

## Concept and Evolution of Dowry

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**Abstract:** The concept of dowry has been around since many centuries and led to many told and untold stories of crime, cruelty and harassment of brides during or after marriage. This article discusses the evolution of the concept of dowry in India and also few other countries and the laws prohibiting the same in India. Dowry means giving of wealth or property to the Groom or his family by the Bride's family at the time of their marriage. The Dowry Prohibition Act, 1961 makes the giving and taking of dowry void and illegal. Section 498A IPC penalises the husband and his family members in case there is an act of cruelty on the bride within seven years of marriage. The section makes the crime non bailable and non-compoundable. These laws are absolutely pro-women and requires very little prior corroboration in case there is any complaints under these provisions of law and this has given certain section of women the freedom to misuse these sections to fulfil their mala-fide motives.

**Key Words:** Dowry, Misuse, Anti-Dowry Laws.

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### I. Introduction

“Man and Women are both equal and play vital roles in the creation and development of their families in particular and society in general.”<sup>1</sup>

---J KrishnaMurthy

India is a vast and multi-cultural country. The Civilization of India is the ancient most in the world and with each era a new social structure is born since the birth of our society. With the second highest population in the world after China, India has come a long way in concepts of development in all spheres of society. Indian Culture holds a plethora of concepts where women in society are shown as a divine force of nature. Women throughout have been worshipped as goddesses like Durga, Kali, Sarawati and Lakshmi. Through changing centuries so did the change in the view towards women evolved in rather negative way. The status of women in the Vedic Civilization and the Indus Valley women held a status or position that of a Goddess. It is very surprising how the position of women as Goddess reduced itself to a mere object. But like every century has its own ideology so does the present one. The concept of feminism which is widely wrongly understood by both gender has become a major tool used against husbands by their wives and family. Till now we only heard of the concept where women were tortured in the mane of dowry and sometimes even killed, but for some time now we are getting to here where wives have filed false dowry cases against their husbands to fulfil their evil vendetta. For a very long time the status of women was immensely powerful and considered divine. It was considered the she had the power to create what is good and destroy what is bad.<sup>2</sup> Women had the independence to take her own decisions and also got involved in policy making of the state. She had the right to choose her

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<sup>1</sup>KrishnaMurthyJ., “Women in Colonial India”; - Essay on survival, work and state; Oxford University Press (1989).

<sup>2</sup> Mrs. Reshma M.A, Dr.RamegoudaA., “Dowry- the cancer of society”; IOSR Journal of Humanities and Social Science, Vol-17, Issue-4 (2013).

own husband which was widely known as 'Swayamvar'. Along with being a house maker she was a society maker as well. But according to some ancient scriptures like Manushashtra where Manu accorded women to be very low in society.

The concept of dowry goes back to many centuries. By definition dowry means, "it is a parental property that passes to the daughter at the time of her marriage". It involves any kind of property, Money, Ornaments, Consumable Items like electronics, Cars etc. Dowry is both a practise and a problem in Indian marriages.<sup>3</sup>In some parts of the world especially in Asian and African countries dowry has become a condition for marriage. Dowry was introduced in society with the sole purpose to provide assistance to the newly married couples but with the passage of time the concept of dowry became as mere transaction of money and other valuables instead of the true merits of the bride.<sup>4</sup>

