INTRODUCTION
CHAPTER-I

INTRODUCTION

1.1. The Subjects and its Importance

The word dowry in the ordinary and natural sense means the property that a girl or a bride brings with her at the time of her marriage from her parental house to her matrimonial house. According to Lexicon Webster Dictionary dowry means\(^1\) -

1. The money, goods, or estate which a woman brings to her husband in marriage.

2. A natural talent.

3. A dower.

According to Shorter Oxford English Dictionary on Historical Principles, the word ‘dowry’ means\(^2\) -

1. Property or money brought by a bride to her husband, the portion given with the bride.

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2. A present made by a man to the father of his prospective bride as a condition of her being allowed to marry. Formerly, a present given by one spouse to the other,

3. The property or endowment of a church.

Section 2, Dowry Prohibition Act, 1961 defined dowry as property or valuable security given or agreed to be given either directly or indirectly.

(a) By one party to a marriage to the other party to the marriage.

or

(b) By the parents of either party to a marriage or by other persons to either party to the marriage or to any other person at or before\(^3\) (or any time after the marriage)\(^4\) (In connection with the marriage of the said parties) but does not include dower or mahr in the case of person to whom the Muslim Personal Laws (Shariot) applies.

The evil of asking for marriage, i.e. dowry affected the Hindu society badly and for realization of dowry, brides were put to inhuman treatment, harassment and physical and mental torture. Brides were even burnt to death or compelled to commit suicide as a punishment for not bringing dowry up to the expectation of the husband and family members of the husband.

3. Subs. by Act 43 of 1986, S.2, for the words ‘or after marriage’ (w.e.f. 19-11-1986).
4. Subs. by Act 63 of 1984, S.2, for the words ‘as consideration for the marriage of the said parties, but does not include.’ (w.e.f. 2-10-1985)
In a bid to eradicate this evil from the society the Central Government enacted the Dowry Prohibition Act 1961, but the evil of dowry system was assuming enormous proportion and the Act failed to achieve the objective for which the Act was enacted. A Joint Parliamentary Committee on dowry was constituted which submitted its report in August, 1982. On the basis of the recommendations of the committee, the Dowry Prohibition Act, 1961 was amended by the Dowry Prohibition (Amendment) Act, 1984 (63 of 1984) and was again amended by the Dowry Prohibition (Amendment) Act, 1986 (43 of 1986) to stringent the Act of 1961. Two new Sections i.e. 498A and 304B were inserted in the Criminal Law, and Sections 113A and 113B were inserted in the Indian Evidence Act by the Dowry Prohibition (Amendment) Act 1986 (43 of 1986) to well equipped the Act with more power But unfortunately the Act was not able to fulfill the desired aim for which the legislation was enacted. The evil of dowry has taken a serious form in almost all the Sections of the society in our country. The society was free from all sorts of evil customs of the Aryan culture basically for two reasons- i) Assam is a tribal based society, and ii) Absence of major Aryan influence in this land in the Ancient and Medieval Period. The cultural life in this region was influenced by tribal and Non-Aryan elements. In the social, religious or political field of the tribal and Non-Aryan culture women occupied majestic and honoured position.
In the medieval period in contrast to other states Assamese women got more prominence in the social or other schemes.\(^5\) The women folk of indigenous society in Assam were highly respected and as such their future and fortune were never measured in lieu of money value in form of notorious dowry. Ramita Dhar said that the practice of dowry that was largely practised in the Hindu Society in other parts in Ancient and Medieval India was not at all existent in the traditional Assamese society.\(^6\) Thus it has come to light that Assam was almost free from the dowry disease in early time. Whatever occurrence took place was among the people who have migrated from the other parts of the country excepting other states of Eastern region. The heinous crime dowry entered in the Assamese society by the mixing of other migrated dowry effected societies with the indigenous societies of the State. As a consequence now dowry death frequently occurred in the State. Though it is not in the dangerous situation in Assam the increasing trend of dowry death is clear indication of degradation of moral fiber of the society. Sacredness and sacramentality of the institution of the marriage in indigenous Assamese life have found to be displaced by some commercial relations, imported from other dowry effected communities of the other parts of the country. At present often reports have been found of the dowry death in the state even among the people belonging to the indigenous society. Media all over the Assam

