

MODERN DOWRY CAMOUFLAGED AS GIFTS: UNVEILING THE PERSISTING PERIL

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ABSTRACT

This paper examines the legal framework governing dowry prohibition in India, stressing the loopholes and obstacles in effectively eliminating the practice. It looks at how the disguised nature of modern dowry makes enforcement challenging, as well as prospective measures to close these loopholes. Although overt dowry traditions may be declining, the pernicious reality of "modern dowry" disguised as extravagant gift-giving at weddings continues to be a major obstacle to women's rights and gender equality. This paper delves into the complexities of this phenomenon, and the underlying socio-economic and cultural factors that perpetuate the practice of modern dowry, including concerns about social status, family honour, and financial security for daughters.

INTRODUCTION

The harsh reality is that the dowry system is still in place and thriving throughout most of India, even among the educated masses, whether it is openly demanded or concealed as gifts. The Dowry Prohibition Act of 1961¹ did prohibit the giving of expensive possessions for marriage, but it's important to recognize that its scope is broader and the challenges are more nuanced. The legacy of the dowry survives, and it lives on in the form of modern "gifts" that exploit legal loopholes.

Section 2 of The Dowry Prohibition Act of 1961² provides a definition of dowry, here are some crucial highlights-

1. Scope of the Dowry: The term "valuable security" refers to any asset that has monetary value, including cash as well as goods, property, and other assets. It can be given directly or indirectly, which means it can be given out overtly or covertly, for example, by covering the couple's wedding costs or giving them gifts.

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¹ The Dowry Prohibition Act, 1961

² The Dowry Prohibition Act, 1961, s 2

2. Parties Involved: It may be given to the other party (generally the groom or his family) by one of the parties to the marriage, which is typically the bride's family.

3. Timing of the Dowry: As part of the marital arrangements, it may be presented at the time of marriage or beforehand. Additionally, it can be provided at any point after marriage, indicating that dowry demands may continue even after marriage has taken place.

4. Connection to Marriage: An important need is that valuable security be provided in relation to the marriage; that is, it must be directly linked to the act of marriage and not given as a gift for a custom or inheritance in general.³

5. Exclusion: It's crucial to remember that for people who adhere to Muslim Personal Law (Shariat), "dower or mahr" is not included in the definition of dowry. According to Islamic marriage contracts, the dower, also known as the mahr, is an additional payment or gift that the groom gives to the bride.⁴

Information from the National Crime Records Bureau (NCRB) demonstrates that 13,479 occurrences under the Dowry Prohibition Act of 1961 were reported in 2022. During the same period in 2022, 6,450 dowry fatalities were reported. Although there has been a minor decline in the number of dowry deaths and instances registered under the Dowry Prohibition Act, the data are still concerning. This shows how the evil of Dowry is still prevailing in our country.⁵

Modern "gifts" sometimes camouflage extravagant expenses, putting tremendous financial and emotional strain on families, particularly daughters. This avoids legal consequences while perpetuating the same discrepancies and burdens.

DOWRY PROHIBITION ACT OF 1961: A HISTORICAL AND LEGAL ANALYSIS

The Dowry Prohibition Act, 1961 is a significant legislation in India's fight against the deeply rooted custom of dowry. However, the route from conception to execution was difficult, and

³ Adv. Rupa K.N, 'Section 2 of the dowry prohibition act' (*EzyLegal*, 28 Nov 2022)

<<https://www.ezylegal.in/blogs/section-2-of-the-dowry-prohibition-act-definition-and-regulations>> accessed 14 January 2024

⁴ Ibid

⁵ Web Desk, 'NCRB data shows in 2022, more than 6,000 dowry death cases' (*Madhyamam*, 6 December 2023) <<https://english.madhyamam.com/india/ncrb-data-shows-in-2022-more-than-6000-dowry-death-cases-registered-1233626>> accessed 16 January 2024

filled with social and political complications. Let's examine its background as well as its effects.

