

# Dowry : Social Legislation and Social Change

## Abstract

In every society there is a kind of consensus on the normative basis of social order, which has its basis in many historical, political and philosophical sources and comprises of particular and universal values. The progressive conduction of these norms in order to operationalise the ideal social order, constitute the manor body of social legislation. This legal corpus focuses directly and primarily on the question of social welfare, justice and human dignity. Social legislation is the mechanizes of relating and maximizing the expectations of the least advantaged and socially underprivileged strata, consistent with the demands of liberty and equality of opportunity. With varying degrees of success, social legislation attempts to cover the gap between consensual values and apparent incongruence with prevailing patterns of behavior. Social legislation involves an active process of remedy by preventing or changing the wrong course of society or by selecting among the courses that the proved to be right.

**Keywords:** Social legislation, Untouchability, Social Reform.

## Introduction

Social legislation in India today is resultant of a cumulative process of continued social consciousness to change the social system. But the legislation could be effective only through proper implementation in solving humane problems of the citizen. Existing laws must conform to certain prescribed standards and respect the fundamental rights granted to all citizens.

The emergence of the legislation of the dowry and its changes.

In India where the society is ridden by caste prejudices, illiteracy and narrow sectarian outlook, social legislation can be introduced only in stages. Century-old customs, traditions and beliefs, however, primitive they may look to the modern age, cannot be thrown out overnight. To mould the Indian society consisting of several religions, faiths, linguistic and ethnic groups and subcultures into one compact unit is herculean task by any standard. Social legislation may, in this context, sometimes appear to be far ahead of its time. It is a collective articulation of the social psyche reflecting the social ideals upheld by the majority in public life. However, it may not always be in consonance with the private behavior of individuals, families and even various kinds of groups.

One can reform society either through welfare measure which must be provided in abundance, or through persuasion by creating a strong public opinion against age-old prejudices, and lastly, by legislation. The first two of these measures failed to make any appreciable impact in our Country: they failed to touch the downtrodden millions who needed it most. Social workers, Sarvodaya workers and other engaged in persuasive methods could reach out only to a small segment of our vast and variegated population. Besides persuasion had only a temporary effect. To illustrate the point, Mahatma Gandhi carried on a crusade against un-touchability and for the upliftment of Harijans but did not succeed in his life time.

Even the Constitutional provision abolishing untouchability and various other legislative measure- such as the Untouchability Act could not rout the evil. This was so because although the government of the day with its majority in Parliament, may pass an Act of social measure, its implementation requires the support of strong public opinion. Even a highly educated man of the Scheduled Caste in a village may be

**Neelam Kazmi**

Assistant Professor,  
Deptt.of B.Ed.,  
Abinav Sewa Sansthan,  
Kanpur.

condemned as untouchable. Despite the passing of Statutes the problems of the untouchables have not been substantially solved.

The chief weapon in the annuity of the rich is the economic power which they possess over the poor untouchables who are socially backward psychologically and economically weak and numerically small.

Now take the example of the dowry system prevalent in our society. It is a curse which has ruined, or even ended millions of innocent lives. The government tried to curb this evil by passing legislation against dowry long back. Yet in the absence of a strong public opinion, which could not be built up the Dowry Act just could not be enforced. Similarly, the Child Marriage Restraint Act enacted in 1929 failed to completely stop child marriages and one can still find its occurrence in one form or another in our society particularly in villages.

Enlightened public opinion may indeed not only prepare the ground for piece of social legislation but even force the government to enact it. But in our country enlightened public opinion means the opinion of the elite which constitutes a microscopic minority. The public expression of shock by the elite sometimes tends to ignore the stark and depressing socio-economic realities faced by common people. Poverty, helplessness and extremely tight hold of social and religious organization often prevent the people to keep pace with aspirations of the elite towards the process of modernization.

A detailed study of evils of dowry is being made in the following paragraphs to discuss the impact of Act on eradication of dowry system in India.

