



RESEARCH PAPER

Legal Implications on Dowry System in Pakistan: A Critical Analysis

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ABSTRACT

Dowry is a very troubling issue these days, especially in South Asia. Its origin dates back to the late Bronze Age and early Iron Age. Its bad impacts are effective in Pakistani society too. This research paper revolves around the dowry system in Pakistan, its consequences, and legislative attempts made to curb this menace. In this paper, the history of dowry and its system prevailing in Pakistani society is evaluated. A Qualitative method of research is used to evaluate how dowry is practiced in rural and urban areas of Pakistan and how it is responsible for the death of hundreds of lives. The Dowry and Bridal Gifts (restriction) Act 1976 was enacted to empower women and tackle the atrocities of Dowry however has been amended in 2016. Enforcement of laws, mass awareness, education to the common man, and media campaigns against this social evil are the possible ways to uproot this malady. This article comprises of four sections: in the first section introduction to dowry and its historical background is articulated, in the second portion customs prevailing and its effects are elaborated. The third section is about the anti-dowry laws enacted in the state and their implementation. In the fourth section, the possible ways and precautions is to annihilate this evil from our society.

KEYWORDS Anti Dowry Laws, Bridal Gift, Domestic Violence, Dowry Effects

Introduction

Marriage plays a pivotal role in the life of human beings. Although it fetches contentment as well as complications in one's life. But before entering into this contract there are some prerequisites, that include dowry in our Asian culture (Bhamani & Merchant, 2022). Dowry is, actually, a ritual in the event of marriage. Dowry is "the money, belongings, or estate that a woman carries to her groom's house in marriage given by her parents" (Ahmad & Hussain, 2014). This is actually the term used for the things that a bridegroom brings along with her to husband's house (Kalanauri, 2020). These things may consist of dresses, utensils, furniture, and much more. It is defined in, the Dowry and Bridal Gifts Act of 1976 that, "any property given before, during, or following the marriage either directly or indirectly to the bride from the bride's parents is associated with the marriage but it excludes property that the bride could inherit under the legislation of inheritance and succession that apply to her" (Pakistan N. A., 1976). Contrarily, a wedding gift is any item presented as a gift to the bride by the groom or his parents in conjunction with the marriage, whether directly or indirectly; Mehar is not considered a bridal gift (Mohsin, 2022).

Dowry first included routinely used things in daily life but with the passage of time the list of these things started to increase and still continue and people started to use it as a prestigious token in the community. Rich parents can afford to use it to gain prestigious status and make links in society but on the other side of the coin it bears the economic pressure of pompous dowry (Stanley J. Tambiah, 1989). However, they try their best to give their daughter a handsome amount of dowry so that she can live a happily married life. Contrary to its disadvantages, it has its positive aspects that it has an impact on the relations of partners as per perception of a few minds of society. Research and surveys suggest that women who bring handsome amount of dowry live happy life and behavior of husbands and

their families remains fair and loving (Agha, 2016). In Pakistan, some particular cultures support the dowry system less than others do. When the bride's parents gave their daughters the smallest amount of dowry, it was assumed that most wife and husband disputes had already occurred. Dowry also involves a lot of family conflicts. One of Pakistan's biggest issues is the mortality of women due to dowries which is famously known as Dower Death (Gulzar & Nauman, 2022).

Historical Background

The concept of dowry is centuries old and no one could figure out its origin with certainty. However, it is said that it originated from origins of Hinduism. This custom is performed in almost every culture and region of the world irrespective of religion but in-depth in Hinduism (Makino, 2019). Dowry is effective since the Vedic period when presents from relatives and parents of the daughter on marriage were considered the bride's property known as '*stridhan*' (Khan, 2021). In the Vedic period, marriage is associated with Kanya dāna. Kanya dāna was also recognized as '*Hunda*', it originates from the word '*Handa*' meaning pot, was called so because in primeval time dowry was given in a pot (Reshma, 2012). According to Dharam Shastra (Rigveda), the bridegroom's meritorious conduct was not complete until he received a Dakshina. Varadakshina is the type of dakshina, which provided by the parents of the bride out of devotion and affection rather than under duress (kasliwal). In England, it was introduced by the Normans in the 12th century. The dowry system in England used to permit noble families to marry their daughters off with intent of gaining investment ties, daughters were treated as nothing but merchandises (Chatterjee, 2018).

