

## Dowry Death in India

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*“Young man who makes dowry a condition for marriage discredits his education and his country and dishonors womanhood”.*

Gandhi Ji

*Ex-President of India in his speech on the eve of Independence Day stated that our women are still treated as less than human. Day in and day out, we read in the newspapers gruesome stories of dowry deaths of young women in the flower of their youth, because of the insatiable greed of husbands and the in-laws.<sup>1</sup> The law enforcing agencies remain indifferent or ineffective, and the law itself remains awfully inadequate. In fact, statistics show that crimes against women have been on the increase. No place is safe for them, not even their own homes.*

Swami Vivekananda used to say, “the land of India is... soaked with the tears of widows”. Today it is soaked by the tears of women in general, and even girl children, who are ill-treated and murdered. In a recent case of a five-year old girl abducted, raped and murdered, the Sessions Judge let the accused go scot-free. In his eloquent judgment he said: “I am of the view that the prosecution has not been able to prove the guilt of the accused beyond the shadow of doubt. Dark clouds of doubts are hovering all around, the benefit to which is to be given to the accused” Indeed, there are dark clouds of prejudice and collous unconcern hanging over our society with regard to the problem of rape and atrocities on women. Since neither conscience nor common sense is responding to this tragic problem, should not the law-makers rewrite the laws so that a deterrent against such crimes exist in society.

Dowry is of an ancient origin which assumed abnormal proportion in later on. Among the ancient Hindu the custom of dowry did exist under different names. This custom of giving presents at the time of marriage is a universal phenomenon and continues to be so till today.

The rational behind this presenting of gifts show the affection of the parents towards their children, but in due course of time, the said custom has grown rigid and become associated with social status and family prestige leading to the great social evil.

The Dowry system has produced adverse effect on our society. This social evil is copious mostly in Hindu community and in the sense of the bride’s price or the bride-groom’s price has spread like a contagious disease and become a regular practice, assuming threatening dimensions.

Because of dowry demands, sometimes a girl remain unmarried due to the inability of their parents to meet the demands of the other sides. Considering dishonor to the family, there have been instances where such girls have committed suicide as they remain unmarried after the marriageable age. The Dowry Prohibition Act, 1961 was passed with the ostensible purpose of curbing the evil of dowry, if not eradicating it. But the said act, has signally failed to achieve its purpose.

As per Cambridge Dictionary Dowry is property which a woman brings to her husband at marriage like wise as per Webster dictionary "money, goods or estate that a woman brings to her husband at marriage" is dowry.

Dowry or Dahej is the payment in cash or/ and kind by the bride's family to the bridegroom's family along with the giving away of the bride (called Kanyadaan) in India marriage. Kanyadanam is an important part of Hindu marital rites. Kanya means daughter, and dan means gift.

Dowry originated in upper caste families as the wedding gift to the bride from her family. The dowry was later given to help with marriage expenses and became a form of insurance in the case that her in-laws mistreated her. Although the dowry was legally prohibited in 1961, it continues to be highly institutionalized. The groom often demands a dowry consisting of a large sum of money, farm animals, furniture, and electronics.

The practice of dowry abuse is rising in India. The most severe in "bride burning", the burning of women whose dowries were not considered sufficient by their husband or in-laws. Most of these incidents are reported as accidental burns in the kitchen or are disguised as suicide. It is evident that there exist deep rooted prejudices against women in India. Cultural practices such as the payment of dowry tend to subordinate women in India society.

Though prohibited by law in 1961, the extraction of Dowry from the bride's family prior to marriage still occurs. When the dowry amount is not considered sufficient or is not forthcoming, the bride is often harassed, abused and made miserable. This abuse can escalate to the point where the husband or his family burn the bride, often by pouring kerosene on her and lighting it, usually killing her. The official records of these incidents are low because they are often reported as accidents or suicides by the family. In Delhi, a woman is burned to death almost every twelve hours. The number of dowry murders is increasing. In 1988, 2,209 women were killed in dowry related incidents and in 1990, 4,835 were killed. It is important to reiterate that these are official records, which are immensely under reported. The lack of official registration of this crime is apparent in Delhi, where ninety percent of cases of women burnt were recorded as accidents, five percent as suicide and only the remaining five percent were shown as murder.

The Hindu Shashtra's and Smrities while dealing with marriage, have nowhere used the word 'dowry' or any of its synonym. It is by the descriptions of the rules of customs or forms of marriage that we get an impression that certain gifts or presents had to be made at marriages either by the parents of the bride to the bridegroom his parents; or by the latter to the former.

The Brahma form of marriage is one in which a qualified and able bridegroom is endowed with the bride after having him called upon and honored with the clothes and ornaments. Endowing the bride to a person presiding a yagna after having him honoured and decorated, is called 'Devya marriage'. Giving of a bride in consideration of a pair of cows or bullocks is known as 'Arsh', while giving of bride with the blessing, 'thou perform the religion of married life', is described as 'Prajaptya'.