The Road to Prohibition:

Early Attempts: Social reformers like Savitribai Phule promoted the elimination of dowry payments, and anti-dowry groups first appeared in the 19th century. The social stigma and financial burden associated with dowry were major problems at the time. The Satyashodhak Samaj vigorously opposed the dowry system and supported marriages that did not involve receiving gifts or cash payments.⁶

Political and social debates: Concerns about cultural sensitivity and potential retaliation from prominent groups slowed development.

Growing Pressure: Public outrage and increased calls for action were sparked by an increase in dowry-related violence and fatalities, including bride burning.

Origin of the Act: The issue of the dowry system came to light during the Lok Sabha's initial session, with suggestions for dowry regulation filed as Private Members' Bill. Following consultations with state governments in 1953, the Minister of Law promised that a measure would be introduced soon. As the situation worsened, it became critical for the government to advance legislation by introducing the Dowry Prohibition Bill 1959 in the Lok Sabha.⁷

The Dowry Prohibition Act was ultimately passed in 1961 as a result of strong popular pressure and a pledge made by the recently elected Indian National Congress administration.

Key Provisions: The Act prohibited providing or receiving dowry, which was widely defined as any property or expensive gifts provided in conjunction with marriage.

Penalties: It imposed imprisonment and penalties on violators, including those who assisted in dowry trades.

⁶ Abhishek Jha, '6 Reasons Why Savitribai Phule Will Always Be A Kickass Feminist Educator!' (*Youth Ki Awaaz*, 3 January 2017) <www.youthkiawaaz.com/2017/01/savitribai-phule-first-woman-teacher-india/> accessed 18 January 2024

⁷ Vanshika Shukla, 'AN ANALYSIS OF THE 'DOWRY PROHIBITION ACT 1961' CONCEPT & EVOLUTION' (2021) 7(9) *EPRA JOURNALS* <<https://eprajournals.com/IJMR/article/5887/download>> accessed 18 January 2024

LANDMARK CASES

*S. Gopal Reddy versus State of Andhra Pradesh*⁸- In this case, it was interestingly noted by the Supreme Court,“ ‘Dowry’ as defined in Section 2 of the Act cannot be reduced just to a 'demand' for money, property or valuable security made immediately before or after marriage. In its wisdom and foresight while establishing what constitutes dowry, any exchange involving cash, assets/capital worth something substantial, done with regards to an arranged nuptial ceremony; prior to, during, or even shortly afterwards, are all included within this definition according to section 2of the Act.”

*Kans Raj versus State of Punjab and Ors.*⁹ - In this case, we explore a sorrowful event surrounding Sunita Kumari's untimely death. Accusations were hurled at her husband and in-laws for dowry-related torment which allegedly led to her demise. At first instance, the trial court held the spouse guilty but he was subsequently cleared by the High Court. However, once reaching the Supreme Court, the apex court ruled against him reinstating all charges originally found guilty of previously awarded sentences. To address this decision-making process they made clear that what would constitute 'soon before' depended on both particular facts as good circumstances and specific timeframes also seen as justly 'reasonable'. A crucial contributing factor examined through proceedings involved maintaining an ongoing connection between any suffered cruelty/harassment around dowries with the concluding events leading up to the victim's demise.

*Vishnu v. State of Kerala*¹⁰- The court stated that the prohibition of dowry transactions under Section 3(1) of the Dowry Prohibition Act,1961 does not apply to gifts bestowed upon the bride during marriage, that is, if they are given freely and in accordance with this Act's regulatory directives.¹¹

All these pivotal cases were crucial in addressing dowry-related issues such as the rise in fatalities due to relentless demands, mistreatment of brides post-wedding, and several other grave concerns. However, the Kerala High Court¹² crafted a sort of exception that interpreted

