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## DOWRY PRACTICES AND LEGISLATION IN INDIA AND ITS RELEVANCE IN CURRENT DAYS TO MALAYSIA

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### Abstract:

In the Hindu Culture patriarchal values is hailed in which it support female inferiority (Sonia Dalmia, Pareena G. Lawrence. 2001). It is to be noted that on the Indian subcontinent, there exist a "theory of perpetual tutelage for women" which was formulated by Manu, the Hindu lawgiver. In which he preached that education for girls should be stopped. He also preached that they should be not permitted to have a public life and must restrict themselves to their homes. He reiterates that a wife ought to respect her husband as God and serve him faithfully. Even though if he were vicious and void on any account, it was to be accepted as applicable to all women. And under the ambit of these laws, women become weak and subservient. Marriages were determined by the parents. And the wives in turn lost their identity as an individual or as a member of community and became more like a commodity which could be bought and sold. And polygamy is permitted and there is no provision of divorce or remarriage for women. The status of women in both Hindu is rather intriguing and complex. At one level she is considered as a Goddess (Devi). An example is elucidated in SEETA the wife of RAMA, a personification of sweet long-suffering wife in which she is the embodiment of motherhood in which she bore a male child, thus paving her the potential to become LAKSHMI also preconceived as the harbinger of luck. Nonetheless, she is blamed for all the ills and degradation of man's moral and spiritually. The objective of the study is we will be examining cases on dowry in India and also visiting the current situation in Malaysia. Author will be employing the doctrinal legal research methodology.

**Keywords:**

Dowry, Polygamy, Legislations, Moral, Spiritual

**Introduction**

Marriages in the past were followed by a passage of goods or services from the kin of the groom to the kin of the bride, known as brideprice or bridewealth. The net wealth flow in the opposite direction, commonly known as dowry, not a familiar scene. The dowry crisis in India is so grave to the extent that a lead man are resort to dousing his wife with kerosene and lighting a match to her. The institution of dowry has become so heinous to the extent that there are certain cases that demands for added dowry has occurred and the wife was unable to fulfill. In India dowry refers to a property or any valuable security that is given or agreed to be given by one party within a marriage to another party. In India, the part who agreed to give dowry is mainly the parents of a girl to the groom's family. Taking dowry is itself a crime and prohibited as per the "Dowry act 1961. (Shreya Seth,2022)"

The scenario of dowry murders in Malaysia is still a new phenomenon though this phenomenon of haggling dowry is on the rise and is still scorned by many Indians. The article written by historian (Veena Oldenburg, 2002) in which she argues that British Settlements denoting land as alienable property and assigning ownership to males made the claims for the female to be negated in regards to the share of land products. She also noted that the inflexible assessment of land revenue inflexible assessments of land revenue in the form of taxation had drove peasant families to borrow from moneylenders in situations of poor harvests in which they stake their land as collateral. Thus, they acquire crush debt burdens and they sadly lose their lands in foreclosures. A solution to this problem to produce more sons to provide supplementary incomes in which they open new areas for farming. She also noted the shift of dowry perceptions in which it took deeper transformations. She reiterated that prior to land resettlements the dowry practice made acknowledgement to a daughters claim to share in the produce of the land worked by her family. It was rendered to the daughter in the form of household goods and it was often given by her relatives. The bridegroom family's perception to this act is that it demonstrated a bride rendering family's affection for its daughter. And that she alone had the power to determine the utilization. And as the family slipped into debt the dowry function served the purpose as a safety net. Gold and jewellery given to the bride compensated for the land loss as they could be pawned for cash needed. From this starting point it drove demands for such items. Higher education and civil service jobs increase dowry stakes due to the competitive bidding of bridegrooms with good prospects. Dowry became a new form of groom pricing in which its pricing became increasingly under the control by the bridegroom's family. Oldenburg explored the fact that the drive to produce more sons had caused fewer daughters. Thus entailed the destruction of a daughter after birth allowing for renewal of efforts to get a son. The pattern of male female imbalance was reflected in the census records in which the British charged that the killing of daughters happens to be an effort to evade late payment of dowry. She stated that these patterns suggest that the infanticide rates were high among groups not practicing dowry as they were practiced among dowry granting families. Thus, evading dowry could not have been their drive and motivation. Oldenburg suggests that the tendency to blame dowry for cases of bride burning may be equally false. She reiterated dowry extortion is a very real problem Dowry extortion, she concedes, is a very real

problem caused by the devaluation of daughter vis-a-vis sons. She concludes that dowries remain an important safety net for daughters and many daughters desire and demand them.

