
DOWRY- AS A MATRIMONIAL OFFENCE

Mrs. Reshma, M.A., LLB, M.Phil (Research Scholar) Asst.Professor, of Sociology,
Government First Grade College, Shimoga, Shimoga District, Karnataka State.

Guide: Dr. A. Ramegowda, Professor, Dept of PG Studies and Research in Sociology
Kuvempu University Gnyana Sahayadri Shankarghatta

To awaken the people it is the woman who must be awakened. Once she is on the move the family moves, the village moves, the nation moves". "Jawaharlal Nehru"



Abstract:

India venerates women as goddesses and mother. Rivers and the nations are named as women. There have been poets and great men in India who have crusaded that women should be treated on par with men. Right from politics down to the primary level, attempts have been made to debate the status of women, but due to cultural, educational, religious, economic and social reasons, women have become second rate citizens.

There is a notion in the society that men are superior and women are inferior. As a result, the society tries and is trying to oppress women at various levels and in different ways. Gandhiji has, said," Our good day of national awareness is the day women attain awareness. Any family, society or nation that does not respect women will perish.

One among the practices that oppress women in India is dowry in the beginning it was the men who gave dowry (bride price) to the women. This custom is in vogue in some of the Gulf countries even today. Later, the parents of the bride started giving dowry to the men. Today the system of dowry and its practice have become a serious social problem.

Key words: Women, Marriage, Practice, Socio-cultural, Dowry, Offences, oppression, Awareness.

INTRODUCTION: This article is a theoretical study based on references of several articles prevailing on situation at the ground level in women's role in eradicating social evils and participating in developmental activities was selected as it represents the real India.

Gender- based inequality is an age-old phenomenon. Increasing concern and wider publicity given to the issue of gender inequity in recent years has, no doubt, brought some awareness among the people, but has not so far given an equal status to women in the society. Constitutional guarantee of equality has remained a theoretical concept and hardly the Indian women are allowed to rights and opportunities bestowed upon them. In day to day life women are being treated unequally in many cases simply because they are women, giving them a lower status. Violence against women is largely a manifestation of their lower status in the society.

Violence and atrocities against women is not a new thing. Perhaps it is as old as mankind and has existed in all forms of society. But while such atrocities were rarely discussed, in the present day society, they occupy a major area of debate. Its growing dimension is creating serious problems for the society. The newspaper's reporting about the crime against women like bride burning, rape, sexual abuse of women under false promise of marriage, harassment to women at work place does not seem to create a fear of such crimes, but obviously it causes mental shock for a sensible person. In spite of all that is being said and done at non government as well as government level, the fact remains that the paths of women are still best with several difficulties. The dowry menace in the society has always perturbed me. It has always hurt me to think about the mental condition of the poor parents who pay for their simplicity and honesty in terms of ill treatment and mental agony to their daughters in the in-law's houses. The plight of poor women who are unable to digest the torture, yet not able to raise their voice against it, has always pained me. I feel obsessed for the women placed in double jeopardy, firstly by the offenders for committing crime against them and secondly the society which makes the women responsible for all that happen because I have seen when I was working in "Santhwana Women help line" as family counsellor every day a women with a new curse but the problem may be same nature may be different that is why I thought of bringing my experience in this form and as a researcher in this field when I met the investigation officers and they have also shared their experiences so the paper presents the practical feelings and experiences in the theoretical form.

DOWRY PROBLEMS:

Solemnisation of marriage is a social occasion. It signifies the creation of a bond between two individuals as also between two families. Two major types of transfer of material wealth take place at the time of marriage: in one the wealth travels in the opposite direction of the bride and in another it travels in the same direction of the bride. The former is called Bride Price and the later Dowry.

Max Radin has defined dowry as the property, which a man receives from his wife or her family at the time of his marriage. Dowry may be broadly defined as gifts and valuables received in marriage by the bride, the bridegroom and his relatives. The amount of dowry is regulated by factors like boy's service and salary, social and economic status of the girl's father, the social prestige of the boy's family, educational qualifications of the girl and the boy, girl's working and her salary, girl's and boy's beauty and features, future prospects of economic security, size and the composition of the girl's and boy's family and factors like that. What is significant is that girl's parents give her money and gifts not only at the time of her wedding but they continue to give gifts to her husband's family throughout the life. McKim Marriott holds that the feeling behind this is that one's daughter and sister at marriage become the helpless possession of an alien kinship group and to secure her good treatment, lavish hospitality must be offered to her in-laws from time to time.

One of the causes of dowry is the desire and aspiration of every parent to marry his daughter in a higher and a rich family to keep up or to add to his prestige and also to prove comforts and security to the daughter. The high marriage- market values of the boys belonging to rich and high social status families have swelled the amount of dowry.

Other cause of the existence of dowry is that giving dowry is a social custom and it is very difficult to change customs all of a sudden. The feeling is that practicing customs generates and strengthens solidarity and cohesiveness among people. Many people give and take dowry only because their parents and ancestors had been practicing it. Custom has stereotyped the old dowry system and till some rebellious youth muster courage to abolish it and girls resist social pressures to give it, people will stick to it.