The evils of dowry have taken a heavy toll of precious lives of your women. It has taken such a deep root in our system that the legislative measures the pledges and the protests have not be of much avail. In a study of a sample of 1,000 students and their corresponding parents it was found that 67 percent students (boys and girls) and 75 percent parents (fathers and mothers) were frank enough to admit that they approve of the dowry. The girls' parents were willing to pay lakhs of rupees for an IAS, IPS, IFS boy. Even an ordinary postgraduate in Arts was priced anywhere around one lakh rupees. They speak volumes of our marriage system. The parents are not only prepared to mortgage their property but mop up all their life's savings to see that their daughters are well settled. The ever demanding in-laws force the girl either to commit suicide or burn her to death for non fulfillment of the promises of the parents. This vicious circle continues. The same girl when turned into a mother-in-law forgets the plight of her parents and demands a heavy price for her son. She may not hesitate to eliminate the daughter in law for not getting the promised

dowry. Thus the enemy of the woman is woman. It is, therefore, necessary that the woman must rise, organize and become very conscious of this evil. This evil can be removed by protests from women and their organizations.

The anti-dowry feeling recently aroused in Delhi should not only culminate impressions and demonstrations but be organized into a movement working women, house-wives with babies in their arms, some burqa-clad women and washer women took out processions. A man came all the way from Punjab to voice his protest. His sister was reportedly burnt to death by her husband just 14 days after her marriage because she did not bring dowry. The women held placards which carried slogans like "All marriages should be registered". We will never give dowry not let any woman burn. Arrest the killer of the women. It is hoped that such outbursts will not be only sporadic but will shape into systematic organized effort to fight against the age old atrocities being perpetuated against women.

Along with the organized articulation of public sentiment against any attempt that seeks to lower the status of women the government of India have shown a real political will by constituting a separate department of women and child development as part of the Ministry of Human Resources Development by establishing inter ministerial coordination processes affecting women's development initiating a wide ranging process of reforms in laws and legal process and by formulating several development programmes.

The Dowry Act has been amended twice to make it more effective. The act seeks to check the display of gifts as well as ostentation at marriages. The committee on the status of Women on whose recommendation the Act was amended has suggested that there should be a limit on gifts for the bridegroom and his parents. The punishment for violation of the 1961 Dowry act was a fine of Rs.50000 and six months of imprisonment. Now the punishment has been raised. It is essential that addition to legal measures and protests the evil has to be tackled at the social level through a process of raising consciousness and creating organizations to remedy the situation.

The women's decade has seen in its wake an outpouring of ideas and programmes for women's emancipation all over the world. In India it has witnessed the stirrings of a nascent social revolution in the form of a massive campaign spearheaded by youth against dowry a corrupted form of social custom associated with a marriage a social monster that has been running thousands of families and gobbling up hundreds of young women all over the country every year.

Dowry is commonly understood as the money and other forms of property that a woman brings to her husband's home under a marriage

contract. The contract is heavily weighed against the family of the bride who is the principal victim. It has been defined by the central legislation on dowry as any property or valuable security given or agreed to be given either directly or indirectly by one party to the marriage to the other party or her (or his) parents or by any other person at before or after the marriage as consideration for the marriage of the said parties. Several studies have shown that the system of dowry has relegated the position of women to a level of degradation. Everybody curses dowry but moves heaven and earth either to give or to grab it. In the Vedic age dowry was unknown for the simple reason that women enjoyed equal status with men. They very fact that marriage was known in days gone by as kanyadana indicated that it had been far from the veil of dowry. He who accepts a gift is not expected to impose conditions or demand any particular type of gift. The institution of dowry is a later day innovation.

It would be interesting to look to the origin of varadakshina or Dana accompanying a wedding. There is no doubt that, as today the desire to have a male child was a supreme consideration that actuated a man to take a wife. The Shasta's which enjoined rigorously the rule of marriage strictly within castes slackened in the case of a man to marry below his caste for the procreation of a male child. Woman was denied this right because it was considered that the credit of begetting child goes to father alone. It is for the same reason that a man was allowed to take a second wife when his first wife failed to bear a male child. It was this over emphasis on male child that a female child was relegated to a secondary position in the family. The father of a marriageable girl would always be solicitous of prospective bridegroom and his parents and relatives so that his daughter was accepted as a bride. The solicitous father would ensure the chance of a good matchmaking with inducements of good and attractive presents to the prospective son-in-law. Dowry is the outcome of this solicitude.

In medieval India two more facets of dowry became evident – protection and mobility in social status. First. There was the risk of female being neglected because of her failure to bear a son leading her husband to take a second wife. The stridhana th property she brings from her parents. Increased when India was subjected to the sucession of foreign invaders of marauders with their lustful eyes on unmarried Hindu women. The fathers were therefore, always on the look out for strong husbands for their daughters to protect them from mlechchas strangers of impure blood. This encouraged the practice of dowry of increasingly larger size. Second the interplay of sub-castes and the desire to gain higher social status through marital linkages with higher castes and sub-casts also put a premium on dowry.

