CONCEPTUAL FRAMEWORKS

कहि न जाय कछु दाङ्र भूरी। रहा कनक मणि मंडपु पूरी ।।
कंबल बसन बिच्छन पटोरे। भौंति भौंति बहु मोल न थोरे ।।
गज स्थ तुरण दास अरु दासी। धेनु अलंकृत कामदुहा सी ।।
वस्तु अनेक करिअ किंभि लेखा। कहि न जाइ जाकहि जिन्ह देखा ।।
लोकपाल अवलोकि सिहाने। लीन्ह अवधपति सहु सुखु माने ।।

-Goswami Tulasidas, Ram Charit Manas, Bal Kand, 326.
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1.1. Concept of Dowry

The word "dowry" is not unknown either to law or the society in India. Since long dowry has been given and taken by the brides, bridegrooms and other relative of bridegroom on the occasion of marriage and even afterwards. Dowry generally refers to those gifts that are given with the bride to be taken to her conjugal household at marriage. These, however, constitute a part of the series of presents that are made on different other important occasions and take complex form in different cultures. The collection of gifts given to the bride by her parents and different relatives including her mother-in-law was regarded as women's Streedhana or her property. The word "dowry" finds its meaning in various dictionaries too:

Of Latin origin, the word according to Webster's New Twentieth Century Dictionary, 1956 means:

(a) The money, goods or estate which a woman brings to her husband in marriage; the portion given with a wife;

(b) A natural talent, gift or endowment; as poetry was his dowry;

(c) A gift given to or for a wife (Archaic).

Similar are the meanings given by other dictionaries and it is not necessary to repeat them.
Aliyar in his Law Lexicon of British India, 1940 Edition, p. 364 has summed up the meaning given to “dowry” in the field of law:

Dowry or dote (Dos Mulieris) was in ancient times applied to that which the wife brings to her husband in marriage; otherwise called maritagium or marriage goods; but these are termed more properly, goods given in marriage, and the marriage portion. (Co. Lit. 31) This word is often confounded with Dowry; though it hath a different meaning from it. (Tomlin’s Law Dictionary). That, which the wife gives to the husband on account of marriage and which is a sort of donation made with a view of their future maintenance and support.

Wharton in his Law Lexicon has attributed the following meaning to ‘Dowry’:

“Dowry (dos muliers, Lat.) otherwise called maritagium, or marriage goods, that which the wife brings to the husband in marriage; this word should not be confounded with dower – Co. Litt. 31.”

The meaning of expression ‘dowry’ as commonly used and understood is different than the particular definition thereof under the Dowry Prohibition Act, 1961. The word ‘dowry’ as it is understood traditionally means and includes the traditional presents to the bride or the bridegroom by their relatives, friends and others. This voluntary presents given at or before or after the marriage as the case may be of traditional nature which are given not as consideration for marriage but out of love, affection or regard, would not fall within the mischief of expression ‘dowry’ made punishable under the Act.¹

Mr. Justice S S Sandhawalia C. J. expressed his views that “one finds nothing in the ordinary dictionary, meaning of ‘dowry’ and

even in the ancient concept of Hindu Law with regard to the traditional presents given at the time of wedding, which can possibly bar the exclusive ownership of the bride in such property. For instance jewellery meant for the personal wearing of the bride, wedding apparel made to her measures specifically, cash amounts put into a fixed deposit in a bank expressly in her name, or a motor car presented to her and duly registered in her name; are obvious examples of dowry raising the strongest, if not conclusive presumption, of her separate ownership in these articles. The most ancient text of Hindu Law have always been categorical that dowry, as commonly understood, was *Streedhana* and thus in the exclusive ownership of the bride.\(^2\)

"What may be kept in mind is that the dowry and the traditional presents given to a bride in a Hindu wedding may usually be put in three categories as under\(^3\):

(i) Property intended for exclusive use of the bride, e.g., her personal jewellery and wearing apparel etc,

(ii) Articles of dowry which may be for common use and enjoyment in the matrimonial home;

(iii) Articles given as presents to the husband or the parents-in-law and other members of his family."

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\(^3\) Ibid.
1.2. Origin

As discussed earlier the primitive methods of obtaining a wife were evidently by forcible abduction or stealing the girl from her parental control or by purchasing the girl from her father or from those who had authority over her.

The Brahma and Daiva form of marriages were approved and the Rakshasa, Asura and Paisacha form of marriages were continuously condemned by the commentators and reformers of Hindu Law and a time came when Brahma and Daiva form of marriages were universally adopted by the Brahmans. People belonging to other castes also started adopting them as a mark of higher social status. There is no doubt that the Brahma marriage has since long ceased to be a privilege of any class. The Madras Sudder Court held, as long ago as in the year of 1859 that, in the case of Shudras, the mere fact that the bride is given without the bestowal of any gift by the bridegroom constitutes the marriage one of the Brahma form.4

As a corollary to the concept of giving daughter as a gift to the bridegroom (Kanyadan), a custom grew that the members of the girls' family not only gave the daughter as a gift to bridegroom but she also was given gifts by her parents, their relatives and friends. Not only that, people from bridegroom's side also gave gifts to the daughter-in-law they accepted to induct in their family. Thus was born the concept of Streedhana, the oldest form of dowry.

According to Sir Gooroodas Banerjee5, Manu says: "What was given before the nuptial fire (adhyagni), what was given at the bridal procession (adhyavahnika), what was given as token of love (pritidatta), and what was received from a brother, a mother or a father are considered of the six fold separate property of a married woman."

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4 Sivarama v. Bagavan: Madras, December, 1859 44.
And he further declares that "Such ornaments as women wear during the lives of their husbands, the heirs (of those husbands) shall not divide among themselves; they who divide them among themselves fall deep into sin."

Narada, Vishnu, Katyayana, Apastamba, Vyas, Devala and Yajnavalkya have given their connotation of the term *Streedhana* and there are only small differences which are needless to mention here.

Dr. Banerjee sums up the discussion saying that - "It may, therefore, be deduced from her relations, and her ornaments and apparel, that constitute her *Streedhana* and that the only sorts of gifts from strangers which come under that denomination are, presents before the nuptial fire, and (according to some) presents made at the bridal procession. But neither gifts obtained from strangers at any other time, nor her acquisition by labour and skill, would constitute her *Streedhana.*"

After long disputes between the learned lawyers the *Streedhana* came to be divided into the classes *‘Saudayika’* and *‘Asaudayika’*. *Saudayika* came that part of *Streedhana* of which she was the complete mistress and *Asaudayika* was that of which she could only use the usufruct and not the corpus. This dispute and distinction has been referred to trace how property and rights thereto entered the otherwise biological romantic arena of man-woman relationship.

