

## **THE DOWRY TRAGEDY: AN ANALYSIS OF THE CAUSES OF DOWRY SYSTEM IN MODERN INDIA**

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### **ABSTRACT**

*Dowry is commonly understood as the wealth and materialistic possessions which are given to the groom or his family by the bride or on her behalf, upon their entering into the marital alliance. Contrary to popular opinion, dowry as a concept is not exclusive to Hindu society and in fact, the practice of payment of dowry has a multi-cultural facet.*

*The practice of dowry has been a major source of marital violence in Indian households and has claimed the innocent lives of innumerable women despite a robust legal framework in place to check the continuance of the practice. The Dowry Prohibition Act was enacted in 1961 which not only defined dowry but also made stringent provisions against demanding, giving, and advertising of dowry.*

*The researcher is interested in conducting this research to analyze why dowry continues to be demanded and paid in numerous communities despite desperate legislative efforts to bring an end to the dowry saga. Clearly, the legislative provisions cannot, alone, weed out a social evil like the dowry practice itself and therefore the researcher's approach in this paper is to analyze the causes behind the existence and continuance of the dowry practice. There are several economic, social, and political factors in place which have led to the sustenance of dowry practice in India. The fault in the legislative endeavors lies in their inability to attack these sociological and cultural causes of dowry leading to its continued prevalence in Indian society.*

**Key Words:** Dowry, Marriage, Legislation, Causes, Caste

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## **INTRODUCTION**

Transfer of wealth from parents to their children is not a new practice however the dowry practice has its origin in ancient Indian texts and Hindu mythology. “*Manusmriti*” is one of the oldest digests of law and the practice of payment of dowry has been sanctioned by it.<sup>1</sup> The code recognises such a payment to be one of the modes of raising the status of the family of the bride in the society.<sup>2</sup> The history of dowry provides certain justifications for its practice which translate into probable causes for its rise.

## **RESEARCH OBJECTIVES**

The objective of this research is to do a causal analysis of the dowry problem in India and appraise the statutory provisions which are in force to provide redressal on this issue. The researcher aims to analyze how far the legislative provisions have been able to uproot the causes of dowry in Indian society. The aim of this research is to recommend measures that can be incorporated into the policy decisions of the government and assist the state in better responding to the problem of dowry in India.

## **RESEARCH QUESTIONS**

The grave nature of dowry violence has motivated the researcher to work on the following research questions

- What is the significance of cultural, religious practices and socio-economic structure of Indian society in influencing and aggravating the dowry problem?
- What are the possible loopholes and gaps in the anti-dowry legislation which can be exploited and aggravate the problem of dowry?

## **RESEARCH METHODS**

The research follows doctrinal methods where data collected from statutes has been appraised and data from quality papers published on the subject matter by eminent social scientists have

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<sup>1</sup> Priya R. Banerjee, *Dowry in 21st-Century India: The Sociocultural Face of Exploitation*, 15 Trauma, Violence, & Abuse 34–40 (2014).

<sup>2</sup> Banerjee, *Ibid.*

been taken into consideration to undertake an analytical research. Critical analysis of the existing literature and statutes is conducted to do a gap analysis and identify the challenges on the subject matter of the research. An explanatory style of writing is <sup>7</sup> adopted to explain how the various socio-demographic factors have aggravated the problem of dowry. Subject matter research universe for the purpose of this paper is the dowry practice and its causes and time frame under consideration is the ancient times (when dowry evolved in the Indian context) and the modern post-independence time

### **DOWRY PRACTICE: EVOLUTION**

Dowry became a mode of climbing the ladder of social hierarchy and provided scope for social mobility. A girl from a resourceful family could exalt her rank by marrying a high-caste boy.<sup>3</sup>

Overcoming poverty was another justification which led to the sustenance of the dowry Practice. The family which acquired the dowry payment could overcome its financial backwardness.<sup>4</sup>

Arranged Marriages have always been the popular mode of fixing marital alliances in India and in such forms of marriages, certain factors such as looks, capability to bear children play a determining role in the fixing of alliance. In such a case, a woman who lacks these conventionally approved “natural abilities” can also find a match by paying a handsome dowry.<sup>5</sup>

Women have always found it difficult to own property in India. Dowry began to be seen as one of the ways in which women could acquire property from their family and become property owners - an otherwise improbable event.<sup>6</sup> Dowries rendered women as important and worthy members of society who were otherwise not considered as valuable as men in a patriarchal society.