Dowry is coined also as a prominent example of economically motivated violence which is initiated from the Indian subcontinent in which numerous press reports indicate the rampant use of wife abuse as a means of extracting transfers from the wife's parents. The disputes over the dowry give rise to what newspapers preconceive as "dowry murders," in which wives are burned alive by their husband's families. Thus, "dowry" violence does not refer directly to marriage-related payments made at the time of the wedding, but also takes into account the payments demanded after the marriage by the groom's family where the husband reacts by abusing the wife in order to extort a larger form of transfer.

It is to be noted that the dowry system-payments from the bride's family to the groom or groom's family at the time of marriage-has a long history in India and other Asian societies. (Lee, 1982).

Thus, it is crucial to note that the modern Indian dowry system has its roots in the traditional upper-caste practices. Traditionally, although these gifts could be substantial they were often rendered as a form of small tokens of good wishes. Nonetheless this small gifts have morphed to the heinous dowry in which it involves a substantial transfer of wealth from the bride's family to the groom's, and has become a major factor in marriage negotiations. (Nadagouda, Krishnaswamy, & Aruna, 1992; Paul, 1985; Teja, 1991)

Historically, the dowry came into play as mentioned earlier as a form of premortem inheritance for women, due to the fact that only men were entitled to inherit family property (Sharma, 1980). It may also be form of providing compensation to the groom and his family for the economic support they would provide to the new wife, because women had little or no role in the market economy and would be relying upon their husbands and in-laws. (Boserup, 1970).

This notion is in correlation to the fact that the dowry was historically practiced largely in the upper castes, amongst whom women's economic roles were particularly restricted. As opposed to the women from the lower castes, in which they were more likely to be economic contributors to their families, the custom of the bride-price was more common.

The anti-dowry laws in India were enacted in 1961 in which both parties to the dowry namely the families of the husband and wife are criminalised. Sadly the law itself have done nothing to halt dowry transactions and the violence that is often associated with them. The police and the courts have put on blindfolds to cases of violence against women and dowry associated deaths. It was not until 1983 that domestic violence became punishable by law. (Srinivas, 1994). The objective in examine the laws on dowry in Malaysia and also India and to make reference of the cases in India.

## **Literature Review**

### ***Statistics Of Dowry In India***

Dowries on average are higher in the north than in the south. A opinion was forwarded that contrary to popular belief, it was found that holding groom characteristics constant, real dowries have decreased over time. Results also show eluded that the most important

determinants of demand for various groom attributes are based on price of the attribute, the bride's traits, and the socio-economic status of the bride household. (Sonia Dalmia.2002)

After Independence, the rampant rise in dowry deaths in India had compelled the government to enact the Dowry Prohibition Act in 1961 to charge a person for demanding dowry and committing such heinous acts. Thus, the figures of dowry deaths has increased from 6,208 in 2003 to 8,172 in 2008. In addition, dowry prohibition cases have increased from 2,684 in 2003 to 5,555 in 2008 and cases of cruelty by husbands and other relatives have seen a rise dramatically from 50,703 in 2003 to 81,344 in 2008 . These are official statistics and it still remains a mystery on how many cases go unreported, since it is a myth that wife battering is a 'private matter' and it has dumbfounded many victims for centuries ((**Bhattacharya 2004**).

It is to be noted that cases registered under the Dowry Prohibition Act represent only a fraction as dowry is a common cultural practice in India (**Ghosh 2007**).

The state of Bihar is number one on the list of dowry death and comes second in dowry prohibition cases in the year 2008. However, in registering 'cruelty' cases, in correlation to dowry transactions in the Indian society, the state of Bihar is on the 16<sup>th</sup> position.