Amongst Hindus, marriage in the same caste and sub-caste has been prescribed by the social and religious practices with the result that choice of selecting a mate is always restricted. This results in the paucity of young boys who have high salaried jobs or promising careers in the profession. They become scarce commodities and their parents demand huge amount of

money from the girl's parents to accept her as their daughter-in-law, as if girls and chattel for which the bargain has to be made. Nevertheless, their scarcity is exacerbated and aggravated by the custom of marriage in the same caste.

A few people give more dowries just to exhibit their high social and economic status. Jains and Rajputs, for example, spend lakhs of rupees in the marriage of their daughters just to show their high status or keep their prestige in the society even if they have to borrow money. The most important cause of accepting dowry by the grooms' parents is that they have to give dowry to their daughters and sisters. Naturally, they look to the dowry of their sons to meet their obligations in finding husbands for their daughters. For instance, an individual who may be against the dowry system is compelled to accept fifty to sixty thousand rupees in cash in dowry only because he has to spend an equal amount in his sister's or daughter's marriage. The vicious circle starts and the amount of dowry goes on increasing till it assumes a scandalous proportion.

SOCIAL DIMENSIONS OF DOWRY MENACE

The social dimensions of dowry are far and wide. It not only affects adversely the marital relationship and social status of women, but increasing dowry demand, at times, even forces girls of marriageable age to commit suicide out of sheer frustration or for mitigating the suffering and mental tension of their parents. Again, many girls are compelled to remain unmarried because their parents cannot meet the huge dowry demands of the prospective bridegroom.

It hardly needs to be mentioned that the menace of dowry is essentially an outcome of the rapid industrialization and commercialization which have changed the standard of living of the people and resulted into disintegration of the family system. With the unprecedented growth in population many youths are left unemployed thereby causing unequal distribution of money and imbalances in social status. The consequential dearth of well-settled or earning bridegrooms has, to some extent, been responsible for dowry to perpetuate as social custom in the Indian society. The spread of education and drastic anti-dowry laws have not been able to contain the menace of dowry from extending its tentacles even to those castes and communities which were traditionally known to be averse to dowry system. The quantum and magnitude of dowry, however, varies according to the social status, profession and future prospects of the

bridegroom and the sociocultural background of the families of the spouses.

There is yet another reason for dowry being taken as a compensatory measure. The parents who were required to give dowry for marrying their daughter tend to accept an equal amount or perhaps more, at the time of their son's marriage.

Thus, those who are compelled to give dowry are bound to feel aggrieved and think that there is nothing wrong if they accept it when it is their turn.

Dowry is primarily an evil associated with marriages in Hindu society, but the practice has made inroads in many sections of the Muslim and the Christian communities. The menace has also permeated into the Sikh community, but not to the extent as among the middle and upper class Hindus. Despite legal restraints, dowry continues to be a basic component of marriage system although its form, magnitude and the associated atrocities on the women vary according to the customary norms of the different communities.

ANTI-DOWRY LAWS

The unabated miseries and injustices caused to the young brides and their parents prompted our Parliament to bring an anti-dowry legislation in the form of Dowry Prohibition Act, 1961. Although some states already had their state laws enforcing legal restrictions on dowry, a central legislation, uniformly applicable throughout the country, was much needed to curb this menace.

Section 2 of the Act defines 'dowry' 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 at or before or any time after the marriage in connection with the marriage of the said parties but does not include dower or mehar in the case of persons to whom the Muslim Personal Law (Shariat) applies.

The definition of dowry as given in the Act is quite comprehensive and prohibits not only giving and taking of dowry but also tries to stamp out the practice of demanding dowry in any form either before or after marriage. It, however, permits customary presents to bride or bridegroom but they have to be entered in a list maintained in accordance with the rules made under the Act.

Section 4 of the Act prohibits and penalizes demand of dowry as consideration for a marriage between the parties thereto. This provision, however, created some doubts as to whether the articles or presents given after marriage, unless it was agreed at the time of marriage, would constitute consideration for marriage or not. The controversy has now been settled by the Supreme Court in its historic decision in L.V. Jadhav Vs. Shankar Rao, wherein the term 'dowry' used in section 4 has been interpreted to mean any property or valuable security if consented to be given on the demand made. The Apex Court further clarified that there is no warrant for taking the view that the initial demand for giving of property or valuable security would not constitute an offence of dowry and that an offence would take place only when the demand was made again after the party to whom demand was made agreed to comply with it.

A new section 8-A has been inserted in the Act by the Dowry Prohibition (Amendment) Act, 1986 which has shifted the burden of proof on the accused in a dowry case to prove that he did not commit the offence u/s 3 or 4 of the Act. In other words, where a person is prosecuted for taking or abetting the taking of any dowry u/s 3, or the demanding of dowry u/s 4, the burden of proving that he had not committed the offence under these sections shall lie on him.