Some research also relates to the economics of the marriage market to suggest the evolution of dowry. <sup>7</sup> The payment of dowries and bride prices depended upon the availability of the

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<sup>3</sup> Wanda Teays, *The Burning Bride: The Dowry Problem in India*, 7(2) Journal of Feminist Studies in Religion 29-52 (1991).

<sup>4</sup> Teays, *Ibid.*

<sup>5</sup> Teays, *Ibid.*

<sup>6</sup> Teays, *Ibid.*

<sup>7</sup> Maristella Botuccinni & Aloysius Siow, *Why Dowries?*, 93(4) The American Economic Review 1385-1398 (2003)

marriage-suited women and men in the society and the scarcity of either led to the payment of dowries or bride prices to ease the process of selection of mates in the marriage market.<sup>8</sup>

Young women in their childbearing years have always been highly valued in Indian society. Irrespective of the misogynistic nature of dowry practice, the evolutionary causes of dowry do not answer for its exploitative nature today. This exploitative and degrading turn taken by the dowry practice is what may be referred to as the “new dowry”<sup>9</sup>

## **DOWRY PRACTICE IN MODERN INDIA**

In this section of the paper we delve into the various factors which have contributed to the sustenance of dowry in modern India.

## **THE SOCIO-CULTURAL FACTORS**

In the modern Indian society there have been several reasons for the persistence of the dowry issue. There is a general consensus that the daughter of the family would not be able to secure marital bliss if the payment of dowry is not made hence pride and happiness of the daughter in the house of her in-laws rests on the amount of dowry she has paid.<sup>10</sup>

Dowry provides an opportunity to resort to ostentatious displays of wealth. A classist society with complex hierarchical structure encourages such displays because it is seen as a way to gain the respect and envy of fellow members of the community and also to extol social status.<sup>11</sup> Dowry practice feeds off the stratified nature of such societies and survives.

Listing the causes for the persistence of the dowry practice would be incomplete without a reference being made to the unequal status of men and women in the Indian Society. To say the least, women occupy an inferior status in the Indian social hierarchy. Objectification of women

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<sup>8</sup> Botuccinni & Siow, *Ibid.*

<sup>9</sup> M.N. Srinivas, *Some Reflections on Dowry*, Oxford University Press (1984).

<sup>10</sup> Priya R. Banerjee, *Dowry in 21st-Century India: The Sociocultural Face of Exploitation*, 15 *Trauma, Violence, & Abuse* 34–40 (2014).

<sup>11</sup> Stevan Harrell & Sara A. Dickey, *Dowry Systems in Complex Societies*, 24 *Ethnology* 105 (1985).

and their treatment as commodities is another reason for the sustenance of anti-women practices such as dowry.<sup>12</sup>

The families with both daughters and sons often legitimize their demand for dowry in case of their son's alliance by stating that they would be required or were required to pay dowry for marrying off their daughter therefore they are simply getting compensated.<sup>13</sup>

A persistent problem with Indian society is its reluctance to interfere in the matters which are within the domestic sphere of others. This leads to torture and violence to continue within the four walls of the house without its adequate redressal.<sup>14</sup>

Another reason for persistence of the dowry saga is the sporadic nature of attention it has received. One of the developments of the modern society was the rise of feminist movements all over the world to throw light on the plight of women however; somehow there has been an oversight when it comes to the dowry tragedy.<sup>15</sup>

## **ECONOMIC FACTORS**

Economic and financial dependence of a woman on her husband or other members of the family makes them more prone to dowry violence and related problems. Such women are less likely to report the atrocities that they suffer due to lack of means to do so and also due to fear of losing their means of survival.<sup>16</sup>

Education and the nature of the employment of the groom is a major factor determining his "dowry-value" in northern India. As the level of education varies and the nature of job changes (private or governmental), the amount of dowry which can be fetched by the said groom also varies and fluctuates.<sup>17</sup>

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<sup>12</sup> Priya R. Banerjee, *Dowry in 21st-Century India: The Sociocultural Face of Exploitation*, 15 Trauma, Violence, & Abuse 34-40 (2014).