The question as to what is *Saudayika* property was considered by the Bombay High Court as early as in 1932\(^6\) and the controversy as to how *‘Saudayika’* and *‘Non-saudayika’* are understood in Hindu Law was re-scrutinised by the Mysore High Court\(^7\)

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\(^7\) Hanumant v. Rango: AIR 1961 Mys. 206.
Mr. Justice S R Das Gupta (C.J.) while dealing with the question as to what is *Streedhana* property quoted the following verses from the Smriti of Katyayana (400A.D.-600A.D.):

(i) What was given before the nuptial fire, what was given at the time of bridal procession, what was given to a woman through affection, what was received from the brother, mother or father – this *Streedhana* is declared to be of six fold.

(ii) What was given to a woman (by anybody) at the time of marriage before (the nuptial) fire, that is declared to be *Adhyagni Streedhana* by the wise.

(iii) That again which a woman obtains when she is being taken (in a procession) from her father’s house (to the bridegroom’s) is termed *Streedhana* of the *Adhyavahanika* kind.

(iv) Whatever is given (to a woman) through affection by the father-in-law or mother-in-law and what is received at the time of saluting the feet of elders is termed *Pritidatta* (gift through affection).

(v) That is declared to be *Shulka*, which is obtained as the price of household utensils, of beast of burden, of milch cattle, ornaments and slaves.

(vi) Whatever is obtained by a woman after marriage from the family of her husband and what is similarly obtained from the family of her (father’s) kinsmen is said to be *Arvadheya* (gift subsequent).

(vii) Whatever is obtained by a woman through affection after her marriage from her husband or from her parents that is *Arvadheya*. This is the view of Bhrugu.
(viii) That is known as *Saudayika* which is obtained by a married woman or by a maiden in her husband's or father's house from her brother or from her parents.⁸

Having quoted the above verses Justice S R Das Gupta (C.J.) expressed his opinion in the following ways saying that - "The last of these verses mentions what is *Saudayika*. The question which is now before us in this case and which was before their Lordships, in the case to which I have already referred rested on the interpretation of this verse. It is necessary, in my opinion, to set out the original of this verse which reads as follows:

UTHAYA KANYAYA WAPI BHARTUH PITRIGRAHEAPIVA.
BHRATUH SAKASHATYITROVAN LABDHAMSAUDAYIKAM SMRITAM.

It is evident from the verses as well as from the verses of various commentators that *Saudayika* is not only that which is obtained by a woman from her brothers or parents. Anything obtained from persons other than brothers and parents would not be excluded from the term *Saudayika*.⁹ This view seems to have been accepted by those commentators who commented on the said verses of Katyayana. Chandeswara says that, the words 'from her brother or her parents' are merely illustrative and a gift from affectionate kindred would include a gift from other persons."¹⁰

According to Jimutavahana - "that, which is received from affectionate kindred (*Saudaya*), is the gift of affectionate kindred (*Saudayika*)."¹¹

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⁸ Verse No. 894 – 901 of the Katyayana Smriti (400A.D. – 600A.D.), referred by Mr. Justice S R Das Gupta (C.J.) in Hanumant v. Rango; AIR 1961 Mys. 206.
⁹ Supra note 7.
¹¹ Supra note 7.
Raghunandana's Commentary puts in these words - "that, which is received from affectionate father, mother or husband, or from the kindred of these, is a gift from affectionate kindred."\textsuperscript{12}

The text of Bridh Vyas as quoted by Apararaka which when translated reads - "that which is received by a woman either at the time or subsequent to the marriage or which is obtained from the house of the father or the brother is called \textit{Saudayika}."\textsuperscript{13}

According to Mayukha - "Even immovable property can be given in gift by father, mother, brother, husband and kindred (\textit{Dnati})."\textsuperscript{14}

Mayne says that - "the gift is made by the husband or by a relation either of the woman or of her husband, it seems to be immaterial whether it is made before marriage, at marriage or after marriage; it is equally her \textit{Saudayika}."\textsuperscript{15} In light of various views expressed herein above it is amply clear that:

"\textit{Saudayika} or gift of affectionate kinsmen is explained as being the general name for several sorts of \textit{Streedhana}."\textsuperscript{16}

Accordingly it was concluded that the commentators on Hindu Law in explaining the said text of Katyayana have taken the view that the words ‘her brother’ or ‘her parents’ are merely illustrative and not exhaustive. They have further taken the view that any kind of gift made by the husband or his relations or by the relations of the woman in her father’s family whether before marriage, at marriage or after marriage would also become \textit{Saudayika}.\textsuperscript{17}

\textsuperscript{12} Ibid.
\textsuperscript{13} Ibid.
\textsuperscript{14} Mayukha, Chapter IV, Section X, pp. 5 to 8, Gharpure’s translation pp. 128 and 129, referred in 34 Bom. IR 1141: AIR 1932 Bom. 559.
\textsuperscript{16} Banerjee, Sir Gooroodas, Supra. p. 337. The same view has been taken by Gopalchandra Sarkar Shastri in his Hindu Law. 6\textsuperscript{th} edition, p. 638.” Supra note 7.
\textsuperscript{17} Supra note 7.
In effect, the law on this point as it now stands is that anything other than the property acquired by mechanical arts or received from stranger, are Saudayika and the woman has the complete dominion over such property. What is obtained from mechanical arts or received from a stranger would, however, be subjected to the dominion of the husband.\textsuperscript{18}

The most ancient texts of Hindu Law have been categorical that dowry, as commonly understood, was Streedhana and thus in the exclusive ownership of the bride.\textsuperscript{19} It is considered unnecessary to go individually to the original sources and the following summarization in the authoritative work of Mulla on Hindu Law would suffice to illustrate the ancient views on the point. Streedhana according to Manu is of six kinds and they are:

(i) Gifts made before the nuptial fire, explained by Katyayana to mean gifts made at the time of marriage before the fire which is the witness of the nuptial (Adhyagni).

(ii) Gifts made at the bridal procession, that is, say Katyayana, while the bride is being led from the residence of her parents to that of her husband (Padavandanika).

(iii) Gifts made in token of love, that is, says Katyayana those made through affection by her father-in-law and mother-in-law (Pritidatta), and those made at the time of her making obeisance at the feet of elders (Padavandanika).

(iv) Gifts made by the father.

(v) Gifts made by the mother.