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particularly the newspaper often gives considerable coverage on violence against women such as dowry death, dowry torture etc. Dilip Kumar Medhi writes-

‘In a case of that period a young married lady of Santipur, Guwahati could escape from the atrocities of her husband at dead hours of the night and now lives with her parents owing to insufficient amount of dowry. In another case in the same locality, a man burnt his wife to death and lack of evidence enabled him to marry again. At Shri Mantapur area of the city of Guwahati a woman was murdered for an exaggerated demand of dowry in 2002, after she was physically tortured every evening. In another case at Guwahati a husband burnt his wife to death with kerosene oil infront of two kids. Furthermore a Prof. of Birubari had beaten his wife and they later began to live apart at the interference of their neighbours.’

An analysis of the data for the state and her 27 districts reveals that during the period 1998-2008 there has not only been an increase in the number of crime and violence against women but also the incidence of crime is well

spread over all the districts. The statistical data shows that in 1998 the incidence of dowry death was 32, it increases up to 103 in 2008. The number of incidence of cruelty by husband and relatives in 1998 was 739 and in 2008 it raises up to 3478 in the State. The number of suicidal death due to dowry related dispute has been increasing year after year in Assam. In 1999 in Assam number of female suicide relating to dowry dispute was 7 but from the year 2000 it began to increase and in the year 2003 it reached the highest number with 34. Thus in recent time Assamese society has shown a rising trend in the instances of dowry related cases.

The statistical data recorded by National Crime Records Bureau recorded 8,172 dowry death cases and 81,344 cases of cruelty by husband and relatives for all over India for the year 2008. Within this year Uttar Pradesh shows highest number of dowry death (u/s 304B IPC) incidence i.e., 2,237 and West-Bengal recorded 13,663 cases which is the highest of cruelty by husband and relatives (u/s 498A IPC). Whereas Assam shows 103 dowry death cases and 3,478 cases of cruelty by husband in particular year.

Thus, though in comparison to other states the rate of dowry incident in Assam is low, the uprising trend of this notorious institution has already sent

8. See table 4.2 in Chapter IV at p. 99, also in Appendix- XIV.
9. See table 4.6 in chapter IV at p. 110, also in Appendix- X.
a signal of terrifying and dangerous situation in near future if the same is not controlled at the bud stage. The number of dowry death and dowry related torture is increasing tremendously. On the other hand table 4:8 shows the conviction rate under Sections 304B and 498A IPC very poor. Only 58.8 is the highest conviction rate u/s 304B and 24.9 is the highest conviction rate u/s 498 A IPC within the year 1998-2008. Besides, disposal rates (u/s 304B and 498A IPC) in both court and police level is seen lamentably poor. The statistical data shows very poor number of prisoners under the same crime heads in different Jail in Assam. The rapid rising of dowry incidence such as dowry death and dowry torture, enormity of pendency in both the Gauhati High Court and its Sub-ordinate courts, poor conviction rate and pitiable number of convicted prisoners in different Jails in Assam obviously signify the ineffectiveness of Dowry Prohibition Act in the solution of dowry problem in Assam. By the micro observation it is found that the reasons of ineffectiveness of the Act are many fold. Vague statutory provisions, absence of strong and independent enforcement machinery, dilatory process of the court, apathetic and callous attitude of the Police, reluctance of neighbours, irresponsibility of civil society and fearful attitude of the victims is worthwhile to be point out the causes of poor implementation of Dowry Prohibition Act in Assam.

11. See Table 4.7 and table 4.18 in chapter IV, at pp. 113 & 149.
12. See Table 4.16 in chapter IV, at p. 144.
Another significant phenomenon of Dowry Prohibition Act is that it has an unpleasant impact in practical situation. The Act has been misused badly in recent times. The inserting Sections in Criminal Law 304B and 498A by the Second Amendment of Dowry Prohibition Act which are the main weapons of controlling the dowry evil, have been seen badly misused. In a Criminal Appeal case\textsuperscript{13} in the Gauhati High Court it is proved that Sri Mati Anima Das w/o Sri Surja Kummar Deka falsely implicated her husband under trivial ground u/s 498A IPC. In another Sessions case\textsuperscript{14} Chand Miyan, the accused is falsely implicated u/s 304B IPC for the death of his wife Sahida khatoon.

