

# The Phenomenon of Dowry: An Analysis

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On the eve of India's Independence, Prime Minister Nehru wrote, 'The spirit of the age is in favour of equality, but the practice denies it almost everywhere.' The inequalities that Nehru had in mind were chiefly pertaining to caste, class, gender and the problems and inequities faced by the minorities. Dowry is one dimension of gender inequality in contemporary India. The dowry problem raised its ugly head in the 1980s, when there was a spate of bride-burning cases compelling our legislators to enact the Dowry Prohibition Amendment Act, 1984 and the Criminal Law Amendment Act, 1983. Though the dowry problem has been on the backburner for the last few years, there has been an alarming rise in other forms of violence against women—domestic violence, rape and molestation cases. The records of National Crime Records Bureau, Crimes Against Women Cell (Delhi Police) and of civil society organisations go on to prove that majority of the rape cases are committed by relatives close to the victim. There is increasing number of cases of marital violence even in such progressive states like Kerala, which has the highest literacy rates in the country. The sex-ratios are falling drastically, primarily due to Pre-Natal Diagnostic Techniques (PNDT) and female foeticide, compelling scholars like Amartya Sen to comment on 'the missing women' in India especially in the 0-6 age group. Isn't this reminiscent of the practice of female infanticide in the 18<sup>th</sup> and 19<sup>th</sup> century India, which Veena Talwar Oldenberg (2002) calls 'the pre-emptive dowry murder'?

It also reflects that home is no longer a safe haven for women; rather it is a site of violence inflicted on the women by their near and dear ones. It also reflects the change from thinking about power as integral to state to thinking about power as a discursive practice, embedded in the social and everyday life, according to, Michel Foucault. However, a disappointing feature of women studies has been that they are of women, for women and by women. I hope this paper kindles some interest in the men folk too, not only as scholars

but also as men, for it is being increasingly realised that 'men' and 'masculinities' are crucial for our understanding of women. The significance of gender issues in contemporary India can be assessed by the considerable debate about gender-budgeting, feminisation of poverty, the phenomenon of missing women and livelihood and empowerment issues pertaining to women.

The phenomenon of dowry has over the years, drawn attention of the intelligentsia, activists, legislators, judiciary, journalists and social workers. However, I am here concerned with the systematic and scholarly study of the marriage payments and other post-nuptial gifts among the Hindus which give material expression to the affinal relationship. It is regretful that, though the subject is of crucial significance, it has by and large been ignored by the students of kinship. The only accounts that we have are Dumont's essay (1966), Sylvia Vatuk's paper on Gaur Brahmins of Meerut in U.P. (1975) and T.N. Madan's account of gift giving among the Pandits of Kashmir (1975) for North India, Klass W. Van der Veen's study of marriage among the Anavil's Brahmins of Gujarat for Western India (1972) and Mayer's account of kinship obligations in Malwa (1960) for Central India.

#### *Dowry as Pre-Mortem Inheritance*

The initial attempts to analyse the phenomenon of dowry by social anthropologists were made by Jack Goody and S.J. Tambiah. (1973) Both conceive of dowry as pre-mortem inheritance for the daughter. For Goody, dowry in India is a form of inheritance for the daughter common in Eurasian societies. He stresses on the unity of the unilineal kinship groups and points out that there is fission due to unilineal rules of succession. Therefore, the kinship group is divided into (a) members who have rights of succession and descent and (b) the residual siblings who are unable to carry on the line of descent. Such a conflict is found in patrilineal societies but there are social mechanisms to deal with it. Goody's later formulation is an elaboration of his earlier view, whereby he considers dowry as a form of familial or conjugal fund. It is a type of transmission which he calls 'diverging devolution' (the woman's property complex). Tambiah, arguing on the basis of the classical Indian legal treatises, the *Dharmashastras*, argues that a girl receives her share of the natal property at marriage which remains under her exclusive control. This is her *stridhanam* (woman's property). Though, it can be managed by the husband but the destination of

the dowry is the bride herself. Implicit in Tambiah's notion of dowry are two principles. First, that dowry signifies right to property for women, and second, that dowry is 'a vehicle for setting up a relation of affinity' between both the parties to the marriage.

