

## THE GAP BETWEEN STATUTE AND SOCIETY: WHY DOWRY PERSISTS SIX DECADES EVEN AFTER ENACTMENT OF THE DOWRY PROHIBITION ACT, 1961

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### ABSTRACT

Dowry, an ancient practice that has been a social and economic factor, is still one of the harshest forms of oppression against women in India. The Dowry Prohibition Act of 1961, although a step towards the eradication of such practices, has not changed the situation seriously; it is either seen openly or it is practiced more secretly, but in both cases, women's rights and dignity are violated. This paper investigates the history, development, and current situation of dowry in Indian society as well as the effectiveness and limitations of the legislation and the Dowry Prohibition Act. It further suggests the ways to reach a more just and equitable social order.

The research issue is to explore the causes for the continuance of the dowry system which is already pronounced illegal and socially disapproved after such a long time. The inquiry considers the cultural, economic, and psychological factors surrounding the dowry and examines the evolution of the dowry from a typical gift-giving ceremony to a complete exploitation. It further looks into the objectives of the Dowry Prohibition Act, the challenges concerning its implementation, and the broader socio-legal context in which it is situated. The paper will draw upon the law as a tool to demonstrate the gap between law and practice as well as the requirement for cultural change that is beyond legal measures in the dynamic social order of India.

The central research issue can be formulated as:

*"How far the Dowry Prohibition Act of 1961 has succeeded in curbing dowry issues and what are the social, cultural and institutional factors that are still preventing the Act from being fully implemented?"*

The study concludes that even though legal restrictions are necessary, the total abolition of dowry practice still needs an integrated approach comprising legal changes, social awareness, gender sensitization, and community responsibility.

**KEY WORDS:** Dowry, Dowry Prohibition Act Of 1961, Society, Stridhan, Women, Section 304B IPC, Patriarchy, Gender Norms, Anti-Dowry Laws, Persistence Of Dowry

### INTRODUCTION

Dowry, a topic that brings in its wake both great historical importance and modern-day problems, continues to be one of the most enduring social evils in India. It signifies the

giving away of property, valuables or money from the bride's family to the groom or his family at the wedding. Although it was first regarded as a woman's part of the inheritance, dowry has become an involuntary and cruel

transaction that often assesses a woman's value and her chances of getting married. The practice has been declared illegal more than sixty years ago with the Dowry Prohibition Act of 1961, yet it still shows up in various forms throughout the society no matter what their caste, creed or financial standing is, thus causing discrimination and sometimes leading to extreme measures like harassment, violence, or even murder.<sup>114</sup>

Dowry is not only a matter of gifting or receiving but also a mirror of the conditions surrounding the marriage—the patriarchal system, the social superstitions, and the economic inequality. For the majority of families marriage talks are mainly about the power the bride brings in, and this could easily lead to a demand for more or a bride's family being humiliated or financially ruined. The National Crime Records Bureau mentions that every year, a number of deaths related to dowry are reported which shows that there is a continuous connection between dowry and violence against women<sup>115</sup>. The unresolved issue of dowry has always raised the question of the ineffectiveness of the existing laws and the dubiousness of the society that abets such practices.

The Dowry Prohibition Act, 1961 was taken into consideration to tackle the issue of dowry. Its main aim was to turn into a crime the giving, taking, or demanding of dowry, as well as to develop a legal dissuasion against the carrying out of such actions. The Act referred to dowry as *"any property or valuable security given or agreed to be given directly or indirectly by one party to a marriage to the other party or any other person"*<sup>116</sup>. Besides, after the introduction of the prohibitive legislation, there was a dramatic change in the societal view towards dowries, as the penalties were imposed on the people using the dowry system thereby making the practice cognizable and non-bailable in later amendments.

Nonetheless, the preemptive legal measures can never be the sole reason for the disappearance of social practices that are deeply ingrained. The issue with anti-dowry laws is that even where there are strong legal provisions, their application still faces problems, including society's non-acknowledgment and lack of proof, the misuse of legal provisions, and the unwillingness to change. The Dowry Prohibition Act, though a significant gender justice law in India, is one of the oldest legislations with still untapped potential. The gap between the legal text and social behavior demonstrates the challenge of regulating morality and tradition in a pluralistic society.

