

Dowry in Indian Society

The development in the patriarchal societies has been such women have become weaker section of human population. Her functions have been relegated to mere procreation and attending the household chores. The patriarchal culture dilutes freedom and equality of women in all walks of life. Throughout history, violence has been systematically directed towards women in patriarchal societies. Economic and social processes operate directly and indirectly to support a patriarchal social order and family structure.

The system of dowry in marriages has been haunting our society for a long time. This is a social curse, which has gone unchecked, though time and again it has tormented the people in general. It has become a routine affair that we come across news-reports on dowry deaths and agony of women, which reflect the evils of the dowry system. It is like a scar on a healthy society. Dowry is primarily an evil associated with marriages in Hindu society, but the practice has made inroads in many sections of the Muslim and Christian communities also. 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. Degradation of society due to pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husbands and their relatives, resulting in an alarming number of suicidal and dowry deaths by women, has shocked the legislative consciousness.

The available literature on evolution of Indian culture and civilization reveals that although the ancient writers pretended to record their revered admiration for the womanhood yet in actual practice women have always been suppressed and exploited by the dominate male members of the society. Law of Manu insisted that woman must constantly worship her husband as God. In the male dominated society, woman has always been kept in subjugation by her husband because by nature, she is supposed to be weak and meek. Dowry system has been known to be in existence ever since the inception of the institution of marriage in India and has been in vogue through the ages. Although the word “dowry” was never used while negotiating a marriage, but in common practice it meant property which the bride brings to her matrimonial home at the time of marriage.

Dowry has been a continuing trend in Indian society as we find its mention even in the roots of our history. Rulers in ancient times made this

system rampant. Dowry was seen as a status symbol and a prestige issue in those times. The trend continues even today. Dowry is viewed as gift, a token of parental love and affection for the daughter, expressed at the time of her marriage, which also helped the newlyweds to start their life together. In South India it is called as **stridhan**, and in North India it is considered as a gift or dahej. It is also a fact that since a girl joins her husband's house in Hindu patriarchal society, she is given compensation in forms of dowry. As per ancient custom, **Kanyadan** was followed by the ritual of **Vardakshina**, which was a nominal amount decided unilaterally by the girl's father according to his financial condition, **yathashakti**. It did not comprise of any evil motive of extracting money or gifts from bride's parents. But the system of dowry is becoming uglier day by day. The practice essentially remained voluntary in nature and there was neither any compulsion for the bride's parents or demand from the bridegroom's side for dowry. The sanctity of this socio-religious practice was retained until the beginning of the 19th century when due to the rising trend of materialism and craze for money, the concept of Vardakshina gave way to the commercialization of marriage institution and the devil of dowry emerged as a major social evil in the Indian society.

Traditionally, the voluntary giving of jewellery presents and even cash by the bride's parents to the groom or his relatives were considered to be a symbol of showing respect to the groom's family. However, the course of time this voluntary consideration transformed into a matter of right for the family of the bridegroom and nowadays dowry is being demanded by the husband and his parents, not only before or at the time of the marriage but even after years of it. The refusal on the part of wife or her parents generates tension between two families and the wife is harassed and subjected to cruelty which at times leads to murder. The magnitude of the criminality involved in the dowry cases and the growing number of dowry deaths and bride-burning reflect the barbarity so deeply embedded in our social system. These inequalities result into demand of dowry from the husband's side which creates tension and differences between the husband and wife and their relatives. It is an irony of fate that the bride, who should be dearest to her husband and her in-laws, becomes the victim of the dowry offence and her own husband or his near relatives become the offender due to social, economic and psychological reasons. The age-old gender bias permitting in the orthodox customs, traditions and beliefs is the root cause of this evil.