A critical analysis of the conception of dowry as pre-mortem inheritance, leads one to state that Goody may be correct in treating dowry as a form of inheritance only in the case of some societies only. For instance, in Greek society, daughters are given land like their brothers and have exclusive rights over it (Friedl 1962), but this explanation cannot be extended to Hindu Society. The Hindu scriptures clearly specify that the right to inherit property is linked with *pinda-dana*, the obligation to offer oblations to the ancestors. This being the male preserve, only men could inherit-coparcener property. The relation of women to property was governed by the relation of men to property. The daughters in the Hindu joint family, in turn, were till recently entitled to maintenance up to marriage, to marriage expenses and dowry. Hindus treat a girl as a temporary member in her natal family while a son is considered to be a permanent member. Therefore, the former does not have inheritance rights in paternal property. [(V. Das 1976; Committee 1975, L. Dube, (Mimeo)] Further, the *Dharamshastras*, on which Tambiah's argument is based, never recognised the rights of inheritance for women, as in the case of male coparceners. Goody and Tambiah's contention of dowry being pre-mortem inheritance is disproved by field studies too. For instance, Madan notes in the case of Kashmir Pandits that dowry is 'some sort of compensation for a daughter's lack of rights of inheritance, and for her obligation to go to live with strangers'. Inheritance by the daughter in extraordinary circumstances is an exception and not the norm. With regard to the control over dowry, a woman does not possess full rights over her *stridhana*, as she cannot sell any part of it, although she can pass it on to her daughters and daughters-in-law. At the same, it is because of their love and affection, *priti-datta* for the daughter and the realisation of what marriage means to her, she being alienated from her familiar environment and being placed in a world of strangers, that parents give dowry to their daughters. Dumont and Vatuk have made similar observations in their studies of Sarjupuri Brahmins and Gaur Brahmins of U.P. respectively. Therefore, Alexandrowicz has observed, '*Stridhana* with a specific devolution counter balances the exclusion of women from coparcenary succession.' (as quoted in Madan 1975, 237)

Besides, there are significant differences in the way daughters are endowed with dowry and the way sons inherit property. First, daughters do not get all the movable property of their parents, and dowry does not represent a fixed share of a particular divisible estate for the daughter. The amount of dowry generally varies from one daughter to another; the things to be given as dowry are specifically bought for the purpose. Moreover, the Pandits of Kashmir justify this in terms of *karma-lekha*, the written word of *karma*. Second, if we consider the content of dowry, we find that it does not consist of income-generating property as in the case of land inherited by males. Thirdly, as far as the control over dowry is concerned, although Tambiah argues on the basis of the notion of *stridhana* in the *kanyadana* marriage, he does not answer why the dowry of a woman does not belong to her in practice and why it is appropriated by her in-laws. Our answer to the above question would be that the concept of *kanyadana* is a comprehensive one and denotes the transfer of rights, both over the woman and her dowry. The girl being given as a *dana* (gift), implies that the husband and his family have the right over her and whatever she brings with herself at marriage. Hence, it differs considerably from the inherited property of a son, who has full and direct control over it. In reality dowry is not 'a women's property' but 'property which passes with women'. (Sharma 1984) Fourthly, as Madan notes, in the case of Kashmiri Pandits, that although they recognise the *stridhana* right of a woman, and since, it is acquired from various sources, we cannot jump to the conclusion that it is inherited from parents. Fifthly, the legal rules with regard to *stridhana* and its devolution according to both Dayabhaga and Mitakshira are rather complex. They are, thus, of no direct concern to the anthropologist as he must take this stand on the facts of the ground, the existential facts rather than the normative order.

Miller (1980), although she subscribes to Tambiah's notion of dowry, has drawn attention to the fact that he has in his analysis neglected North/South differences and also differences in practices among rich and poor. For him, the concept of *stridhanam* is so significant that he sees it as pervading the whole of South Asia. Miller further elaborates, that for his argument to work, it must satisfy two conditions; first, that dowry (which he treats as *stridhanam*) must be the general form of marriage throughout India; second, it must represent wealth which is under the exclusive control of the girl to whom it is given. Arguing on this front, she writes that neither of these conditions is fulfilled in actual practice. Dowry is not the



general form of marriage in India as it co-exists with other forms i.e. bride-price and exchange marriages etc.