These are the two instances of misuse of the above Sections. There are lots of instances of misuse cases u/s 498A IPC and 304B IPC lying in the Gauhati High Court and Sub-ordinate courts in Assam. In \textit{Gautam Saha v. State of Assam},\textsuperscript{15} the accused appellant Gautam Saha was implicated u/s 498A IPC/304B IPC for the commission of suicide by his wife Susmita Saha, the deceased. But later on it was proved in the Appeal Court that there was no demand for dowry prior to the marriage and after the marriage or even before the death of deceased from the side of the accused appellant.

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In the words of R. Chandranathan-

‘A prevalent misuse of the above legislation occurs widely in Assam among a certain floating community of the population especially in the ‘Char’ areas. The husband when taking on a second wife as allowed by his religion fails to compensate the first wife financially the wife files a 498A IPC (Cruelty by Husband) case or other dowry related cases. Thus giving rise to increase registration of such cases in these areas.’

In Sushil Kumar Sarma v. Union of India, the Supreme Court observed as follows -

‘The object of the provision is prevention of dowry menace. But as has been rightly contended by the petition many instances have come to light where the complaints are not bonafide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. Merely because the provision is constitutional and intra-vires, it does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may therefore

become necessary for the legislature to find out ways how the makers of frivolous complaints or allegation can be appropriately dealt with."

So, the matter that is the application and the impact of Dowry Prohibition Act in Assam is very significant. In one hand the Act is unable to bring adequate solution of dowry problem due to poor implementation of the Act. In another hand under the shadow of inserted Section 498A IPC to Criminal Law by the Dowry Prohibition (Amendment) Act 1986 some women try to harass their innocent husbands. As a consequence the husband has to suffer harassment of jail custody. Judicial officers, Advocates, Police officers have accepted it that at least 80% of cases u/s 498A IPC have been found totally false implication. So the matter i.e. the application and impact of Dowry Prohibition Act is worthwhile to be noted. In many literatures, crimes against women including dowry torture and dowry death etc. have been emphasized by the authors but least important is focussed on the misuse of the well intended provisions of the Act to eradicate the dowry evil. The misuse of this provision has created a critical problem not only in judicial process but also in police, domestic and social life. A micro and scientific study is needed to find out the root causes of this critical problem. This is the matter which has attracted the mind of investigator to select the present topic of the thesis.
1.2 Objectives of study

The main purpose of this investigation is to find out the fact to what extent the Dowry Prohibition Act has been able to bring fruitful result in curbing the heinous evil dowry in Assam. It has also been proposed to investigate about the impact of the Act on social and individual lives in Assam. By this study through probable investigation the researcher wants to draw the attention of the Courts, Police and Civil Society to this tremendous problem of society and find out the root causes of the problem, forward some suggestions for possible amendment of the provisions of the Act and remedial measures so that the Act implement properly.

1.3 Review of literature

A lot of works have been done and published on the position of women in Indian society along with the society of Assam, on the evil of dowry and its effects, dowry death, dowry torture, history of dowry etc. etc. The important among these are Paras Diwan’s ‘Dowry and Protection to Married Women’, ‘Laws Relating to Dowry, Dowry Death, Bride Burning, Rape and Related Offences’, G.B. Reddy’s ‘Women and the Laws’, H. Sudhir, Jubita Hajarimayum’s (Eds) ‘Violence Against Women in North-East India’, Dr. P.C. Chaudhury’s ‘The History of Civilization of the People of Assam’, S.L. Baruah’s ‘Comprehensive History of Assam,’ M.N. Srinivas’s ‘Some Reflections on

Paras Diwan’s two books ‘Dowry and Protection to Married Women’ and ‘Laws Relating to Dowry Death, Bride Burning, Rape and Related Offences’ present a discussion on the legal provisions provided in Criminal Law for the protection of married women and violence against women. Role of Judiciary has been discussed thoroughly in different chapters of the books.

