, the bride's family somehow arrange even by taking loans at times to provide a dowry for the girl during her wedding.

¹Rani Jethmalani & P.K. Dey (1995). *Dowry Deaths and Access to Justice in Kali's Yug: Empowerment, Law and Dowry Deaths*. pp. 36, 38. (Accessed on 20th July, 2020)

²Anderson, Siwan (2007). "The Economics of Dowry and Brideprice". *The Journal of Economic Perspectives*. 21 (4): 151–174. doi:10.1257/jep.21.4.151. S2CID 13722006. (Accessed on 20th July, 2020)

While India has been making progress for [women's rights](#), women continue to be in a subordinate status in their family.³ Thus, while on one hand, we advocate for gender equality and women's rights in marriage and employment, amongst other things, still somewhere down the line, the system of Dowry is still deep-rooted in our country. Whilst, it may be brushed aside if it is voluntarily given, any force or demand for dowry is a ground to constitute a legal offence.

LEGAL PERSPECTIVES OF DOWRY

In India, predominantly the Act that deals with Dowry Prohibition are:

- a) **Dowry Prohibition Act, 1961,**
- b) **Criminal statutes – Indian Penal Code, Code of Criminal Procedure and Indian Evidence Act**
- c) **Protection of Women from Domestic Violence (DV) Act, 2005**

These legal recourses are available to the bride's family if they are pressurized to give dowry at the time of marriage of their daughter.

If demand for dowry is not made and it is given voluntarily, then it does not come within the purview of the legal acts.⁴

DOWRY PROHIBITION ACT, 1961

According to the Dowry Prohibition Act, 1961, it is defined as:

Dowry means any property or valuable security given or agreed to be given either directly or indirectly during the marriage but does not include Dower or Mahr in the case of Muslims.

Punishment under this Act - The punishment could be imprisonment term for a minimum

³SRINIVASAN, SHARADA; ARJUN S. BEDI (2007). "[Domestic Violence and Dowry: Evidence from a South Indian Village](#)". *World Development*. **35** (5): 857–880. doi:10.1016/j.worlddev.2006.08.005. hdl:1765/19188. (Accessed on 20th July, 2020)

⁴Section 3(2), Dowry Prohibition Act 1961 (Accessed on 20th July, 2020)

period of 5 years and a fine more than ₹15,000 or the value of the dowry received, whichever is higher.⁵

The Dowry Prohibition Act will come into force only when a demand has been made by the bridegroom's family. It is to note that in many parts of India, the crime of Dowry goes **unreported**⁶ or is seldom reported by the girl's side due to societal issues and the life of the girl is also at stake in the boy's side.

INDIAN PENAL CODE, 1860

Section 302 of the IPC, 1860 recognises 'dowry death' – as a probable angle to prove if the death of the bride takes place within 7 years from the date of her marriage and if proved the husband and his family members would be subjected to a maximum punishment of imprisonment of 7 years to life.⁷

Section 498-A of the IPC, 1860 empowered the immediate arrest of the bridegroom's family who demanded dowry. But since it was widely abused, in **2014, the Supreme Court made guidelines** that a person (bridegroom or his family members) cannot be arrested without the approval of a magistrate.⁸

INDIAN EVIDENCE ACT, 1872

Section 113B of the Evidence Act, 1872 states a presumption of death were before the death of the woman, if she was subjected to any cruelty on the grounds of Dowry.

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE (DV) ACT, 2005

⁵Section 3(1), Dowry Prohibition Act 1961 (Accessed on 20th July, 2020)

⁶Spatz, Melissa (1991). "A "Lesser" Crime: A Comparative Study of Legal Defenses for Men Who Kill Their Wives". *Colum. J. L. & Soc. Probs.* **24**: 597, 612. (Accessed on 20th July, 2020)

⁷Suman. Nalwa and Hari Dev. Kohli (2011). *Law Relating to Dowry, Dowry Death, Cruelty to Women & Domestic Violence*. New Delhi: Universal Law Pub. Co. p. 211. (Accessed on 20th July, 2020)

⁸**No arrests under anti-dowry law without magistrate's nod: SC".** *The Times of India*. Archived from the original on 7 July 2014. (Accessed on 20th July, 2020).

