

CHAPTER 7
DOWRY: A SOCIAL EVIL

"Widowhood imposed by religion or custom is an unbearable yoke and defiles the home by secret vice and degrades religion. If we would be pure, if we would save Hinduism, we must rid ourselves of this poison of enforced widowhood"

Mahathma Gandhi

Dowry is a custom turned as a social evil. The concept of equality among marital relationship is toppled by the custom. Moreover human dignity of women is questioning through the custom. Women who have not enough money or property are the worst sufferers. Most of them is denied marital life or right to choose appropriate spouse. Justice is denied to the females and the custom is beneficial to male.

The word 'dowry' is almost synonymous with Indian women's oppression under patriarchal systems. It has been a short cut for indicating low status for women, the argument being that the callous and mundane efficiency of "dowry deaths" indicates the low value of women's labor and the high cost of their marriages, making women a liability for their natal families and a source of lucre for their marital families. There is ample evidence that the phenomenon of dowry is expanding, spreading to communities where it had never existed, and that the value of dowries is rising to untenable limits; there are horrific reports of fathers selling kidneys to cover dowry payments,

1 Young India 5th August 1926
or collective suicides in families with multiple daughters. The Indian government's Department of Women and Child Development reported 6,006 dowry deaths for 1997.

The common conclusion has been to condemn exorbitant dowries. Scholars and activists have been pointing out, however, that criminalizing the giving and taking of dowry and applying social pressure to ban dowry in marriages are partial and inadequate solutions. Rather, the problem of dowry must be considered alongside questions of property, labor and the fundamental nature of marriage. Dowry, or some form of marriage payment, is hardly unique to India. Of the 563 societies listed in George P Murdock's Atlas of World Cultures, 24 (four per cent) are associated with dowry systems, 226 with bride wealth (grooms' families making payments to brides' families), and 63 with bride service (grooms contributing labor to brides' families in lieu of money).

Anthropologists have suggested that marriage payments are one of the ways in which cultures expand social relations between communities by exchanging gifts. Other explanations are that marriage payments help secure labor rights, or that they provide occasions for display of social status.

Cultural and Sociological Background

A system of dowry exists in many cultures and societies, but nowhere has it become such a colossal problem as in India. The system and its concomitant evils are perhaps the best indicators of moral and economic
norms in a society which claims very old and rich cultural traditions. Elsewhere, in some primitive tribes, the would-be groom has to pay a bride price and there is talk of the woman being bought and sold like a chattel. The situation is reversed in India; the husband, besides acquiring a woman who fulfils all the requirements of wife, cook, housekeeper and mother, also demands an exhorbitant dowry. If this is not paid, the husband and his family might, literally, reduce the wife to ashes. Dowry giving is a commercial bargain with no ethical foundation. The system has caused physical, psychological and financial hardship to parents who have more daughters than sons as well as more daughters than wealth. Highly educated and sophisticated families are ruthless when it comes to extorting money and material goods frombrides(6,35),(993,990) and their families. Marital discord results if the parents of the bride or wife are unable to satisfy these ever-increasing demands.

Definition of dowry

In the legal sense, dowry means 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 at or before or after the marriage as a consideration for the marriage of the said parties.²

Historical background

Stereotyped customs sometimes persist, irrespective of the harm or good they may bring to a society. Legal reforms lag behind, and the legislators do not perform their tasks well — perhaps because they don't have a sense of the urgency of the task or the power of social and economic conditions to limit legal rights and duties. The custom of dowry giving thus continues to lead to economic exploitation and ill treatment of brides, and humiliation of other people affected by it.³

In India, social and spiritual doctrines have a tremendous impact on the dowry system. It is difficult to determine exactly how or when the practice began in India, but there is no doubt that it has existed since ancient time.⁴

In Sanskrit texts, dowry is referred to as *yautraka* — the material gifts which serve to confirm the union of those joined together in matrimony. In one form of ancient Indian marriage, a girl was given away upon her father's receipt of a bride price called *sulka* — a form of compensation to the girl's parents for the loss of their daughter. The custom had fallen into virtual disuse by the early middle ages, when it came to be regarded as disreputable because it made the father a "seller of children". However, it is still practised clandestinely where, for example, a wealthy old man who desires a young

⁴ Hooja, p.15.
bride will pay her father a large sum of money as a settlement for the daughter.

