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Dowry System in India: A socio-legal approach

Sriharshitha Chada

INTRODUCTION

Eradication of dowry has been the major item on agenda of social reformers of all type. In the last decade anti-dowry campaign has received more attention than almost any other social issue. Yet, it is nowhere being eradicated. In fact, the dowry system has flourished and spread through all levels of our society, all over the nation, though there has been a continuous campaign against it. The reasons frequently quoted for the inflation in dowry are not reflective of serious thinking about the reasons as to why people give and take dowry. Until we understand how dowry actually works, we will not be able to do anything any meaningful about it. The study is endeavoured to analyse the dowry system prevalent in society and find meaningful ways eradicate it.

IS THERE INFLATION IN DOWRY?

Over the last 40 years, there has been a significant increase in the transfer price from brides and their families to the grooms and their families in South Asia. Caldwell, Reddy and Caldwell provided an interesting explanation;¹ with declining mortality the number of younger cohorts became more than larger cohorts. If younger women marry older men, there is a surplus of women in the market. This phenomenon is known as *marriage squeeze* has led to inflation in dowries. This is in consistence with the observed rise in dowries from 1950's onwards. Population started growing in South Asia from 1930's and they would attain marriageable age by 1950's. Since unmarried daughters are a great cultural and economic liability in South Asia, the phenomenon of marriage squeeze explains why households with daughters of marriageable age are willing to endure hardships to find scarce husbands. This is due to both lacks of job opportunities for women as well as an extreme drop in the social status associated with having an old unmarried daughter.

IS THE INFLATION IN DOWRY DUE TO GROWING GREED?

People in today's world have become very greedy is one repeated argument used as reasoning for increasing demands for dowry. This '*greed*' is often seen as an influence of western consumerist culture, which leads people to want more and more. This tendency to see the present age as *kalyug* and the past as a golden era may be satisfactory, but is not grounded in the fact. Many social protest movements have the theme of criticising the current materialist culture in comparison to the good old days. The literature of Bhakti Movement or even the earlier movement as Buddhism hold testimony to this. There is nothing new in people's desire for more and more wealth. Nor is it a

¹ J. C. Caldwell et al., *The Causes of Marriage Change in South India*, 37 POPULATION STUDIES 343–361 (1983).

trait of any particular culture. Dowry however is limited to certain culture. If increasing dowry demands were merely due to the materialist culture and lifestyle of the West, then we should also find higher dowry demands in many western countries. But clearly that is not the case. This is not because people in one country are more or less greedy than others. It is because people don't see the need to get stay married at any cost. They would not consider it an unbearable social disgrace if their daughter stayed unmarried till long time. The greed-theory would only make sense if there are two sets of families- one set which produced only boys and another which produced only girls. Our society is not divided into these exclusive camps; hence there is no permanent loser or gainer.

If dowry is basically only the product of greed, the groom's family would not encourage expenditure on the wedding feast and entertainment of guest. In fact groom's family too spends substantial amount for wedding in most of the cases. Even a general study on wife harassment cases shows that it is not related to any major demands like cash or items like scooter etc. It is rather designed to torture her, humiliate her and make her feel a contemptible burden on the family. The whole concept of humiliation is intended to demoralise a woman so that her feeling of vulnerability makes her desperately desire to crave for a place in her in-laws' house. This psychological warfare is part of a strategy to make women accept a subordinate position within the family which is seen as an essential part of her transition from the natal to the marital home.

Thus, dowry demands are as little or as much related to greed as rape are to sexual satisfaction. Both are essentially forms of violence whose primary object is to degrade and victimise a woman.²

CAN DOWRY BE GIVEN VOLUNTARILY?

One key pressure that compels the '*voluntary*' giving of dowry is that marriage is not just universal but is considered so essential that without it a women's life is considered destroyed. Parents feel daughters as a burden of whom they should get rid of. A daughter is never considered settled until she is married off, though she has a decent job. In fact the dowry for highly educated is like to be larger than smaller because the amount of dowry is calculated according to the market-value of the prospective son-in-law. The pressure is not only to settle her but also at right age. What is right age varies from time to time and community to community.

In such a situation, it is pointless to talk about free will or voluntary giving. This is equivalent to saying that a inflation in prices of essential commodities is fine as long as costumers buy them at

² MADHU KISHWAR, ZEALOUS REFORMERS, DEADLY LAWS: BATTLING STEREOTYPES.

their own will and pay high prices. *Status* or *izzat* is always at stake. A family's voluntary giving can also express enhancing the amount of dowry.

WHAT IS THE SOCIAL ROLE OF DOWRY?

The institution of dowry is not of recent origin. It may be traced to the ancient practice of marriage by purchase or purchase of wife,³ which appears to have transformed later into the practise of purchasing husbands.⁴ The 'duty' of giving dowry later became the "essential negotiation" of marriage transaction in India. What a man receives or doesn't receive really don't make or break his or his family's financial status. The richer man is the larger the dowry he expects. A man who gets a scooter as dowry is in a position to buy it; a man who gets a car probably has a car. A dowry is more of an acknowledgment of a status rather than a determinant of it.

