



The dowry prohibition ACT in India: A critical analysis

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Abstract

The Dowry Prohibition Act, enacted in India in 1961, aimed to eradicate the social evil of dowry, which has persisted for centuries. Despite legal provisions, dowry-related offences continue to occur, reflecting deep-rooted social, economic, and institutional challenges. This critical analysis examines the strengths and weaknesses of the Dowry Prohibition Act, highlighting its limited effectiveness in addressing the multifaceted nature of dowry harassment and violence. Drawing on historical context, legal frameworks, and recent cases, the analysis explores the intersecting factors perpetuating dowry, including gender inequality, economic pressures, and institutional loopholes. Spread of education so far has failed to decrease the instances of dowry given, taken or demand made and incidental crimes like dowry death (section 304B), and cruelty (498A, IPC) are occurring at the rate more frequently than normal. This research article seeks to furnish suggestions for the problems in light of recommendations made by the National Women Commission and the day-to-day obstacles that come with the implementation of this Act. This paper emphasizes the need for holistic solutions, encompassing legal reforms, societal interventions, and support systems for victims, to effectively combat the pervasive issue of dowry and ensure the safety and dignity of women in India.

Keywords: Dowry, Prohibition, offence, legislation, punishments, etc

Introduction

In our society, the social evil of dowries is well ingrained. The horrible crimes that are faithful to the women are dowry-related offences, such as dowry death, dowry murder, dowry suicides, and dowry order offences. All societies rely on women to convey the social mores and human situations of bygone eras. Women pay a heavy price for their maturity from conception to death, with very little measures done to earn their respect from others. Discrimination begins with the birth of a woman. The greatest gift that God has given humanity is women. She can determine what is disagreeable and what is good and wrong. Women bear children; they are mothers and better halves; they take care of the cooking, wending, edging, and washing. They take care of a man and are small to gentleman authority; they are largely disqualified from far above-the-ground situation occupations and positions of his status in the family. These generalizations apply, to some amount to almost every observed human society. Undoubtedly the conflict for crime equality has been one of the important worries of the women's movement all over the world. In India, on account of the drawn-out lower back, ladies have been considered as the broken segment of the society and they were disregarded for centuries. At some stage in the country, there is a wide conflict for Independence. Our forefather Gandhiji also gave an opinion about the independence of women and said - "I am uncompromising inside the be counted of women's rights. The distinction in sex and physical shape denotes no distinction in reputation.

The Dowry Prohibition Act, enacted in India in 1961, aimed to eradicate the social evil of dowry, which had been prevalent for centuries. Despite its noble intentions, the Act has faced numerous challenges and criticisms over the years. This article critically examines the Dowry Prohibition Act, highlighting its strengths, weaknesses, and the ongoing debate surrounding its effectiveness.

Historical context

Dowry, a centuries-old practice in India, has deep-rooted social and cultural significance. It is a payment or gift given by the bride's family to the groom's family as a precondition for marriage. Over time, dowry has evolved into a pervasive and exploitative custom, leading to various forms of harassment, violence, and even the death of brides who fail to meet dowry demands.

Concept of dowry

1. Dowry or Dahej is the price in coins or/and type using the bride's family members to the bridegroom's circle of relations along with the freely giving of the bride (known as Kanyadaan) in Indian marriage. Kanyadanam is a critical part of Hindu conjugal rites. Kanya means daughter, and the Dana technique is present.
2. A dowry (also called trousseau) is the cash, items, or property that a woman brings to her husband at the time of marriage. It contrast with Bride value is paid to the bride's parents, and dower, that is possessions established at the bride herself by the groom on the time of marriage. The same lifestyle may arise at the same time exercised by both dowry and bride rate. Dowry is an historic custom, and its existence can also properly predate information of it.
3. Dowry (Dahej/Hunda) as all of us recognize is paid in cash or type by way of the bride's circle of relatives to the groom's circle of relatives in conjunction with the giving away of the bride (Kanya-dana). The ritual of Kanya-dana is a vital thing in Hindu marital rites. Kanya=daughter, Dana=present^[1].