<sup>13</sup> Banerjee, *Ibid*.

<sup>14</sup> Banerjee, *Ibid*.

<sup>15</sup> M.K. Shenk, *Dowry and public policy in contemporary India: The behavioral ecology of the "social evil"*, 18 Human Nature 242-263 (2007).

<sup>16</sup> Priya R. Banerjee, *Dowry in 21st-Century India: The Sociocultural Face of Exploitation*, 15 Trauma, Violence, & Abuse 34-40 (2014).

<sup>17</sup> M.N. Srinivas, *Some Reflections on Dowry*, Oxford University Press (1984).

In the modern day and age, the materialistic demands of people have been rising. The need for luxurious amenities such as air conditioners, automobiles, flats may not be affordable to the middle class Indian family given the ever-increasing rates of inflation. This materialism has also significantly contributed to the persistence of the dowry chapter.<sup>18</sup>

The amount of the dowry may fluctuate given the employment status of the woman. An insensitive assessment of housewives contribution may look at her as a non-earning bride who is an extra mouth to feed hence the demand and amount of dowry may accelerate.

### **AGRO-STRUCTURAL FACTORS**

India has traditionally been an agricultural society and the nature of agricultural production has also contributed to the varying nature of dowry dynamics in India. Northern India is characterized by its plow-intensive nature of farming which is essential in wheat production and therefore the north Indian agriculture is male labor intensive. The reliance on female labor is low resulting in women being viewed as less valuable than the male members of the society hence the practice of dowry is more prevalent in the northern part of the country.<sup>19</sup> Southern India depends on female labor in its agricultural practices while growing crops like rice hence bride price is the norm over there and the dowry menace is relatively less.<sup>20</sup>

### **THE CASTE PERSPECTIVE**

Several researches on this subject reveal that the caste stratification of the society has immensely designed and controlled the dowry pattern.<sup>21</sup> The dowry practice is more prevalent in high castes than those which are considered to be lower castes because in lower caste communities women are engaged in economic production for instance by providing agricultural labor hence the economic value of their labor has resulted in relatively insignificant instances of dowries.

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<sup>18</sup> Priya R. Banerjee, *Dowry in 21st-Century India: The Sociocultural Face of Exploitation*, 15 Trauma, Violence, & Abuse 34–40 (2014).

<sup>19</sup> Sonia Dalmia & Pareena G. Lawrence, *The Institution of Dowry in India: Why It Continues To Prevail*, 38 The Journal of Developing Areas 71–93 (2005).

<sup>20</sup> Dalmia & Lawrence, *Ibid.*

<sup>21</sup> Dalmia & Lawrence, *Ibid.*

Exclusion of high caste women from the economic sphere of production has translated into greater dowry payments for their marriages.<sup>22</sup>

Some research also suggests that marriage costs are more equitably shared in lower and less prominent classes and castes than in wealthier classes.<sup>23</sup> There are contrary findings available as well which state that in northern India, dowry continues to prevail irrespective of the position of caste or class in social hierarchy.<sup>24</sup> Given the varying nature of findings of different research, it is difficult to reach a definite conclusion as regards the role played by caste and class in dowry sustenance in India.

### **THE DEMOGRAPHY FACTOR**

According to the 2011 census there are 943 women per 1000 men in India and the general sex ratio trend in India is often skewed in favour of men. Given the paucity of women available as compared to the men, one could logically assume the advantage for women in the Indian marriage market however the practice of dowry continues to grow and prevail.

In India, traditionally, the marriageable age is different for men and women and the said age is lower for women than men therefore men, although more in number than women have the advantage of the influx of younger women in the marriage market with every passing year. This is how a skewed sex ratio which should favour women in the game of marriage transactions is unable to do so.<sup>25</sup>

### **THE REGIONAL DIFFERENCES**

According to an empirical research conducted on the subject, there are different factors which influence dowry in northern and southern India.<sup>26</sup> We have already discussed the male and female labor force factor however there are different considerations which determine dowry in these regions. In northern India, education of the groom is a major determinant of the amount of

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<sup>22</sup> Dalmia & Lawrence, *Ibid*.

<sup>23</sup> L. Caplan, *Bridegroom Prices in Urban India: Class, Caste and Dowry Evil among Christians in Madras*, 19 *Man* 216-233 (1984).