In the pre-colonial era, the system was prevailing in order to empower and give self-esteem to women. It was not considered as evil as is considered in present day. It was treated as a tradition to give ornaments, furniture, clothes and many other things according to their capacity and affluence status as estate was given to sons. In British Raj, the property given to woman as dowry was bestowed in the possession of their husbands as women can't own any property. So, the real problem emerged from this act and groom's family started to demand the dowry from bride's family in order to marry their girl. The practice of dowry was mandatory in British raj to marry as they were to take commission from the property of dowry. Of the eight types of marriages enumerated in the laws of Manu only four: Brahma, Daiva, Arsha, and Prajyapata were ratified by the noble brahmins. All of these are somehow related to different variations of the dowry (Shuani1, 2023). In colonial era the prima facie assumption was the Brahma form of marriage. Another reason of prevalence of this marriage was the only authorized form of marriage from colonial judicial decisions. As in the case of (Chuni v Suraj, 1909), the court noted that "unless rebutted by the evidence," the prima facie assumption no doubt every marriage under the Hindu law is according to Brahma form". The court did not consider the solemnization of Brahma form of marriage unless no transaction of gifts from bride's family to groom take place with Kanyadan. On this, heavy demands were initiated from groom's side to be made and evil prevailing today was started. Many dowry deaths have been recorded in South Asia since then.

As stated above every culture practiced dowry system adopted it from Hinduism. On contrary, there is no concept of dowry in Islam. Islam has not sanctioned any kind of dowry. In the Quran, there is no revelation about dowry; which is called '*jahez*' in subcontinent extracted from '*Jahez-e-Fatima* (Arshad, 2019). As the Muslims of Asia are converts from Hinduism and they have upheld the custom. People try to excel in giving substances to their daughter in the form of dowry from each other and in pursuing this it has become norm to show off the dowry items which are cause of tensions for the poor parents. In some cases, male's family demands for expensive commodities and luxuries as a compensation for their well settled and wealthy son (Jameel, 2021). In Islam, there are directives to minimize the amount of dowry. As Holy prophet has said "best Nikah is that on which least is spent". However, some people consider it a religious duty and perform it like sunnah. A woven bed,

two cushions, two sheets for the bed, one bedcover, two enchantments, one goatskin for carrying water in a container two water carrying containers, one hand-grinding mill, which consists one cup, and one prayer mat were among the daily necessities discovered to have been put together for His daughter's wedding. The cost was covered by Hazrat Ali, but the Prophet's family sorted and produced this list (Ahmed, 2010). This ritual is legitimized in the Indian Muslims by the Muslims theologies in the sense of love and affection but there is no evidence of said practice in Arabs and Islam because Prophet himself gave his daughter Fatima only equipment of daily usage to start the marital life.

Dowry System in Pakistan

Pakistan is one of those countries where dowry is an important part of the marriage. According to research 95% families' give and take dowries. Dowry is given according to the status of the families which includes luxuries too in upper class families (TheDiplomaticAffairs, 2020). Due to this practice and custom which is set by upper class, middle class and lower-class families try to give dowries more than their wealth and income. People try to find those girls who have wealthy parents so they can have more dowry items. Basically, parents in law demand it and sometimes they talk about the price of dowry given. The dowry system is taken from Hindus because after giving dowry they don't give rights in inheritance to their daughters. Mostly female in laws insist for having dowry and they are also reason of verbal and physical abuse to their daughter in laws. Dowry has become social evil due to its practice but basically it was given with a good intention to support the newlywed couple to start a new life. Parents give dowry according to their income to support instead of making it burden for themselves to meet the criteria set by the society. Due to these rituals, it gives birth to problems. Otherwise according to a survey of Gallup Pakistan 53% people supported dowry, 38% opposed and 9% were not sure about it (Khattak & Bezhan, 2021).