\textsuperscript{18} Ibid.

\textsuperscript{19} Vinod Kumar Sethi v. State of Punjab; AIR 1982 P&H 372.
(vi) Gifts made by a brother.

All the commentators on Hindu law agree that the above is not an exhaustive enumeration of Streedhana and so following 4 kinds of Streedhana put forth by Vishnu (Noted commentator) can be included in the list of Streedhana:

(i) Gifts made by a husband to his wife on super session, that is, on the occasion of his taking another wife (Adhipedanika).

(ii) Gifts, subsequent, that is, says Katyayana those made after marriage by her husband’s relations or her parents’ relations (Anwadhayaka).

(iii) Shulka, or marriage-fee, a term which is used in different senses in different schools.

(iv) Gifts from sons and relations.

Vishnu does not make any specific mention of gifts made at the bridal procession.

It would be manifest from the above enumeration that from time immemorial Hindu Law has recognised the individual ownership of the wife with regard to the aforementioned articles of dowry called Streedhana and traditional presents given at the time of wedding. Continued recognition of this fact and the individual ownership of the Hindu wife with regard thereto is manifest from the well settled rule that Streedhana cannot be attached for the debts of her husband. Equally well-acknowledged is it that the husband has no right of alienation to that which is the Streedhana of his wife. These facts highlight the clear-cut recognition by the oldest treatise of Hindu Law with regard to individual ownership of her separate property by a Hindu wife. It is, therefore, wholly idle to contend today that those articles of dowry and
traditional presents given at the time of wedding cannot be the individual property of a Hindu wife.

As far as nature, character and concomitants of Streedhana are concerned the view of Katyayayana as quoted by Sir Gooroodas Banerjee is that – neither the husband, nor the son, nor the father, nor the brother, has power to use or to alien the legal property of a woman. If any of them shall consume such property against her own consent he shall be compelled to pay its value with interest to her, and shall also pay a fine to the king . . . . . . Whatever she has put amicably into the hands of her husband afflicted by disease, suffering from distress, or sorely pressed by the creditors, he should repay that by his own free will.

Law as expounded by the commentators of the different schools, the unqualified dominion of the husband is limited to only some descriptions of the wife’s property, while as regards the rest he is allowed only a qualified right of use under certain circumstances specifically defined.

Similarly, gifts of affectionate kindred, which are known by the name of Saudayika Streedhana, constitute a woman’s absolute property, which she has at all times independent power to alienate, and over which her husband has only a qualified right, namely, the right of use in times of distress.

The view expressed by N R Raghavachariar is not different. He says that – “power during Covertures – Saudayika, meaning the gift of the affectionate kindred, includes both Yautaka and gifts received at the time of marriage as well as its negative Ayautaka. In respect of such property, whether given by gift or will, she is the absolute owner and can deal with it in any way she likes. She may

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20 Pratibha Rani v. Suraj Kumar, 1985 SCC (Cri.) 180, p.185; Banerjee, Sir Gooroodas, Supra. p. 341.
spend, sell or give it away at her own pleasure by gift or will without reference to her husband and property acquired by it is equally subject to such rights. Ordinarily, the husband has no manner of right or interest in it. But at times of extreme distress, as in famine, illness or imprisonment, or for the performance of indispensable duty the husband can take and utilize it for the personal purposes, though even then he is morally bound to restore it or its value when able to do so. But this right is purely personal to him and cannot be availed of by a holder of a decree against the husband, and if the husband dies without utilizing the property for the liquidation of his debts, his creditors cannot claim to proceed against it in the place of her husband.\(^{23}\)

Thus from the above discussion it can be concluded that from the most ancient time woman's separate property was recognised in the name of *Streedhana*. Naturally a woman's property would commence at her bridal and would consist of gifts from her bridegroom and his family and her own family. Besides gifts of affection from her parents and from her husband's family, a married woman was at liberty to receive presents from strangers or make earning from mechanical arts during covertures. A woman's *Streedhana* or separate property, therefore, falls under two heads:

(i) Property over which she has absolute control and

(ii) Property as to which her control is limited by her husband but by husband only.

The second is known as *Non-Saudayika* whereas the first is known as *Saudayika* which means gift of affectionate kindred. This *Saudayika* is the gift which is traditionally known as dowry. Thus we find that from very ancient time dowry is recognised and known to Hindu Law.

In order to trace back the origin of dowry in India the followings prevalent in the ancient Hindu societies needed consideration that:

(A) Presents or jewellery in the Brahma form of marriage voluntary given to bride as a mark of respect for her were permitted by the Shasta's.

(B) Shulka or bride price received by the father or guardian of the bride was discountenanced by the Shasta's. The vice consisted in the father or the guardian of the girl out of his greed turning his fiduciary obligation into a source of profit for himself thereby transforming a sacrament into a commercial bargain.

(C) Receipt of money or money's worth for the benefit of bride herself was considered undesirable. As pointed out by Meghatithi (in his commentary on the text of Manu) it did not amount to a sale, and was desirable as it tended to enhance her self esteem and also raised her in the estimation of others.

(D) Vardakshina or bridegroom price was not prohibited and it did not convert the marriage otherwise in Brahma form any the less."

Thus the valuable consideration for the marriage in ancient India was of two types:

(i) That flowing from the bridegroom's party and paid to the parents or guardian of the girl as the price for the bride (Shulka) which was not approved by Shasta's.
(ii) That, flowing from the bride party to the bridegroom as the price for the condescending to marry the girl which was not disapproved by Shasta's."^{24}

As the present work is based on the dowry system prevailing in Mithila, the sacred birth place of Goddess Sita the devoted wife of Lord Rama, it becomes important to have a discussion about the Law of Streedhana prevailing in the region of Mithila.

In the epic age when Lord Ram was married to Goddess Sita, she received a huge dowry. Saint Valmiki in his Ramayana has provided a long list thus:

"Hundred thousand cows, woollen cloth, countless silken ropes, richly decorated elephants, horses and chariots, male and female attendants, numberless golden coins, and many other gifts."^{25}

Goswami Tulsidas in his Ramcharit Manas put it in following ways:

KAHI NA JAI KACHHU DAEJ BHURI.
RAHA KANAKA MANI MANDAPU POOREE.
KAMBAL BASAN BICHITRA PATORE.
BHANTI BHANTI BAHU MOL NA THORE.
GAJA RATHA TURAG DAS ARU DASEE.
DHENU AALANKRIT KAMDOOHA SEE.
VASTU AANEKA KARIA KIMI LEKHA.
KAHI NA JAI JANAHI JINH DEKHA.
LOKAPAL AVALOKI SIHANE.