<sup>24</sup> B. Miller, *Female Neglect and Costs of Marriage in Rural India*, 14(1) *Contribution to Indian Sociology* 95-129 (1980).

<sup>25</sup> Sonia Dalmia & Pareena G. Lawrence, *The Institution of Dowry in India: Why It Continues To Prevail*, 38 *The Journal of Developing Areas* 71-93 (2005).

<sup>26</sup> Dalmia & Lawrence, *Ibid*.

dowry he will fetch in the Indian marriage market. In southern India the dynamics change a bit and instead of the education of the groom, it is his height and age which determine how handsome his dowry would be.<sup>27</sup>

## **THE LEGISLATIVE LOOPHOLES**

The government enacted the Dowry Prohibition Act 1961 and amended the Indian Penal Code 1860 and the Indian Evidence Act, 1872 to remedy the dowry situation in the society. Section 304B of the Indian Penal Code provides for the ingredients of dowry death and also states the punishment for causing such death and Section 498A of the same code provides for cruelty against women at the hands of their husbands and their relatives. Section 113-B of the Indian Evidence Act creates a presumption in favor of dowry death if certain conditions listed in the said section are fulfilled.

These legislative endeavors of the government have failed in eradicating the dowry menace from the face of Indian society due to the inherent loopholes present in the legislative framework.

The Dowry Prohibition Act was enacted in 1961 because it was felt that there was a need to redress the dowry problem in India. The Act was amended in 1984 and 1986 to make it a more effective weapon against the demand of dowry.

Section 2 of Act attempts to comprehensively define dowry and provides that dowry is any “valuable security given or agreed to be given either directly or indirectly by one party to a marriage (or by the parents) to the other party to the marriage; at or before or at any time after the marriage in connection with the marriage of the said parties”.

The definition clause of the impugned Act is all-encompassing in nature however its efficacy is diminished by Section 3(2) of the impugned Act which exempted presents to the bride and groom from the category of dowry provided the presents were given without any demand and were enlisted in the manner warranted by the statute.<sup>28</sup>

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<sup>27</sup> Dalmia & Lawrence, Ibid.

<sup>28</sup> P.S Jaswal & Nishtha Jaswal, *Anti-Dowry Legislation in India: An appraisal*, 30(1) Journal of Indian Law Institute 78-87 (1988)



Provision contained in Section 3(2) dilutes the statute by covertly permitting the payment of dowry in the guise of customary, un-demanded presents.<sup>29</sup> The Act may not permit excessive presents however it does furnish the procedure for determining what would amount to excessive expenditure in a particular class.

Section 2 of the statute prohibits dowry transaction directly or indirectly however the parameters of the expression “indirectly” are not defined by the Act. The customary presents which are permitted under the statute may imply an indirect form of dowry where the bride is expected to bring expensive and extravagant presents from her natal home and if such is the case then a contradiction appears in the statute itself where something which is prohibited by Section 2 is implicitly permitted by Section 3.

Section 4 of the Dowry Prohibition Act is crucial since it penalizes the demanding of dowry either directly or indirectly however in this paper it is opined that this provision is of little use in the real world scenario where the demand for dowry may not even be made directly or indirectly but it would still be paid given its customary nature. In most of the marriage transactions the demand for dowry is implied instead of being made, therefore if the bride walks into the house of her in-laws empty handed then she would suffer the repercussions of not bringing a hefty dowry despite no such demand having been made.

We have seen in the above discussion that one of the causes of dowry is the temptation to resort to ostentatious displays of wealth. The statute does not prohibit excessive marriage expenditure nor does it include the wedding expenditure within the purview of dowry.<sup>30</sup> Indian society is known for its “big fat weddings” and in such societies where marriages are seen as the best opportunity to display one's class, standard of living and financial capabilities, the Act acquiesced in the continuation of dowry practice by not setting a limit on the scale and expenditure on the wedding.

There was a time when the wording of Section 2 and Section 4 (penalizing the demand for dowry) of the impugned Act created some confusion as regards whether the party accused of demanding dowry could escape conviction if the demand for valuable security when made was

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<sup>29</sup> Jaswal & Jaswal, Ibid.