In ‘Women and The Laws’ G.B Reddy thoroughly discussed the various legal provisions for the safeguard and protection of Women’s Human Rights. In ‘Violence Against Women In Northeast India With Special Reference to Assam, Manipur and Tripura’ edited by H. Sudhir and Jubita Hazarimayum, a few eminent writers such as Archana Sharma, Dilip Kumar Medhi, Vasudha Gupta presented a vivid picture of crimes against women in Assam with
statistical data and graphical representations. The role of Government and Non-Government organizations, Police, Judiciary in controlling the crimes with positive and negative functions has been discussed.

In 'Some Reflections on Dowry' M.N Srinivas focused on the origin and development of dowry evil in various communities. The author made a sincere attempt to deal with the weakness of the investigating and enforcement machinery along with irresponsibility of common people for the increasing trend of dowry evil.

Ramita Dhar's Doctoral thesis 'Status of Women in Assam from Mythological Period to Ahom Period (1826), A Critical Study', presents a detailed work on the status of the Assamese women in the light of social, economical, political and other challenges from the Mythological Period to Ahom Period. It is a humble attempt to deal with the significant role of Assamese women in various fields. Towards the end of the book the author seeks to identify the impact that recent events have on the status of women.

'Judicial Activism – A New Matrix of Social Justice' is a Doctoral thesis by Mrinmayee Baruah which can be regarded a humble attempt to present the varied role of Judiciary on the protection of human rights through judicial activism. The author stresses on the cautiousness and sincerity of the Judiciary for the proper application of judicial activism to bring the fruitful result in rendering judicial aid to helpless and hapless women in our country.

Ripima Buzarbaruah describes about the existence, manner and serious impact of dowry evil in Assamese life in her Doctoral thesis ‘Violation of Women’s Human Rights: A Case Study in Kamrup District, Assam.

In Crime Control Mechanism and Law Enforcement in Guwahati (1990-2000), Raman Sharma has pointed out some weak points of enforcement and investigative authorities in their respective functions in controlling crimes in Assam. Sri Pradyut Kakati’s ‘Jautuk Pratha’ presents the origin and development of dowry system in Assam along with legal provisions for the protection of women’s human rights. The author clearly describes various causes of rapid rising of dowry evil and its impact in Assamese society along with social response to it.

Some of the seminars were held on status of women in North-East India and papers presented there in. One of them is Pradeep Narzary’s Paper on ‘Crime Against Women in North-East India.’ The work presents a vivid picture of crimes against women in North-east India which has created a terrible situation in the region in the present time.

18. Submitted in the National Seminar on Women in North-East Challenges and Opportunities for the 21st Century organized by WSRC, GU. convened by the Women Commission of State for Assam at Administrative Staff College, Jawahar Nagar, Guwahati on 8th and 9th December 1995.
The writer stressed on the immediate solution of the problem drawing the attention of Judiciary, Police, and Civil Society to this pernicious evil.

The matter is worthwhile to mention that the above works of various authors emphasized only on status of women, crime against women including dowry death, dowry torture, role of Judiciary, Police etc. etc. But no any work has been found dealing with the question of application and impact of Dowry Prohibition Act which is a critical problem for present time.

1.4 Sources of Data

Data from various sources have been gathered to carry forward the study to the logical conclusion after tabulating these looking to them in an incisive manner. Record of crimes relating to dowry death (304B IPC), dowry torture (498A IPC) data on conviction rate of dowry related cases, data on registered, disposal and pending on dowry related cases, data on suicidal cases (general suicidal & suicidal cases relating to dowry disputes) etc. have been collected from DIG, CID office Guwahati. Different police stations had been visited to collect data as regards crime reported, detected, arrest made, final report prepared, prosecution initiated, charge sheet prepared, conviction, acquittal obtained etc. Data as regard number of police personnel engaged for crime control and law enforcement have been collected from Assam Police Head Quarter, Guwahati.
Data have been collected from Honourable the Gauhati High Court as regards the availability of necessary paraphernalia for effective functioning for crime control and law enforcement, cases instituted, disposed and pending relating to dowry cases, latest strength of Judicial Officer (upto the year 2008) in the Gauhati High Court and of Sub-ordinate courts of Assam, cases registered, disposed and pending in the Criminal Revision and Criminal Appeal Courts from the year 1998-2008 etc. etc.