Attractive officer of dowry always acted as a strong inducement to scions of families of higher social hierarchy to condescend to select their brides from among the highest bidders.

There are also economic implications involved in the practice of dowry. Until recent years members of the upper strata of society had been following the shastric dictum that a woman was never free and independent. She was dependent either on her father or husband or son who provided her physical protection and social security and she in her turn provided them with comfort at home. She was therefore never considered capable of economic benefit to the family which depended on the male breadwinners. Her world was naturally confined to the four walls of the house in which she found herself as a daughter wife or mother. In such a social environment women's inheritance to property was unthinkable in all peritoneal communities. It was only in matrilineal societies where the women enjoyed property rights and consequent freedom and independence. But even in such causes she was limited in her freedom by being considered as a weaker sex and she needed protection by men.

The inheritance question was avoided by the institution of dowry also designated as stridhana. Originally it was an earmarked portion of father's property or an amount of money or jewellery to the daughter in lieu of her share in the property and to stand her in good stead in times of need. But in course of time it degenerated into the form of dowry not given to the daughter but to the son-in-law for consideration of the marriage. Dowry in one form or another is practiced not only by Hindus but also by Muslims and Christians in India. Although the Muslim bridegroom promises a handsome mehr or money as a part of marriage contract known as jode-ke-paise or the cost of the bridal outfit it runs into quite a few thousand rupees. It is also prevalent among orthodox Christians of Kerala and Catholics of Mangalore and Goa in that all expenses of both the parties to the marriage are borne by the bride's people. The Christians of Mangalore still follow their pre-conversion custom of kanyadan and gift giving that puts a heavy burden on the bride's family.

The practice of bride price followed by certain communities is another aspect to be considered. It is confined to certain sections of Harijans and other backward communities and among tribal's but it is rated lower in the social system even among its practice tribes. With education and economic progress bride price is being gradually replaced by dowry. It may be stated here that the concept of accepting a woman as an equal partner with man is more in practice among the communities where the custom of bride price is prevalent. In these communities a woman is not an economic burden and enjoys relative freedom and un-dependence compared to

their counterparts in the upper social strata. Property inheritance right has been legally granted to women although in practice it has not helped much in making them economically independent. The index of women's emancipation is has been rightly said is their employment although this view is not universally accepted. A woman with her "delicate frame and nimble fingers" is created for the special jobs within her home they insist and conclude that since the job of child-baring and child-rearing is her reserve she is never intended to go out of her kitchen. But today women are increasingly cantering professions like medicine higher teaching, law and engineering and have invaded such man's preserve as highway truck driving armed forces and even space travel.

It is known that many women before marriage take up jobs to help them save enough for dowry for their marriages. Even if a working woman cannot bring dowry her employment is considered enough compensation in certain cases where such woman are preferred for marriage. In a few cases jobs are taken up for leading a life of independence of self actualization or escaping boredom. Most jobs by women are however, taken up to augment family income. In almost all such cases a working woman can never overcome her sub servicemen in the natal or antenatal family. This is to say that woman's employment is not enough for her emancipation. But this is also true that compared to the status of non working women the working women do enjoy more comforts and freedom.

Since the early days of the freedom struggle. Gandhiji emphasized that for the realization of the objectives of Swaraj women must be given equal status with men. His call for women's emancipation drew a group of dedicated women with discipline and high ideals. In spite of the vast number the women in Indian society continued to suffer from lurking fear and anxiety slavery insecurity and loneliness. With h attainment of freedom women were given full facilities of citizens and conferred equal status with men by the constitution. But with deeply entrenched old values and norms of the existing social order the constitutional provision did not give full meaning to the life of women.

The Hindu Code Bill was a comprehensive document providing a guarantee for the implementation of various legislative measures in the direction of women's emancipation. These measures were the Special Marriage Act, 1954, the Medical Termination of Pregnancy Act 1971, the Hindu Marriage Act; 1955 the Hindu Adoptions and Maintenance Act, 1956; the Immoral Traffic (Prevention) Act; 1956; the Maternity Benefits Act; 1961 and the Dowry Prohibition Act; 1961. All these legal measures are meant to unshackle woman from the tyrannies of age old social customs and superstitions values and to help her

achieve untrammled development along with man.