According to the National Crime Records Bureau of the Ministry of Home Affairs, the number of crimes reported was 53,860 in 1987. It rose to 74,903 in 1991. For the same years, the numbers of dowry death cases were 1,912 and 5,157 respectively. In the category of "cruelty by

husbands and his relatives” the rise was from 11,603 to 15,949. However, the bureau claimed that there was a decline in dowry deaths in recent years. In 2001, the figure was 6,851; in 2002 it was declined to 6,822 and in 2003 it was 6,285. Similarly, complaints of dowry harassment and related atrocities declined from 7000 in 2002 to 5,700 in 2003 and in 24771 reported in last three years. The parents of a girl have to pay a heavy price in the name of dowry to the parents of the bridegroom, if they want to see their daughters in comfortable position in the family of their in-laws. Exorbitant amounts in the form of cash and luxury items are demanded and have to be paid by the bride’s parents even if they are unable to afford it. So, the marriage of a daughter means complete financial ruin for her parents. The problem is that even after the payment of heavy dowry there is no guarantee that the bride will enjoy a comfortable life in her new family. Additional demands are constantly made and if they are not met with by the parents of the bride, she is subjected to physical and mental torture by her in-laws. Her life becomes miserable. Greed and violence snatch the pleasure of her life. The harassment meted out to the newly married brides and their ill-treatment in the hands of their in-laws not only disturbs the peace of her family but also maligns the very institution of marriage which was once regarded as sacred. It is rather agonising to note that person and honour of their wives or daughter-in-law commit brutally on them with impunity.

Today the problem has taken such a worse shape that people do not want to have daughters. Female infanticide and killing of female foetuses through abortion are on the rise. This has increased the gender gap alarmingly. The law to curb the menace of dowry is there but it has proved ineffective. The unabated miseries and injustices caused to the young brides and their parents prompted the Parliament to bring an anti-dowry legislation as Dowry Prohibition Act, 1961.

To deal with this evil of the society, the **Dowry Prohibition Act, 1961** was passed in 1961 to prohibit the practice of giving or receiving dowry. It was amended in 1984 and 1986 respectively to curb the evil practice of dowry. According to this Act, dowry means in case of a any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or by the parents of either party or by any other person to either party to the marriage. It may be given at or before or anytime after the marriage of the said parties. But it does not include dower or mehr in case of a person to whom the Muslim Personal Law (Shariat) applies. This Act applies to all communities irrespective of the religion such as Hindu, Muslim, Christians, Jews, Parsis or to any and every person who performs his marriage in India and is found guilty by dowry offence.

According to this Act, giving or accepting dowry is criminal offence and he/she may imprisoned for a minimum of five years and fined not less than Rs.15,000 or the amount of the value of the dowry whichever is more. For adequate and special reasons the court has the power to grant lesser punishment but the reasons must be recorded in the judgement.

The definition of dowry as given in the Act is quite comprehensive and prohibits not only giving and taking dowry but also tries to stamp out the practice of demanding dowry in any form either before or after marriage. It permits customary presents to the 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 penalises demand of dowry as consideration for a marriage between the parties thereto. This provision 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.

Gifts given to the bride and bridegroom voluntarily are not punishable. But presents must be listed. The giving of such presents should be a part of local custom and their value must be proportional to the financial capacity of the giver. Any person who receives any dowry should transfer it to the woman on whose behalf it was received. If the dowry was received before the marriage, the receiver must transfer it to the woman within three months after the marriage. If the dowry was received at the time of or after the marriage, it must be transferred to her within three months of its receipt. If the dowry was received when the woman was a minor, it must be given to her within three months after she becomes 18 year still then the person who received it is expected to hold it in trust for her benefit. A person going against Section 6 can be jailed from six months to two years or fined Rs.5000 to Rs.10, 000 or given both punishments if dowry property is not transferred to the bride.

If husband denies conjugal right to his wife, he can be jailed for up to one year or fined up to Rs.10, 000 or given both punishments. Fine charged on the husband may be given to the wife as compensation if court so directs. If the husband gives a written assurance to the court that he will not demand dowry or that he will allow conjugal rights to his wife, the court may drop the proceedings against him. But if he proves false to his

promise, the wife can make fresh application to the court and the court will take up the case from the stage at which it was dropped, but she has to do it within three years of suspension of proceeding.

A metropolitan Magistrate or a judicial Magistrate of the first class can try any offence under this Act. A police officer, any person affected by the offence or parent or other relative of such person, any recognised welfare institution or organization recognised for the purpose of making complaint can make complaint to the court. A court also can initiate a trial on the basis of its own knowledge of the facts of the offence. Dowry is considered a cognizable offence for the purpose of investigation. That means the police officer can investigate the case as soon as a complaint is lodged in the police station. But he has no power to arrest the accused person without a warrant or without an order of a Magistrate.