“ज्ञातिभ्यो द्रविरां दत्त्वा कन्यायै चैव शक्तितः।  
कन्या प्रदानं स्वाच्छन्दादासुरौ धर्म उच्यते।।  
हत्वा छित्वा च भित्वा च क्रोशन्ती रूदती गृहात्।

प्रसह्य कन्या हरारां राक्षसो विधि रूच्यते।।  
सुप्तां मक्तां प्रमत्तां व र्हो यत्रोप गच्छति।  
स पापिष्ठो विवाहानां पेशाचश्चाष्टमोऽधमः”।<sup>ii</sup>

Marrying a bride in consideration of monetary bargain is denounced as ‘Asura’; marrying after bloodshed or wounding somebody or forcibly kidnapping the bride as “Rakshasa”; and the marriage resulted by ravishing an asleep, intoxicated or unconscious girl was known as ‘Paishachya’. The Gandharva marriage was one resulted by mutual love between the couple before marriage.

Prior and after the composition of Manusmriti certain type of gifts or presents were necessary to the Brahma, Devya, Arch and Asura form of marriage. Clothes and ornaments were gifted to the bridegroom or to his parents, yet in case of Arch and Asura forms some consideration was to be taken from the bridegroom, which could be one or more pair of cows and bullocks in case of Arsh, while the consideration was mostly in monetary terms in case of Asura form of marriage.

As recited in the holy prophetic injunctions of Manu, among the Brahma and Devya forms of marriage the gifts that were to be presented to the bridegroom were of a very nominal character and so they were not worthy of being denounced as dowry. At the most the gifts intended to be made to a bridegroom could be called as “Var-dakshina” symboling the taken of honour and veneration to the bridegroom. The one or more pair of cows or bullocks transferable in Arsh marriage, can although be taken under the present concept of consideration, yet strictly speaking the same were to be taken only for certain religious purposes and, therefore, had no element of an intent to marry for consideration. As regards the Asura form, definitely the same had an element of payment of bride price and getting the bride for consideration. It may be said that in Devya, Brahma and Arsh, the gifts to be made were not by any stretch of imagination compulsory, but totally voluntary, and the payment of price or consideration was always denounced. It shows the dowry of the ancient times that wherever price or consideration was used as a means to marry, the same was not approvable and the marriage resulted on account of payments were worthy of being known as third-rate marriages.

While denouncing the giving of a bride in consideration of a monetary bargain or wealth, Manu has emphatically said that :-

“न कल्यायाः पिता विद्वन्गृह्यमणीयां च्दुल्कं मण्वपि।

गृहणांश्छुल्कं हि लोभेन स्यान्नरोऽपस्य विक्रयी।।”<sup>iii</sup>

The father of the bride must not take any money or wealth in consideration of the bride because one who take such ealth is the seller of his child. Manu has further propounded that even if a parent takes anything for endowing his female child in marriage, he must restore the same back to her.

Therefore it is concluded that the givers of hindu law like Manu and others, never preached for a monetary bargain either to obtain a husband or a wife, and the system of dowry was an offshoot of the perverted degeneration of the custom of endowing gifts at marriages, as developed after the shastric and smritic periods. Dowry is defined differently by the English Dictionaries.

Dowry or dot (Dost Mulieris) was in ancient times applied to that which the wife brings to her husband in marriage, otherwise called maritagium or marriage goods, but these are termed mere property as goods given in marriage and the marriage portion. This word is often confounded with dowry, though it has a different meaning from it (Tomlins Law Dictionary). That which the wife gives to the husband on account of the marriage, and is a sort of donation made with a view to their future maintenance and support.

Dowry continues to be given and taken and considered as a symbol of status; and none expresses any surprise that it continues despite its legal prohibition. In many cases, dowry is not called dowry, but is given as a gift to a daughter when she marries, as a counterpart of the education or inheritance given to a son, while in other cases it is a matter of hard headed negotiations viewed as a kind of quid pro quo for the groom's job and education. In spite of social depolarization against the dowry, it is negotiated, given or taken; and actually the shoe starts pinching against it the moment one's daughter or sister becomes marriageable, but even such persons cannot stop their long cherished desire for getting dowry in the marriages of their sons and brothers. The position is that the giver is murmuring while the taker is silently relishing. Even the persons who make no demand, can often be found expressing that they do not want to demand or coerce for giving, yet they are prepared to take whatever is given pleasantly by the other side and, therefore, unless the desire of pleasant-taking is not stopped the mere preaching cannot give relief.

Dr. Gural Singh has rightly observed that the use of Physical violence against women continues unabated. It is an universal pattern. The wives continue to bear the burnt of physical torture by their husbands. Throughout the world, this is one of the most brutal and explicit expressions of patriarchal domination. All the penal provisions in law and constitutional guarantees in Article 15(3) now prove to be inadequate to check the increasing trends of crime against woman, particularly in dowry offence.