The earliest legislation against dowry in the sub continent was passed in the pre independence day by the Government of Sind, now in Pakistan. The Bill was piloted in 1946 by Dr. Hemehandra Wadhani, a Minister of Sir Ghulam Hussain Hidayatulla cabinet and he was given full support by the Muslim dominated government particularly the Amil community among the Sindhis. Supporting the move Miss Juthi Sipahimalani a former Speaker of the State Assembly, made a poignant personal reference when she stated that she had to remain a spinster all hr life because her father could not raise enough money for dowry for her marriage needless to say that this piece of legislation remained on paper because of lack of support in its implementation. Very few sons were found objecting to their parents offering dowry for the marriages of their sisters because they too were keen to get it on their turn.

As marriage and divorce come under the concurrent list under the constitution the central legislation was enacted in 1961 and followed by the State Governments of Bihar, Orissa, West Bengal, Punjab, Haryana and Himachal Pradesh. The Karnataka Anti-Dowry Bill was passed in 1976 and all other state laws were suitably amended in order to make giving taking and abetting dowry a cognizable offence. The Karnataka Bill extends the definition of dowry to include any financial help given by any person to a young man for his education or business with the intention of giving his daughter or any other relation in marriage to him. Under its provision no one except parents can give presents however small to the bridal couple and non can even 'cultivate' a prospective son-in-law by offering him money for any propose with marriage in view.

Whatever the purpose that it might have served at the time of its origin dowry as it is practiced today in Indian society has become an instrument of torture. Marriage according to Hinduism is a sacrament but dowry has degenerated it into a contract in the marriage market. It has also affected the non Hindu communities for whom marriage is a social contract. Under the marriage system in Indian society, a match is usually arranged by the parents of the girl. They take into consideration the final and social position of the family of the prospective bridegroom, his physical appearance educational standard earning capacity and general character. In most cases of negotiated marriage, the boys and girls are not consulted about their preferences. The only change that has taken place in recent years is that the boys are allowed to see the girls before their marriages are performed. In some cases, negotiations may fail because of the disagreement by the boys about the choice of their brides. But in most cases, the consent of the girls is not taken

and she is never consulted. For a right type of boy, the parents of the girl must be prepared to pay a handsome dowry.

According to the Committee on the Status of Women in India, the settlement of dowry has all the characteristics of a market transaction. "What was originally intended to be a token *Dakshina* for the bridegroom has now assumed enormous proportions. "It is on the increase all over the country and has penetrated the communities and region which did not practice it earlier. The enormity of dowry is felt in many states in the country where the standard among the dowry for men in the IAS and IFS belonging to selloff communities is said to be minimum of rupees 10.00 lakhs both in cash and kind. Business executives rank next and below them are engineers and doctors. After that they and their parents have spent on their education most of them expect that marriage would bring them not only a partner in life but also the things of modern life like a car, a refrigerator and a television set to start a household of their own. In big cities residential accommodation may be demanded in dowry. Sometimes in villages motor cars are demanded by prospective sons-in-law so that they can ply them as taxis.

The helpless father of the girl cannot refuse the demand of dowry for two reasons. First no father would like his daughter either to remain a spinster or let her in marriage face taunts, torture and even death at her father-in-law's house. Secondly, being basically tradition bound the father would not also like to entertain the idea of giving his daughter in marriage to a boy of low caste who might be willing to accept her without dowry. It has always been a point of pride for a father to be able to pay adequate dowry at his daughter's marriage, and for this he may starve his family and beg, borrow or steal. Many have been ruined by mortgaging family property and incurring heavy debts only to raise enough money for dowry. It is only in those cases where the girl is extraordinarily beautiful or talented, or the boy is enlightened or the families are inspired by social reformers that a marriage may be held without dowry. These are just flashes of silver lining in the dark clouds that overcast the Indian society. The committee on the status of Women in India has collected numerous instances of torture and humiliation of young women in their in-laws' house. The situation sometimes becomes so intolerable that they are driven to suicide in order to end their sufferings.

The Press has been always reporting about cases of torture, desertion and murder of young women and in the wake of anti-dowry campaign in the last few years these have attracted public attention and created great indignation throughout the country.

