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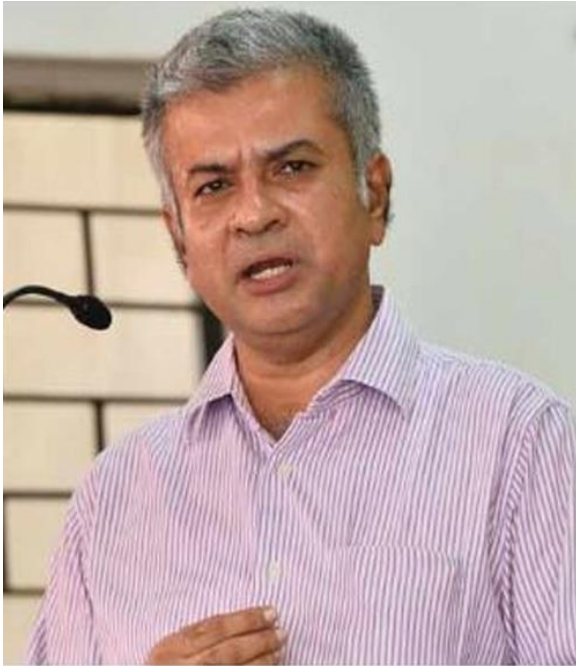
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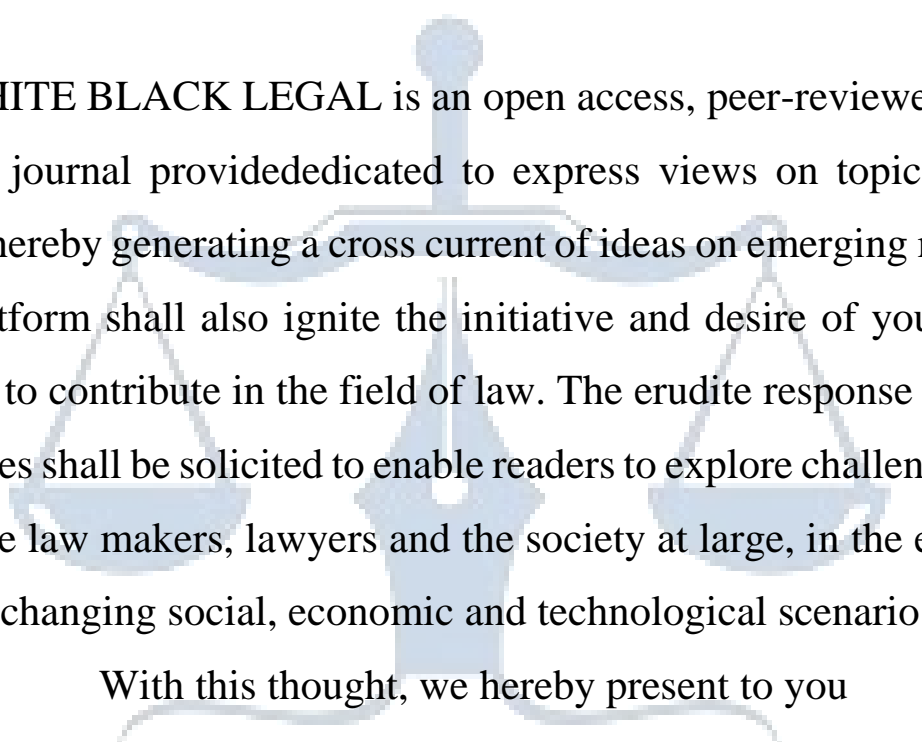