Dowry has many negative consequences because it is a burden on a family to provide dowry to each daughter. Girls commit suicide to lessen the burden of their parents because they see that their parents are unable to make their dowries (McCarthy, 2017). People take loans from banks and relatives to give dowry to their daughters and after that they spend their whole lives to pay those debts till, they die. Many girls remain unmarried due to their parents' low status or less income. That's why people don't like having baby girls as it is sign of burden when a girl born in any house (McCarthy, 2017). After the marriage, girls will have mal treatment from their parent in laws and husband (Muzaffar, Yaseen, & Ahmad, 2018). They also have to face verbal abuse and taunts when they don't have enough dowries. This also leads towards the violence. Female education and independence is most important factor to avoid this issue (Khan & Mandal, 2023). However sometimes people compare their educated daughter in laws according to their dowries and those who have more dowry will be given high preference and status in the family but with less dowry they will be taunted and have to face psychological and physical abuse (Ali, Árnadóttir, & Kulane, 2013). Mental issues are common issues regarding the dowry and mostly people don't give importance to it which leads to further problems. The verbal abuse was mostly given from female parent in laws which also disturb the life of that girl (Ali, Árnadóttir, & Kulane, 2013). Due to this abuse, girls commit suicide or at least they think of committing suicide. According to a research 65%-74% girls have suicidal thoughts due to the violence faced by them (Ali, Mogren, & Krantz, 2013). There are also deaths due to not bringing dowry; people kill their wives for it. According to the Pakistan's news international Pakistan has highest number in world in dowry related deaths per 100,000 women which is almost 2000 each year (Badar, 2017). Pakistan, India and Bangladesh are the most affected countries by this dowry system (Khattak & Bezhan, 2021).

Laws in Pakistan

Prior to the enactment of The Dowry and Bridal Gifts (Restriction) Act 1976, there was West Pakistan Dowry (Prohibition on Display) Act 1967 which was repealed by the new act. This West Pakistan Dowry Act was enforced just to restraint the display of the dowry, bridal gifts. This was never intended to constrict the value of dowry or to set a limit for price of dowry, bridal gifts given to the groom and bride. Breach of this act entailed 1y imprisonment or fine up to 5000/- or both (Pakistan L. a., 2003). After the heart wrenching incident of 1971, a new act was introduced which was intended to regularize the dowry, bridal gifts/presents, their value/quantity. This act is called as The Dowry and Bridal Gifts (Registration) Act, 1976 (act XLIII of 1976 hereinafter). Section 3, XLIII Act of 1976 is about the restraint on the assessment of the dowry and presents, also about the time during these can be delivered. It states that the aggregate value of the dowry and presents given by parents to the bride shall not exceed the amount of 5000/- and in the same way, the aggregate value of the bridal gifts given by the parents to the bridegroom must not exceed the limit of 5000/-. And these gifts and dowry can only be given within six months either prior to the nikah or after (Tribune, 2020). Section 4, XLIII Act of 1976 talks about the presents given by the other persons to the bride or bridegroom. It restricts the persons to give the presents of value exceeding one hundred rupees to the bride or bridegroom. Section 5, XLIII Act of 1976 states that all the property given as dowry, bridal gifts or presents to the bride shall be vested absolutely in her and her interest in property shall not be conditional or limited.