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Thus system of dowry and *Streedhana* has been in existence in Mithila since even before the epic age. Sir Goorooodas Banerjee in his Tagore Law Lecture has discussed the Law of *Streedhana* prevailed at that time in the Mithila School in the following words:

“The leading authority for that (Mithila) school is the Vivad Chintamani. This book too does not give any definition of *Streedhana* but, like the Chandrika, it enumerates and defines the several descriptions of property which rank as *Streedhana* according to it.

There are six kinds of *Streedhana* as enumerated by Manu and defined by Katyayana in the text already cited. With reference to these it would mean the denial of the presents given at bridal procession. These presents are not merely what is received from kinsmen, but include all that is given to a woman by any person while she is proceeding second time from the house of his father to that of her husband (i.e. *Dviragaman*, also called as *Gauna*). Accordingly there is the seventh variety of *Streedhana* known as *Adhivedanika* or gift on super session, as defined by Yajnavalkya.

The eighth variety of *Streedhana* is *Shulka*, or woman’s perquisite (i.e. wealth given to a damsel on demanding her in marriage), and the ninth is the gift subsequent; and these are both defined according to the texts of Katyayana cited above. *Saudayika*, or gifts of...

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26 Goswami Tulasidas, Ram Charit Manas, Bal Kand, 326, 73rd Ed., (Gorakhpur: Geeta Press) p. 276
affectionate kinsmen, is explained as being a general name for several sorts of *Streedhana*.

Ornaments constitute the tenth variety of *Streedhana*. Regarding these a text of Manu (IX 200) is cited and it is observed that "any ornaments that a woman wears with the consent of her husband shall be her peculiar property, even if it has not been given to her. And "food and venture," mentioned in the text of Devala and explained by our author to mean “funds appropriated to a woman’s support” form the eleventh description of *Streedhana*. Finally it is concluded that there are several kinds of peculiar property of woman known as *Streedhana*. And the text of Yajnavalkya, which forms the basis of the unlimited interpretation of the term *Streedhana* in the Mitakshara and Virmitrodaya, neither cited nor even referred to. Hence it may be inferred that according to the Vivad Chintamani, no other kind of property besides those enumerated above, comes under the denomination of *Streedhana*."²⁷

As regards property inherited by a widow from her husband, the authors meaning is not very clear. He draws a distinction between movables and immoveable, and holds that the widow’s power of disposal over the former is absolute but then he adds that the text of Katyayana, from which the distinction is deduced, do not refer to *Streedhana*.²⁸

From the above discussion of Sir Gooroodas Bannerjee, it is clear that according to Mithila School there are eleven types of properties which are termed as *Streedhana* and the woman holding it had absolute control over those properties. Though husband’s
properties were also inherited by the widow but it was not termed as Streedhana. It is further clear that all such property was gifts to the woman either from parent's side or from the side of her in-law's and their relative. Thus, under the Mithila School the term Streedhana, was held and understood in the same sense and meaning as the term dowry was held and understood before the Dowry Prohibition Act, 1961 came into force.
1.3. Present Form of Dowry

Because, according to Hindu law prior to 17-06-1955, the daughter inherited nothing, the concept of Streedhana came to acquire strength from time to time.

It is not only in the Hindu Society that the gift of the newly wedded daughter-in-law came to wipe out water down the property of the husband’s people but the Victorian novels also speak of bride’s linen, she had so assiduously and lovingly embroidered, sold to save the husband’s silver.

In Africa a daughter brings cattle but it is not utilized. It works as a circulating bank and the rates keep on changing like securities in the modern economic world.29

In Homeric Greece the daughter was termed as Cattle bringing Maiden, in 1300-1100 B.C. This is mentioned in Iliad.

The practice of dowry is not confined to India alone. Our island of Bombay constituted a part of the dowry of Catherine of Braganza when she was married to Charles II of England. Then a worthless island the clever Queen Regent of Portugal gave it away as a gift. If she only knew the price of that island today, Queen Regent may have acted differently. She had promised lot of money to Charles II which she forgot to send, Bombay was appropriated although Catharine of Braganza was consistently neglected and she eventually left England.

It is not necessary to consider any of the other forms of marriage prevalent amongst the ancient Hindus because, first, all other forms became totally out modelled in course of time and secondly,

none of these forms throw any light on the subject of dowry and therefore outside the scope of present study.\textsuperscript{30}

What ill effects on the society in the ancient times these forms of valuable consideration had is beyond our comprehension today. But we can safely say that by the passage of the time the popularity of these two kinds of valuable consideration immensely increased; gradually the old concept of marriage being a sacrament started dwindling yielding place to the above commercial concept. The scruples of the parents and guardians of the parties to the marriage changed their colour and man started conducting business even with his offspring. And a time came when barring solitary exceptions of persons still imbibed with old religious idea of a sacrament, vast members of the society made it a routine practice to indulge in one or the other of the aforesaid two kinds of valuable consideration – choice depending on the peculiar conditions pertaining to the sexual majority prevailing in the particular part of the country.

So far the bridegroom and his party are concerned; they have an additional incentive for bargaining. In the Indian society the position of the girl is more delicate than that of a boy and a girl who could not be married within the certain range of age she would be dubbed as socially unfit for marriage attaching diverse kinds of doubts to her. This state of things made it necessary for the parents or the guardian of the girls to become extra anxious to solemnize her marriage within a particular age. This anxiety on their part provides the incentive for the bargaining spirit on the side of bridegroom.

Indeed dowry has assumed unbearable proportions today. Many a girl belonging to novel families could not be married due to the inability of their parents or guardians to find the resources to meet the exorbitant demands of the other side. There have been instances where such girls were compelled to commit suicide because a girl

\textsuperscript{30} Ibid. p. 8.
remaining unmarried after crossing the normal marriageable age was considered a dishonour to the family. There have also been instances where such girls were led astray and were compelled to adopt ignoble ways of life either out of the necessity of appeasing their sexual hunger, the urge being quite natural at that age, or out of necessity of meeting their bare maintenance. This unsolved problem created a sore in the heart of their parents and guardian and shortened their normal span of life by being sensitive to the problem which became a source of constant worry to them.

The dowry system spread with unabated growth to alarming proportions taking toll of many young brides. Due to the Frankenstein approach of the society the country witnessed the emergence of the evils of this system in a more acute and severe form. The Committee on the Status of Women in India pointed out that even the educated youth in the country were grossly insensitive to the evils of dowry and unashamedly contributing to its perpetuation.