Dowry tool in Indian Marriages may be called the economic thing of the wedding. The practice of giving dowry curved into very not unusual amongst every person of all international locations. A woman receives all the home

utensils that are important to the installation a own family. Dowry devices in India became widespread because of the Vedic length. In Epic period gifts from parents, brothers and relatives and relatives were known as women's property i.e. stridhan. Problem is not any greater restricted to 1 or 2 states or north Indian states but win roots in the soil of Southern in addition to eastern states too. The main problem is that it is made to all sections, lessons, castes, societies and communities. It accepted even to tribal societies known for ancient equality and gender equality and to Muslim community too. Strong legislation, legal guidelines and ladies's actions, every try and face up to it has been dissatisfied by the extensive social authorize accorded to this unlawful practice.

General law (Indian Penal code, 1860)

304B. Dowry Death- (1). Where the death of a woman is caused by any burn or bodily injury or occurs otherwise then under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

(2). Whoever commit Dowry death shall be punished with imprisonment for a term which shall no be less than seven years but which may extended to imprisonment for life ^[2]. The offence of dowry death in Section 304B, IPC does not fall into the categories of the offences for which death penalty has been provided in the Penal Code. Dowry death is different from the offence of murder. The death of a bride may fall under both the categories of offences, namely, murder and dowry death, in which case, a death sentence may be awarded for committing the offence of murder in appropriate cases depending upon the facts and circumstances of each case ^[3].

Causing miscarriage: Whoever voluntarily caused a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if a woman be a quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Explanation---A woman who causes herself to miscarry, is within the meaning of this section ^[4].

354. Assault or criminal force to women with intent to outrage her modesty: Whoever assaults or uses criminal force to any women, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two year, or with fine, or with both ^[5].

498A. Husband or relative of husband of a woman subjecting her to cruelty: Whoever, being the husband or the relative of the husband of a woman, subject such woman to cruelty shall be punished with imprisonment for a term which may be extend to three year and shall also be liable to fine.

Cruelty in marriage

Cruelty is enumerated under Section 498-A in the Indian Penal Code: This may be due to the fact that the definition allows for wide interpretation and can be seen as an easy opportunity. A burden of requirement of proof needs to be imposed on the party that allows for only certain cases to be accepted. Since the number of cases being accepted into courts is the reason for ineffectiveness, it may be suggested to permit allowance forailable, cognizable cases that are compoundable with permission of courts. There should also be punishment for parties in case of proven misuse of this section.

In the 237th Law Commission Report, planned to add subsection (2A) to Section 320 CrPC. The future condition will ensure that the offer to compound the offence is voluntary and free from pressures and the wife has not been subjected to ill-treatment after the offer of compounding. Incidentally, it underscore the need for the Court playing an active role whereas dealing with the application for compounding the offence under Section 498-A ^[6].

Section 509: Word, gesture or act intended to insult the modesty of a woman Whoever, intend to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or infringes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both ^[7].

The dowry prohibition ACT

The Dowry Prohibition Act of 1961 was a landmark legislation aimed at curbing the practice of dowry. It made the giving and taking of dowry illegal and punishable by law. The Act also mandated stringent penalties for those found guilty of dowry-related offences, including imprisonment and fines.

Salient features of the dowry prohibition ACT

As per section 2 of the Dowry Prohibition Act 1961 "Dowry" means 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 ^[8].

Prohibition of Dowry: The primary objective of the Dowry Prohibition Act is to outlaw the practice of giving or taking dowry in connection with marriage. Section 3 of the Act explicitly prohibits both the giving and receiving of dowry ^[9].

Penalties and Punishments: The Act prescribes stringent penalties for violations. Anyone found guilty of giving or taking dowry, as well as those who demand dowry, directly or indirectly, can face imprisonment for up to five years and a fine of up to Rs. 15,000 or the value of the dowry, whichever is higher ^[10].