In course of time, a gradual reversal of roles took place, and today it is the groom and not the bride who commands the price. Some trace the origins of the modern Hindu dowry system to ancient times, when a bride given to a Brahmin was decked with ornaments at her wedding. The jewels and adornments then passed to her husband. Others believe that the custom originated with royalty: it was among the aristocratic and royal families that brides were accompanied by elephants, horses, gold, silver and the like at the time of marriage. What has probably happened is that brides have always received some voluntary gifts of valuable jewellery and garments, but this custom has gradually turned into a commercial transaction between the families of the bride and groom. With the emergence of pre-puberty marriage, families proud of their ancestry were anxious to give away their daughters within a limited time. In some cases, when the transfer of a woman from her own family to the husband's family took place, a certain amount of wealth in cash or kind, agreed upon by the parents of both parties, was also transferred in the same direction.

Today, the groom's party often demands a complete inventory of ornaments, clothing, cash bonds, utensils and other properties that will accompany the bride before the marriage proposal is accepted. This is
regarded as the daughter's share in her family inheritance; henceforth her husband must accept all responsibility for her economic needs. The transfer of dowry should ensure that the husband cannot, at any time in the future, accuse the woman of "coming to him like a beggar".

In Punjab, dowry was a form of 'Streedhan' (women's wealth). Dowry was put together by the bride's female relatives, partly from their own jewellery but partly from setting aside household resources. Land was attached to households and neither men nor women were sole legal owners of pieces of property. This benefited women because it gave them a fund of their own. But this practice changed as colonial policies were put into place.⁵

Oldenburg contends that dowry among Punjabis had commonly functioned as a property fund for women, "one of the few indigenous, woman-centered institutions in an overwhelmingly patriarchal and agrarian society", put together by women over numerous years, and paid for through a complex system of community reciprocity. The colonial concern about rising dowry payments, infanticide linked to Hindu concerns about not being able to pay dowry, and the attempt to control marriage expenses to diminish the impoverishment attributed to dowry were all 'scapegoating' attempts that cast 'Hindu culture' as the problem and justified colonial paternalist domination. Oldenburg not only refutes the evidence that infanticide was a high-caste

Hindu problem and that dowry was suddenly extortionate, but turns the culpability back upon the colonial State. She argues that the growing impoverishment had a far greater correlation with colonial land and revenue policies and suppression of modern industry. And increasing son-preference correlated highly with the colonial construction of males as property owners and the creation of lucrative wage jobs in the military. A professor of history at Baruch College (City University of New York), Oldenburg emphasizes that the present scenario bears little resemblance to pre-colonial traditions. That the extreme devaluation of women reflected in contemporary practices such as dowry, female infanticide and female feticide may be traced back in Punjab to colonial policies.

Another research has indicated that dowry cannot be treated as equivalent to women's inheritance. Unlike the European case, neither is it equal to the share of wealth that would go to sons, and nor are daughters given property in cases where no dowry has been given.  

Arguments that daughters are cut off from their natal families after marriage, that dowry "pays off" their share of property, and that sons look after parents in old age are used to deny women shares of natal inheritance. This disenfranchisement makes women even more dependent on marriage as a route to economic security, and makes it likely that women will tolerate

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abuse within marriage. It may be that women themselves concur with dowry for their own marriages because they know they will receive little else from their parents. But dowry often is not a fund that is for their own use or control, and does not have the benefits of an inheritance portion. As noted sociologist and anthropologist M N Srinivas stated, the contemporary phenomenon of Indian dowry may be explained not in terms of scriptural concepts but as a modern institution of showing off wealth connected to colonial monetization of the economy and to postcolonial globalization. It can also be explained in terms of "hypergamy" where families seek to marry daughters to families of higher status and to "sanskritisation" where communities try to improve their caste status by adopting dowry practices.

Legal drives to ban the practice of dowry in India have met with little success. The Dowry Prohibition (Amendment) Act (1984, 1986) makes the giving and taking of dowry "as a condition of marriage" punishable by law, while excluding "voluntary gifts" - a combination of provisions which makes for toothless sanctions. Not only may gifts easily be claimed as voluntary or be deliberately distanced from the wedding ceremony, but because dowry-givers are penalized as well as dowry-takers, even those coerced into payment are unlikely to file claims. Dowry practices are thus legally prosecuted largely in conjunction with suicides or murders connected to dowry demands or in

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7 Helpline law 2006 May 25, www.helplinelaw.com
conjunction with domestic violence or property recovery cases often filed in conjunction with divorces. Legal directives are blatantly ignored in the focus on wealth and status accumulation, and the urgency of having daughters married at all cost.