The purpose of dowry-giving rituals is comparable to that of traditional offerings to feudal overlords. Whether or not these offerings made any substantial difference to the lord's actual wealth, they had to be offered as token of respect, in acknowledgment of his status. Non-compliance of this ritual would be perceived as unforgivable insult.

Similarly any omission on the part of the girl's family to give gifts at the appropriate times is perceived by the boy's family as an insult to their status. The emphasis is not on the financial loss but on what they see as disrespect. One of the major purposes of giving dowry seems to be a constant public reaffirmation of her inferior status and his superior status. Every marriage and dowry ritual publicly places a stamp of unequal value on the bride and groom. Its significance is not primarily economical but political, in the sense that it defines a power relation between the man and the woman.

IS DOWRY AN ILL-DEFINED CRIME?

Section 2 of the Dowry Prohibition Act defines dowry as:

Any property or valuable security given or agreed to directly or indirectly-

(a) by one party to a marriage to the other party to the

³ *Dharma Shastra of Vashishta* states: "The purchase of wife is mentioned in the Vedas."

⁴ R. Jaganmohan Rao, *Dowry System in India—A Socio-Legal Approach To The Problem*, 15 JOURNAL OF THE INDIAN LAW INSTITUTE 617–625 (1973).

(b) by the parents of either party to a marriage or by either party to the marriage or to any other person any time after the marriage in connection with the said parties, but does not include dowry, or mehar persons to whom the Muslim Personal⁵

The definition is quite comprehensive. It not only prohibits giving and taking of dowry but also tries to stamp out the practice of demanding dowry in any shape or form either before or after marriage.⁶

Section 3(2) permits presents to be given to the bride or bridegroom at the time of marriage. Such presents may be justified as the Act allows only those presents without any demand and they are required to be entered accordance with the rules made under the Act.

The Act even prescribes the nature of presents given to the bridegroom. Such presents should be of customary nature and their value should not be excessive having regard to the financial status of those whose behalf such presents are given. Moreover, one fails to understand term "excessive" and who will determine this. What is the criterion to determine the customary nature of a gift and who will decide it-the family, the community or the government? The Act is silent in this respect. Another major lacuna in the definition is that it does not include various other incidental expenditures incurred in marriage.⁷

WHAT ARE THE INHERENT FLAWS IN ANTI-DOWRY LEGISLATION?

Many states attempted to curb the practise of dowry in the past, but parliament took cognisance of the need to impose legal restrictions on dowry in 1961 and enacted the Dowry Prohibition Act.

The penal provisions of the Act have proved to be virtually ineffective. The Act suffers from serious shortcomings which definitely come in the way of its successful implementation. This is proved by the absence of any kind of impact of the Act on the people for the past one decade of its existence. And, surprisingly, not even one case under the Act has come up before the courts. The only cases reported so far relate to the legality of dowry agreements.

⁵ Dowry Prohibition Act, 1961 (India).

⁶ L.V. Jadhav v. Shankarrao, A.I.R.1983 S.C. 1219 (India).

⁷ P. S. Jaswal & Nishtha Jaswal, *Anti-Dowry Legislation in India : An Appraisal*, 30 JOURNAL OF THE INDIAN LAW INSTITUTE 78-87 (1988).

In practice, the anti-dowry law, like any other welfare legislation, may prove to be pretence and a slumbering enactment. It may be observed more in breach than in implementation. Unless a serious attempt is made to enforce it, it proves to be a dead letter.⁸ However, the law alone cannot tackle traditions like dowry. Adequate social awareness and education together with determination to back all measures designed to check such evils are necessary.

IS EDUCATION THE ANSWER TO ERADICATE DOWRY SYSTEM?

Education is considered as solution for every problem. Therefore, all attempts at reform, whether by social organisations or by government have been in the direction of educating people. There has been no comparable effort towards thinking out the structural changes requires to change the unjust power balance between men and women in our society. It is assumed that if people are made aware that dowry is a social evil, the practise will disappear. This ignores the fact that even the worst of social practises have a social rationale and can be sustained only if interests of some powerful group in the society are served by these practises. Mere awareness campaigns without structural changes cannot accomplish long term changes in the society.

The awareness campaign on this issue almost has a century long history. The only visible result is that today almost everyone nominally condemns dowry and calls it a social evil in public. Understandably this has bred a certain cynicism.

Stringent laws penalising it only remain ineffective or, at best, make the practise assume disguised forms. Law makers and law enforcers are not special breed of humanity. The law is bound to remain a dead letter until there is a social base for confrontation with the culture of disinheritance of daughters.

CONCLUSION

The greed for dowry, and undeniably the dowry system as a tradition calls for the severest criticism. It is apparent that legislative measures such as the Dowry Prohibition Act have not met with the targets for which they were intended. Possibly legislation in itself cannot succeed in removing such an evil, and the solution must eventually be found in the principles and willpower of the society and its active expression through legal and constitutional methods.

⁸ Hari Swarup, *For Whom the Law Is Made*, 228 (1981).

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