The paper takes a socio-legal approach to the issue of dowry and examines it from different angles. It digs into its past, the development of the law and the diverse reasons for its still existing practice. The author maintains that the Dowry Prohibition Act is the primary weapon in the war against gender injustice, but its effect is not felt where culture is not reformed concurrently. The various aspects of the issue surrounding dowry must be examined through the lens of gender inequality and the social expectations connected with the institution of marriage, rather than regarding the dowry as a mere legal problem.

## 1. UNDERSTANDING DOWRY AND ITS HISTORICAL BACKGROUND

Dowry, a contentious social institution, is a long-standing practice, in fact, it has lasted for centuries, but its significance and function have gradually changed. The Hindu, Greek, and Roman marriages of the first century are thought to be the earliest examples of the dowry practice, where the daughters were gifted a portion of the father's estate at the time of their marriage as a pre-death inheritance.

### 1.1 The Ancient Context: Dowry as Stridhan

During Vedic and post-Vedic eras, matrimony was regarded as divine unions rather than contracts. An exchange of gifts was a customary act, mostly mutual, and aimed at reinforcing ties between families instead of

<sup>114</sup> Dowry Prohibition Act, 1961, Preamble

<sup>115</sup> NCRB Report, 2023

<sup>116</sup> Dowry Prohibition Act, 1961, Section 2

being involved in economic transactions. The gifts that were given to a woman by her family and relatives—her jewelry, household articles, and other possessions—were collectively known as stridhan, which literally translates to “woman’s wealth.” This property was intended for her sole use and remained her right, even after marriage.<sup>117</sup> It acted as a type of social insurance, especially for widows, giving them a measure of economic independence in a patriarchal society where women were often deprived of property rights.

On the other hand, the meaning of dowry began to change as the society moved from the Vedic to the medieval period. Initially, it was a voluntary gift but gradually became a social obligation. The richer families started to offer bigger dowries to have the alliance with the renowned families, and eventually, the social prestige connected with the size of dowry began to alter its original function.<sup>118</sup>

## 1.2 Medieval India: The Transformation into a Transaction

A rede of which the dowry system was a major part was turned upside down during the medieval period in India because of a number of socio-economic and political factors. Society under feudal rule became increasingly stratified and marriages lost their original purpose of uniting two families; instead they became a way of displaying wealth, power, and social status. The kanyadaan ritual where a daughter was given away to the groom’s family was usually accompanied by material gifts that started to increase in size.<sup>119</sup> Dowry in this era became less of forethought for the woman’s future and more of a symbolic gift to the groom’s family for satisfying their demands or expectations.

The coming of Islamic rule in India not only opened up new cultural interactions but also intensified the existing patriarchal structures

that kept women out of property inheritance. Daughters being usually left out from direct inheritance meant that dowry was the only way they could receive a portion of the family estate. This, however, was not for their empowerment most of the time. On the contrary, it perpetuated the belief that women were a burden financially and their marriage had to be “compensated” through material wealth.<sup>120</sup>

## 1.4 Post-Independence India: From Tradition to Problem

The dowry system witnessed major transformations in India after the British Colonial Rule ended in 1947. The factors such as the economy going through modernization, along with the upsurge of consumerism, and the emergence of the middle class contributed to the commercial exploitation of marriage. The custom, which had been losing its symbolic aspect, gradually, through its formal demand, became one. In both urban and rural India the dowry was determined by the groom’s qualifications, salary, or government job—thereby transforming married life into a relationship with price tags that differed across.<sup>121</sup>

The 1950s and 1960s recorded a very slow but steady rise in the number of cases where women were killed, tortured, and harassed on account of dowries. Women’s organizations, public reformers, and politicians who were pressing for changing the law brought the issue to the national spotlight. They maintained that only traditional morality could not suffocate such an evil practice. The Dowry Prohibition Act of 1961, which was a response by Indian Parliament to the escalating social crisis, was one of the most significant laws that banned the giving, taking, or demanding of dowry, and changed the legal view of marriage transactions.<sup>122</sup>