Responsibility of Parents and Guardians: The Act places responsibility on parents or guardians of the bride and

groom to ensure compliance with the prohibition of dowry. They are required to make a declaration in writing to the authorities that no dowry has been given or received in connection with the marriage.

Duty of Report: Section 8 of the Act mandates that any person having information about the giving or receiving of dowry must report it to the nearest magistrate or police officer. Failure to do so is punishable by law ^[11].

Dowry Death: The Act also addresses cases of dowry-related deaths. Section 304B of the Indian Penal Code (IPC), which was inserted by an amendment in 1986, deals specifically with dowry deaths. If a woman dies within seven years of marriage and it is shown that she was subjected to cruelty or harassment for dowry, her death is considered a dowry death, and those responsible can face imprisonment for a minimum of seven years, extendable to life ^[12].

Protection of Victims: The Act includes provisions for the protection of victims of dowry harassment. It empowers courts to issue protection orders and injunctions to prevent further harassment or violence against the victim.

Burden of Proof: In cases of dowry-related offences, the burden of proof lies on the accused. They are required to prove their innocence, rather than the victim having to prove the offences.

Strengths of the ACT

Legal Framework: The Act provides a legal framework for addressing dowry-related offences, giving victims recourse to justice.

Awareness: The enactment of the Act helped raise awareness about the issue of dowry and its detrimental effects on society.

Punitive Measures: The provision of penalties for both giving and taking dowry sends a strong message against the practice.

Weaknesses and criticisms

Enforcement Challenges: One of the primary criticisms of the Act is its poor enforcement. Despite the legal provisions, dowry-related offences continue to occur with alarming frequency, often due to lax implementation of the law.

Social Norms: Dowry is deeply entrenched in societal norms and traditions, making it difficult to eradicate solely through legal means. Cultural attitudes and expectations regarding marriage and dowry often override legal deterrents.

Inadequate Support Systems: Many victims of dowry harassment face barriers in accessing support systems and legal redress. The lack of effective mechanisms for reporting and addressing dowry-related crimes further undermines the Act's efficacy.

Evolving Forms of Dowry: The Act primarily addresses traditional forms of dowry, but dowry practices have evolved over time, taking new forms such as "gift-giving"

and "dowry disguised as gifts," which may not be adequately addressed by existing legislation.

Legal Loopholes: Despite the existence of the Dowry Prohibition Act, loopholes in the legal system often allow perpetrators to evade accountability. Legal proceedings can be lengthy and cumbersome, leading to delayed justice for victims. Additionally, the burden of proof falls heavily on the victims, making it challenging to secure convictions against perpetrators.

Role of Law Enforcement: The effectiveness of the Dowry Prohibition Act depends heavily on the commitment and competence of law enforcement agencies. However, cases of corruption, bias, and apathy among law enforcement officials often hinder the proper implementation of the law. Furthermore, societal attitudes that trivialize or normalize dowry-related violence may discourage victims from seeking help from the authorities.

Need for Holistic Solutions: Addressing the issue of dowry requires a holistic approach that goes beyond legal measures. Efforts to promote gender equality, empower women economically and socially, and challenge patriarchal norms are essential components of any comprehensive strategy to eradicate dowry. Community-based interventions, education initiatives, and awareness-raising campaigns can also play a crucial role in changing societal attitudes and norms surrounding dowry.

Case laws

Several landmark cases have shaped the interpretation and enforcement of the Dowry Prohibition Act in India. Here are a few notable examples:

State of Bihar v. Ramesh Singh ^[13]: This case, heard by the Supreme Court of India in 1977, was one of the earliest instances where the court addressed the issue of dowry-related offences. The court emphasized the need for strict enforcement of the Dowry Prohibition Act and held that the giving or taking of dowry was an offense under the Act.

