



## A SOCIOLOGICAL UNDERSTANDING OF DOWRY DEATHS IN INDIA

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### RESEARCH ARTICLE



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#### Abstract

The paper analyses the historical evolution of the concept of dowry in the Indian religious texts like Dharmashastra, which started as *kanyadaan* in the ancient texts has turned slowly into a compulsory practice that forces women and their parents' family to settle their marital contract on the basis of amount of wealth procured in a wedding. The paper is an analysis of the historical factors that has led to the criminalisation of the dowry system, resulting in the formulation of the Dowry Prohibition Act, 1961. The paper analyses the features of the Act and the fallouts of it. The paper concludes by featuring some of the cases of the Dowry Act and how it failed to bring justice to the victims. The brings in sociological perspective to understand the prevalent social evil.

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### Introduction

The paper traces the status of women through the evolution of dowry system in India and its consequent fallouts. During the early Vedic period, brides were given the choice regarding the groom they wished to marry. At the vedic wedding ceremony the ritual of *kanyadaan* was performed where the brides were given to the grooms along with some gifts. 'Kanya' means the girl and 'dana' means the gift. According to Rig Veda it was believed that without presenting 'Dakshina' to the bride the custom of 'Kanyadan' is incomplete. Hence 'Kanyadana' and 'Varadakshina' became intimately associated. Rigveda mentions *kanyadaan* in mandal 1, Suktas 125 and 126 where King Swanaya paid to Kakshivat on the marriage of his daughter with him. Other Hindu texts contained detailed accounts of *kanyadaan*. For example, Mahabharata Adi Parv Section 197/ Shlokas 15-18 details of the dowry presented by King Drupad on the marriage of his daughter Draupadi with the five Pandavas. The Mahabharata also informs us of dowry given during the marriage of Abhimanyu, son of Arjuna with Uttara, daughter of king Viraat in Section 72, Shlokas 36-37.

Tambiah and Goody did an anthropological study in undivided India Ceylon and Burma and found the nature of interaction that took place in that area, that denied the nature of bridewealth and dowry rather, the system of exchange that took place in Africa occurred on the basis of certain contract. The bridegroom's family transferred certain goods to the bride's family in exchange of certain rights in the bride. This wealth was used by the bride's brother, father to seek brides for themselves and the cycle of bride price continued. Similarly, cattle were founded and exchanged for Thonga and Lovendu tribes of Africa that helped in the creation of family relations. Bride prise was different from the notion of dowry where wealth travelled unidirectionally. The family gave both wealth and women at the same time to the groom's family.

The Dharmashastras that were developed in the later Vedic period were based on Smritis, that is remembered by the sages, because they learnt the importance of righteousness. Sages like Manu, Narada, Brihaspati, Katyayana, Yajnavalkya wrote codes that defined the status and right of women. The British officials discovered these sources in 1884 and the Hindu law was administered in the courts with the help of Brahmin pandits. These age-old traditional laws were applied in all cases of marriage, inheritance, family, joint family caste and other religious institutions and usages. This later developed into the Anglo-Hindu law that gradually shaped the nature of the Hindu Marriage Law, 1955, Hindu Succession law 1956, Hindu Adoption and Maintenance Act of 1956 and Dowry Prohibition Act of 1961. The transformation of *kanyadaan* and *varadakshina* has transformed into dowry system which is ridden by injustice and compulsion. The voluntary element in *dowry* has disappeared and the coercive element has crept in. It has taken deep roots not only in marriage ceremonies but also post-marital relationships.

Dowry was the property paid to her to take her with the marriage. It was presumed that she would be in control, husband would manage it. So, while the ancient texts mentioned *stridhan*, it was presumed to be a token from the bride's family, without any pressure from the groom's side. In reality *stridhan* has transformed into a cruel social evil of dowry that is prevalent and persistent in Indian society.

### **Sociological understanding of the emergence of dowry**

Sociological factors that have facilitated the continuance of the dowry system in India can be enumerated as follows. The Indian society is patriarchal in nature. The nature of residence determines the social position and status of women. She is equated with the wealth that she brings home. Sociologically, amount of dowry determines her social status in her new residence, and also qualifies her position, especially in an arranged marriage.

1. Dowry in India developed more in the Northern part of India than in the South because in the northern agricultural land, ploughing was mainly done by men while women were confined in doors and restricted in her social interaction. Since women could not participate in the economic activity of the family, it was expected that she should bring enough wealth, whether in form of cash, cattle or gold that should sustain the life of the groom. However, the sustenance soon transformed into greed making it an inseparable part of Indian marriage system.