<sup>117</sup> Manusmriti, Chapter IX, Verse 194

<sup>118</sup> Sharma, R. 1958. *Social Changes in Ancient India*. Delhi: Arya Press

<sup>119</sup> Singh, K. 1966. *A History of Indian Marriage Practices*. New Delhi: University Press

<sup>120</sup> Dowry Prohibition Act, 1961, Statement of Objects and Reasons

<sup>121</sup> Nair, P. 1980. *Dowry and the Modern Indian Marriage System*. Calcutta: National Social Institute

<sup>122</sup> Dowry Prohibition Act, 1961, Preamble

## 2. THE DOWRY PROHIBITION ACT, 1961 – PROVISIONS AND LEGISLATIVE INTENT

The Dowry Prohibition Act (DPA), 1961, is a crucial piece of legislation in India that is designed to eliminate the dowry system which has been a tradition for a long time. Statutory deterrence against the practice was the main reason why the Act was passed by the Indian Parliament which also sought to punish both givers and receivers of dowries as offenders.

### 2.1 Key Features of the Act

The Act is almost like a summary sentence-wise, imposing only a few sections that deal with the action that is defined, forbidden, and punished.

- ❖ **Definition of Dowry (Section 2):** The Act states that "dowry" is any amount of property or any valuable thing that one of the spouses either directly or indirectly passes on or agrees to give to the other, or that the parents of either spouse give to any person, in connection with marriage. The Act, however, exempts gifts made without any expectation, provided they are of a customary nature and their value does not exceed the financial status of the giver, from the definition of dowry.
- ❖ **Penalty for Giving or Taking Dowry (Section 3):** This section represents the principal penal clause. It states that the individual involved in dowry transactions, whether giving or receiving, or aiding in the process, will face a minimum sentence of five years, along with an obligation to pay a fine, which is to be either fifteen thousand rupees or the value of the dowry that is being regarded, depending on which amount is heavier.
- ❖ **Penalty for Demanding Dowry (Section 4):** The code declares the demand as a crime and thus treats the offender as such if he/she seeks to obtain dowry by any means from the parents or guardians of the bride or groom. The penalty consists of a prison sentence

ranging from six months to two years and a fine of up to ten thousand rupees.

- ❖ **Agreement for Dowry to be Void (Section 5):** It indicates that any agreement related to the giving or taking of dowry is null and void and cannot be enforced in court. This provision guarantees that even though the parties have formally agreed on a dowry payment, the agreement cannot be enforced in law.
- ❖ **Dowry to Benefit the Wife (Section 6):** This provision specifies the disposition of any dowry received. It provides that in a situation where a dowry is given to a person other than the woman who is the recipient of the dowry, then that person is responsible to give it to her within the period of three months from the date of marriage or in case of receipt the later date. If the person fails to do so, he/she will be subjected to penalties. The main intention of this section is to provide financial security to the bride through the property received.

### 2.2 Legislative Intent and Objectives

The main aim of the Dowry Prohibition Act, 1961 was to wipe off the hotel practice of dowry completely through legal means and to treat it as cognizable and non-bailable offense (yet amendments were later made).

- ❖ **Legislation as a Tool for Social Reform:** The Act is a legislative way out for a long-standing social problem. The intention was to change the behavior of society with the help of law and to send out a very strong and clear message that the state would not accept the marriage market anymore.
- ❖ **Protection of Women:** The law was primarily intended as a protective measure for women against the pressures, exploitations, and violences (including 'dowry deaths') that accompany dowry requests. So through criminalizing the demand and ensuring the property transferred is for the benefit of the wife, the legislature sought to keep

the bride's dignity and economic safety during the marriage.

- ❖ **Creating a Deterrent:** The strict penalties, mainly the obligatory minimum imprisonment and hefty fines, aimed to be a great deterrent not only for the offenders (both the takers and the demanders) but also for the victims who would give in (the givers).