⁸ S. Gopal Reddy versus State of Andhra Pradesh (1996) 4 SCC 596

⁹ Kans Raj Vs. State of Punjab and Ors. (2000) 5 SCC 207

¹⁰ Vishnu v. State of Kerala 2021 SCC OnLine Ker 5131

¹¹ Bhumika Indulia, 'Daughter receiving presents from parents during her marriage, will be covered under 'Dowry'? Ker HC explains in light of provision which prohibits 'giving or taking of dowry' (SCC Blog, 15 December 2021) <www.scconline.com/blog/post/2021/12/15/dowry/> accessed 19 January 2024

¹² Ibid

gifts given to the groom's family as not constituting dowry. Here the term 'consent' plays a key role. The family of the bride was unable to substantiate any claims about being forced into gift-giving, there appeared to be an unspoken anticipation for lavish presents.

IMPACT AND CHALLENGES

Early Successes: Initial studies showed a decrease in dowry demands and associated violence.

Loopholes and Resistance: The Act experienced hurdles due to societal stigma, a lack of information, and loopholes utilized by families to circumvent the law with disguised "gifts" in the name of customs and traditions.

The Dowry Prohibition Act, despite its limitations, has prompted more legal and social reforms. Continuous efforts are required to close gaps, create knowledge, empower women, and encourage attitudinal reforms in society. Only through persistent vigilance and societal reform will the evil of dowry be really eliminated completely.

MODERN FORM OF DOWRY DISGUISED AS 'GIFTS'

Although the term 'dowry' is not being used nowadays and has become a taboo the reality is that in most of the so-called 'modern weddings', they still pay out dowries, which are disguised as gifts from the bride's side to the groom.¹³ The grim reality is that the dowry system is still in place and actively growing throughout most of India, including among the educated masses, either explicitly asked for or concealed as gifts.¹⁴

Recently, a Kerala doctor was suspended by the Indian Medical Association (IMA) when his 26-year-old girlfriend allegedly committed suicide after he called off their wedding due to dowry demands.¹⁵

¹³ Sakshi, 'Is 'Gifting' Pretty Much Dowry In Disguise?' (*WedMeGood*, 19 June 2019)

<www.wedmegood.com/blog/is-gifting-pretty-much-dowry-in-disguise/> accessed 20 January 2024.

¹⁴ Ibid

¹⁵ Shaju Philip, 'Kerala doctor dies by suicide after colleague's 'exorbitant dowry demand' scuttles marriage plans.' (The Indian Express, 9 December, 2023)

<<https://indianexpress.com/article/cities/thiruvananthapuram/kerala-unable-to-pay-dowry-trainee-doc-kills-self-9057608/>> accessed 20 January, 2024

Dowry is now regarded as an inadvertent haq (right) of a boy and his parents as opposed to a dan (gift).¹⁶The concept of family honour is one of the main causes behind this prevalent system of Dowry. This concept needs to be changed gradually yet thoroughly.¹⁷

Here's a brief look at how dowry operates under the garb of gifts:

Terminology Shift: Subtle expectations of "shagun" (auspicious presents), "blessings," or "contributions" towards the wedding expenditures may take the place of the open demand for dowry. Families are able to continue the practice while denying any wrongdoing thanks to this linguistic shift. The language may have changed, but the adverse consequences and underlying power dynamics are still very much present.

Growing Expectations: Despite being offered voluntarily as expressions of love, these "gifts" are frequently extremely costly, ranging from large financial payments to pricey furniture and electronic devices. A competitive and financially demanding atmosphere is created by the pressure to "match" or even surpass the groom's side's perceived worth.

Burden on the Bride's Family: It is mostly the bride's family's obligation to meet these ostentatious gift requirements. This may put their future security and well-being at risk, as well as causing severe financial hardship.

Maintaining Gender Inequality: The expectation of gifts perpetuates unequal gender roles by portraying the bride as a burden or a subordinate member of the family. It maintains the idea that the groom's family should receive a reward for accepting the bride and diminishes the woman's value to her economic contribution.