Briefly, it can be said that although Tambiah has misinterpreted the situation on certain grounds, he is right when he says that the daughter and her dowry are vehicles in setting up the relationship of affinity between the two families, which enter into its relationship. With the passing of the Hindu Succession Amendment Act, 2005 (HSAA) wherein daughters have been given coparcener rights in ancestral property and right to inherit agricultural land, it remains to be seen, what long term impact these legal reforms would have. I shall come back to it later.

#### *Dowry as Compensation*

Another significant explanation for the phenomenon of dowry and bride-price that finds favour with scholars is that which regards them as 'compensation'. This analytical framework distinguishes between 'intra-mural' and 'extra-mural' work, the former being considered unproductive while the latter as productive. Ester Boserup observes,

In regions where women do most of the agricultural work, it is the bridegroom who must pay bridewealth... but where women are less actively engaged in agriculture, marriage payments come usually from the bride's family. (1970, 48)

This argument implies that there is a weighing, so to say, of the economic contribution of the woman which determines the nature of the marriage payment. If a woman contributes economically in the household, her natal family has to be compensated on her marriage, for the loss of a productive member. This pattern prevails among the poorer sections of the higher castes or among the lower castes. If the economic contribution of a woman to the household is insignificant, her marriage implies that her family need no longer shoulder the responsibility of maintaining an economically unproductive member. Hence, dowry prevails here whereby her husband's family has to be compensated for accepting an unproductive member. This is practiced by higher castes: Rajputs, Leva-Patidars, Anavil Brahmins and Khedawals in Gujarat, who form the upper crust of the hierarchy, practise dowry or *vankado*. (Vander Veen 1970 and Shah 1982)

T.S. Epstein states that in the case of Okkaligas of Mysore, one of the factors behind the shift from bride-price to dowry is the increased

prosperity of the peasants, which leads to the withdrawal of women from agriculture. The peasant's wife has now become a 'liability' while earlier she was an economic asset.

Indira Rajaraman has given a new turn to the explanation of dowry and bride-price as compensation. Explaining the transition from bride-price to dowry as an unorganised sector phenomenon, she analyses this in the light of declining female work participation rate (FWPR). Her argument is that if a woman's contribution to the household is valued less than the cost of her maintenance, there is a shift to dowry or 'negative bride-price', as she calls it. She further states that this payment shall be uniform as it would be determined by the community as a whole. To quote Rajaraman,

The decline in female participation in gainful work i.e. increase in female leisure, may then simply be something that is purchased by the community with its increased prosperity. (1983, 276)

Coming to a critical examination of the features of the compensation theory, it is to be noted at the outset that economic interpretations tend to overlook the contribution of the woman to the overall family welfare even when she is not gainfully employed. Undoubtedly, there are difficulties in estimating the economic value of the household services, much has been said to include the unpaid services of housewives in national accounting. Experts are of the view that their activities have a potential market value. This is already practiced in some of the Western countries.

M.N. Srinivas holds that to consider a woman who works only inside the house as a liability, is unfounded. For the present, our notion about the evaluation of a housewife's work is still fuzzy. Even if these arguments are ignored for the time being, it is evident that compensation theory suffers from certain lacunae. First, the linking of dowry with withdrawal of women from the labour-force 'is too simplistic' as facts stand much more complicated at the micro-level; second, bride-price ought to be treated as a 'symbolic' payment, and not as a compensatory one in the context of India; third, field studies in different regions indicate that a process of shift from bride-price to dowry is evident without the withdrawal of women from agriculture. Similarly, in the higher caste groups practising dowry, though women have started engaging in productive activities, it has not resulted in the reduction in the amount of dowry, let alone a shift to bride-price; fourth, regarding the uniformity of compensation, it is to be noted that the amount is variable and not

uniform—it varies with the different socio-economic conditions of the families; fifth, the view of the compensationists that female leisure is bought by the community with its increased prosperity, is to be taken with a pinch of salt. The fact of the matter is that withdrawal of womenfolk from agriculture, as a consequence of increased prosperity, is in fact, incongruous with their newly acquired prestige. Srinivas rightly remarks, 'Their women should no longer be seen by *hoi pollo*.' (2002) Lastly, an economic interpretation of a socio-cultural institution like dowry is inadequate in explaining the phenomenon as it ignores the social and ideological features of our society which are the basis of dowry.