2. Under the *Mitakshara* act a female was not entitled to the father's property at birth. *Stridhan* consisting mainly of immovable property gave some kind of social and economic security to the girls. It was believed that once the woman was given all the material good, she could no longer claim any more from her father's house. However, the tragedy started when the *stridhan* received by her rarely remained under her control.

3. The functionalist theorist Westermarck held that dowry established women's status and right in property and marked her role in the family, it was also a kind of security for her children.

However, when the number of deaths began to rise drastically and after the Rup Kanwar case of 1987, when an adolescent girl was made to sit on the burning funeral pyre of her husband and die, feminist activists all over the country began their fight to end the struggle for women in form of social a mental pressure.

The social reformers who were from the nineteenth and early twentieth centuries have struggled very hard to abolish this system. However, the British did not want to interfere in the personal law and damage their reputation. It was post-Independence, when the State Governments of Bihar and Andhra Pradesh initiated The Bihar Dowry Restraint Act, 1950 and The Andhra Pradesh Dowry Prohibition Act, 1958 for their respective States, but both these enactments failed miserably. On 24<sup>th</sup> April 1959 the 'Dowry Prohibition Bill, 1959' was introduced in the Lok Sabha. The bill was referred to a 'Joint Committee' of both the 'Houses of Parliament'. Neither House of Parliament agreed with the amendments as reported by the Joint Committee and ultimately the bill was considered at the joint sittings of both the Houses of Parliament held on 6<sup>th</sup> and 9<sup>th</sup> May, 1961 when it was formulated.

### **Amendment to the Dowry Prohibition Act**

There were several reasons why the Dowry Prohibition Act of 1961 had to be amended in 1984 -1. the act said that anything given after the marriage is not an act of dowry but just in continuation of the happy marriage (Inder Sain vs state, 1981).

2. The new legislation proved to be highly ineffective in rural areas when the matter was tried by the Panchayat to solve it. The case of Jaswal Singh vs the State of Punjab 1984 was a reflection of this where a young bride was tortured and then murdered by her husband because her father failed to keep up the promise of gifting a motorcycle. Such incidents were coming to the fore.

3. In another case of Shanti vs the State of Haryana 1991, Dinesh Kumar was married in 1989. In 1993 she was forcefully taken to the room by her mother in law, who poured kerosene on her, the younger brother in law lit the match stick while the husband and the father in law simply watched.

4. The Subhash Chadha case of 1979, where the daughter Satya Rani Chadha was burnt alive because the father could not give a scooter made a violent legal battle in India and Kanchan Bala became a fore runner in the anti dowry struggle. In 1975, when the brother of a dowry victim Kanchan Chopra was brutally murdered by the police did not take any measure to arrest the groom or his family saying that it was a domestic murder, the brother organised march to the station and as he also had the support of other people that expressed their support for the victim.

These cases were forerunners in modifying the Dowry Prohibition act of 1961. Phrases like continuation of marriage, the explanation of gifts in a list. However, the problem raised by the feminists were that continuation of marriage should not be a precondition for demanding dowry. Secondly, cases where gifts had to be mentioned in a list, there were chances that both the groom's family would accept that the gift mentioned in the list are theirs and not handed over by the groom's parents.

So, the dowry prohibition act of 1961 was amended in 1984. According to the Government of India Act, 1986 "any property of valuable security given or agreed to be given either directly or indirectly- (a) by one party to a marriage to the other party to a marriage; or (b) by parents of either party to a marriage or by any other person, to either party to the marriage or to any other person" (Government of India 1986:1). The act makes it illegal to give or take dowry, "If any person after the commencement of this act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years; and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry whichever is more" (Government of India 1986:1). While this section unambiguously prohibits dowry, the third section allows wedding presents to be freely given. Thus, the law does not apply to "presents which are given at the time of marriage to

the bride (without demand having been made in that behalf)" (Government of India 1986:1). 498 A was added, where cruelty of the wife by the husband resulted in imprisonment upto 3 years.

According to the Dowry Prohibition Act, 1984, it was made a rule that the list of presents given to the groom shall be maintained by the bridegroom which will contain the thumb impressions of both the groom and the bride. Also, section 4A bans the advertisement of the wealth of the groom on the newspaper and section 6 mentions that in case a woman dies within 7 years of marriage her property shall belong to her children. In case she has no children then her property should belong to her parents. Laws related to abolition of dowry

1. The first national law was The Dowry Prohibition Act of 1961. The Act made any dowry negotiation illegal and punishable by imprisonment and fines. However, a loophole remained—families could provide “gifts” to the bride at the time of marriage, that were not “excessive” (loosely defined) in financial value. A record of the gifts had to be maintained and the gifts were to be held in trust for the bride (Basu, 2001; Diwan & Diwan, 1995; Shenk, 2007).