The Act also provides for setting up of Family Courts for the trial of dowry cases and also for restoration of dowry and stridhan property to the woman in connection of whose marriage it was given. Thus section 6 of the Act provides that if any person other than the bride has received the dowry, it should be transferred to her within three months of the marriage and in case of a minor bride, within three months after she has attained the age of 18 years. A person who denies a woman her dowry-property, shall be guilty of the offence of criminal breach of trust u/s 405/406 of the Indian Penal Code. The Supreme Court, in Prabha Rani Vs. Suraj Kumar categorically observed that stridhan property of a married woman, even if it is placed in the custody of her husband or in-laws, they would be deemed to be trustees and, therefore, are bound to return the same when demanded by her. With a view to avoiding any likely future dispute regarding stridhan property, it is provided that the presents made at the time of marriage should be entered in the list to be maintained in accordance with the rules made under the Dowry Act.

The working of the Dowry Prohibition Act over the years has shown that the main difficulty in the effective implementation of the Act is the lack of proper enforcement machinery, besides active co-operation of the appointment of Dowry Prohibition Officers. Consequently, a new section 8-B was inserted by the Dowry Prohibition (Amendment) Act, 1986, providing that the State governments may appoint such officers as they deem fit and specify their areas, powers and functions. The State Government is also empowered to appoint an advisory Board consisting of not more than five social welfare workers including at least two women, from the area in respect of which such officers exercise jurisdiction.

JUDICIAL TREND:

There has been a plethora of judicial pronouncements on dowry cases ever since the enactment of the dowry prohibition law. But even the drastic changes introduced by the amending Acts have not been able to contain this menace; on the contrary, it is on a constant rise. Expressing its concern Premchand observed as under:

"Degradation of society due to pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husbands and their parents and relatives, resulting in an alarming number of suicidal and dowry deaths by women, has shocked the legislative conscience."

In this case, the husband persistently demanded money from his wife and quarreled with her everyday over it. Reacting adversely, the wife said that she would prefer death to that sort of life. The husband, thereupon, responded by saying that he would feel relieved if she died. The wife, thereafter, set herself afire. The Supreme Court held the husband guilty of instigating his wife to commit suicide.

It must be stated that the mental torture caused to the wife due to maltreatment for bringing less dowry would amount to cruelty within the meaning of the newly created section 498-A I.P.C. even if the girl does not commit suicide.

An overall view of dowry violence and torture suggests that socio-psychological factors and suffocating surroundings of young wives are the main causes of this malady. In case of bride burning, the defence story generally tries to establish

death due to fire accident destroying all the possible clues of deliberate burning. Therefore, there is need for an expeditious investigation in such cases within the frameworks of the amended provisions of the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act. The law has got to be augmented and geared up to combat the evil of dowry to prevent further degradation of the society.

METHODOLOGY

STATEMENT OF THE PROBLEM:-The social evil of dowry is deep rooted in our society. The offences of dowry, dowry-death, dowry-murders, dowry-suicides, demand of dowry etc. are the heinous crimes committed against the women. The researcher has selected the topic “**DOWRY- AS A MATRIMONIAL OFFENCE**” with the object of making an in depth study of the problem of dowry in general and an empirical study of dowry related offences in particular. A modest attempt is made to analyze critically the new trends set by the judicial activism in liberating women from the onslaughts of men.

The specific objectives of the study are as follows:-

- To study and analyze how the concept of dowry changed with the passage of time.
- To find out the causes for the acceptance of such a cruel practice by the society.
- To sociologically analyze whether there is possibility of misuse of the provisions relating to dowry.

HYPOTHESIS:-

The following hypotheses are formulated for the purpose of the study:-

- The vicious circle that focus many to accept dowry.
- Every parents desire his/her daughter to be married into the highest social group to keep up or to add to his/her prestige.
- Higher the level of education higher the demand of dowry, lower the education lesser the price of dowry, it has become the status symbol.

CONCLUSION:

Ironically, dowry demands have spurred the rate of divorce petitions and contributed to an irretrievable breakdown of marriages, leaving women to suffer badly. In fact, the very sanctity of marriage has been thrown to winds and it has

now assumed the form of a commercial bargaining. The dowry menace has also contributed to sex delinquency to some extent, as many girls are compelled to lead a promiscuous life just to earn enough for meeting dowry expenses of their marriage. In recent years, it has been seen that not only brides but even the teenage girls, knowing full well that their parents will not be able to arrange dowry, are drawn to commit suicide out of sheer frustration and desperation.

The problem of dowry is associated with the institution of marriage where the security and the life of a girl for the rest of her life is involved. It would, therefore, be expedient that dowry-related crimes, excepting dowry deaths, and bride-burning, should be tried by Family Courts which provide a more congenial atmosphere for both parties to settle their differences amicably. It may also be suggested that besides punishing the erring husband or his relative, as the case may be, with a term of imprisonment, he should be deprived of certain civic rights such as disqualifying him from holding any public office or contesting election etc. That apart, his name should be widely publicized in local newspapers and the amount of fine imposed on him should be equivalent to the value of dowry property taken or demanded by him.

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