Impact on the Bride: This disguised dowry system can have severe psychological and emotional consequences for the bride. She may feel objectified, pressured, and burdened by unrealistic expectations. It can also lead to domestic violence, harassment, and even self-harm in extreme cases.¹⁸

¹⁶ Puja Mondal, 'Dowry System in India: Problems, Social Dimensions and Other Details' (*Your Article Library*, January 2021) <www.yourarticlelibrary.com/society/dowry/dowry-system-in-india-problems-social-dimensions-and-other-details/35175> accessed 20 January 2024.

¹⁷ 'Woman, uninterrupted: It's not dowry, it's just a gift' (*The Hindu*, 5 February 2016) <www.thehindu.com/features/metroplus/woman-uninterrupted-its-not-dowry-its-just-a-gift/article8198165.ece> accessed 20 January 2024.

¹⁸ Dr K. Neela Pushpam, 'DOWRY SYSTEM IN INDIA' (2022) 10(1) IJCRT <<https://ijert.org/papers/IJCRT2201056.pdf>> accessed 21 January 2024.

Stridhan vs. Dowry: Stridhan refers to a woman's property before, during, or after marriage. It differs from dowry. It could be gifts, inherited property, or self-acquired assets. It is her own property, and she has entire authority over its use and disposal.¹⁹ Dowry is the groom's family's demand for money, goods, or property in exchange for marriage. It is banned in India, yet the practice continues in many forms.²⁰

Misuse of Stridhan-

Underneath lies twisted expectations: In certain circumstances, families overestimate the worth of Stridhan assets, putting financial strain on the groom's family. This can serve as a bargaining chip, comparable to dowry demands.

Important distinctions:

Consent: Unlike dowry, Stridhan gifts are given voluntarily by the bride's family. The woman retains ownership and control over them. Lines drawn over consent make all the difference.

Legality: Dowry is outlawed in India, although stridhan is regarded as a woman's legitimate property.

In the *Pratibha Rani v. Suraj Kumar*²¹ case, the Supreme Court decided that any Hindu woman who marries becomes the sole owner of her Stridhan property. She can handle the property however she pleases, and even if she names her husband or in-laws as trustees, she still has the right to retrieve the property. If the trustees fail to do so, she can hold them accountable under Section 406²² of the Indian Penal Code, which stipulates that they can be punished with three years in prison, a fine, or both for criminal breach of trust, which is again defined in Section 405 of the IPC.

The case of *Girish Chander Raina v. Sushma Sharma*²³ clarified the difference between dowry and stridhan, with the Supreme Court ruling that the fundamental aspect of dowry is the transfer of property to the person to whom it was given. It is true that the property is transferred to the individual who sought the dowry. By "stridhan," it is understood that whatever property

¹⁹ Snehal Upadhyay, 'Streedhan and women's right to property' (2022) 2(1) IJIRL <<https://ijirl.com/wp-content/uploads/2022/02/STREEDHAN-AND-WOMENS-RIGHT-TO-PROPERTY.pdf>> accessed 21 January 2024

²⁰ Ibid

²¹ *Pratibha Rani v. Suraj Kumar* 1985 (2) SCC 370

²² Indian Penal Code, 1960, s 406

²³ *Girish Chander Raina v. Sushma Sharma* LQ 2008 HC 19363

is given to the bride prior to, during, or after her marriage is her exclusive property, with full authority to dispose of it as she wishes.²⁴

Stridhan is intended to empower women and give financial security, whereas dowry is frequently viewed as a means for the bride's family to provide for the groom's family.

THE WAY AHEAD: BREAKING THE CYCLE

Fighting the Disguise: In order to eradicate this detrimental behaviour, it is imperative that:

Raise awareness: To combat the normalisation of "gift-giving" as a covert dowry, public dialogue and community education are crucial.