### **Evolution of the Dowry**

#### **India**

Dowry was not practised in ancient India and it is practically not known that exactly when the concept of dowry came to India but the concept is known to have its roots in the ancient past. According to *Megasthenes and Arrian*, 3rd Century B.C, they accorded that ancient Indian people in the process of selecting their bride they do not care about whether the bride has dowry or she has any handsome fortune but only look at her inner and outer beauty.<sup>5</sup>The *Code of Manu* also mentioned Dowry and brides wealth. Manu explained the difference between Dowry and Brides wealth. Dowry was more of a prestigious thing and it was associated with the Brahmanic Caste whereas the Brides wealth was typically restricted to the lower castes. This mainly prevailed in the earlier half of 20<sup>th</sup> Century.<sup>6</sup> Ancient texts, Dowry has been referred as 'Yautraka' which means a kind of material gift which confirms that two people have joined in a matrimony. The girl in marriage was given away upon getting a price that was called 'Sulka'. It means that the parents were compensated for their loss of their daughter after her marriage.<sup>7</sup>Dowry system was prevalent since the Vedic period where gifts from parents, relatives were recognised as women's property called 'Stridhan'. In Indian marriages along with money, jewellery and other items to be given to the groom as dowry the giving away of the bride- 'Kanyadana' was also a part of it. Kanya means Daughter and Dana means Gift. It was also known as 'Hunda', it comes from the word 'Handa' meaning pot. It was called so because in ancient times the dowry was given in a pot.<sup>8</sup> Dowry was given as a support to the bride that she could use for her independent use. According to Kautilya, "Means of Subsistence or jewellery constitutes what is called the use of property of a women. It is no guilt for a wife to make use of this property in maintaining her son, her daughter in law or herself, if her absent husband has made no provision for her maintenance."<sup>9</sup>When the French came to India, they praised India women for having a say in the state of affairs, they also developed great fondness for Ahalya Bai as she was a great administrator of the society. It is only when the British came to settle permanently under Lord Cornwallis in 1793, enabled a system of private ownership of land which was an unknown concept in India. It is then that the Feudal system or the Zamindari System emerged, before this zamindars were just tax collectors of the society. It was only during this time when the British completely prohibited women from owning any land or any kind of property. This was the time when parents used to give money to the bride during her marriage and as the British prohibited women from possessing any kind of wealth the money that she received during her wedding will now belong to her husband.<sup>10</sup> The husband in this case misused the right to possess the wife's wealth and the concept of dowry once again took a turn and now it became a consideration for marriage that meant in a marriage the bride had to

<sup>3</sup>Haveripeth P.D., "Cause and consequences of dowry menace in India"; RIJS Vol 2(2) 2013. ([www.rierc.org](http://www.rierc.org))

<sup>4</sup>Mehek Singh., "Dowry as a factor of violence in Marriage: A study of Women seeking help in family counselling centres in Chandigarh"; International Journal of Advancements in Research & Technology, Vol-2 Issue-6 (2013)

<sup>5</sup><https://en.wikipedia.org/wiki/Dowry>, accessed on 23-01-2018 at 21:25p.m

<sup>6</sup>Tambiah, Stanley; Goody, Jack (1973). *Bridewealth and Dowry*. Cambridge UK: Cambridge University Press. pp. 68–9

<sup>7</sup>Hooja S.L., "Dowry System in India- A case study"; Delhi, Asia Press 1969, p-15.

<sup>8</sup>Reshma, Ramegouda .A., "Socio Legal Perspective of Dowry": A Study; International Journal of Scientific and Engineering Research; Vol-3, Issue-7 (2012).

<sup>9</sup> *ibid*

<sup>10</sup><http://www.hitxp.com/articles/history/origin-dowry-system-bride-woman-india-british/>, accessed on 13-10-2017 via Google.com at 10 p.m.

bring the wealth as desired by the family of the in-laws as consideration of her marriage. If such desired wealth was not brought then various ways of torture be inflicted upon the bride to pressurise her to bring such wealth and so in the process there have been various cases of crimes like Murder, Suicide, bodily injuries, Mental abuse etc. In the 1980s, we first got the glimpse of uproar on protest against Dowry. Women through their radical movement established that root of subordination lies in the biological family and incorporation of laws were not adequate until the attitude of society is reformed via education and participation in politics.<sup>11</sup>

In the Islamic laws, the Dower (Mahr) is a sum of money or property that is paid to the bride at the time of marriage. The law confers a right of Mahr or Dower to the wife. According to the Holy Quran, the following verse entitles the right of Mahr on the bride,

“You shall obtain permission from their guardians before you marry them, and pay them their due mahr (dowries) equitably” , “you give them their bridal due (as) on obligation. And (there is) no sin on you concerning what you mutually agree of it (dowry) from beyond the obligation”.<sup>12</sup>

### **Dowry in few other Countries**

#### **England**

Dowry system in England was introduced in the 12<sup>th</sup> century by the Normans. Earlier to this there was another kind of practice where the husband gave some kind of morning gift to his wife. Dowry was generally given at the wedding by the husband at the church door in front of all present public. The dowry system in England allowed that noble families married their daughters off with an intention of gaining patronage ties<sup>13</sup>, daughters were treated as nothing but commodities.