Factors contributing to the practice of the dowry system

Apart from its roots in Hindu culture, there are other reasons for the continued existence of the dowry system. There is widespread belief in India that the marriage of a man to a girl makes that man superior to the girl's family. The transactions of the dowry system have not, therefore, evolved in order to provide security for the newly married couple — but rather are based on the "disadvantage" that a woman causes her husband; monetary compensation is deemed necessary to offset such an unprofitable deal. This is one of the reasons why Hindus have ever dreaded the birth of a daughter. Daughters are a heavy financial liability when they are to be married, and a blot on the family if they remain unmarried,

It is vital to the Hindu father that his daughter marries; he is prepared to pay as much as he can afford or even borrow in order to obtain a suitable husband for her. The demand for bridegrooms makes them much-sought-after commodities, and a "price" is placed on grooms from even the most respectable families.
Many Indian men go abroad for higher education, for the sake of a bright career. Once they have completed their studies, demand for them increases in the marriage market. Plenty of offers are made, with the result that these young men become conscious of their importance, and attach an unduly high value to their education and career. They become selective in their choice of partners: the girl needs to be smart, highly educated, accomplished in domestic work, and from a rich and influential family. This intensifies competition among the girls' parents, who are compelled to agree silently to the groom's demands. If the father has the misfortune to possess a daughter who is of dark complexion, or in any way ugly or deformed, the amount of dowry to be given increases.\(^8\)

Parents of daughters favour the dowry system — when it comes to taking dowry for their sons! When their sons marry, the parents demand huge sums of money, anticipating that they might have to pay a similar amount when their daughter weds. Through their defensive actions, these people also contribute to the continuation of the dowry system.\(^9\)

Dowry is considered by many Indian as \textit{Dakshina} — an offering attending the gift of the girl. They believe they cannot achieve salvation without fulfilling their religious duty to give dowry to a daughter; it would be

\(^9\) Mohan, S, p.16.
sinful if parents did not give her gifts on her marriage. These people believe that happiness cannot dwell in their houses if they send their daughter or sister away without giving her due share of dowry. Religion is therefore a strong social force behind the retention of the dowry system.10

According to Professor M.N. Srinivas, the increase in dowry-giving is also attributable to a sharp increase in the emulation of the higher castes by the lower castes. There is improved access to education and jobs in the organised sector; dowry is a practice adopted to exhibit a new status.11

Another major factor contributing to this evil system is the inheritance law. Until comparatively recently, women were denied the right of inheritance. This led to the rigidity of the custom of dowry among the propertied classes. But with the passage of the Hindu Code Bill 1956 which, for the first time, conferred the right of property upon women and entitled them to a share in the father's property previously bequeathed only to sons, things have gradually taken a different turn and western values have influenced the institution of marriage.

Besides these factors, the modern Indian girl has also become status-conscious, and often wants to marry someone of higher social standing who draws a large income.

10 Hooja, p.22.
The very institution of marriage is being altered by this evil system. Marriage has become a potential death trap for many women, particularly in the northern parts of the country. Instead of assisting newly-wedded couples to set up a household, dowry has become a major disruption of marital harmony. It has taken the shape of a business transaction, in which material goods take priority over the bride herself. The bride's parents are often taxed with frequent fresh demands, even after the marriage. Inability to satisfy these demands can lead to the wife bearing the brunt of her in-laws' anger, and to psychological, social and economic problems for her family. The parents often get into debt so heavy that it passes from one generation to the next. In cases where a man has more than one daughter, he usually struggles to get them all married, because he spends all his money and borrows more to get the eldest married.

**Law reform**

The dowry system has come in for scathing criticism from Hindu liberals. The institution, they declare, ensures that the Hindu girl will have the best husband that money can buy. According to the critics, the legislation passed in 1961 to restrict the operation of the dowry system has so far done little to stop the custom; it has merely substituted the disposal of eligible bachelors by private auction for the previous public sale. The genesis of the problem of cruelty towards women can be traced to the social apathy of the
Indian populace. Although the Indian Constitution provides for equality of the sexes, with special protections for women and children, in their family life Indians have been governed by personal and religious laws which militate against women's interests. These laws have relegated Indian women to an inferior position, both legally and socially.