According to an article in Time magazine, deaths in India related to dowry demands have increase 15-fold since the mid-1980s from 400 a year to around 5,800 a year by the middle of the 1990s. Some commentators claim that the rising number simply indicates that more cases are being reported as a result of increased activity of women's organisations. Others, however, insist that the incidence of dowry-related deaths has increased.

A research has been conducted in the late 1990s by Vimochana, a women's group in the southern city of Bangalore which elucidated that many deaths are closed and shun away by the police. The police take statements from the husband and relatives present. And this becomes the basis and the sole consideration in determining whether an investigation should proceed or not. As Vimochana research it reiterates that what a victim will say in a state of shock and under threat from her husband's relatives will often be turned and changed markedly in later interviews.

There is a substantial amount of 1,133 cases of "unnatural deaths" of women in Bangalore in 1997, and sadly only 157 were treated as murder whilst the other 546 were categorised as "suicides" and 430 as "accidents". Another activist known as V. Gowramma reiterated that of 550 cases reported between January and September 1997, the amount 71 percent were closed as 'kitchen/cooking accidents' and 'stove-bursts' after investigations under section 174 of the Code of Criminal Procedures. The fact that a large proportion of the victims were daughters-in-law was either shun away or blind folded and treated as a coincidence by police.

Frontline indicate that in the duration of August 1998, there were 1,600 cases pending in the only special court in Bangalore dealing with allegations of violence against women. Three new courts were set up the same year to deal with the large backlog but cases were still expected to take six to seven years to complete. Prosecution rates are low. Frontline reported the results of one court: "Of the 730 cases pending in his court at the end of 1998, 58 resulted in acquittals and only 11 in convictions. At the end of June 1999, out of 381 cases pending, 51 resulted in acquittals and only eight in convictions."

It is to be noted that the cases of dowry death amounted to 8172 cases and the cases of dowry prohibition amounted to 5555 cases and as for cases of torture/cruelty by husband and other relatives it amounted to 81344 cases and collectively it constituted to 48.54% of registered crimes against women in the country in 2008. This indicates that women in India, irrespective of sociocultural differences, are facing exploitation, harassment and torture in the domestic sphere. Ironically, certain myths are also prevalent as part of the patriarchal ethos which prove that violence is 'normal' within family. (Ahlawat 2005).

It is substantial to note that if the economic dependence of women is the keylink factor that relates to the custom of the dowry, than ironically the women's increasing role in the market economy of India should bring about a decline in the occurrence and magnitude of dowries. It is predominant to note that there are state-level variations, in which the ratio of female workers per 100 male workers in India has been increasing steadily in the last several decades, from 22.7 in 1971 to 29.0 in 1991.

It is also to be realised that these ratios are considerably compromised in official statistics because female workers are often missed during data collection, and their families do not acknowledge women's contributions to household income due to the rigidity of cultural disapproval of women working outside the home. (Srinivasan, Shariff, Zaman, & Bierring, 1997). Nonetheless, despite the significant participation and contribution of women in the labor force, dowries are becoming even more common and rampant. The custom has paved the way to all religions and social classes and has spread to neighboring countries and is growing even among South Asian immigrants to Western societies.

### Methodology

Doctrinal legal research LR is a systematic exposition of the rules, institutions and procedures or their application prevalent in one or more legal systems or their sub-systems with a comparative evaluation after objective estimation of their similarities and differences and their implications. CLR may be doctrinal or non-doctrinal, theoretical or fundamental, historical or contemporary, qualitative or quantitative. CLR is also known as comparative law. But there is controversy whether comparative law is only a method or includes a perspective. According to Zweigert and Kotz, it suggests an intellectual activity with law as its objects and comparison as its process. (Bhat, P. Ishwara. 2015)