#### **Russia**

In Russia Dowry is also known as *Posag or Pridannoe*. Mothers were responsible for the matchmaking and fathers did all the financial arrangement. It was very important to people as it provided an independent support to the women and thus, the church also remained silent on this matter. Since always the women has absolute control of the family and dowry to the bride made her in control as it made her independent and this dowry was a huge sum of wealth.<sup>14</sup>

#### **China**

In China Dowry is known as *Jiazhuang*. In Chinese tradition there is a two way gift method, where at first three months before the wedding the groom gifts a bride price known as betrothal gifts and this giving of the betrothal gift is the auspicious occasion because it is the symbol of prosperity and good luck, later the bride's family also bestows the bride with dowry which contains all the necessities to support her in her wedlock.

### **The Historical Journey of Anti- Dowry Laws**

In the latter half of the 1900s in India there was an alarming rise in Dowry related crimes. Crimes like murder of the bride by hanging, burning, poisoning etc., compelling the brides to commit suicide, verbal and mental abuse, inflicting of bodily injuries to name a few. The society was completely in the grip of a dark phase where greed and lust were the primary factors where marriage was concerned. It was seldom taken as a sacred union. The basic sacredness of the institution of marriage was long lost. The victims of Dowry crimes increased and so the need for a reform. Though the Dowry Prohibition Act, 1961 was prevalent but the rate of Dowry crimes increased at an alarming rate. There were no proper checks and investigations were improper. The earliest of the protest against Dowry system were made by Progressive Organisation of women in Hyderabad in 1975, there were almost 2000 people who came on street to protect against the increase of Dowry system in India.<sup>15</sup> In the year 1979, an organised protest landed on the streets of Delhi against Dowry because one *Tarvinder Kaur* was urned to death by her Mother and sister in law as they were denied their desired Dowry. Right after the *Tarvinder Kaur* Murder case, another case showed up in the Malviya Nagar area in Delhi, where a complaint was brought by the brother of one *Kanchan Chopra*, but unfortunately the police denied the

<sup>11</sup>Dr. S. C Tripathy & Vibha Arora., ‘Law relating to Women and Children’; Central Law Publication (2017), pg-4 (2).

<sup>12</sup> Ahmed Sahid Sayed., ‘A critical analysis of dower (Mahr) in Islam’; IOSR Journal of Humanities And Social Science (IOSR- JHSS) (2016), Vol-22, Issue-6, pg- 87

<sup>13</sup>S. H. Steinberg et al. eds. *A New Dictionary of British History* (1963) pp 110-11, [https://en.wikipedia.org/wiki/Dowry#cite\\_note-55](https://en.wikipedia.org/wiki/Dowry#cite_note-55), accessed on 23-01-2018 at 09:55 p.m.

<sup>14</sup><http://www.goldschp.net/archive/wedding.html#11>, accessed on 23-01-2018 at 10:16 p.m.

<sup>15</sup>Nagpal Himanshi., ‘The Historical journey of Anti-Dowry laws’; (2017), [www.feminismofindia.com](http://www.feminismofindia.com), accessed on 23-01-2018 at 01:47 p.m

registration of the complaint as they considered it to be a personal and matrimonial issue. The very next day Kanchan was found dead. Delhi saw the highest number of Dowry crimes in the 1970s and 80s.<sup>16</sup> There were protests all over including in the states of Punjab, Maharashtra, Karnataka, Gujarat, West Bengal etc. There was country wide movement against Dowry and one famous face was of *Satyarani Chadha*<sup>17</sup>, she came to be known as the face of Anti- Dowry Movement.



[Source: Satya Rani Chadha- Face of Anti- Dowry Movement, [feministindia.com](http://feministindia.com)]



[Source: [anaemiconabike.com](http://anaemiconabike.com), News article on the protest of 1979, New Delhi.]

After the enactment of the Dowry Prohibition Act, 1961 and after series of various protects against the alarming increase of Dowry crimes, women activists started various awareness programme to educate women about their rights and that dowry was a prohibited act and is against law. The fact that dowry is a crime was unknown to various rural women and they accepted that if they had to get their daughters married off to a good man they must have adequate dowry, which is an absolute false fact. But the system was so deep rooted in the social structure that dowry crimes increased and so did its victims. The huge account of protests and country wide movement proved their metal and the law makers were compelled to make various other amendments to match the want of the existing situation.

In the year 1983, the Criminal Law (second amendment) Act was passed and a new provision Section 498A<sup>18</sup> was added to the Indian Penal Code, 1860. This provision provided women protection from abuse both physical

<sup>16</sup> Ibid.