<sup>30</sup> Jaswal & Jaswal, Ibid.

refused at the time of marriage but was paid later. Section 2 stated that dowry was a “valuable security given or agreed to be given either directly or indirectly” and therefore the initial consent to pay the valuable security was considered a prerequisite to convict a person for demanding the dowry.

This constituted another legislative loophole where the initial refusal to provide the valuable security would emancipate an accused party of all charges even if the valuable security was given afterwards.

Thankfully, the judiciary came to the aid of the society to control the misuse of this legislative loophole and it was held in the case of *L.V. Jadhav v. Shankarrao*<sup>31</sup> that in order to give effect to the objective of the statute which is to curb the menace of dowry, a liberal interpretation has to be bestowed upon the expression “dowry”, therefore even an initial demand for dowry would constitute an offence and the consent of the other party to such a demand is immaterial since the act of demanding dowry is a complete offence by itself.

Section 3 of the Dowry Prohibition Act penalizes the giving of dowry as well as the abetment of such an act. The consequence of this criminalisation opens the prospect of criminal prosecution of those who want to take advantage of provisions in the statute for the recovery of valuable security because that ipso facto implies that they gave dowry in the first place.

Another issue which we face in case of dowry deaths is that the deaths caused due to the evil practice of dowry are difficult to identify. Death may have been caused by using any mode such as burning the woman, poisoning her, hanging her etc. this may result in the crime being classified in different offences and not as a dowry death.<sup>32</sup> This may result in relatively insignificant attention received by the dowry problem.

## **ANALYSIS/FINDINGS**

In this paper an attempt has been made to study the various causes of the dowry problem and have tried to trace the causes of dowry and factors influencing it from the time of its evolution.

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<sup>31</sup> *L.V. Jadhav v. Shankarrao*, 1983 Cri LJ 269 (Bom).

<sup>32</sup> Priya R. Banerjee, *Dowry in 21st-Century India: The Sociocultural Face of Exploitation*, 15 *Trauma, Violence, & Abuse* 34–40 (2014).

Through the study of origin of dowry in the Indian subcontinent, the various evolutionary causes of dowry were deduced.

On the basis of this research, it can be inferred that there are various socio-economic, political, and cultural factors that have led to the sustenance of dowry practice in the Indian context. Sustenance of dowry is due to several factors such as

- Indian demography
- Agricultural structure
- The caste tragedy
- Economic concerns
- The unequal status of men and women
- Religious sacrament
- Regional differences across India.
- Legislative loopholes

It can be clearly seen that there are several diverse factors in place which support and sustain the dowry practice.

The approach taken by the state to redress the dowry issue has been statutory and legal. When a problem is deeply entrenched in the social fabric then the redressal of the issue cannot be purely legal and legislative. Even the legislative route taken by the state is riddled with loopholes and lacunae which can be exploited and the practice will flourish and grow.

The key to the dowry deadlock lies in the very society which has nurtured and strengthened this disastrous institution. Social behavior often has a rigid and inflexible character and law in such a case is not a good tool for social reform.

The policy decisions of the government need to focus on incentivizing social reform rather than applying penalizing provisions against the sanctioned social behavior of people. Reforms and amendments in the law are essential and the next section of the paper suggests those amendments however even an amended and stringent law would be of little to no use if the state does not endeavor to change the social mentality, economic and property structure which massively contribute to the issue we seek to redress.

In this paper, we have reached an analysis that the legislative measures by the state have failed to eradicate the dowry menace because they do not attack the causes of the dowry practice while focusing merely on the act of dowry transaction. As long as the cause of the practice is surviving in society, the practice itself will also survive.

Therefore a holistic and interdisciplinary approach to dealing with the dowry issue is essential. In the next section, we look at the possible routes which might assist in ameliorating the dowry menace in our society based on the causes which have been identified in the preceding sections of this paper.

## **CONCLUSION**

The recommendations are based on the analysis that attacking the causes of dowry is the key to uprooting the evil of dowry from Indian society.

- The policy approach to eradicate dowry would have to focus on certain aspects such as:
  - I. Concrete participation of women in production activities.
  - II. Restructuring the property regime to ensure female ownership.
  - III. Economic transformation has given how economic factors such as agriculture impact the intensity of the dowry issue.
  - IV. Localized response to suit the dowry pattern in different regions.
- Based on the agricultural structure cited earlier in this paper, it's clear that the dowry problem is a bigger menace in the northern belt of the country given the agricultural dependence on male labor resulting in men being more valued in the northern communities than in the south where women progressively participate in the production activities. The policy should be aimed at incentivizing secondary and tertiary sectors of employment over agriculture. Women's participation in manufacturing and service industries can be encouraged through vocational skill development programs. Rather egalitarian participation by women in the workforce can be ensured better in these industries rather than in agriculture where labor distribution is set in its way due to decades of practice.