The investigator has collected data from Assam Human Rights Commission, Guwahati as regards dowry related cases along with a few case history of dowry case.

From the Inspector General of Prisons, Assam, Khanapara, Guwahati data have been collected about the number of prisoners convicted for dowry offence including the number of prisoners according to terms and conditions of the imprisonment in all Jail of Assam.

Opinions have been obtained from different institutional heads regarding dowry incidence, its causes and measures under taken by Government and Non-government Organizations for the solution of dowry problem in Assam by the way of questionnaire and interview schedule. Opinions have been obtained from Gita Rani Bhattacharya, State Programme Director, Assam Mahila Samata Society, R. Chandranathan IPS, Inspector General of Police
(Adm.) (as he then was), Anjali Baruah, Chair Person, Assam Pradeshik Mahila Samiti, Mrs. Bina Kakati, Officer in Charge, All Women Police Station, Panbazar, Guwahati. Besides, opinion of a few senior and experienced advocates have gathered by the way of questionnaire on the problem of dowry and its remedy more over opinion of several dowry victims and their parents have been gathered through Interview Schedule.

1.5 Time, place and materials of the survey

The period of the research project is undertaken from the years 1998 to 2008. This period of eleven years has been taken for the research project on the subject though it may not be complete yardstick of the problem. Some major, noticeable incidents might happened beyond this period earlier or latter. But data have been collected mainly for this period. Of course two or three major incidents of dowry has been mentioned in the work which are beyond this prescribed period to point out the importance of the subject. By the observation it is realized that within the selected period the problem of dowry in Assam has reached an important step.

The geographical boundary of the study is the present Assam with its 27 Districts.¹⁹

¹⁹. As in the period of study new Districts had been created after division of old districts, fraction arose in case of data allotted for different Districts.
All the communities inhabited within this geographical boundary is covered by the study whether the community is the Assamese or the Non-Assamese Hindu or Non-Hindu.

The project includes the problem of dowry, dowry related torture and dowry death. It covers only a single dimension of various crimes against women.

MATERIALS AND METHODOLOGY

The elements of research fall into analytical and empirical study. The investigator critically examine the dowry related cases admitted and delivered Judgement against them by the High Courts and the Supreme Court. A critical evaluation has been done on the role played by the courts for the purpose of providing Judicial remedy to the poor, helpless, hapless women and by the by to the innocent husbands against whom false implication had been done. Various case books on violence against women, Law Journals, All India Reporter, articles published in the news papers on the subject have been studied thoroughly. Along with primary sources the information from secondary sources have also been gathered. In primary sources there are opinions expressed by several persons are gathered. Secondary sources collected from research articles, books, internet, and statutes book. Thus both documentary and primary sources have been collected.
Various data on dowry incidence, dowry cases, data on the strength of enforcement authority such as police personnel, Judicial officers etc., opinion of group leaders, socially conscious person have been collected for the survey of the problem which are described earlier. Moreover works on women and dowry, written by eminent scholars have been studied for gathering knowledge about the present problem and to do the survey on it.

For collection of data both interview and observation methods have been followed. The important tool of data collection Questionnaire for collection of data has been used. As the area of investigation is large sample method of data collection has been applied. Stratified Random sample basing on statistical methods has been followed. Mailed questionnaire for literate and interview schedules for illiterate has been used to collect the data.