Public Dialogue and Education:

- **Media Campaigns:** Use various media channels (TV, radio, social media) to create awareness campaigns about the hidden nature of "gift-giving" and its link to the dowry system.²⁵
- **Community Workshops & Seminars:** Organize community events including experts and survivors to educate both men and women about the legal and social ramifications of disguised dowries.
- **Educational booklets and resources:** Distribute informational materials in local languages, emphasizing case studies, legal provisions, and alternative wedding rituals that promote equality.

Challenging Social Norms:

- **Role models and celebrity endorsements:** Ask significant personalities and celebrities to promote and advocate against disguised dowries, thereby raising public awareness and breaking societal silence.
- **Promoting Alternative Rituals and Celebrations:** Encourage celebrations that focus on the couple's unity rather than materialistic displays, and promote simpler ceremonies and meaningful rituals.

²⁴ Ritesha Das, 'Stridhan and Women's Estate under Hindu Law' (*Lexpeeps*, 18 May 2020) <<https://lexpeeps.in/stridhan-and-womens-estate-under-hindu-law/>> accessed 23 January 2024.

²⁵ Nomik Uddin, Marzana Akter Hamna, Ehsan Talukder, Rayhan Ahmed 'Comparative Study on Dowry System' (2019) 6(11) *Theijsshi* <<https://valleyinternational.net/index.php/theijsshi/article/view/2430>> accessed 24 January 2024

Empower families: It is essential to educate families about the harmful effects and legal ramifications of dowries.

- **Financial Literacy Workshops:** Organize workshops to teach families, particularly bride's families, about financial literacy and how to arrange economical wedding celebrations.
- **Legal Awareness Programs:** Organize legal awareness programs to educate families on the Dowry Prohibition Act, the consequences of demanding or offering dowries, and possible remedies in the event of abuse.
- **Counselling and Support Groups:** Offer counselling services and support groups to families dealing with societal pressures or facing unpleasant repercussions as a result of dowry demands.
- **Peer Education and Networks:** Establish peer education and networks among young people and families, enabling open talks and shared experiences in order to undermine entrenched practices and promote changes.

Encourage parity amongst genders: In the end, addressing the underlying causes of gender disparity will open the door to a society that values marriage without abusing or commodifying people.

Men as Allies: Engaging Men in the Fight Against Dowry- We should encourage men to be a part of the fight against the dowry system. The young men who are ready for marriage don't transform into sellable assets to the bride's parents in exchange for bridal payment.²⁶

- **Educate men about the dowry system:** It's possible that many of them are unaware of all the negative consequences associated with it. We can begin laying the groundwork for understanding and support by informing them about the financial and psychological strain it puts on women and their families.
- **Challenge prevailing gender norms:** The dowry system frequently stems from gender stereotypes that devalue women and girls.
- **Refusing to get involved in dowry transactions:** Men, in the end, have the ability to reject the dowry system. They can refuse to receive dowries from their bride's families and push their own families to do the same. Through contesting these beliefs and

²⁶ P. Mondal (n 16)

advocating for gender parity, we can establish a community in which the dowry system is viewed as unacceptable.

CONCLUSION

The Dowry Prohibition Act of 1961 remains an essential step forward in the battle against dowry. Understanding its shortcomings, whilst acknowledging its contributions and persistently aiming for a community free from this oppressive practice is vital for fostering a fairer and more balanced tomorrow.

We've untangled the deceitful threads of "gifts," demonstrating the dowry system's pernicious influence in modern attire. Gender inequality persists, families are financially crippled, and women are exploited and commodified—all hidden under the dazzling façade of lavish gifts. But, among the gloomy contours of this repressive institution, flickers of hope emerge. Women are strengthening their voices claiming autonomy while rejecting being a commodity.

There is a long path ahead, but, by using the instruments of knowledge and empowerment, we can create a new narrative in which daughters are cherished rather than sold, and love finds its genuine meaning, free of the taint of monetary dealings. We can eliminate the dowry system and pave the way for a more just future for all by identifying and tearing down the "gift" masquerade.