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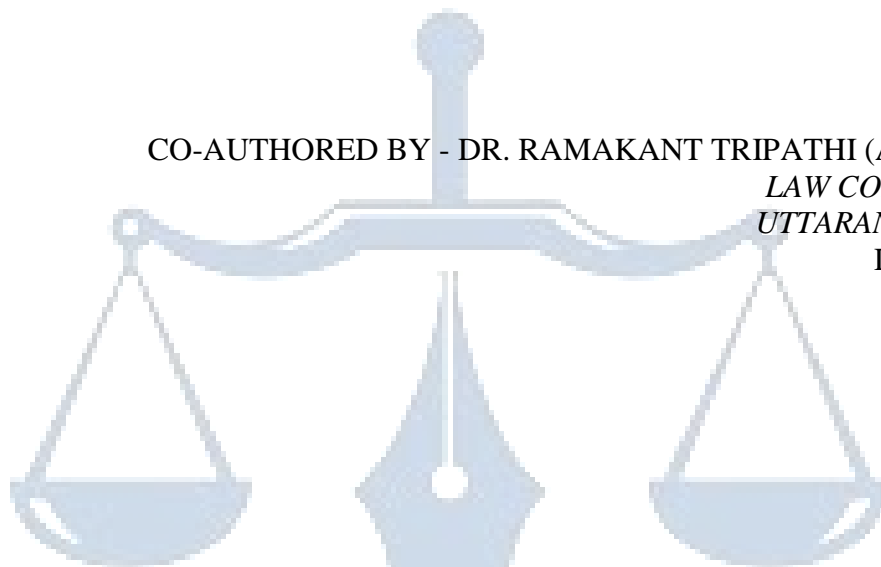
With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

DOWRY AND INDIAN JUDICIARY

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ABSTRACT

Throughout patriarchal cultures technology has made the female section of human beings poorer. Females have been held in high regard in an Indian society going back centuries and lost in ancient times. Under ancient law the status of women was honorable and dignified. Several Vidushi were there, others were Great Sages who learned the Vedas and the Scriptures. Hindu marriage was also treated as a religious institution. During the time of marriage, their daughters are granted the tradition of parents to do from time to time. The narrator of this clothing is claiming that dowry is subject to the sanctioning for Hindu holy texts, etc. This household queen was later turned into a worst social and economic abuse point. For the selling of love marriage idealism has vanished. Dowry has been a societal sin, a real direction that has given unity, prosperity and development of life and destroys the family. This has now expanded to populations that typically don't. In this Article we will see what is Dowry, Why dowry is evil practice in the society and how does it affects a women. We will also see Section 304 B of IPC and capital punishment as well necessity of Punishments.

Keywords—Dowry, Section 304 B, Punishment, Domestic Violence, Suicide, Dowry death

Introduction

Marriage solemnization is a significant social activity for members of all faiths and groups. Marriage has a social significance in culture separate from its intrinsic value as persons, as it not only establishes a connection between two people, but also between two communities because it happens in our framework. In times gone by the respectable form of marriage in India, one's daughter or sister was introduced at wedlock to offer self-designed presents of decorations, cash or articles that can easily be provided. The ownership of the item was usually referred to in the form of 'Stridhan,' or its land, which it was lawfully allowed to use or dispose of as it pleased. In ancient and medieval India, a father or guardian was able to give the wedding to the bride that he could comfortably manage and there was there any obligation to offer something but the same. There was certainly no factor of monetary marriage trading and caste rank, the social and economic role of the families and quality of the bridal and bride's horoscopes became the principal criteria for marriage. But during the latter era of British rule, business intent started to slip through and overshadowed the sanctity of marriage; in short, the infant of the dowry of commerce was born into an explosion of new aspects that emerged on economic horizons, through which culture lacked a stable sense of values. The accelerated urbanization of the first half of the century continued to expand to include even the smaller cities. Both children from diverse backgrounds and their parents did not set up separate homes in cities until they were married. The rise in living standards contributed to other imaginable forms of the same; once again, the marriage system was misused as it was convenient to claim and get a lot of marriages in cash or in kind to provide for better living standards, rather than to buy it with one's hard-earned capital. Since the dearth of suitable bridegrooms was ever regarded as the most significant excuse to encourage the devil to stretch his wings was the formal bridegroom and the suitable or position Bridegroom. Social reformers were complacent in sending women to higher education, and not only girls go to schools, but even to higher education in universities, but in most instances their schooling was provided for an arbitrary duration of waiting and less than their dowries, or more time to add up.