### Case Study

#### *Mrs Rubina Case*

A case study of an individual named Mrs. Rubina who was physically & mentally tortured ever since her marriage dated 19th March 2001. She staying at a new flat at Burnpur under Hirapur police station of Asansol town by in which he husband kept all the properties at the original matrimonial home situated at Rahamatnagar and shifted her 6 year old son to a hostel. Her husband then drove her out of the flat on 5th October 2007 due to her parents not being able to meet the demands of dowry. Rubina's father then took her away to Durgapur town and initiated a case at Durgapur. The Additional Chief Judicial Magistrate (ACJM) of Durgapur then passed a 'protection order favouring Mrs. Rubina on 3<sup>rd</sup> July 2008. The court allowed her the right of residence in the shared household at Rahamatnagar, and the right to enjoy properties, and gave her entitlement of Rs. 2000/per month as a form of maintenance from the husband. The court also rendered her the love and affection of her son in the matrimonial home. Her husband Mr.

Ahmed, who is a lawyer by profession, then moved from the quarters at Burnpur to the original house of his parents at Rahamatnagar. Nevertheless, when the concerned PO and the local police officials went to ensure right of residence to Rubina at Rahamatnagar, they discovered that the house was locked. Following The court then issued an arrest warrant against Mr. Ahmed, Rubina's spouse. The High Court stayed the order on hearing the argument forwarded that the 'house' belongs to the mother of Mr. Ahmed and the court also noted the fact that Rubina along with her husband did not stay at Rahamatnagar before separation. The High Court then dismissed Mr. Ahmed's petition as Rubina did reside at Rahamatnagar home after marriage and the court also added that Rubina 'may move to appropriate forum to settle the matter'. Rubina brought her case to the Additional District Judge (ADJ) of Durgapur. On 10th August 2010, the ADJ gave a verdict in favour of Rubina sustaining all the right that the CJM court had earlier ordered and the court also further included an enhanced maintenance grant of Rs. 3000/per month. Failing to implement the order Rubina then resorted to move to the court of ACJM, Durgapur. She resorted to the District Judge Court for availing the custody of her son whom sadly she did not see since October 2007. Rubina is physically and mentally tired of seeking 'justice'. It has been 3 years since she is moving from one court to the next to seek justice.

### ***Mrs Kabita Case***

Kabita another case of dowry abuse was subjected to verbal, emotional and physical abuse by her husband. She could not conceive a male child and she failed to bring dowry. On top of that she raised objections about the illicit relationship of her husband with his sister-in-law. Her two minor daughters were taken to his in-laws house. The husband did not care to take them back and neither did he care to inquire about them. He filed a suit of divorce against Kabita, who then was forced to file a case under the new law. At the court hearing, her husband tried to defend himself by blaming Kabita on the moral character of Kabita. He argued that she went back to her father's house on her own. The cross examination revealed, that Kabita was subjected to domestic violence and she was also not permitted to resume marital tie and get an entry into matrimonial home. Her husband had no intention to take her back. The court passed an order on 8th August 2008, in which the respondents should not commit any act of domestic violence against the petitioner and the minor children. The respondent should not alienate any assets of the petitioner including the property. The court permitted the petitioner and the children to stay at the matrimonial home without any disturbance and that the husband pay a sum of Rs. 6000/per month to Kabita within 7 days of every month to meet the expenses. A follow up of the case was made only to discover that Kabita was allowed to stay at the matrimonial home, but her husband did not pay her monthly maintenance regularly. She reported the matter to the Protection Officer and it is to be noted that he has breached of a protection order under the ambit of sections 31 and 32 of the Act.

The case ended with the husband Ajoy agreeing to accept Kabita as his wife and to start a normal conjugal relations. Lets observe to see how far and how long normal conjugal relations are maintained in this family.