There is yet another explanation which explains dowry on demographic basis. First, the prevalence of dowry is attributed to 'too many girls choosing too few grooms'. A critical examination of the above indicates that, firstly, the Census figures point to the contrary; second, rather than being a consequence of demographic imbalance, marriage payments are likely to be the cause of such imbalance. The differential parental attitude towards the female child in terms of health, nutrition and education is determined by the costs to be incurred at marriage of girls.

In conclusion, it can be safely said that the explanations discussed above, though make a significant contribution to the understanding of dowry, yet they either misinterpret the reality or are simply inadequate. An alternative framework for viewing dowry in the case of India is suggested here. First, that it has been, till recently, a substitute for lack of inheritance rights for the women; second, it is a *sine qua non* of marriage; third, it is significant for the girl's proper treatment in her conjugal home; fourth, it is a token of parental love for the daughter or *pritidatta* and lastly, it is a means of ensuring prestige, *yash* in the *baradari*.

Hence, it can be said that the application of the western notions of dowry in toto in case of India presents difficulties. Dowry has acquired a different meaning in the distinct socio-cultural ethos of India.

#### *Traditional Dowry and Modern Dowry*

Dowry, once a respected custom, integral to the endogamous and hypergamous principles of the caste system, to the ideal of *kanyadana* as *dakshina*, and to the patrilineal joint family where the right to inherit is linked to *pinda-dana*, has become a scourge, leading scholars like M.N. Srinivas to call it 'the suttee of the twentieth

century'. It is characterised by hectic bargaining, blackmail and an element of compulsion. The main factors for its prevalence are widely regarded as education, process of Sanskritisation, consumerism and black money. Veena Talwar Oldenberg, tracing the phenomenon of dowry historically in Punjab, attributes it to the colonial state policies, especially the agrarian policies and their implications for women. Oldenberg argues that dowry violence is rooted in the collusion of the then imperial State and Punjabi men, who reconstructed patriarchal values and ideals in the 19<sup>th</sup> century Punjab. Some of these colonial state policies were the establishment of individual property rights for peasants and the consequent loss of women's economic power and social worth; inflexible tax demands and collection regimes, leading to indebtedness; codification of customs; and increased son preference in post-war Punjab due to their physical prowess. With the creation of a 'masculine economy', women became more vulnerable. The other scholars to have examined the modern phenomenon of dowry are W. Menski (1999), who considers the dowry problem to be a result of the growing human deficiency in self-control; Ranjana Kumari (1989), who sees dowry in the context of gender inequality; and Julia Leslie (1999), who considers dowry a part of complex marriage transaction. According to Leslie, the problem only occurs when there is a breakdown of reciprocal arrangements. The Nisha Sharma case, which caught the attention of the national media in the summer of 2003 can be easily analysed in the theoretical framework provided by Leslie.

When speaking about changes in dowry, two aspects need to be examined:

- (a) Spread of dowry in various sub-castes and tribes who earlier practiced bride-price.
- (b) Changes in the institution of dowry itself.

Factors for the shift from bride-price to dowry are the increased prosperity and consumerism that enable lavish spending at marriages; withdrawal of women from agricultural work due to which women are considered as liabilities; education of young men—it is through the marriage that the amount spent on their education is aimed to be recovered; and lastly, Sanskritisation i.e. imitating the customs of higher castes, who practice dowry.