Section 3 of the Domestic Violence (DV) Act, 2005 specifically incorporates all forms of harassment, injury, and harms inflicted to coerce a woman to meet any unlawful demand of dowry.⁹

DOWRY SYSTEM – A DEEP ROOTED EVIL IN THE INDIAN SOCIETY

Dowry System as discussed above is deeply rooted in Indian society when it comes to marriages that make it almost difficult to conduct a marriage without the concept of Dowry giving or taking in it. It must be avoided and not pressurized on the girl's side of the family as it may add to the burden of the financial costs incurred to conduct the marriages of their daughters. This is a social perspective. But, when it is demanded and the girls' family complains then it becomes a legal issue and the boy's side would be held liable for the torture for dowry.

There have been many instances in India wherein the bridegroom's family asks for big gifts as dowry in the ceremony of the wedding which may be beyond the reach of the girl's side family. The abuse thereafter continues in the household even after marriage and this is when the girl decides to complain and it becomes an issue.

ENFORCEMENT OF ANTI- DOWRY LAWS

These laws as mentioned above aim at preventing the concept of Dowry and punish the offence. But, still, many husbands get away without punishment due to the want of sufficient evidence, or witnesses since these crimes happen within the four walls of the house. It becomes increasingly difficult for the girl to prove these offences. Also, it takes a long time before finality is reached in such cases.

One should also take into consideration that the girl has to live in the house of her husband and after making such a complaint about dowry harassment against him, it would give him more room to torture his wife, and hence she may not see any remedy coming immediately. Due to these reasons, I presume, the woman refrains from making any complaint or taking any legal action against the husband in cases of Dowry Harassment.

⁹Suman. Nalwa and Hari Dev. Kohli (2011). *Law Relating to Dowry, Dowry Death, Cruelty to Women & Domestic Violence*. New Delhi: Universal Law Pub. Co. pp. 362–364. (Accessed on 20th July, 2020)

Only when it is severe, and death is reported within 7 years of the marriage, as per law, do the police and investigating agencies, look into the concept of Dowry as a probable cause for Death.

It is also important to note that many women are even misusing these anti-dowry laws to take revenge against their husbands which should be avoided as it defeats the very purpose of enactment of these legislations.

According to the [National Crime Records Bureau](#) statistics, in 2012, nearly 2 lakh people including 47,951 women, were arrested in regard to dowry offences. However, only 15% of the accused were convicted.¹⁰

In July 2014, in the case of *Arnesh Kumar v. State of Bihar & Anr*,¹¹ a two-judge bench of the [Supreme Court](#) reviewed the enforcement of section 41(1)(A) of CrPC which instructs to following certain procedure before arrest, and went on to observe that the 498A had become a powerful weapon in the hands of frustrated wives where innocent people were arrested without any evidence due to the non-bailable and [cognizable](#) nature of the law.¹²

CONCLUSION / MY SUGGESTIONS

Thus, I would like to conclude by saying that Dowry giving and taking should be banned legally and families should understand that as in Hindu Law, Marriage is a Sacrament and the two souls who come together to start a new beginning and a new family should be celebrated and not tortured for Dowry as it even can be termed an economic offence as it takes a real hit and toll on those bride's families who can't provide as per the whims and fancies of the bridegroom. This torture may even occur post-marriage till dowry is met or even on a recurring basis by the boy's side and this should be avoided.

The Cordial understanding between the parties to the marriage can set aside these differences and they can live happily ever after marriage. Dowry should not be imposed upon and it maybe given

¹⁰"[Women Misusing India's Anti-Dowry Law, says Supreme Court](#)". 3 July 2014. [Archived](#) from the original on 9 January 2015.

¹¹"[Arnesh Kumar Judgment](#)". 13 April 2016. [Archived](#) from the original on 13 May 2016. (Accessed on 20th July, 2020)

¹²"[Women Misusing India's Anti-Dowry Law, says Supreme Court](#)". 3 July 2014. [Archived](#) from the original on 9 January 2015. (Accessed on 20th July, 2020)

voluntarily akin to a gift given out of love and affection on the girl and the boy in the ceremony of marriage. If it is forced upon it must not be accepted and it should be purely voluntary. Hence if incase, any disputes arise over Dowry in the wedlock, then there is legal recourse that the wives can use to take against their husbands and it should be used and not misused.



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