Every offence under this Act is non-bailable. So, the accused person has no legal right to get bail. Only a Magistrate can grant him bail on application, using his discretion. Offences under this Act are also non-compoundable. The complainant cannot withdraw the case on compromise with the opposite party. The burden of proving that he has not committed an offence under the Dowry Act is on the accused. **The Dowry Prohibition (Amendment) Act, 1984**, which was passed by the Parliament in 1984, came into force from 2nd October 1985. The Amendment Act, which makes far-reaching changes in the Dowry Prohibition Act, 1961 with a view to curbing the dowry menace, prescribes a minimum punishment of six month imprisonment and fine of anyone demanding dowry from the parents of the bride. The offence is punishable up to two years and invites a fine which may extend to Rs.10,000/-. In spite of this amendment in the law the dowry abuse in the country is not declining. The arms of law are not long enough to reach the guilty and punish the groom and his kith and kin not only for making dowry demands, but also for either instigating or provoking her to commit suicide. This is a social problem and it needs all the right-thinking people to come together to find ways and means to drive this curse out of the society.

Besides resolving to the legality and legal amendments a change in the mentality of people at large is also essential since giving and taking of dowry is a social evil. Law alone cannot help to eradicate this evil. The people at large will have to be educated and informed about the evil of dowry system and its various implications with regard to the social and economic life of people of the country. The time has come to do away with this reprehensible system prevalent in our society and is possible only when we firmly and unitedly resolve to stamp out all forces of this condemned and shameful system forever. Under the Dowry Prohibition (Amendment) Act, 1984 the bar of the period of limitation of one years

has been done away for filling the complaint under the Act. Now, there is no limitation of period whatever.

Section 304B of Indian Penal Code (IPC) says that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of her marriage and it is shown that soon after 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. Whoever commits dowry death shall be punished with imprisonment for minimum terms of 7 years but it may extend to imprisonment of life. The High Court upheld the sentence passed by the trial court under Section 304 B and 498A IPC. But the Court modified the punishment granted to the husband under Section 304B from life imprisonment to 10 years rigorous imprisonment in the case of Tapas Kumar Ghosh v.State of West Bengal, 2007.

Section 3(1) of this Act was amended in 1984 and 1986, provides that a person who gives ,takes or abets dowry, shall be punishable with imprisonment for five years and a fine which shall not be less than Rs.15,000/- or the amount of the value of such dowry, whichever is more. The offence of dowry under the Act is cognizable, non-bailable and non-compoundable. The complaint in a dowry case can be made within ten years of marriage. The court can take cognizance of the offence either suo motu or on a police report or on a complaint made by the aggrieved person, his/her relatives or parents or by a recognized welfare institution or organisation. A new Section 8-A has been included 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. It means where a person is prosecuted for taking 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 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 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 (Prohibition) Act, 1986, providing that 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. Although section 4 of the Dowry Prohibition Act provides penalty for demanding dowry is either actually given or agreed to be given. If mere demand of dowry is to be brought within the purview of this section shall have to be redefined in the light of sub-section (b) of section-498-A of the Indian Penal Code which says that harassment of the woman with a view to coercing her or any person related to her, to meet any unlawful demand for dowry or on account of failure on her part or any person related to her to meet such demand, shall constitute cruelty within the meaning of section 498-A of the Penal Code. Though every demand of dowry whenever repeated constitutes a separate offence, if it is repeated after the marriage of the spouse, the person repeating such demand shall be deemed to have committed an offence under section 4 of Dowry Act.

Conclusion

The fight against the institution of dowry will have to be carried out simultaneously on several fronts. Though legislation is necessary but it will not put an end to dowry, howsoever deterrent punishment may be prescribed for those who demand dowry. The co-operation of the people can be sought only by creating public opinion. The success of all social legislation depends upon the support of the general public. Social understanding may be created by bringing the evils of dowry to the notice of the people through moral as well as formal education. Although educated people also demand more dowry, sometimes for their further studies or for meeting their responsibilities fulfilled. But, youth should be taught the importance of new social values which can be attained only after getting education. The change in the ideas of the people can be brought about by using mass media also. Inter-caste marriages can be suitable for eradicating this social evil. It is high time for Hindu society to put an end to this evil practice which has driven many an innocent maiden to commit suicide. Marriage is a sacramental union, not the business. The sanctity and sublimity of marriage lost by dowry demand.

The sooner the dowry becomes the thing of the past, the better for our society.