#### *Legal Aspects of Dowry*

As sociologists our task is to examine the relationship between 'law



in books' and 'law in action'. Some lag between the actual and legally desired behaviour is characteristic of all laws, otherwise it would acquire absurdity. However, in India, the social practices are radically inconsistent with the legal order that has been adopted. It is important to find out why and how the laws fail, for this failure ultimately means the failure of justice.

Let us now examine the main legal sanctions against dowry. These are the Dowry Prohibition Act, 1961, the Dowry Prohibition Amendment Act, 1984, the Criminal Law Amendment Act, 1983. The 1961 Act defines dowry as that which is 'in consideration for marriage or that which is given as a reason for marriage. The lacuna here is that there is no clear demarcation between a conditional demand and a voluntary gift. The 1984 Act, substitutes the terms 'in consideration for marriage' with 'in connection with marriage'. This makes the definition of dowry wide, yet one wonders if it is a definition at all. Further, the 1961 Act and the 1984 Act, consider both the giver and the taker of dowry as offenders. It is to be noted that the giver, especially a poor parent, is a victim rather than an offender. It is only the rich parents, who may be considered offenders, as for them, the marriage of their children is a worthwhile status game, to climb the echelons of society with enormous display and consumerism, made worse by the processes of globalisation.

In the 1961 Act, the punishment prescribed is six months imprisonment and a fine of Rs. 5000, whereas, in the 1984 Act, the minimum punishment is six months, which may go up to two years and a fine of Rs. 1000. However, it is also provided that the court may impose a sentence of less than six months. Thus, what is given with one hand has been taken by another. In the 1961 Act, the dowry offence was non-cognisable but in the 1984 Act it has been made cognisable. It is a welcome move that the court can now act on its own, or a police report, a complaint by the aggrieved women or a welfare organisation. On the basis of the recommendations of the 91<sup>st</sup> Report on Dowry Deaths and Law Reform, 1982, changes were introduced in the Indian Penal Code (IPC) the Criminal Procedure Code (Cr PC) and the Indian Evidence Act. A new section, 498-A was added to the IPC which laid down that if a woman commits suicide within seven years of her marriage and cruelty is proved, it shall be presumed that her suicide was abetted by her husband or his relatives.

## CONCLUSION

All the stringent legal measures notwithstanding, not only are there inherent lacunae in the law itself but their implementation by the subordinate courts is far from satisfactory. Besides, as is widely known, with the decadent values in contemporary Indian society these legal provision are being grossly misused by many women.

It remains to be seen how far the Hindu Succession (Amendment) Act passed in 2005, with its provisions of both sons and daughter, getting coparcener rights in the Hindu joint family and inheritance rights in agricultural land, being made subject to the Hindu Succession (Amendment) Act, overriding the gender unequal State tenurial laws, shall be effective and the impact it would have on the institution of dowry. Prima-facie, the provisions appear to be promising. Making married daughters coparceners is significant symbolically and economically. Symbolically, it shall create a permanent link with their natal family, and economically, it shall provide security to women. Rights over agricultural land are significant too, as women's livelihood depends on land in a predominantly agrarian economy. It is crucial for the empowerment of women. Research jointly conducted by the Delhi-based Institute of Economic Growth and the Population Council of India in Kerala (2005), proves that owning land drastically reduces domestic violence. The incidence of physical violence against property less women was found to be as high as 49 per cent; that against land owning women 18 per cent and that against women owning both land and house was as low as 7 per cent

Generally the law makers, merely by passing laws, feel it is sufficient and they start expecting the laws to become universally known, understood, accepted and obeyed. The communication aspect is extremely significant. What matters is the extent to which the law has reached the people for whom it is enacted. Law by itself cannot achieve much, though it reflects our vision of the kind of society we want to achieve. Sociologist André Betèille rightly observes,

The Constitution may indicate the direction in which we are to move, but the social structure will decide how far we are able to move and at what pace. (1974, 6)

This applies equally to all policies and legal measures. And along with this, the role of reflexivity among individuals who form society

must be added. Reflexivity involves a continuing reflection on individual action as a result of the many possibilities with which individuals are confronted. It is also inclusive of reordering and redefining social activities on a regular basis. Ultimately, it is a question of what kind of society we aim to achieve.

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