### **Aim of Study**

Dowry is a social evil: it must be fought on a social plane. Legislation is merely a political action that may facilitate a social action. Indian society is as whole bedeviled by outdated customs and ruinous practices and the evil must be exercised by a strident social action. Dowry is only one of the many evils that are embedded in our entire social system, and all of them must be attacked simultaneously at all fronts to remove them lock, stock and barrel. This cannot be done by a campaign which is always ad hoc in nature and therefore, short-lived in its effect. For this a crusading social movement must be mounted all over the country. The crusade must begin against dowry that is the most elaborate ostentatious and tortuous system of marriage and it must knock if of its foundation. A marriage is essentially a social function uniting two persons as partner in life. As such the choice of partners should be based on the present and emerging social moods and ill religious mumbo-jumbo should be avoided. Its ceremony should be simple and inexpensive so that it does not cause economic setback to the families concerned.

Education is supposed to be a forerunner of social reform. Unfortunately in this country education itself is in dire need of reform. In India most of the outdated social customs and superstitions have been sustained by the educated sections who are blindly followed by the less educated and uneducated in society. It is not therefore, the degrees and doctorate, but the degree and depth of enlightenment with a dynamic social outlook and heady idealism that must pervade and permeate all sections of population in society. There has been a lot of thinking on making education relevant and purposeful to real life. The results of this thinking reflecting the volume of reports have not been put to proper use in the absence of an all embracing social movement with the young on its vanguard.

One of the features of the dowry prohibition legislation is the provision of social welfare organizations to play an effective role in checkmating the evil of dowry. The law has by this recognized the importance of voluntary agencies in this field. The social movement that we have spoken about in the foregoing pages must be linked with a network of such voluntary social welfare organizations. It is necessary to have at least a couple of such organizations in a district with their centre spread over to villages. All such organizations must be under the guidance of experienced social workers with no political affiliation; and local educational institutions bar association, chambers of commerce and industry labour unions, cultural societies and other groups and members of public opinion should be intimately associated with these organizations to create the social movement.

It was emphasized by Gandhiji over and over again that there must be a continuous constructive work movement in order to achieve the goal of human emancipation. When such a constructive movement becomes a revolution, it reaches milestone in its owned progress. The commendable beginnings made by the campaign against dowry can be raised to the level of a social revolution on the ground with the active but voluntary support by the people and spearheaded by the youth.

#### **Conclusion**

If legislation is completely against social mores, it is hardly effective. One has to think more of the enforcement of such legislation, much more than of its educational value. But more for educative purposes, much greater and more intensive efforts will be necessary and even then quick results will not be achieved. It is well known that any social change that relies purely on education will skip at least one generation. Habits and tradition die hard. If social evil, such as dowry, is to be eradicated some drastic steps would be required. Such steps may include raids on premises where marriages take place through searches and insistent examination of all those concerned. Social reform requires a determined political will and of course a social consciousness of the evil. Social changes and changes in the law are constant and interacting process, present to a considerable extent in all contemporary societies. By examining and defining the conditions under

which law can induce social change and by emphasizing the limits upon the use of law to induce social change, a significant contribution can be made to the development of law-making as a main object of policy studies.

#### **References**

1. *Hindu Marriage Act 1955*
2. *Special Marriage Act 1954*
3. *Dissolution of Muslim Marriage Act 1939*
4. *Dowry Prohibition Act 1961*
5. *Relevant Extract from IPC, 1860, sec. 493-498A*
6. *Relevant Extract from Cr.P.C., 1973 Sec. 125-198A*
7. *Relevant Extract from CPC, 1908 or XXXII-A*
8. *Family Court Act 1984*
9. *Law of marriage and divorce in India by Justice B.P.Beri Published eastern book company Lucknow 11<sup>th</sup> Edition 1989.*
10. *Dowry Prohibition Act, 1961 by B.P. Beri Published eastern book company Lucknow 11<sup>th</sup> Edition 1988.*
11. *Dowry Prohibition Act, 1961, By O.P. Mishra Published Central Law Agency Allahabad 2004*
12. *Dowry Prohibition Act, 1961 by R.L. Anand Published by Law Publishers, Allahabad 1969.*
13. *Human Rights by Dr. V.K. Anand Published by Allahabad Law Agency Faridabad 2015 at page no.170, 219,220,222.*
14. *Indian Penal court by S.N. Mishra published Central Law Publication 2014.*