In the larger portion of the country the practice of demanding and bargaining for the bridegroom’s price was in vogue. Exorbitant sums and other valuable consideration were demanded as price for bridegroom. Although this kind of dowry i.e. bridegroom’s price was not discredited by the Shasta’s in older times yet in modern times it came to be considered as an evil practice leading to the denial of innumerable girls to be given in marriage by their parents or guardians on the term proposed.

There are practices of “Dahej” and “Vory” amongst the Hindus given at the time of marriage for the use of bride and bridegroom as a married couple. “Dahej” represents presents given by the bride’s parents, guardian and relatives and “Vory” represents presents brought by the bridegroom party for the use and benefit of bride. “Dahej” also includes some presents for certain blood relations of the bridegroom.
According to M. N. Srinivas, the dowry as prevalent, especially among higher castes today is a totally new phenomenon and ought not to be mixed up with traditional ideas, such as Kanyadan and Streedhana. Dowry as we understand today is of recent origin and spread to religions and communities in which it was not known in this form. Traditionally dowry was made willingly and, it constituted a part of the series of presents. It has never followed a non-reciprocal and unilateral direction as it is made out to be, and women in various roles received gifts on various occasions constituting their property. The gift of the bride, Kanyadan, is accompanied by a subsidiary cash gift or Dakshina and Streedhana refers to the gifts given to a woman by different relative from either side. But modern dowry is not Kanyadan and Streedhana insists Srinivas, and this attempt to connect the two is to ‘legitimize a modern monstrosity by linking it up with the ancient and respected custom, a common enough and hoary Indian Device’.

Leela Dube is also of the view that, ‘Streedhana, a woman’s movable property in the form of various kinds of gifts has been common all over India, but the woman control over it has varied. Sadly in recent years dowry seems to have replaced the traditional Streedhana.

Authors like Tambiah regard dowry in immovable form as women’s property. According to him dowry connotes female property or female right to property, which is transferred at a woman’s marriage, as a sort of pre-mortem inheritance, dowry also connotes in complementary fashion that property is transferred together with a daughter so that she is enabled to enter into marriage. In ‘diverging-devolution’ children of both sexes inherit, but women often receive their portion at marriage in the form of dowry while men inherit immovable property like land. Many authors, especially those who focus on North

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India do not agree with the view that dowry can be equated with inheritance. This is so because, ‘dowry does not represent a fixed share of a particular divisible estate’, and ‘it is not paid to the bride herself but to her husband’s family’.  

In addition to it dowry for women is linked to whether or not they marry, while inheritance for men is not’ and except for certain communities ‘dowry is not entirely a women’s own or in her control’. She has however, shown that there are regional variations and indeed the concept of dowry and its practice as followed in different parts of India, cautions us against applying a uniform definition of dowry and universal understanding of the phenomenon.

In certain communities of South India like Nanglildi Vellalars of Tamil Nadu and Kammas and Reddys of Andhra Pradesh, dowry has been a form of pre-mortem inheritance which included immovable items like land and other immovable, even though these are given at marriage and not strictly by right of inheritance. In Telugu, what is given at the time of marriage is called bahumanam meaning gift and not bhagam, a share, and in Tamil, the land is called Manjal Kani for women’s independent income and to be possessed from mother to daughter. Customarily, the women’s right to property on marriage, both movable and immovable is recognized in these areas. To what extent they are followed and adhered to determine women’s position exhibit variations.

Among some people, though immovable property does not devolve on women, they own immovable property or Streedhana given to them at marriage. Yuko Nishimura has shown that among the Nagarattars of Tamil Nadu, the ownership of Streedhana is well protected so that every piece of bridal goods is regarded as parts of women’s savings. Gifts given by relatives are all considered to belong

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to her, which are to be handed down to her daughters. The other example given by her shows a tremendous difference in the ways the dowry system is practiced. Whereas Gujrati Jains and Modh Baniyas claim that cash payment to the groom’s family used to be non-existent, and the Streedhana used to be given mostly in kind, i.e. Jewellery from both sides, among the mercantile Jain community in Rajasthan, Streedhana as women’s property seems to be almost non-existent and the bride is expected to bring a large amount of property to be handed over to her mother-in-law. Drawing on data collected during field work in Punjab and Himachal Pradesh in 1977-78, Ursula Sharma, regards dowry as consisting of ‘made over to husband’s family, or to the newly married pair at or soon after marriage’, and in relation to dowry women’s position she says that, ‘as brides women have little control over the way in which dowry is given and received’. Nishimura gives yet another example of a different form of Streedhana practice. The Comutti Chettiyars, a mercantile caste in South India, acknowledge the Streedhana to an extent, not entirely as women’s property, but in a different form. In marrying women’s properties are jointly held under the custody of eldest female. But she is supposed to handover each female member’s property in the course of time. Nishimura is of the view that in order to discuss modern dowry it is necessary to differentiate the three situations. One, in which the ownership belongs to the bride entirely (the Nagarattar case), Second in which the bride temporarily entrusts it to the eldest female member in the family (Komutti Chettiyar case) and third, where the ownership is immediately transferred to the mother-in-law (Marwari case).

The Dowry, “Dahej” or Streedhana so sacredly enunciated by the law-giver acquired exclusive dimensions. In beginning the girl’s father’s capacity to give gifts to his daughter came to be silently assessed while considering the comparative merits of the girl. What

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40 Nishimura, Yuko, Supra. p. 147.
41 Nishimura, Yuko, ibid; p. 47.
was originally conceived as an affectionate gift by the girl's kinsmen for giving a start to a newly wedded damsel became the measure to tilt the matrimonial scale. Again what was intended and legally protected for daughter's use and complete control was assessed by her in-laws in terms of being used as parting gift for husband's sister. What the loving parents acquired and accumulated often by self denial for the comfort and security of their darling daughter was deliberately diverted for the benefit of another girl and many such daughters-in-law have shed silent tears due to the shameless avarice of the people husband's side.

Among the affluent families dowry is often the drain pipe for unaccounted money. Undeclared wealth which is often a source of dread is siphoned in marriage extravaganza. How else can any bride's parents give extremely expensive presents to the assorted baraties?

In certain segments of society the boys selected for the Indian Administrative Service have a fixed high price tag. Calculating and power conscious parents have chosen from these section boys even though they may be physically unsuitable for girl. Lover of riches choose from the rich however unmanly the boy might be for their fully grown up, physically robust daughter. Even the haunch-back or tubercular retarded girls were gladly accepted only if they were laden with compensatory gold, houses, cars, land, jewellery, ward-robe and money.