### 3. IMPLEMENTATION, CHALLENGES, AND SOCIETAL IMPACT

The Dowry Prohibition Act (DPA), 1961, with its lofty legislative ambition and main goal, nevertheless has been a huge hinder and problem on its execution and consequently, one of the main factors that keep dowry continuing. The law and society gap, in enforcement of this law, is the biggest and this leads to a series of complicated issues along with an adverse societal impact that is very far-reaching.

#### 3.1 Issues Related to Implementation and Enforcement

The inability to eliminate dowry is the result of the coming together of various system-related, legal, and socio-cultural handicaps:

- ❖ **Underreporting and Acquiescence:** The most significant challenge is crime reporting, which is extremely difficult to do because of its very nature. The dowry payments are often presented as "gifts" or are based on mutual (but coerced) agreement so the victim's side frequently chooses not to file a complaint. There is fear among the victims of a situation where:
  - The stigma attached to divorce along with the shame that comes with it becomes unbearable.
  - The good terms with the husband's family are lost.
  - Separation or divorce's social cost, which is generally borne by women, makes them financially vulnerable since they are usually left without any financial support.
- ❖ **Weak Definition and Ambiguity:** The DPA's dowry definition in Section 2 allows "things

given without any demand being made" to be exempted. This exception is very often used to present dowry as a voluntary gift, thus making it hard to convict. One of the major challenges to the prosecution is the proving of the existence of a demand in a private transaction, which requires a lot of evidence.

- ❖ **Lack of Dedicated Enforcement Machinery:**

The non-existence of a robust, dedicated enforcement agency for the DPA is its most significant drawback among social laws. Police usually assume the responsibility, but they may not have the requisite sensitivity or specialized training for these socio-legal cases. Dowry Prohibition Officers (DPOs) have been appointed in some areas, but their presence has ended up being poorly implemented and their powers limited.

- ❖ **Low Conviction Rate and Judicial Backlog:**

It is the difficulty of securing evidence that victims often retract their testimony that leads to a low rate of convictions. This situation coupled with an over burdened judicial system results in lengthy drawn-out trials that discourage victims from coming forward.

- ❖ **Misuse of Complementary Laws (IPC 498A):**

Section 498A of the Indian Penal Code (IPC), which criminalizes cruelty to a married woman (including harassment for dowry), has definitely been a powerful tool but also criticized for misuse. Accusations of false complaints, though often exaggerated, have caused a skeptical atmosphere sometimes leading to courts dealing with genuine cases with undue rigor.

#### 3.2 Societal and Economic Impact:

The dowry system, which continues to prevail even after the enforcement of the 1961 Act, has a severe and mournful impact on the Indian social structure; especially on the female population.

- ❖ **Gender Discrimination and Female Infanticide/Feticide:** The dowry system creates a financial burden for the parents which leads them to consider girl children

as worthless. In order to escape the costs of abortion and infertility, they resort to sex-selective abortions and female feticide thus heavily skewing the sex ratio in India.

- ❖ **Dowry Deaths and Violence:** One outstanding among others is the tremendous increase in the number of dowry-related murders or deaths disguised as suicides and accidents (IPC Section 304B addresses this). In addition to physical violence, the tortures and harassments inflicted on the victim include mental and financial aspects. These murders testify to the law's inadequacy in protecting women from being killed in their husbands' homes.
- ❖ **Economic Burden on the Daughter's Family:** For the lower-middle and low-income families, the preparation of the dowry is nothing less than a loan, selling family land, or consuming a lifetime's savings leaving the family in the grip of poverty and economic stress.
- ❖ **Corruption's Acceptability:** The dowry practice makes the demand and gift bribery inside the family seem to be normal thereby indirectly helping the overcoming corruption in the society at large through the acceptance of such behavior.

In short, the DPA of 1961 continues to be a largely "toothless tiger" whose intentions are good but is crippled by deeply rooted social customs, ineffective law enforcement, and the victim's own insecure position in the patriarchal system.

#### 4. CURRENT SCENARIO, REFORMS, AND FUTURE SCOPE

The enduring ineffectiveness of the Dowry Prohibition Act (DPA) of 1961 and related laws to completely get rid of the practice of dowry demands a thorough scrutiny not only of the present condition but also of the changes needed to close the fissure existing between the law and people's day-to-day practices. The future of anti-dowry law is in raising the

emphasis from just retribution to preventive social engineering and empowering people economically.