2. The Dowry Prohibition Amendment Act of 1984 helped narrow the loopholes in the Dowry Prohibition Act and increased the punishment associated with dowry negotiations. An amendment to this act added the concept of “dowry death” by defining it, by making it an offense under the Indian Penal Code and resting the burden of proof squarely on those accused (Shenk, 2007). In addition, a woman’s death occurring within the first 7 years of marriage is requisitely investigated (Newman, 1992). The Criminal Law Act of 1983 defined “cruelty” as an offense under the Indian Penal Code Section 498-A. The husband or relatives of a woman harassed or subjected to cruel acts related to demands of property is considered a punishable offence (Newman, 1992). The Protection of Women from Domestic Violence Act, 2005. The law is comprehensive, including all forms of violence against women, including those related to dowry. In July 2009, the Bombay High Court determined that the provisions of the new law would apply retroactively (Ghosh & Choudhuri, 2011).

Willful conduct of such a nature by the husband or his relations as is likely to drive the woman to commit suicide or cause grave physical or moral injury to her, and harassment of a woman by her husband or by any relatives of her husband with a view to coercing her or any of her relatives to meet any unlawful demand for property would be punishable as cruelty.

### **In reality**

The court is indifferent to the plight of the women. Court’s indifference to the plight of the suffering family, for instance in the case of Shanni Kaur, who died of dowry burning in a Delhi hospital. Before dying she gave her statement three times, once to the police and again to two different doctors, stating that her husband had poured kerosene on her and set her on fire. All three declarations were discounted in court.<sup>81</sup> There is also the case of Manjushree Sarda who is reported to have been suffocated and given poison (potassium cyanide) by her husband, Sharad Birdichand Sarda. Here not only did the woman's sisters and friends supply written statements, but her father, mother, sister and friend testified about the husband's abusive behavior—all of which the court discounted. The act itself seems to be concerned that men are protected:

Section 3 of the act, which provides a penalty for giving or taking of dowry, exempts "such presents as are of a customary nature," thereby vitiating the purpose of the act, since anyone could argue that the gifts are "customary. So, how can one decide which gifts are customary and which are not.

In fact, Section 6 of the Dowry Prohibition Act makes no provisions for the return of presents to the bride or her family. This is a potentially significant problem. It has already been used as a ploy by the groom's family. For example, "a similar ingenious argument is resorted to by the husband's family in the Satish Chawla Case, where the family refused to return the dowry articles by referring to them as gifts. So, even after killing the bride, their things are not returned to the family. The family loses both the wealth and the girl.

Proponents of the dowry system argue for it on the following grounds: Dowry provides some flexibility within a hierarchical system: A rich girl with a large dowry may be able to attract a higher-caste man and, in this sense, dowry allows people to climb the social ladder. Dowry could help improve the financial status of a poor family and in the ordinary course of events, the giving and taking of dowry tends to even out (since the ratio of women to men in India is 47:53). In a closed society with arranged marriage the norm, dowry allows a girl with insufficient natural abilities or looks to find a suitable mate. Most women regard dowry as a legitimate and equitable transfer of property from a father to a daughter, since she almost never receives "immovable" property

### **So, what can be the ways to prevent dowry?**

Right to say no to dowry - Feminist movement started pre-independence, it was a collaborative movement for attaining independence and for destroying the social evils like sati pratha, right to education, widow re marriage. Post- Independence, there was a lull in the movement, however soon afterwards it regained its momentum in the 1970s. With the dowry prohibition bill it was expected that the bride’s parents will satisfy and meet the basic requirements of the groom’s family. Protests were held in the northern belt of Punjab, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Gujarat, Karnataka.

Social organisations like Stree Sangharsh and Mahila Dakshata Samiti organised frequent marches to create awareness among women regarding dowry. Students organisation like the progressive students organisation also participated in such meetings. With new laws like Hindu Maintenance Act, a woman can claim maintenance from the husband’s father if she is widowed. Hindu Succession Act has given her the right to inherit the father’s property, one need not be married to inherit a property.

### Why does dowry still persist?

1. Marriage is a sacrament where the parents of the bride strive hard to retain the relationship .
2. Getting a daughter married is considered to be a prime responsibility of the parents
3. Caste play an important role here, people are allowed to be married only within their caste
4. Patrilocal residence forces a woman to comply to the wishes and demands of the inlaws.
5. Availability of groom who have govt jobs , always settle for higher jobs will demand higher dowry.

Dowry is considered to be a social evil, because it leads to other social problems like female foeticide, increases suicide rates, creates mental anxiety among others. Dowry leads to bride burning, killing women by pushing in the well, poisoning them , committing suicides by ingesting insecticides , immolation.

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