For the political potentates a marriage in the family is often converted into an occasion for acquiring wealth. Separate counters for receiving cash, gold other presents were regularly established at the time of marriage. The official class often apes their master and adopts subtler forms to escape the curious eyes.\(^{42}\)

The increase in materialism also increased the greed and avarice of the bridegroom and his people. They started to extort all

\(^{42}\) Beri, Justice B.P., op. cit. p. 38.
which the bride people had for their own limited use. With decrease in the human value and morality, demand of dowry took ugly turn and spread like contagious disease in the whole society and became the regular practice. Husband and their relatives started to use all the methodology to extract more dowries. They tried to satisfy all the present and future needs by extorting bride people. The process once started by commenting, harassing, torturing and treating poorly, many times ends in abetted suicide and/or killing the young bride by burning, poisoning or strangulating.

After killing one bride who could not meet the demand of husband and his family members, the boy becomes again ready to be induced in the marriage market for starting a new story of extortion by taking another bride.

Many times the poor girl is driven away or divorced to go straying and the boy starts negotiating for another marriage. The corrupt law enforcement machinery and reluctance jointly with poor economic condition of bride’s parents do not provide adequate relief to the unfortunate girls and consequently she does not acquire a place either at her father’s home or in matrimonial home.

From time immemorial Hindu Law has recognised the ownership of individual property of a Hindu wife. The most ancient texts of Hindu Law have always been categorical that dowry; as commonly understood was “Streedhana” and thus was in exclusive ownership of the bride.

Unfortunately at the end of Mughal Period and during the British rule and even thereafter the male dominated society took certain extreme stand which was never recognised by Hindu Law and it came to be understood that a Hindu wife by the very factum of her marriage cannot own and possess property separate from her husband during the subsistence of marriage. The property of the wife was understood to
be the property of her husband or in any case, it could jointly be owned by her husband. A wife's dowry would equally be either her husband's property or at the highest jointly owned by both. The Hindu wife cannot own anything separately and individually during covertures.\(^{43}\)

Thus whatever dowry was brought by wife either gifted by the parents or other relatives were taken in possession by the in-laws and it became the normal practice that those articles were used in accordance with the desire and will of in-laws. Ultimately the wife had a little or no control over those articles and no consent was acquired or even wished to be acquired for using, disposing, alienating or even for selling those dowry articles.

Thus there was a need for some law which could prohibit such extortion which the bridegroom’s parents make from the bride’s family. So also it is equally required that the girl who has been uprooted from parents' family and planted in in-law’s family must be given right of ownership and possession over her dowry with a view to deal with the menace of extortion in guise of dowry.

The Parliament passed the Dowry Prohibition Act, 1961.\(^{44}\) Section 2 of this Act defined Dowry in the following words: --

2. Definition of “Dowry” — In this Act, “dowry” means 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,


\(^{44}\) Assented to by the President of India on May 20\(^{th}\), 1961 and enforced with effect from July 1\(^{st}\), 1961.
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 Muslim Personal Law (Shariat) applies.

Explanation I – 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, cloths or other articles shall not be deemed to be dowry within the meaning of this, unless they are made as consideration for the marriage of the said parties.

Explanation II – The expression valuable security has the same meaning as in Section 80 of the Indian Penal Code (45 of 1860)

The un-amended definition of dowry consisted of the following ingredients:

(i) There must be property or valuable security

(ii) Which is given or agreed to be given

(iii) Either directly or indirectly

(iv) By one party to the marriage to the other party of the marriage

Or

By parents of either party to a marriage

Or

By any other person to either party to the marriage

(v) At or before or after the marriage

(vi) As consideration for the marriage of the said parties.

But does not include dower or mahr in case of persons to whom the Muslim Personal Law (Shariat) applies.
Two explanations were added to the definition. The first explanation said that any present made at the time of marriage to either party to the marriage in the form of cash, ornaments, cloths or other articles shall not be deemed to be dowry. The second explanation merely adopted the definition of valuable security as given in Section 30 of the Indian Penal Code.

The expression “in consideration of marriage” being the crucial phrase, it came in for close scrutiny in a number of decided cases. But the word “consideration” is not defined in the Act. The meaning of the word “consideration”, as per Chamber’s 20th Century Dictionary, 1969 Revised Edition reprinted in 1969, is - “motive or reason, compensation, reward, reason or basis of a contract”. Therefore, the words “as a consideration for marriage” in Section 2 of the Act will mean motive, reason or reward for the marriage. “For the marriage” obviously means for the act of marrying or in other words for solemnization of marriage. Hence only those articles are ‘dowry’ which are given or agreed to be given as reward or reason or motive for solemnization of marriage. Anything given after the marriage may be on the account of demand from boy or his parents or relative, is only a consideration for continuance of marriage or for happy or conducive to good matrimonial relationship. Anything given after the marriage was dowry if it was agreed or promised to be given as ‘consideration for marriage’.45 Where there is no allegation that any article given after the marriage was on account of any promise made or agreement arrived at as ‘consideration for marriage’, any other demand cannot be considered as a demand of dowry and hence offence of demand and giving of dowry was complete as soon as marriage took place.

The word “consideration” is defined in Clause (d) of Section 2 of the Indian Contract Act:

“When at the desire of the promiser the promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or abstain from doing something such act or abstinence or promise is called a consideration for the promise.”

The net result of the aforesaid definition of the word consideration is what a person has already done something or abstained from doing something in the past or does or abstains from doing something in the present or promises to do or abstain from doing in future, such act or abstinence is called consideration. With reference to the passing of property or valuable security consideration means that property or valuable security should have been given or promised to be given in future in order that there may be performance or solemnization of marriage. Thus the definition of the word consideration as given in the Contract Act also leads to the conclusion that the property or valuable security should be demanded or given whether in past, present or future in bringing about solemnization of marriage. After the marriage giving of property or valuable security by the parents of the bride cannot constitute a consideration of the marriage unless it was agreed at the time of or before the marriage that such property or valuable security would be given in future.

Where the complaint did not spell out that the articles mentioned in the complaint were for the marriage and were given as a result of the agreement for the purpose of marriage the court took it otherwise saying that the articles after the marriage were given with a view to have smooth sailing and continuance of good marital relations. Therefore, money paid for T V and scooter did not constitute any consideration or reward for the marriage and hence no dowry. It is submitted that here again law was put in the dock as being so technical that violations remained unpunished.
The definition of the term ‘dowry’ must be as a consideration for the marriage of the Parties because the presents made at the time of the marriage would come within the net only if they are made as consideration for such a marriage.⁴⁶

Though the Act takes care to exclude presents in the form of cloths, ornaments etc. which are customary at marriage, provided the value thereof does not exceed Rs. 2,000. Such a provision appears to be necessary to make the law workable.