The Dowry Prohibition Act of 1961 has been totally ineffective because, although it seeks to punish offenders, it is hard to see how they can be brought before the court under this act, especially given the hidden nature of the offences. The people of India are affected by innumerable superstitions, and it is impossible to expect, as a sequel to a highly sanctified ceremony like marriage, that a bride, groom or any near or distant relative would drag the guilty parties to a court of law. This is clearly evident from the lack of complaints since the passage of the act.

The Dowry Prohibition Act defines dowry as any 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 any other person to either party to the marriage or to any other person. at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies. For the removal of doubts, it is hereby declared that any
presents made at the time of marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles shall not be deemed to be dowry, within the meaning of this section, unless they are made as consideration for the marriage of the said parties.12

The Act further states that the giving and taking of dowry or its abetment, or the demand for it, has been made an offence to be visited with imprisonment, fine or both.

But the success of the act essentially depends on public co-operation. The legislation has so far failed because of its self-contradictoriness and the mixed attitudes found in the Indian society today. In order to be effective, the act should be accompanied by political, social and economic changes in the status of women both inside and outside the family.13

A 1985 amendment has replaced the phrase "in consideration for the marriage" with the words "in connection with the marriage". This has widened and improved the definition of dowry: according to the old definition, things given after the marriage could not be defined as dowry because they were not given to effect the marriage.14 The amendment recognises that dowry demands often increase after marriage, when the bride

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13 See Manushi journal about women in society, no 24, 1984, p 20.
14 The dowry prohibition (Maintenance of lists or presents to the bride and bridegroom) rules 1985, Helpline Law, www.helplinelaw.com
is at the mercy of her in-laws. The amendment also adds that presents shall not be treated as dowry so long as "no demand has been made" for such presents. A suggestion, by the committee which recommended the amendment, that a ceiling be laid on such presents was overlooked. Hence, the problem continues — the in-laws' demands, made verbally, cannot be proven.

The amendment continues: the "presents" should be of customary nature, and the value thereof not excessive, having regard to the financial status of the person by whom or on whose behalf such presents are given. But who decides as to what is customary? What is excessive? The decision is left to the judge's arbitrariness, giving play to individual biases and legal uncertainty.\(^\text{15}\)

According to this act, both the giver and taker of dowry are equally guilty. In both cases the court has a discretion to reduce the minimum period of imprisonment (six months). The amendment committee opposed this discretion as it would be misused.

When both parties are held guilty and are equally liable to punishment, the bride and her parents become reluctant to prosecute the other party for fear of social reprobation. They are afraid that the prosecution may rebound on themselves, The amendment committee therefore recommended that the

\(^{15}\text{Manushi journal, p.30.}\)
offence of taking dowry be made cognisable, in order that anyone might report it. But the new amendment has imposed certain limitations on this: "any recognised welfare institution or organisation" has the right to complain if the harassed woman or her relatives are not in a position to do so.

One of the most laudable recent judgments which, in immediate terms, will have a wide-ranging effect on dowry disputes, was passed by the Supreme Court. It declared that all gifts to a woman at marriage remained her absolute private property until the end, and that neither her husband nor any other had the right to them without her sanction. Gifts of cash, ornaments, silver, clothing or anything that constitutes dowry may be entrusted by the wife to the husband, but the husband will be deemed "guilty of criminal breach of trust" if he misappropriates or refuses to return what the court regards "as the absolute and personal property of his wife".¹⁶

As is the case with most laws, these laws feature loopholes which the guilty person can use to get away. Social injustices cannot always be solved through the medium of legal safeguards alone. It is difficult to collect evidence of dowry offences: neighbours are reluctant to offer eye-witness corroboration. More social organisations should vigorously take up the issue, thereby building up social resistance to such behaviour.

Students should be infused with high social ideals. If the male student decides not to accept dowry in spite of his parents' coercion, this will have a good effect on society. But for this to happen, a complete re-orientation of the education system is necessary. Women should be encouraged through education to develop whole personalities. Inter-caste, inter-religious and inter-lingual marriages may also discourage the practice of dowry. They would definitely reduce competition among the girls' parents and encourage love marriages instead of arranged marriages.

For dowry to disappear completely — which seems far off — a major change in the social value system has to come. Public opinion against the system needs to be created with the help of the media, seminars, symposium and debates. Legal deterrent punishment is likely to be abused by enforcement agencies like police while the system has social and cultural approval.