<sup>17</sup> [www.feministindia.com](http://www.feministindia.com), accessed on 23-01-2018 at 02:09 p.m

<sup>18</sup> 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, subjects such woman to cruelty shall be punished with imprisonment for a

and mental from her Husband, in-laws and relatives. This Section was made non-bailable and non-compoundable. Another amendment was made in section 174 of the Code of Criminal Procedure, 1973, where a post mortem must be conducted in cases where death took place with seven years of marriage, earlier the provision was entitled for deaths upto five years of marriage. Another provision of section 113A of The Evidence Act, 1872 said, 'When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.' Apart from these specific provision which dealt with dowry, other enactments such as Protection of Women from Dowry Prohibition Act, 2005 came thereafter, which further provided safeguard towards abuse of household women. The recent developments after the Nirbhaya Case in 2012, the procedure of arrest was also amended where women could not be arrested after sunset. India as a progressive country realised that the country needed some strong and reliable laws which not only protected women but also empowered them.

### **The Present Scenario**

“With Great Power Comes Great Responsibilities”. ---Voltaire

Women in India today are very well versed with their rights and the legal provisions have proven to be absolute pro-women since a long time. Women are aware of the power of such strong legal provisions. Earlier the unawareness of the laws and their rights made them paralysed as they believed that abuse in the household is their fate and so they had no option but to suffer silently. The number of cases registered were very low due to the social stigma and also that the parents of the bride themselves asked her to take it all because it is a prestige issue. But today women are well educated and are independent, they do not require their husbands to support their livelihood and so there is no question of suffering or tolerating bad behaviour of their husband or their in-laws, they can easily terminate marriage and in cases of any sort of abuse faced, they do not fear to approach the police or the legal system for help and assistance. But in all this phase of empowerment there are a section of women who have taken it all wrong and possess vicious agenda. In some cases women file false cases of dowry against their husband and in-laws in order to fulfil their personal grudges. The fact that she will be backed by the provisions like section 498A and the Dowry Prohibition act, which is a non-bailable and non-compoundable offence, she takes advantage of these pro-women laws and satisfy her own animosity.

There are many cases where the court has observed that the Anti-Dowry laws misused by women themselves. In the case of *Preeti Gupta vs. State of Jharkhand*<sup>19</sup> the Supreme Court has observed that a serious look is warranted in the section of 498A IPC. The court said that, “It is a matter of common knowledge that exaggerated versions of the incidents are reflected in a large number of complaints”. In another case of *Sushil Kumar Sharma vs. UOI*<sup>20</sup>, in this case the Supreme Court observed that complaint under section 498A was filed only to fulfil personal vendetta and held that, ‘It may therefore become necessary for the Legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with’. In the case of *Tr. Ramaiya vs. State*<sup>21</sup>, the Court observed, ‘there is no iota of doubt that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes’. In the case of *Savitri Devi Vs. Ramesh Chand & Others*<sup>22</sup>, this kind of petition is misconceived and is being used as a tool to accuse the entire family of in-laws of ransom, the woman is rather extorting money by putting false allegation under s498A and allegation of dowry. The court observed that, ‘it appears that the legislature was mindful of the fact and situation that this provision may be exploited that it defined “cruelty” and for that purpose “harassment” falling within the parameters of “intentional conduct” of such a degree that may either drive the women to commit suicide or danger to life, limb or health or cause grave injury. In a case of *Arnesh Kumar Vs. State of Bihar & Others*<sup>23</sup>, the Supreme Court has observed that, “Section 498A is a cognizable and non-bailable offense and has lent it a

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term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

<sup>19</sup> AIR 2010 SC 3363

<sup>20</sup> 2005 6 SCC 281

<sup>21</sup> order dated 7.7.2008 and 4.8.2008 in MP No.1 of 2008 in Crl. O.P. No.10896 of 2008.

<sup>22</sup> 2003 (69) DRJ 6

<sup>23</sup> SLP (CRL.) No. 9127 of 2013

dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision.”

## II. Conclusion

Dowry in itself is a very ancient concept by the perception has been ever changing. The evolution of perception from women being suppressed to being suppressed by women has somehow changed the entire view of dowry in society. The prevailing laws has proven to grant huge relief to the suffering but has also created literate monsters who perceives such relief as a tool of torture on their own family members. It is to further noted that both the sides of use and misuse of dowry laws simultaneously exists in society, but even though there have been such huge shift in perceptions, the fact that dowry is a crime remains constant. Whether or not accepted by society the very origin of dowry where giving of property to women as a security for independence is lost.

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