What this statute intended to eradicate was criminal kind of corruption and commercialization of the concept of dowry. The definition under the Act, was, therefore, designed for and moulded to the peculiar object of nipping the extortionate evil in the bud. This special definition, therefore, has no relevance to the word dowry as understood in common parlance and its ordinary dictionary meaning to which reference has been made earlier. It calls for pointed notice that the Dowry Prohibition Act does not, in any way, bar the traditional giving of presents at or about the time of wedding, which may be willing affectionate gifts by parents and close relations of the bride to her. Such presents or dowry given by the parents is, therefore, not at all within the definition of the aforesaid statute. Indeed, this traditional giving of presents at or about the time of wedding is an accepted practice which finds mention in the oldest of the Hindu scriptures and is continued today with great zeal. Consequently, dowry as commonly understood is something different and alien to the peculiar definition thereof in the Dowry Prohibition Act. A voluntary and affectionate giving of dowry and traditional presents would thus be plainly out of the ambit of the particular definition under the Act and if that is so, the rest of the provisions thereof would be equally inapplicable.

A plain reading of the definition of dowry under the aforesaid statute would show that it means any property given directly.

or indirectly as a consideration for the marriage of the said parties. Now once that is dowry of this kind is in fact a quid pro quo for the marriage itself.

It means, therefore, dowry would constitute property given either to secure an agreement to marry or given at the time of marriage, in exchange for or as the reason for the marriage. It would also include property given subsequent to the marriage but expressly deferred as the reason for the marriage but would not include property that may pass hands subsequent to the marriage, even months or years after it, merely to save the marriage from being broken or otherwise to keep the family of the in-laws of the wife better disposed towards her, or to smoothen the coarse of matrimonial life, or to save the wife from harassment, humiliation or taunts for the only reason that she did not bring enough dowry at the time of marriage.47

It is apparent from this definition that it is necessary that property or valuable security so as to constitute dowry must be given as consideration for the marriage.

Now the expression “consideration” has a known connotation in the law of contract, from where it has been apparently lifted by the legislature. The choice of the expression was rather inappropriate and its use in the context of dowry was unfortunate which led to avoidable judicial controversies because it incorporated in a necessary social legislation a purely commercial concept, which was wholly foreign to the purpose sought to be achieved by the legislation.

Thus the interpretation of the word “consideration” given by the courts was a narrower one and many a person escaped the net. For instance in the case of Inder Sain v. State, the Delhi High Court observed:

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“Thus the definition of the consideration leads to the conclusion that the property or valuable security should be demanded or given whether in the past, present or future for bringing out solemnization of marriage. After marriage, a property or valuable security by the parents of the bride cannot constitute a consideration for the marriage unless it was agreed at the time of or before the marriage that such property or valuable security would be given in future”

This short coming of the definition of dowry was well understood by the Joint Committee of Both the Houses of Parliament to examine the question of the Working of the Dowry Prohibition Act, 1961 and the Joint Committee observed in its report as follows:

“The Committee feel that it is well nigh impossible to prove that any property or valuable security given or the presents so made were as consideration for the marriage for the obvious reason that the giver i.e. the parents, who are usually the victims, would not, in the interest of the girl, say so and would be reluctant and unwilling to set the law in motion because of the fear that their daughter could be victimized for that. This, the Committee feel, is one of the reasons why the Dowry Prohibition Act, 1961, although in operation for such a long time, failed to achieve its objective. The Committee is aware that the omission of the aforesaid words would make the definition very wide and drastic. The Committee has reluctantly arrived at the conclusion that words should be omitted as without omitting them the provision of the Act cannot be made to serve the purpose which they are intended to.”
Consequently the original definition of the term “dowry” appearing in the Act of 1961 has been amended twice by the Amendment Act of 1984 and the Amendment Act of 1986.

The Act of 1984 has introduced two changes, one, the words, “as consideration for the marriage of the said parties” has been substituted by the words “in connection with the marriage of the said parties” and two, Explanation I attached to the section has been omitted.

The Act of 1986 has further amended the section by substituting the words “or any time after the marriage” for the words “or after the marriage”.

Now, the word “consideration” has been substituted by the words “in connection with”. These words are preceded by the expression “at or before or any time after the marriage.” Earlier these words were given a restricted interpretation in the sense that the demand of the dowry must be before or at the time of marriage, the compliance may be after the marriage. But now anything demanded or given in connection with the marriage at any point of time would constitute dowry. To wit, if a demand is made at the birth of a son to the wife from her parents it would be in connection with the marriage.48 It is submitted that the stand as expressed by M R Achar and T Venkanna in their book “Dowry prohibition Act and Rules”; 3rd Edition is not correct in the light of judgment given in the case of Satbir Singh v. State of Punjab.49 It was observed by their Lordship of Supreme Court that the customary payments in connection with birth of child or other ceremonies are not involved within ambit of dowry.

The word “connection” has very wide connotation. Even the term “consideration” has been deleted, still it will have to be shown that what was given at, before or any time after the marriage was under the

48 Achar, M R and T Venkanna. op.cit. p. 38.
49 AIR 2001 SC 2828.
coercion, compulsion or threat. It seems that the traditional presents made voluntarily at the time of marriage would not come under the definition of dowry. Therefore, in our submission, the deletion would not make much difference because for setting the machinery of law in motion, it still remains incumbent upon the complainants to prove that they were obligated to give dowry under compulsion or coercion. It seems that this requirement would be more burdensome than to prove consideration since anything shelled out under compulsion or coercion would itself amount to, given in consideration of marriage whereas the converse might not be true. The only difference being that, now the making of demand for dowry is not confined before or at the time of marriage though the compliance might be deferred, but it would be covered even if made “any time after the marriage.” This in fact has the effect of nullifying the holding of the Supreme Court in the case of L V Yadav v. Shankarrao.50

After the amendment of 1984 and 1986 it is pertinent to discuss the judicial opinion on the term “dowry” and the efficacy of the amendment Act. Where the term dowry and demand of it was under consideration the court expressed its opinion that the definition of "dowry" emphasized that any money, property or valuable security given as consideration for marriage, before or after the marriage would be covered by the expression dowry and this definition as contained in Section 2 has to be read whenever the expression “dowry” occurs in the Act. Meaning of expression “dowry” as commonly used and understood is different than the peculiar definition thereof under the Act. Under section 4 of the Act mere demand of dowry is sufficient to bring home the offence to an accused. Thus any demand of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice versa would fall within the mischief of dowry under the Act where such demand is not referable to any legally recognized claim and is relatable

50 1983 (2) Crimes 470 (SC).
only to the consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfilment of the demand of dowry leads to the ugly consequences of the marriage not taking place at all. The expression “dowry” under the Act must be interpreted in the sense which the statute wishes to attribute to it.