In questionnaires important questions have been put to the respondent regarding dowry evil and its serious impact in Assam. Questions have been asked about the causes of increasing dowry menace and failure of Dowry Prohibition Act in curbing the problem in Assam. Besides, questions are asked about the response of civil society, police and courts to this burning social problem and need of amendment of some provisions of the Act. The opinions and statement of the respondent have been cited in various chapters of the present work.
HYPOTHESIS

Undoubtedly the Dowry Prohibition Act was enacted for eradication of menace of dowry from our society. But the Act was not successful. A close study may reveal causes of failure of the Act which is deeper rooted. The hypothesis of the study has been framed as follows-

1. Psychological frustration of the victims, temptation towards evil. Non-awareness of women about their rights provided in Indian Constitution and Statutory Law is the cause of the failure of Dowry Prohibition Act.

2. Lethargic and indifference view of Police, dilatory process of the Courts.

3. Lack of co-operation and conscience of common people towards the evil, reluctance of neighbour in respect of dowry cases.

4. Weak mentality of the dowry victims comes as important causes of ineffectiveness of the Act.

5. There is a significant relationship between patriarchal tradition in Assamese societies and crimes against women.

6. The Socio-economic condition of the household is a significant determinant of violence against women.
7. Difference of opinion between husband and wife and personal vendetta are the root causes of misuse of section 498A and 304B IPC.

8. Modern hollow life style, influenced by the Western Societies, diminution of old sacred relationship among family members, averse to work, legal awareness etc are the other causes of increasing number of misuse cases of legal provisions.

**CHAPTERS**

On the basis of the sources, the investigator divided his thesis into Seven Chapters. The first chapter is 'Introduction'. The deep-rooted evil of dowry has a lamentable impact in individual and social life of Assamese society. It is a monster of society who has eaten up the fabric of our society and brings a great threaten to future generation. The investigator tries to analyze this impact in chapter II 'Impact of Dowry in Assam.'

The third chapter 'Part Played by Judiciary in Dowry Cases' analyses the important judgement of the Supreme Court, the High Courts and the Subordinate Courts on dowry related cases such as u/s 304B and 498A IPC etc. Much care has been taken to incorporate the important cases of various High Courts and the Supreme Court. Analysis of the judgement on dowry related cases in different important points such as definition of dowry, dowry
and stridhan, granting of bail in dowry offences, anticipatory bail, and misuse of Sections 498A and 304B IPC etc. have been done in incisive manner.

Data and documentary materials relating to dowry and dowry related cases and incidents such as 304B and 498A IPC have been collected from various Government offices such as DIG, CID office Guwahati, Assam Human Right Commission Office, Guwahati, Women Commission of State for Assam, Guwahati, Office of the Inspector General of Prisons, Assam Guwahati, the Gauhati High Court etc. all these are discussed, analyzed in the chapter IV 'Data Analysis and Research Report.'

The Dowry Prohibition Act is applied to curb the menace of dowry and to some extent the Act is able to curb the evil. But the Act is misused in many cases. Especially under the shadow of Section 498A IPC of Criminal Law many innocent husbands have been falsely implicated by wives and their relatives. Under Section 304B IPC also many innocent husbands become the victim of concocted allegation of killing their wives on account of dowry demand. In the chapter V- 'Application and Impact of Dowry Prohibition Act In Assam', this important phenomenon has been discussed.

To curb the menace of dowry, to give the safe guard to the young bride from the mouth of evil of dowry, from the cruel hand of husband and his relatives, enormous legislative measures have been adopted. But the statistical
data has shown the rapid rising of dowry cases and incidence day by day. This signifies that legislative measures for the solution of dowry problem are perfectly unable to work. From the analytical and empirical study it has been cleared that many factors are responsible for the failure of the Act. Chapter VI- 'Causes of Ineffectiveness of the Dowry Prohibition Act in Assam', deals with these problems.

The investigator tries to discuss about probable remedy of this monster like social problem. The dowry, the monster of our society must be attacked from various angles such as economical, political, social, legal, administrative etc. Suggestions for the amendment of certain Sections of the Act, has been forwarded. All these remedial measures, suggestions have been discussed in concluding chapter VII along with the summary of the research. The investigator has formulated finding and the generalization on the basis of his study. The utility of finding is tried to present logically and convincingly, both negative and positive result had been produced in the last chapter. Recommendations and suggestions for further study in this field touched by present work have been mentioned.