There has been research which suggests that if a woman is gainfully employed, her dowry burden would be diminished.<sup>33</sup>

- Women engaged in industries and being gainfully employed would address the dowry issue to a great extent where the earning capacity of the woman will reduce the burden of taking material possessions with herself to her matrimonial home. Policy needs to focus on creating women centric avenues of employment and also make female employment lucrative in the industries. Financial independence for women would attack several causes of dowry at once such as the lack of means to survive and raise voice against harassment etc.

There is some research which suggests that there is an inversely proportional relation between modernization and the practice of dowry, that is to say that as the society becomes modernized by virtue of education or social media exposure, the instances of dowry would potentially reduce.<sup>34</sup>

- The policy makers and vigilant citizens should target the youth through Social media Platforms such as Facebook, Instagram to create awareness about the exploitation caused due to dowry. The government can engage social justice organizations and volunteers in such schemes through attractive incentives such as cash prizes etc.
- Volunteers can be engaged to speak to people on an inter-personal basis for better impact on the issue. States can hire such volunteers on an internship or contract basis.
- Gender sensitive education would play a crucial role in eradicating the practice of dowry. The curriculum of this gender sensitive education needs to be decided in such a way that a taboo or shame is created on the subject of demanding or expecting dowry. The innate value of women as human beings needs to be cultivated from the very beginning to prevent them from being viewed as chattel.
- Nationwide, free of cost awareness camps and walk-in seminars throwing light on the health concerns in women caused due the dowry practice would be of great assistance in shedding light on the menace of dowry.

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<sup>33</sup> Madan Paul, *Dowry and the position of women in India: A study of Delhi Metropolis*, Inter India Publishers (1986).

<sup>34</sup> P. Srinivasan & GR Lee, *Dowry system in northern India: Women's attitude and social change*, 66 *Journal of Marriage and Family* 1108-1117 (2004)

- “Love marriages” or “choice-based marriages” if preferred over arranged marriages can help in the cause of dowry to some extent. Earlier, in this paper we noticed how certain parameters of choosing a bride or from arranged marriages have led to the dowry problem therefore love marriages outside one’s community and caste can help mitigate the issue.

### **ANTI-DOWRY LAWS: PROPOSED AMENDMENTS**

- The Dowry Prohibition Act, 1961 needs to be amended to provide for a “bystander clause” which would make it a mandatory duty of members of the community and neighbors to report on the cases of dowry. Distressed women groups should be mandated in neighborhoods where members can report on the cases of women related domestic violence without any hassle.
- Legislation needs to set a limit on wedding expenditure with respect to different income groups so that weddings do not become an excuse for ostensible displays of wealth.
- Presents received by the bride during, before or after marriage should be enlisted and such a list should be mandatorily registered so that the woman becomes the absolute owner of such property. (Women, in any case are absolute owners of their stridhan property and such property is for their exclusive use.<sup>35</sup>)
- Customary presents to be given to groom during marriage should be defined by the law with the help of social scientists for different communities and limits should be set on the value of such presents.
- Parameters of the term “indirectly” used in the legislation needs to be suggested to exemplify what are the scenarios which the state has in mind when seeking to prevent indirect dowry transaction.
- The penalty for giving dowry should be limited to fines, forfeiture of property or other civil sanctions. Incarceration for the act of giving dowry deters the aggrieved parties from coming out and seek enforcement of their rights.
- Section 6 of the statute provides for passing of the dowry valuables to the heirs of the woman in the event of her death. Such heirs need to be defined as the children or the

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<sup>35</sup> Pratibha Rani v. Suraj Kumar, AIR 1985 SC 628

father and mother of the woman and not the husband or her in-laws as it would normally be if the woman died intestate.

It is expected that if these recommendations are brought into force through the policy decisions of the government, it would be useful in bringing about a positive and noticeable change in the dowry chapter of our country.