The whole cost of the wedding ceremonies, including the mehndi, barat, and valima, cannot exceed 2,500 rupees, according to Section 6 of the XLIII Act of 1976. It excludes the value of the dowry, gifts for the bride, and presents. Section 7, XLIII Act of 1976 enunciates that all the dowry, bridal gifts and presents must be displayed at the time of rukhsati to all the persons attending the ceremony. Section 8, XLIII Act of 1976 articulates that lists of dowries, bridal gifts and presents along with the value must be furnished to the registrar within fifteen days after the marriage signed by the person furnishing it to the registrar along with the signatures of two witnesses. The parents of each party shall also present the record of the expenditure incurred on the ceremonies duly signed with one week. And the Registrar shall forward these lists to the Deputy Commissioner within fifteen days of receipt. Section 9, XLIII Act of 1976 provides that in case of non-observance of these rules, guilty party shall be punishable either with the imprisonment of up to 6M or with fine up to 10,000/- or both. All presents given shall be forfeited to the federal administration so that can be used in marriages of deprived female of society. This offence shall be trying by a family court and complained is to given in writing and under authority of DC within 9M of marriage. This act was although enforced but it was hardly seen practically in any corner of the country. There were some loopholes in the act. With the passage of time, in 1992, The Law and Justice Commission of Pakistan (hereinafter LJCP) recommended a lot of changes in XLIII Act of 1976 including the enhancement of limit of dowry/gifts from 5000/- to 50,000/- (Shah, 2017). It also asserted that bridegroom must not demand any dowry or gift whatsoever.

All forms of extravagance and serving more than one dish must be avoided. Including more, the guests who intentionally attend such ceremonies may be fined with an amount of up to five thousand rupees. These recommendations were never implemented. Due to these acts, parents started to use the clandestine ways to give their daughters dowries. In 2003, The Secretariat of the Commission proposed a draft to be enacted on the dowry subject. First thing was to upgrade the maximum limit of the marriage expenditure from 2500/- to 50,000/-. Second thing was to get the increase in value of dowry from 5000/- to 50,000/-. Third thing was to enhance the value of bridal gifts from five thousand rupees to fifty thousand rupees. Forth thing was to increase the value of gifts given by others from one hundred to five hundred rupees. Fifth thing was to place a ban to demand and display of dowry and gifts. Sixth thing was to prohibit the individuals from flamboyant celebrations.

Seventh thing was to articulate a list of bridal gifts and presents and deliver this list to nikah registrar. Last point was to increase the fine from ten thousand rupees to twenty thousand rupees and to reduce the imprisonment from six months to three months.

Bill of amendment of XLIII Act of 1976, A bill was introduced in National Assembly in 2016 by Pakistan Law Commission to amend XLIII Act of 1976. There were the following amendments proposed in the bill; name of the bill is called as the dowry and bridal gifts (Restriction) (Amendment) Act, 2016. Five thousand words to be substituted with 50,000 words in case the marriage is in town area and 25000 rupees if in rural area, in section 3. Sub-section 3 and 4 were added in section 3 stating that bridegroom or anyone on his behalf shall not demand any dowry whatsoever and if such demanded can subjected to punishment not less than six months and may be up to 2Y and fine extending up to 10,000. In section 4, one hundred rupees to be substituted with 1000 in case marriage is in town area and with 500 if marriage is in country area. In section 6, 2500/- was substituted with 50,000 rupees, and all forms of profligacy including more dishes then one shall be circumscribed. A new insertion of section 6A which states that whoever attends an extravaganza marriage knowingly and willingly shall be fined with five hundred rupees.

Recovery of Dowry procedure in Pakistani Courts

As section 5 of the XLIII Act of 1976 enunciates that all bridal gifts and presents must be vested in bride, this section mostly assists women after their dissolution of marriage for the recovery of bridal gifts and presents. But respondents usually resort to section 3 of the XLIII Act of 1976 if the value of the gifts exceeds beyond the prescribed limit of five thousand rupees. To neutralize this, court held that a husband can't recourse to this provision of Act to repudiate the recovery of gifts to a wife (SJA, 2014). In case of (Muhammad Tanzeel v MstKhair-un-Nisa, 1995), after obtaining decree of dissolution of marriage, wife (respondent) also filed suit for the recovery of dowry amounting to Rs. 24000/-. Petitioner filed an appeal in DC, then HC and then SC. Supreme Court dismissed his appeal saying that husband was failed to report the amount of dowry, bridal gifts and presents under Section 8(A) of the Act and it is a culpable offence under Section 9 but court can't take action on it without a written application on or under the signature of deputy commissioner. But husband can't rely on Section 3 to revoke the wife's right to dowry.