### ***Case of Sannamma:***

In the case of Sannamma and Raju, a young couple who have been married for about two years. Their parents arranged the marriage when Sannamma was 17 and Raju was 24. Sannamma's parents are relatively rich with ten acres of irrigated land, while Raju's are considerably poorer. Raju shares a house with his parents, his brothers, and their wives and children who all live off

a five-acre plot of dry land supplemented by intermittent work as wage laborers. Raju received a dowry of 25,000 rupees, which is about half the size of most other dowries paid in the community at the time. A few months into the marriage, he demanded that Sannamma ask her father to send some money so that he could set up a small tea shop. She agreed and her father sent Raju 2,000 rupees, which is what Raju made in four months. About two months later Raju demanded a motorcycle, a considerably larger request well beyond the means of Sannamma's parents. Sannamma passed on the request to her parents who said that they could not afford such a large sum of money. When Raju heard this, he became very angry, hit Sannamma, threw her to the ground, and said that if her parents did not send the money, "he could not say what might happen to her." Subsequently, tensions between Sannamma and Raju have increased considerably and she says that she now lives in fear of her life. Her parents send money when they can even though they cannot really afford to keep up with Raju's demands. However, Sannamma refuses to leave her husband and go back to her parents, fearing social isolation

#### ***Rinki Case:***

For nineteen-year-old Rinki dreams of a happily married life was never to be. Barely a month after her marriage, she was allegedly tortured and then set ablaze by her in-laws for dowry in Indiranagar in the small hours of Saturday. Daughter of late Gyan Chand, a fish contractor who expired a year ago, Rinki was married to Anil on April 19... However, soon after the marriage, Balakram [Anil's father] demanded a colour television instead of a black and white one and a motorcycle as well. When Rinki's mother failed to meet their demands, the teenage housewife was subjected to severe physical torture, allegedly by her husband and mother-in-law... On Saturday morning she [her mother] was informed that Rinki was charred to death when a kerosene lamp accidentally fell on her and her clothes caught fire. However, prima-facie it appeared that the victim was first attacked as her teeth were found broken. Injuries were also apparent on her wrist and chest.

#### ***Jyoti Case:***

Jyoti, daughter of Chandrashekhar Byadagi, was married to Ajjappa Siddappa Kaginele in Guttal village (Haveri taluk) had taken her life after being allegedly harassed by her husband Ajjappa, mother-in-law Kotravva, sister-in-law Nagavva and father-in-law Siddappa for more dowry, the police said. Police said that the harassment compelled her to consume poison... The Guttal police have arrested her husband and father-in-law.

#### ***Akhilbanu Yadawad Case:***

Akhilbanu Yadawad, 26 years was found floating in a well in Tillawali. The police said that Akhilbanu was married to Abdul Razaksab Yadawad five years ago. In spite of dowry being given, her husband and his family tortured her to bring some more dowry. Her father, Abdulrope Pyati in his complaint, alleged that she was killed by them. Her husband and his two brothers have been arrested.

#### **Womans Perseptive On Dowry Practices In India**

It is to be noted that the traditional norms supporting the dowry system are more common amongst women of the Hindu religion and the upper castes this is due to the fact that the custom has its originated amongst these groups. It is to be noted that the dowry system is more rigid in the northern Hindi-speaking namely the state of Bihar, Uttar Pradesh, and Rajasthan states (Dyson & Moore, 1983). Women whom originate from these states have been exposed to the

practice of the dowry from childhood, and are prone to support the dowry than those born elsewhere in India.

However, modernization has influenced the dowry system. Younger women and those who are educated are more likely to be exposed to modern Indian Women's Perspective towards the dowry idea and are less likely to follow conventional customs, especially those that undermine the status of women, such as the dowry. Also in cases where women are regularly exposed to media are also likely to be less supportive of tradition. And those who live in urban areas have more access to modern educational systems and media, and are exposed to more cosmopolitan environments that challenge conventional thinking and lifestyles thus making them have a more independent purview on the matter. Employed women are more likely to be exposed to liberalizing influences in the workplace((**Malhotra & Mathar, 1997**) and their greater financial resources paves the way for them to question traditional practices that are obsolete and that pose burdens to their families and undermine their status.

However under the notion of self-interest, the more unmarried sons a woman has, the more she and her family are likely to benefit from the dowry system. Unfortunately, women with more daughters as opposed will experience a greater financial burden because of the dowry system, and are thus less likely to support it. In situations where women who are married consanguineously namely to husbands to whom they were related prior to marriage are likely to have had a less horrible experience with the dowry, and thus are more likely to condone it.