Where definition is given in the statute itself, it is neither proper nor desirable to look to dictionaries, etc. to find out the meaning of the expression. The definition given in the statute is determinative factor. The Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes it punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time of or after the marriage where such demand is referable to the consideration of marriage. Dowry as a quid pro quo for the marriage, is prohibited and not the traditional presents to the bride or bridegroom by the friends and relatives. Thus voluntary presents given at or before or after the marriage, to the bride or bridegroom as the case may be, of a traditional nature which are given not as a consideration for marriage but out of love, affection or regard, would not fall within the mischief of the expression “dowry” made punishable under the Act. Secondly, it is well known rule of interpretation of statute that the text and context of the entire Act must be looked into while interpreting any of the expression used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary. ‘Demand’ made at or after the marriage is taken to be punishable under Section 4 of the Act, some serious consequences which the Legislature wanted to avoid are bound to follow. For example where the bridegroom or his parents or other relatives made a demand for dowry during marriage negotiations and later on after bringing the bridal party to the bride’s house find that the bride or her parents or relatives have not met the earlier “demand” and
call of the marriage and leave the bride's house; should they escape the punishment under the Act. The answer has to be emphatic 'no'. It would be adding insult to injury if we were to continence; that their action would not attract the provisions of Section 4 of the Act. Such an interpretation would frustrate the very object of the Act and would also run contrary to the accepted principles relating to the interpretation of statute.51

Yet in another case52 while interpreting the definition of the term dowry the court said:

"In view of the definition of the word “dowry”, any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving and taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understand to have a particular meaning in it, then the words are to be construed as having that particular meaning. A demand for money on account of some financial stringency or meeting some urgent domestic expenses or for purchasing Manure cannot be termed as a demand of dowry as the said word is normally understood."

From the above discussion it is clear that presently “dowry” means any property or valuable security which is given, taken and/or demanded in connection with the marriage unlike the word “dowry” as was understood in common parlance and is in its ordinary dictionary meaning i.e. the property which a wife brings to her husband. This definition of dowry is also different to what was observed by Mayne as a contribution by the wife’s family, or by the wife herself, intended to assist the husband in bearing the expenses of the conjugal household. However, the meaning of traditional gifts and presents as provided in sub-section (2) of Section 3 is some how similar to that of term “dowry” as it was understood before the enactment of the Dowry Prohibition Act, 1961.

It is also clear from the above discussion that earlier to the enactment of Dowry Prohibition Act, 1961, dowry was given and received in two ways:

(1) A pure voluntary giving of traditional presents or gifts to the bride or bridegroom out of love, affection or regard by parents and relatives of the bride or bridegroom which has been presently termed as traditional gifts under the present Act, and

(2) That property or valuable security which is given in connection with marriage of the said parties as the quid pro quo of the said marriage and which is backed by some sort of threat compulsion or coercion and non-fulfilment of which may lead to ugly consequences, that has now been termed as “dowry” and the taking, giving and abetting of giving and taking as well as demanding of which is made punishable under the Act.
The Dowry Prohibition Act also provided that the dowry should be for the benefit of the woman in connection of whose marriage the dowry was given. The Joint Committee recommended:

“Although taking and demanding dowry have been prohibited and made punishable under Section 3 and 4 as also in the amendments now being proposed to this section, the Committee apprehend that in view of the nature and prevalence of the dowry system in the country, there is no likelihood of provisions being complied with by all in letter and spirit. The Committee feel that even though the provisions contained in the amendments being proposed to the Act are expected to take care of the violations, in those cases in which dowry has been given and is held by any person other than the woman entitled to it, that person should return it to her under all the conditions mentioned within three months of its receipt by him.

The Committee also feel that in order to ensure that, the dowry, which is essentially for the benefit of the girl, is not misappropriated by the person who is holding for the time being, there should be a provision for the deterrent punishment for any default in that behalf. The committee are, therefore, of the opinion that if the person holding the property does not return it within the stipulated time-limit, he should be punishable with imprisonment for a minimum period of six months extendable up to two years or with fine up to ten thousand rupees or with both.”

Regarding the exclusion of the husband from the list of heirs on the death of the woman in suspicious circumstances, the Committee noted:
“The Committee feel that the present provisions relating to inheritance of the said property to the heirs of the woman in case where she dies before receiving it should be more explicit and such list of heirs should not include the husband of the woman. The Committee are of the opinion that the property in such cases should go back to parents failing which to their heirs if she dies without any issue and to the issues in case she dies leaving behind the issues. The Committee are further of the opinion that in cases where the woman dies under suspicious circumstances and the husband and in-laws are alleged to have murdered the woman or instigated such murder for dowry, the property inherited by the issues should be looked after by the guardian appointed by the court till they attain the age of majority.”

Consequently a duty has been casted upon the person who receives the dowry to transfer it to the bride in connection of whose marriage it is taken. Pending such transfer he will have to hold it in trust for the benefit of the bride. Sub section (2) of Section 6 of the Act provides for the punishment if such person fails to transfer such dowry either to the bride or in case she dies before receiving, to her parents or the heirs.

It will not be out of context to mention here that by virtue of Section 14 of the Hindu Succession Act, 1956 a female Hindu holds property as a full owner including those acquired by her by gift from any person, whether a relative or not, before at or after her marriage. Thus dowry has been the absolute property of the woman since long and its ownership has been confirmed even by the Hindu Succession Act, 1956.

Not only this, the Act confers full inheritable capacity on the female heirs and this section dispenses with the traditional limitation on
the power of female Hindu to hold and transmit property. The effect of the rule laid down in this section is to abrogate the stringent provision against the proprietary rights of female which were often regarded as evidence of her perpetual tutelage and contrary to that, it recognizes her status as independent and absolute owner of property and dowry is one amongst them.

The Section gives explicit declaration of law that a female holds all property in her possession whether acquired by her before or after the commencement of the Act as absolute owner and not as a limited owner.