In case of (Muhammad Arshad v Additional District Judge, 2015) respondent No. 3 filed a suit for the recovery of the dowry. Petitioner was directed to return the dowry amounting to Rs. 579,500/-. Petitioner filed appeal to additional district judge who then decreed that respondent was entitled to the dowry amounting to Rs. 331,000. Court said that according to Section 5 of the Act, wife is entitled to retain the entire dowry. Court also noted down that XLIII Act of 1976 was enacted for the protection of the women and not to deprive them from their dowry and Wari. Ayah No. 20 and 21 were interpreted by all translators and Mufasareen to mean and include the property of any value given to her by her parents or by husband or by his parents. (2015 CLC 463,467).

In light of the husband's argument over the payment of maintenance and dower to his wife, this case presents an opportunity to highlight the guidelines, obligations, and responsibilities of a husband toward his wife under Islamic law with regard to maintenance and dower. The respondent, Naheed Begum, filed a lawsuit in the Family Court of Tangi Charsadda seeking maintenance for her own and her five minor children (three daughters and two sons) as well as the recovery of her dower, a Jarab² of agricultural land (mentioned in column No. 16 of her Nikahnama), against the petitioner, her husband, who had entered into another marriage and was living with his second wife. Her requests for maintenance for her minor children were granted by the Family Court, but her requests for dower recovery were denied. The High Court and the District Court have opposing views. However the Supreme Court has provided a verdict that, It is disappointing that the petitioner, an intelligent individual who practices noble profession of education, is unaware of his

responsibility to fulfill the terms of the dower agreement. Such behavior from him is abhorrent. We dismiss the current petition with all associated expenses because we judge it to be baseless and vexatious for the aforementioned reasons (Haseen Ullah vs. Mst. Naheed Begum, etc, 2021).

Dowry is a well-entrenched social evil in our society and this is flourishing at an unparalleled rate. There are a lot of factors regarding this rise of trend of dowry which includes the greed factor, struggle to avoid social stigma, lack of formal education, illiteracy about Anti-Dowry laws, conservative intellect and to exhibit social status (Umm-e-Habiba & Kamal, 2023). This disease is progressively ensnaring the whole social fabric and the only people burning the brunt are of lower class. So, disseminating the awareness about this social evil is the first step towards the eradication of this malevolence. Media can be at the forefront in this drive to awake our conscience towards this wickedness. A major issue is the non-implementation of the enacted laws. There is quite little discussion about this issue in the Parliament and this cataclysm is capturing all of our social fabric. A quote from Mahatma Gandhi (Salman, 2020), "Any young man who requires dowry as a condition of marriage denigrates his education, his nation, and women".

Conclusion

There is no doubt that dowry is a social evil but still it is practiced in Pakistan. Both literate and illiterate people give and accept dowries from their in-laws. Mostly this problem exists in middle class family and a reason for this is the greed and demonstration of status. These trends should be changed for preventing the women rights. Youth and government should play their role to curb the situation. Government should make sure the implementation of laws made for the restriction of dowry. Youth especially male should play their role by convincing their parents and saying no to the dowry system. Education and awareness can play an important role to end these problems. Dowry isn't a bad thing but its prevailing practice is a bad thing, people should give dowry and gifts according to their income instead of paying it with their lives.

Recommendations

There are certain recommendations which can play a leading role in uprooting this evil. Firstly, government should amend the XLIII Act of 1976 as there have been more than four decades and same laws can't be applied in this ever-growing and dynamic society. Secondly, government has to enforce all the laws in their true sense and capture the culprits infringing these laws. Thirdly, there should be a mass awareness campaign to give people a deep understanding of this cringy thing. Fourthly, education must be given to the under developed areas of the state where lethality is emanating out of this malevolence at a faster pace. Fifthly, girls must be encouraged to get the education so that they can be independent and get self-esteem. Then they would be able to make their own decisions. These were the recommendations to exterminate this malice and make our society a safe place for women to live with high head.

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