Today, six decades since the legislation was enacted, the idea of dowry has not disappeared; instead, it has changed and has come to be subtler.

- **"Gift Culture" and Materialism:** The practice of dowry has practically been cleansed and transformed into a "gift culture" or an unexpressed desire for material goods. Nowadays, the transactions are very often hidden behind luxurious weddings, extravagant designer outfits, cars, and homes gifted as if they were voluntary gifts to the couple, and thus, it becomes very difficult to demonstrate a direct "demand" under the DPA.

The dowry, which used to be a strong economic union between families, has now been viewed as a matter of prestige and social status, especially by the educated and wealthy, therefore the professionalization of dowry has been associated with the changing values and expectations of society. Furthermore, people are beginning to think of marriage only in terms of money. Hence, the economic rationale has continued to promote the practice of using marriage as a business outlet.

- **Ambivalence in Judicial Interpretation:** The courts have been quite firm against dowry demands on the whole, but still, there is this ambivalence in the justice system regarding the distinction made by law between the genuine gifts (which are not subject to Section 2) and dowry that is disguised. Such ambiguity is frequently advantageous to the accused, thus revealing the legislative weakness in specifying the needed intent.
- **Strengthening the Definition of Dowry:** The definition provided in Section 2 should be elaborated to the full extent and covering any transfer of property or security with value given as a reason for the marriage or even as a condition to it, with no regard to

the proof of the existence of a direct “demand”. The limitation for “customary gifts” should be very strictly capped with respect to the income of the giver or a fixed monetary limit so that there is no possibility of exploitation.

- **Mandatory Registration of Gifts:** The introduction of a very rigid stipulation for the obligatory registration of all marriage-related gifts with the Dowry Prohibition Officer (DPO) or a state authority assigned for this purpose, along with an affidavit confirming that no demand was made, could ensure higher transparency and greater accountability. Not registering would mean that the claim of the transfer being a “gift” is annulled.
- **Empowerment of Dowry Prohibition Officers (DPOs):** It is important that the DPO system is established in all the districts with sufficient staff, training, and clearly stated powers, which also include the right to conduct investigations, confiscate documents, and file complaints on their own.
- **Presumption of Dowry in Cases of Violence:** Although it is already present in IPC Section 304B, this issue needs to be given more importance. In cases of unnatural death, violence or harassment within the first few years of marriage, the defense should be required to prove that the violence was not connected to dowry demands; thus, the burden of proof will now be on the defense.

## CONCLUSION

The continued practice of dowry in India, 60 years after the passing of the Dowry Prohibition Act (DPA), 1961, clearly shows how much the gap between law and reality still is. Though the law was meant to protect women’s rights by criminalizing both giving and taking dowry, the law has always been undermined by entrenched socio-cultural beliefs, economic fears, and poor law enforcement.

The DPA, which had straightforward provisions punishing the exchange and demand for dowry, did not consider the practice’s secretive nature.

The dowry was not eliminated; it only changed, turning into a “gift culture” on the surface and later becoming linked to the groom’s economic status more than ever. The main problems—specifically, the unclear definition of dowry, social stigma leading to widespread underreporting, and the absence of strong, specialist enforcement—have made the Act a “toothless tiger” and rendered it impotent. This impotence has tragic repercussions: it contributes to gender discrimination, causes economic hardship for the bride’s family, and, most chillingly, results in the continuance of violence and dowry-related murders. This long-standing divide can be closed only by implementing a multi-faceted plan which excludes solely punitive measures. The statutes must aim at conjuring a strict, clear-cut system wherein gifts linked to marriages will be mandatorily registered and the dowry will be defined in a robust manner thus, making it harder to exploit. Nevertheless, the most important factor is socio-economic empowerment for women. If women are granted equal rights when it comes to education, jobs, and inheriting property, the society will be able to break down the economic setup that prompts dowry and also change the girl child’s image from that of a financial liability to that of a peer economically independent citizen. The situation of dusk will keep prevailing until the law is strictly enforced and the social fabric itself disallows the commercialization of marriage.