Here, it is apt to discuss the Legislative History of the dowry prevailing in India. Prior to independence, the effort in the direction of controlling dowry evil was made in the then province of Sindh by enacting the Sindh Deti Leti Act, 1935. This was a statute enacted with a view to prohibiting "payments made or agreed to be made as part of the contract of betrothal or marriage and to restrict deti leti in the "province of Sindh". The expression "Payment" was defined to mean a payment by or to a person betrothed or married or by or to a parent or any other relation or guardian of such person made or agreed to be made in connection with or in consequence of, the betrothal or marriage and includes the giving of a gift or present in kind on any festival or auspicious day or on account of the birth of: a child or any ceremony in the families of the parents or relations of bride or bridegroom." Section 3 prohibited such payments. The Act prescribes the amount of payment to be made at different ceremonies or occasions of marriage. Section 8 provided for punishment in violation of the provisions of the Act. Simple imprisonment extending to one month or a fine extending to Rs.1000 was provided.

No other province of pre-independent India enacted a dowry prohibition statute. However before the Dowry Prohibition Act, 1961 some states enacted their own dowry prohibition laws. Among these States are Bihar and Andhra Pradesh.

In Independence India enacted its first statute in 1961, the Dowry Prohibition Act, 1961, but the statute hardly cut any ice.

A Joint Parliamentary Committee on Dowry was constituted which submitted its Report in August 1982. On the basis of the recommendation of the Committee the Act was amended in 1984 (No. 63 of 1984) and again in 1986 (Act 43 of 1986) to provide teeth to the Act. But these teeth have failed to cut much ice, such strong is the iceberg of dowry.

The first two paras of the object and reasons of the amending bill of 1984 may be quoted:

(1) The evil of dowry system has been a matter of serious concern to everyone in view of its ever-increasing and disturbing proportions. The legislation on the subject enacted by parliament, i.e. the Dowry Prohibition Act, 1961, and the far reaching amendments which have been made to the Act by a number of the states during the seventies have not succeeded in containing the evil. As pointed out by the Committee on the Status of Women in India, the educated youth is grossly insensitive to the evil of dowry and unashamedly contributes to its perpetuation. Government has been making various efforts to deal with the problems. In addition to issuing instructions to the State Government and the Union Territories administration with regard to the making of thorough and compulsory investigations into cases of dowry deaths and stepping up anti-dowry publicity. The Government referred the whole matter for consideration by a Joint Committee of both the houses of Parliament. The Committee went into the whole matter in great depth and its proceedings have helped in no small measure in focusing the attention of the public and rousing the consciousness of the public against this evil.

(2) The following observations made by the late Pandit Jawaharlal Nehru which have been quoted by the Committee indicate the role which legislative can play in dealing with evil:

Legislation cannot be itself normally solve deep rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential so that it may give that push and have that educative factor as well as the legal sanctions behind it which help public opinion to be given a certain shape.

The recommendations made by the Joint Committee of the Houses to examine the question of working of the Dowry Prohibition Act, 1961 have been considered keeping in view these observations and after taking into consideration the comments received on the report from the State Governments, Union Territory Administration and different Administrative Ministries of the Union concerned with the matter. One of the important recommendation of the Committee for dealing with cruelty to married woman by the husband or the relatives of the husband on the ground of non-receipt of dowry or insufficient dowry or insufficient dowry has already been given effect to by the Criminal Law (Second Amendment) Act, 1983. This Act amended, inter alia, the Indian Penal Code to include therein section 498 A, a provision for punishment for cruelty to married women and was aimed at dealing with the problem of dowry suicide and dowry death.

Since dowry is considered to be a widespread social evil among Hindus, there is a misconception among some that it applies only to Hindus and does not apply to non-Hindus. The fact of the matter is that it equally applies to Muslims, Parsis, Christians, Jews and to any and every person who performs his marriage in India, and is found guilty of any dowry offence.

The evil of dowry may be rampant among Hindus, but it does not mean that it does not exist among others. The Joint Committee of both the Houses of Parliament has observed: "It is equally prevalent among the Muslims and the Christians. Among the Muslims in many parts, there is a

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custom of giving cash to the bridegroom (popularly known as salami) after the nikah ceremony and of giving clothes and jewellery to the bride by her parents who also bear other expenses of the marriage. The Manglore Christians follow their pre-conversion custom of Kanyadan.

In Kerala, having highest literacy rate along with progressive outlook, prevailing high rate of dowry makes marriages impossible for many Christian girls of large families. This induces them to join nunneries.

Therefore, there is, in fact, no difference these days in the pattern and motives of conspicuous consumption and dowry, either religion wise, region wise or otherwise.”

ENDNOTES:

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<sup>i</sup> Hon’ble K.R. Narayanan Ex-President of India Speech.

<sup>ii</sup> Manusmriti – Chapter-III Slokas 31, 33, 34.

<sup>iii</sup> Manusmriti — Chapter III Slokas 51.