The betrothal market involved sending the girl to school and it was generally assumed that the sum of dowry would be decreased; if the girl gets a certain educational degree her marriage with a suitable self-earning boy would somehow be simpler. Dowry as we know today is only the bridegroom size, or "Vera-sulk." Today everybody opposes dowry as a poor legacy or continuation of the earlier scheme in relation to girls' marriage. Dowry has become a social sin, a true curse which destroys unity, harmony and growth in families. This has

influenced both wealthy and disadvantaged citizens of all walks of life. A lot of families were ravaged by the dowry problem and several poor homes were built. The dowry custom dates back to the bride's payment to her in-laws and future husband, who were expected to cover all of her post-marriage costs.¹

There are two opinions that are unwelcome and detrimental to feminine modesty if perceived now or because it is widespread in reality. Day after day, dowry deaths and bride burning for dowry have been published in the newspapers, and the condition at the heart of this great building in our community is genuinely disturbing. In reality, the social consciousness is evidently trained in this regard, but more often than not is not consciously combating this evil of dowry. However, the social reformers came out of sleep and woke up to the case. They started to study the adverse impact on civilization of this threat. The Dowry Scheme was criticized by a Bengali reformer, Ishwar Chander Vidyasagar. Mahatma Gandhi even took dowry cudgels.¹

In the past, attempts to fix this issue have been just minimal. Several state and local governments have taken steps against the dowry scheme. Upon independence, Bihar and Andhra Pradesh State governments and later Jammu and Kashmir State governments enacted the anti-dowry rule. The Hindu Succession Act of 1956 aimed to boost women's economic standing. The expected outcomes were not obtained with any attempt.

The manipulative practice of donation and theology has been regarded as a societal phenomenon and is to be resolved by the Hindu Succession Act (1956)² giving women some enhanced property rights. It was eventually adopted the Dowry Prohibition Act of 1961. On 1 July 1961 the Dowry Prohibition Act came into effect. The Act preserves the Muslim door organization. The operative clauses of the Law claim that the gift or receiving of dowry is a crime and also an assault. Other states changed but did not succeed in making the Act 1961 more effective. In 1980 it was formed to undertake progress on the 1961 Dowry Prohibition Act. The Joint Legislative Committee was named. Any of them were included in the Dowry Prohibition (Amendment) Act 1984, and the Committee proposed other changes. In fact, the Dowry Prohibition Act, 1986 introduced certain tighter laws. Although the 1961 Act has been in the law book for 40 years now, its absence from an efficient operating instrument and various flawed clauses has demonstrated that the Act is a case in point of statutory futility.

For e.g., in accordance with section the concept of dowry is a defective duet except the marriage of dowry

¹ Arunima Baruah, *The Soft Target-Crime against Women* 149 (Kilaso Books, New Delhi, 2004).

² Gooroodass Banerjee, *The Hindu Law of Marriage and Stridhan 1879* (Wentworth Press, 2016).

present. Moreover, what is implied by "excessive" and "customary" existence is not known. The concept of Muslim dowry has omitted 'Dower' or 'Mehr.' This portion should not be used in regard to Muslims for whatever purpose. Moreover, this segment does not contain numerous extra marriage expenditures. Again, the 1986 Amendment Act 43 left a void in the punishment for a dowry allegation under section 4 of this Act, without strengthening it. The courts were often granted power to the statutory compulsory sentence in compliance with the Act.

Dowry as a major factor of domestic violence

In any connection that is used to obtain or maintain power and control over a women's spouse, domestic violence can be described as a pattern of behavior. The physical, mental, social, economic and psychological violence can be or must be an occurrence in which a woman spouse becomes afraid, threatened, terrorized, abused, harmed, embarrassed, blamed or wounded. Domestic abuse is common among all races, genders, gender, beliefs, professions, and males. This may occur in knot or in living partnerships or dating between spouses. This impacts citizens of all socio-economic classes and rates of schooling. As a consequence of sexual abuse, social trauma, mental wellbeing issues and reduced physical performance have been catastrophic. The upcoming generation is influenced by the abuse committed by children or perpetrators themselves. The condition differs from home to house, from person to entity and 167. This might contribute to suicide. There is a broad range of sexual abuse with specific actions. A newly married wife or partner started to torment her husband or family physically and emotionally, as she carried in inadequate dowry or did not fulfill the dowry order. Throughout India, certain types of abuse have perpetrated crimes. Like IPC sec. 498-A, a spouse or a parent of a woman talks with violence . Three types of criminality fall into being as we examine this segment like:

1. Willful conduct which drives the woman to commit suicide.
2. Willful conduct likely to cause grave injury to the life, limb or health of the woman.
3. Harassment in relation to giving of some more properly. Generally in case of violence against women within four walls of her world and specifically in case of violence for insufficient dowry a women is subjected to following types of harassment.