Dowry among Muslims

All Muslim marriages involve Mahr, a payment to the bride by the groom and his family whenever she demands it. If so agreed, some or all the mahr may be paid at the wedding. Mahr is usually given in cash, but may also include real estate and jewellery. The pledge of Mahr is said to be legally binding. The groom's kinsmen are also expected to provide the bride with
clothing and jewellery at the wedding. All Muslim brides are expected to bring dowries to their conjugal homes. These range from a few cheap cooking pots to a grand array of household goods, clothing, milking animals and even servants. Detailed lists of dowry items are kept and, should a marriage end in divorce, a woman would, ideally, take her dowry away with her. In practice, complete retrieval of a dowry is likely to be difficult. The evils of dowry are being experienced by Muslim brides also.

**Dowry among Indian Christians**

The Indian churches also face the problem of dowry — especially those with ancient traditions in South Tamil Nadu and Kerala, such as the Syrian Church. Believed to have been founded by St Thomas the disciple of Christ, the Syrian Church has many Hindu traditions woven into its Christianity. The dowry arrangement is commonly accepted by the church; justified on the grounds that the bride is bringing with her wealth equivalent to her share in the family property. In order to avoid sub-division and fragmentation of immovable property, the female members of the family are given their share in cash and jewellery. If this really were true, it would probably be acceptable. But many grooms choose girls who can afford to bring dowry that is satisfying to them. Until recently, a certain portion of the dowry was given to the church as a gift. There is, even now, a special

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ceremony among these Christians in the presence of the local priest, to mark
the giving of the dowry. The evils of the dowry system are therefore
experienced by the Christian community, no matter what justifications are put
forward.

Demanding dowry and the corresponding marital problems are the
major issue includes violation of Human Rights. As selected earlier it has no
ethical or moral background. It makes women as commodity, which can be
handed over through bargaining; one major difference is that anybody who
buy the commodity never pay but get the value of it.

The system pose two things:

1. She posses not even a minimum value comparing to that of a
   commodity.

2. She is considered as burden to the receiving person, for that he gets a
   compensation from her parents.

Nullifying the dignity of women and considering her as a waste commodity
(often waste cargos need compensation to be received) raises serious human
rights problems. Changing values and concepts of the society with reference
to the monetary gains increased the problem. The women who has some job
or earnings escapes from this trap. The groom does not bargain for dowry
from a lady who has job. Here the fact is that she has also her own bargaining
power, i.e. the value of a of the women is changing. The basic problem is that man inherently considers jobless or poor women as a burden.

Here the outlook of both men and women need change. Feminist movement are always making some ideological propaganda for women, saying that 'do not submit before the male'. They even question the custom of appearing the girl in front of every youth who is coming for 'bride selection'. Choosing a life partner with equal freedom and responsibility should be the custom of society. Here the voice of the women should be brave.

The dowry system is to be considered as a custom which is against social justice. Only because of social backwardness girls were denying the right of marital life or they are doing slavery in the form of domestic jobs for their husband. Another outcome of this system is the increasing rate of female foeticide. A recent study by Canadian research team find out the shocking fact that female foeticide in India crossed one crore in 20 years. Pre-natal sex determination was banned in 1994 but 5,00,000 female fetuses have been destroying every year. According to a recent report by the United Nations Children’s Fund (UNICEF) up to 50 million girls and women are missing from India’s population as a result of systematic gender discrimination in India. In most countries in the world, there are approximately 105 female births for every 100 males. While there exists no quick and easy solution to the problem, it is possible to reduce gender inequality, which lies at the core
of femicide. The first critical step is to challenge the patriarchal attitudes that applaud boys and undermine girls, and to create a culture that celebrates both the genders equally. More so, the medical fraternity can do a lot of service by preventing the practice of female foeticide.

The system of dowry cause another social evil in northern states of India, child marriage. Parents arrange marriage for their 11 or 12 year old daughters in order to escape from giving large amounts as dowry. In such circumstances girls were pushed into marriage life before attaining maturity and also they are compelled to stop their school education. In short the problem of dowry involves social/ethical/economical problems. Social philosophers have an important role to solve the problem. For any action against such a deep rooted custom an ethical back ground is to be formed. Hence we need Philosophical formulations based on justice especially considering new principles of human rights.