Dowries in such cases are usually smaller. This is because the groom's parents are hesitant to make extravagant demands on the relatives, and the bride's parents are often able to exercise some control over the amount of the dowry. This means that the dowry is often used for the benefit of the newly married couple rather than the groom's parents in such a backdrop.

### **Dowry Prohibition Act 1961 India**

The act predefines dowry under section 2 as 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 to the marriage or by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person. And the punishment accorded to those whose go against the act is elucidated in section 3 of the act in which it reiterates that if any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more provided that the Court may, for an adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment of a term of less than five years. Agreement for giving or taking dowry to be void and this is elucidated in section 5 of the act in which it states that any agreement for the giving or taking of dowry shall be void.

The Burden of proof in dowry cases are illustrated in section 8A of the act in which it reiterates that where any person is prosecuted for taking or betting the taking of any dowry under Section 3, or the demanding of dowry under section 4, the burden of proving that he had not committed an offence under these section shall be on him.

Provision in regards to the Dowry Prohibition Officers is embodied in section 8B of the act whereby it reiterates that The State Government may appoint as many Dowry Prohibition

Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act. Every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely to see that the provisions of this Act are complied with, to prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry, to collect such evidences as may be necessary for the prosecution of persons committing offences under the Act, and to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rule made under this Act. And The State Government may, by notification in the Official Gazette, confer such powers of a police officer as may be specified in the notification on the Dowry Prohibition Officer who shall exercise such powers subject to such limitations and conditions as may be specified by rules made under this Act. In addition The State Government may, for the purpose of advising and assisting Dowry Prohibition Officers in the efficient performance of their functions under this Act, appoint an Advisory Board consisting of not more than five social welfare workers (out of whom at least two shall be women) from the area in respect of which such Dowry Prohibition Officer exercise jurisdiction under sub section.

### **Dowry Practice In Malaysia**

As opposed to India the Indians in Malaysia are far more liberated from dowry practices as being a multi racial country the Indians in Malaysia are exposed to various cultures from the Muslims and the Chinese thus making the dowry practices to face a decline in practice. There is so far no reported cases as far as dowry violences are concerned in Malaysia thus not making it a need for any legislation to be passed pertaining to the matter. Nonetheless, it cannot be denied that in certain Indian households the practices on dowry is still promulgated but in minor scales and it is obtained by agreement by both of the parties in small amounts and the dowry practice is stopped the moment the couple is wedded. There is no cases of additional demands to the dowry after the commencement of the wedding and once the couple is leading their married life. And it takes the form of money and jewellery and not in other forms.

Amongst the reasons why dowry practices in Malaysia differs from that of India is due to the fact that the Indian women in Malaysia are exposed to education, media and culture of various races same like the women in india namely the urban areas which are not so keen in this dowry practice. Thus making it impossible for the dowry system to be upheld. And the women in Malaysia are less dependent financially to their husbands as they lead their own career lives and are not rooted to the dowry tradition. Besides most Indian parents in Malaysia are not prone to making requests to dowry as the wedding expenses are split into half and it also can be attributed to the fact that being educated the Indian women in Malaysia do not uphold the dowry practice and are less prone to condone it .it is also due to the fact that the Indian men in Malaysia are less looking forward to dowry as this practice was practiced centuries ago and even in India there is legislation to curb the phenomenon so its best that this practice not be exploited.

### **Conclusion**

As a conclusion, it is perceived that dowry is a gift of money or valuables given by the bride's family to the groom and the newly formed household at the time of their marriage. It has been an ancient and widespread practice centuries ago. And often, the dowry is reciprocated with a bride price given from the groom and his family to the bride. The original intent was to help with expenses in the creation of the new family, help bond the families of the new couple, and provide a support for the bride in case of future problems such as widowhood or divorce. But

in current days , the practice has decreased in developed countries and urban areas. In areas where it persists, especially in India, China, and Africa, there is on going debates and controversy over the role it plays in domestic violence and the abuse of women, with debate over how dowries should be legislated. But in Malaysia this scenario is very less practice therefore there is no need for legislation to govern such a practice. The contribution of study it to examine the need of ensuring the safety of female gender in India by highlighting all the dowry killings.

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