Like:

1. Continuous denial of food.
2. Wrongful confinement inside the house.

3. Keeping the woman away from her own children which is a mental torture for the woman.
4. Physically assaulting the woman.
5. Taunting comment and remarks towards the woman.
 1. Locking the woman at home and not allowing her social interaction.
 2. Putting the women under constant threat of divorce or desertion.
 - 3.

Emotional Abuse:

4. Calls her names, insults her or continuously criticizes her.
5. Does not trust her and acts jealous or possessive.
6. Tries to isolate her from family and friends.
7. Does not want her to work.
8. Controls finances or refuses to share money.
9. Punishes her by withholding affection.
10. Expects her to ask permission.
11. Threatens to hurt her, children, her family or her pets.

Physical Abuse:

12. Damaging property when angry.
13. Pushing, slapping, beating, kicking or choking her.
14. Abandon her in a dangerous or unfamiliar place.
15. Scaring her by reckless driving.
16. Using weapon to threaten her.
17. Demanding sex when she is sick, tired or after beating her.
18. Hurting her with weapons or objects during sex.

In most of the home where women is subjected to different type of physical and mental torture the reason is Dowry. In the world of consumerism human mind becomes more and more greedy for attractive consumer product and the bride or women is a medium through which wants of a husband or his relatives can be fulfilled easily by way of dowry demand and sometimes the torture takes the life of the bride.

The Apex Court observed in *Brij Lal v. Prem Chand & Ors.*¹ that the specific facts of each case would determine what would constitute the instigation of the offence. The court must take into account all of the

relevant facts and circumstances when determining that the abettor's liability should not be viewed in isolation.

Section 304 B of IPC and capital punishment

If a woman dies within 7 years of marriage and it is established that her husband or family soon before death is exposed to dowry abuse, death is considered the death of the wife as dowry. Experience has proven that women are thought to be oppressed in the business, that the common law in England deems women a husband's bug and that according to Blackstone the husband rules their woman, a husband is allowed to control his wife's punishment. The status of women continued to shift during the 50's and the role of women became a separate political body with distinct human privileges. After then, the issue of gender has been resolved by statute. This was the case with the 1956 Hindu Succession Act. In 1961, it was enacted the DP Act banning traditions of giving and obtaining dowries and allowing dowries. It cannot be quickly wiped out except by the DP Act 1961 and with the implementation of 498A & 304-B into the IPC of Dowry is a deep-rooted issue of Indian society. Dowry death reveals how women in Indian culture are oppressed.

In *Hira Lal & Ors. v. State (Govt. of NCT), Delhi*³ : A combined interpretation of Sections 113-B of the Evidence Act and 304-B of the IPC reveals that there must be evidence to demonstrate that the victim experienced cruelty or harassment just before she passed away. To qualify as "death occurring otherwise than in normal circumstances," the prosecution must exclude the likelihood of a natural or accidental death. When Sections 113-B of the Evidence Act and Section 304-B of the IPC are used, the phrase "soon before" is extremely pertinent. Only in those circumstances does presumption apply, and the prosecution is required to prove that cruelty or harassment occurred prior to the occurrence.

This criminal activity is focused on woman's mentality, which treats them as a "warm" or as something that can be kept, controlled and hired, without feelings and a sense of identity. The role of women in India is seen in this way. 170 The proof that dowry is performed because of the need to hold women out of their own properties to insure family money stays part of the patriarchal community shows both historical and sociological facts. The persistence of dowry until the day is attributed to many factors; the social institution is mostly accountable for this poor custom. As citizens in the society's materialistic and consumerist mentality where everybody needs to gain money quickly, not labor hard. Indian culture is governed by men where the

³ (2003) 8 SCC 80.

standards of women deteriorate. Especially if the financial capacity does not require this mentality to show money. People take double positions, criticize openly dowries, but dowries never hesitate. The "Dowry Death" in Indian society is a trite fact. So instead the victims wear the whole event as an accident. Early on, when will these criminals be prosecuted for? This 304-B and 498-A are introduced in the IPC by the Legislature only to secure women's role in society, and sec 113(A) of the Proof Act¹, which talks about the probability of suicidal of married females. Beneficial legislation enacted, in view of the acknowledgement and intervention of domestic abuse, brutality and dowry death in matrimonial homes. Dowry death involves the creation of a reality, which is, in connection with the dowry case, a relation between brutality or abuse by the accused individual. Conflicting opinions was articulated as expanded sentences were introduced for women's offences as death penalty 171 was suggested as rape offense. Most clauses of IPC, public protection regulations and anti-droque laws enforce death sentence. This death sentence is provided for by the Army Law 1950, the Air Force Law 1950 and the Navy Act 1956.