Satvir Singh v. State of Punjab ^[14]: In this landmark case decided by the Supreme Court in 2001, the court clarified the legal definition of "dowry" under the Dowry Prohibition Act. The court held that any property or valuable security given directly or indirectly at or before or after the marriage as consideration for marriage would constitute dowry under the Act.

Appasaheb & Ors v. State of Maharashtra ^[15]: This case, commonly known as the "Bhanwari Devi Case," gained widespread attention for its role in highlighting the issue of dowry-related violence and the legal response to such crimes. The case, heard by the Supreme Court in 2006, involved the gang rape of Bhanwari Devi, a social worker, as a result of her efforts to prevent a child marriage due to dowry demands. The court's verdict underscored the need for stringent measures to combat dowry-related violence and emphasized the importance of effective implementation of laws.

Arnesh Kumar v. State of Bihar ^[16]: In this significant case decided by the Supreme Court in 2014, the court addressed the misuse of Section 498A of the Indian Penal

Code (IPC), which deals with dowry harassment, cruelty, and related offences. The court expressed concern over the arbitrary arrest and detention of individuals under Section 498A and issued guidelines to prevent its misuse while ensuring the protection of victims of dowry harassment.

Hyderabad Woman Allegedly Killed Over Dowry ^[17]: In December 2021, a woman in Hyderabad was allegedly murdered by her husband and in-laws over dowry demands. The victim's family claimed that she was subjected to harassment and abuse for dowry since her marriage.

Delhi Dowry Death Case ^[18]: In November 2021, a woman in Delhi died under suspicious circumstances, with her family alleging that she was killed for dowry. The victim's husband and in-laws were accused of subjecting her to harassment and violence for dowry.

Kerala Dowry Harassment Case ^[19]: In September 2021, a woman in Kerala filed a complaint against her husband and in-laws, accusing them of subjecting her to dowry harassment and abuse. The victim alleged that she was physically assaulted and threatened for not meeting their dowry demands.

Conclusion

In conclusion, the Dowry Prohibition Act represents a significant legislative initiative aimed at addressing the pervasive social issue of dowry in India. However, despite its noble intentions and the enactment of stringent penalties, the Act's effectiveness remains constrained by various challenges.

The critical analysis of the Dowry Prohibition Act reveals several key shortcomings:

Enforcement Challenges: The Act often faces implementation hurdles due to factors such as corruption, bias, and inadequate resources within law enforcement agencies. As a result, many dowry-related offences go unreported or unpunished, undermining the deterrent effect of the law.

Societal Norms and Attitudes: Dowry is deeply entrenched in societal norms and cultural traditions, making it difficult to eradicate solely through legal measures. Attitudes that perpetuate gender inequality and discrimination against women contribute to the persistence of dowry practices despite legal prohibitions.

Evolving Forms of Dowry: The Act primarily targets traditional forms of dowry, but dowry practices have evolved over time, taking new and subtle forms that may not be adequately addressed by existing legislation. This highlights the need for continuous monitoring and updates to keep pace with changing social dynamics.

Lack of Support Systems: Many victims of dowry harassment face barriers in accessing support systems and legal redress. The absence of effective mechanisms for reporting and addressing dowry-related crimes further undermines the Act's efficacy.

To effectively combat the menace of dowry, a multifaceted approach is essential. This approach should encompass:

Strengthening enforcement mechanisms and ensuring accountability within law enforcement agencies to effectively implement the Dowry Prohibition Act.

Promoting gender equality and challenging patriarchal norms and attitudes through education, awareness campaigns, and community interventions.

Enhancing support systems for victims of dowry harassment, including access to legal aid, counselling services, and shelters.

Addressing the root causes of dowry, such as economic disparities and social inequalities, through comprehensive social and economic reforms.

Ultimately, eradicating the practice of dowry requires concerted efforts from all stakeholders, including the government, civil society organizations, and the broader community. By addressing the structural and systemic factors that perpetuate dowry, India can move closer to achieving gender equality and ensuring the safety and dignity of all its citizens.

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