Why capital punishment is a necessity

Dowry death is the most common offence in present context of society. It is grievous in nature. As it caused:

1. Social danger,
2. Alarm caused in society,
3. Social disapproval in society,
4. Harm caused by offence to social morality etc., and
5. Wickedness of the offence. For dowry death capital punishment shall be provided for deterrent effect.

Satya Narayan Tiwari @ Jolly & Anr. V. State Of U.P.⁴ : In this case it was stated that Crimes against women are not your typical crimes, ones committed out of rage or a desire for anything. Social crimes, they are. They cause major social disruption. As a result, they demand severe retribution. Unfortunately, this is what is happening in our society: persons who have a passion for money frequently demand dowries, and after getting as much money as they can, kill their wives, get remarried, and then kill their wives again for the same reason. This is due to our society's complete commercialization and the desire for money, which drives some people to murder their wives.

⁴ (2010) 11 SCC 481.

Abetment of suicide

This demand of dowry sometimes forces a women to commit suicide. As per the language of IPC sometimes a women is abetted to commit suicide. Sec 306 and 107 of IPC are the provisions which throws light on this abetment of suicide. When someone instigates one to commit suicide comes under abetment or when someone intentionally helps one to commit suicide by doing an act or by not doing something like when a woman has been harassed and subjected to mental cruelty and has committed suicide because of that mental torture, the person who harassed the women is liable for abetment of suicide.

Court considers constant dowry demands leading to suicide as abetment of suicide. These are different types of violence which a bride or woman face inside her house for bringing inadequate or insufficiently dowry. So, in this way dowry is the major factor for domestic violence. Though the Act of 1961, sec 498-A, 304-B IPC is there but unable to curb the violence at home. Then comes the protection of women from Domestic violence Act, 2005; which includes in its purview any violence in domestic relationship. Which includes marital relationship also and the most important feature of this DV Act is that it includes marriage that are void in the eye of law, including bigamous marriage and marriages that are not proved in law, including those performed according to customary rites. So, victims of these types of relationship get protection under DV Act. They do not have any protection under the Act or under sec 498-A and 304-B of IPC earlier.

The testimony of witnesses in *Gurbachan Singh v. Satpal Singh & Ors.*¹ revealed the lustful and hungry nature of the men who tortured and insulted the deceased. Additionally, they claimed that she is carrying an unborn child. All of these things pushed her to act in an extreme manner, causing her to burn herself by dousing herself in kerosene oil. The Supreme Court found guilt for each and every defendant.

The issue of whether the defendant helped the deceased commit suicide was raised in *Arjun Kushwaha v. State of Madhya Pradesh*. According to the dying declaration, the deceased was requested to carry the child to the first level but refused, saying that she had only just arrived on the ground floor. Her husband stepped in and explained to her wife the reason behind her replying to her mother-in-law. The accused did not stop; he began fisticuffing her wife and persisted in his behaviour in spite of numerous warnings. While the accused continued to beat her, the wife went into the kitchen and sprinkled paraffin oil. Self-burning occurred. The husband was found guilty of abetment by the court and sentenced to the same.

In *Sayed Miya v. State of Madhya Pradesh*⁵, the prosecution claimed that the appellant was used to abuse and beat her wife. She had a habit of griping to her parents. The wife's husband had battered her before she committed herself as a result of his frustration. Within two years of their marriage, she committed suicide, and it was established that the accused had beaten her in the past. According to the post-mortem report, the dead had a bruise on her head, indicating that she had been the victim of physical abuse before passing away.

Dinesh was wed to Urmila in the *Girija Shankar v. State of M.P.*¹ case. Sometimes following Dinesh's search for a new bride. She endured physical and mental abuse in addition to being forced to starve and work as bonded labourers. Her body was discovered in a well one day, roughly a furlong away from the home of the appellants. The three were tried in accordance with Sections 302 and 306 of the IPC, respectively. They were convicted in accordance with Section 306. The court determined that instigation need not just come from words or even from actions. Direct proof of any instigation or assistance is not required. It is something that can be inferred from the situation. Due to evidence of abuse, malnutrition, and looking for a new spouse for their son, the appellants were found guilty of aiding suicide in this instance.

The dictionary definitions of "instigation" and "goading" were discussed by the court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*⁶. The court held that there must be a deliberate attempt to provoke, incite, or persuade the latter to commit an act. Suicidal tendencies vary from one person to the next. Self-esteem and self-respect are personal concepts for each individual. It is therefore impossible to establish any rigid guidelines for handling such circumstances. Each case must be judged in light of its unique facts and circumstances.

In the history of important rulings, *Manikandan v. State* has proven to be a crucial decision. The Madras High Court ruled that Section 306 IPC is not activated by merely being mentioned in a suicide note. To determine if the accused meets the criteria for abetment as described in section 306, the note's contents need to be carefully examined. The Court further ruled that "it is not the victim's request or readiness to die; rather, it must be the accused's wish; what matters most is the accused's intention that the victim should die. The accused person needs to do something constructive.

The married girl in *Raja Lal Singh v. State of Jharkhand*¹ passed away roughly seven months after getting married. There was proof that the victim was being harassed due to dowry demands. The victim in that incident also died by suicide. The Honourable Supreme Court ruled that Section 304-B IPC can still be

⁵ 1999 Cr L J 4398.

⁶ (2009) 16 SCC 605.

invoked even if the married girl kills herself. If someone kills themselves, it is usually because they are very unhappy, and unless the husband offers a convincing alternate explanation, it is assumed that the repeated demand for dowry was the cause of the suicide.

CONCLUSION

The entire sociological survey shows the involvement of parent's right from the arrangement of marriage in most of the cases parents of bride and groom are deciding authority for marriage. They decide when to marry and how to marry and whom to marry. Indian society gives importance to arranged marriage. The son preference attitude of parents another deciding factor for status of women at home both in the marital home and natal home, so the father, brother and after marriage under the control of her husband. Parent's directly responsible for any dowry case.

This dowry offence is a crime against women and it is in most of the cases found that mother-in-law is the prime perpetrator in the entire incident of dowry case. Who could have very well settled tactfully or pacified other family members who were demanding money. It was found that the ladies seem to be greedier than their male counterparts. So they want hefty sums from their daughter-in-law as dowry. This dowry is an easy way to become rich quickly. Without much hardship one can be rich. Ladies are 324 possessive basically. And if your daughter-in-law returns home with the fear of losing charge of the household, you feel assured that by causing mutual tension between your husband and wife, you can seek to get the entire of your children. The women thus play a significant part in the perpetuation of violence. The present dowry law often refuses to differentiate between voluntary donation and gift on requests, because of the intrinsic flaws in the legislation.

Dowry was the engine of several offenses against women and the child. In Islamabad, a hub named as the NCRB's crime hub. Indian weddings are increasingly evolving into commercial transactions between two groups. The DP Act doesn't work mostly because dowry is widely tolerated. The condition has just grown worse over the last one and a half decades of structural transformation, which has pervaded every area of society. The attitude of the police is, in the bulk of situations, like that of a negotiator who dissuades the plaintiff from carrying out the justice cruise. The lengthy litigation is also seen in order to settle the issue as a barrier.

Dowry is a menace crippling the Indian society. It is boosted due to systematic disorders – mythology, religion and tradition and inefficient policy making and governance from the legislature courts and police. Dowry system is no longer a traditional practice that will be eliminated with the process of social change rather a materialistic component of the Hindu marriage system. The stringent impact of dowry demands created preferences towards sons leading to female infanticide and fall in the India's sex ratio - 940 women is to 1000 men Dowry problem is a clash of class and caste structure. They are no solution to untangle the religious, social and economic factors causing the dowry problem. The Dowry System in India – Problem of Dowry Deaths Journal of Indian Studies 41 To some extent, education and media exposure can diminish the support for dowry but modernization has an edge over it. The society is more materialistic and greedy where goods are valued thus there is an inclining trend towards the demand for dowry. It is more of a display of social and economic status than a traditional custom. South Asian countries practice the custom of dowry, not on the basis of religious obligation, but solely out of greed and other materialistic objective. Therefore, in order to control the influence of dowry system in the society, it is necessary to make strict preventive measure and implementation against dowry.



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