



COMPARATIVE AND CRITICAL STUDY OF DOWRY LAWS IN INDIA AND PAKISTAN

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ABSTRACT

To comprehend the term of dowry, the law excludes traditional gifts (gifts for the birth of a child, for example). There are a few provisions that remain only on paper under this law, as with any other, such as the requirement that gifts given to the bride must be received within three months, the duty of district prohibition officers (DPOs) to raise awareness about the practise, or even the requirement that a registry be kept of all gifts given to the couple (within the means of the families). Criminal remedies such as divorce, injunctions under the Domestic Violence Act, 2005 and compensation under the Dowry Prohibition Act of 1961 were brought into play by the Indian Penal Code, 1860. It is now illegal to give or take dowry under the Act. An additional five years in prison and a \$2,500 fine have been added to the punishment. Dowry taking and dowry giving are equal in the eyes of the law. When it comes to this particular case, it appears that they are neglecting the larger context of dowry altogether. Dowry refers to property or gifts given as a component of a marriage to one or both partners. To be gender-neutral or context-neutral, they appear to be inferring that providing dowry is likewise a choice. 498A IPC (Cruelty by spouse or family members) and 304B (Dowry death)

were employed in tandem when courts saw that the Dowry Act was ineffective in reducing the practice. To combat this problem we need to understand the laws of other countries such as Dowry and Bridal Gifts (Restriction) Act, 1976 of Pakistan, understand victims perception through Marxist feminist theory and how by working on loopholes in Indian legislation will help in decreasing the dowry death cases.

Keywords: Dowry; Dowry Prohibition Act, 1961; Domestic Violence Act, 2005; Indian Penal Code, 1860; Marxist feminist theory; Dowry and Bridal Gifts (Restriction) Act, 1976.

1. INTRODUCTION

Tradition of dowry dates back to ancient times in India, when it was mandated by the country's succession and inheritance rules. The dowry was originally given by the bride's family to provide financial security for her after her marriage, as women were not educated at the time. A problem occurs when people use dowry as a means of social advancement. The parents are doing everything they can to get away from their daughters as quickly as they can. In addition, they are searching for a more affluent suitor. Both their social and financial standing and the ability to marry off their daughters are improved as a result of this arrangement. For these two reasons, the practise of dowry has grown in popularity. The concept of dowry is relevant in three ways: before the marriage, at the time of the marriage, and after the marriage, which may appear to be an interminable period "in connection with marriage of those couples", nevertheless, are critical. It is therefore essential that valuable property, whether tangible or intangible, be



offered as a dowry in order for a couple to enter into a marriage. Dowry once again serves as an indicator of social status in modern India. They are always eager to negotiate a deal with the parents of the groom since they can profit from it. Things only become worse as dowry demands rise, and this is especially true when money is exchanging hands. If the quantity of money or gifts that are exchanged at a wedding ceremony is increased, there may be problems among family members. There may be no end to these demands as long as dowry remains a hot button issue. In spite of the fact that women are doing extremely well in other areas of their lives, the tradition of accepting dowry still persists in society. It is illegal to give or receive dowry under the Dowry Prohibition Act of 1961. To die a dowry death is to be killed by the spouse or his family in order to collect money. According to the Indian language, this phenomenon is known as "dowry deaths". Section 304-B of the Indian Penal Code has made dowry death a felony in India, however dowry is still a social scourge that continues despite the existence of clear laws on the topic. Sadly, throughout the years, the term has transformed from being a kind gesture to a terrible nightmare. Section 498A of the IPC the most widely used, debated, and disputed. Immediate action was required to address dowry and separate the victim from those accused of abusing her. If a law is enacted in response to public outcry, it is rarely the result of careful planning. Even after decades, Section 498A is woefully inadequate for dowry-related crimes. dowry is not as big a problem here as it is in India and other South Asian countries. On the other hand, Bangladesh and Pakistan are in a

hazardous situation.¹ There is an epidemic of dowry in the United States. It's time for Bangladesh's government to take note of this status-seeking once more. Islamic personal law governs Pakistan, which has a sizable Muslim population. In Islamic law, a prospective husband must pay 'dower,' which is the equivalent of a dowry, to show his respect for his future wife. In Pakistani society, the issue of dowry is becoming increasingly widespread. When a daughter marries, she is often forbidden from inheriting as well. We do, however, observe a 'set portion' for the daughter of the groom. A tiny dowry is given to the bride at the time of the wedding but they are not entitled to any of their family's fortune. The emergence of the materialistic trend in Pakistan has intensified the problem of dowry. In 1976, Pakistan approved the '**Dowry and Bridal Gifts (Restriction) Act**' which governs dowry and bridal gifts. A violation of this clause might result in imprisonment and/or a fine of up to Rs 10,000 under this Act, which prohibited dowry property from exceeding Rs 5000. There has been no federal legislation on the subject since the 18th Amendment, as the problem came under provincial jurisdiction. In order to limit the amount of money spent on marriage and the number of dowry items that can be presented to newlyweds, the Pakistani government created this law. Occasionally, a protest against dowry-related violence takes place "Jahaiz ek laanat hai" is a catchphrase that is chanted often. As a result, people are more likely to remain silent. Like any other cultural standard, the practise resumes. People appear to have accepted the practice's permanence it's impossible to abolish this practise because

¹ Bloch, F and V. Rao (2002) "Terror as a Bargaining Instrument: A Case Study of Dowry Violence in Rural

India". *The American Economic Review* 92, (4), pp. 1029-1043.



it's so firmly ingrained in our society.² India is a signatory to a number of international human rights treaties, including the "Universal Declaration of Human Rights," the "International Covenant on Civil and Political Rights," the "International Covenant on Economic, Social, and Cultural Rights," and the "Convention on the Rights of the Child." These treaties provide theoretical solutions to the dowry problem. CEDAW codifies the rights of women, which are of primary importance when talking about dowry-related violence. However, the application of international law to address dowry killings is hindered by non-intervention and cultural relativism.³

An excellent question to ask yourself when evaluating the benefits of any law, for example, is why is the law not affecting social and behavioural change? that is, there isn't enough law enforcement Do some people in society detest the law for no apparent reason? To what end is the law being applied in a biased or skewed manner? Isn't law and order always a problem? Does this concern have any basis? What's preventing society from progressing and evolving, and why is that? When a system fails, who is left to suffer the full brunt of the consequences? It's not clear why criminals or offenders are so powerful that they defy law enforcement. With the answers to these questions, we can better define the country's legislative strategy and produce legislation that is useful, effective, and advantageous.

² Rehman, F. (1988). Dowry Problem in South Asia. *Journal of Law and Society. University of Peshawar*, 7(11), 33-38.

2. THEORY OF CRIME AND VICTIMIZATION

Dowry demands and dowry death can be linked with radical feminist criminological theory as Feminist radicals argue that the key issue is men's subordination of women in the home and in politics. Financial dependency of women, poverty, lack of education etc. are the most common reasons for the demand of dowry and cruelty and the Legislations are assuming all this before enacting these laws such as Domestic Violence Act, 2005, dowry prohibition Act and Sections 304B and 498A Indian Penal Code, 1860. Also, laws are under presumption that husbands and relatives are responsible for the dowry death therefore it can be said that legislature are considering the radical criminology, liberal and Marxist theory of feminism. Following are the reasons why patriarchy system and dominance of husband and his family can be seen:-

- 2.1. The 1960s' emphasis on liberal and Marxist feminism sparked a response that led to the rise of radical feminism. The focus of radical feminism is on the private and political oppression of women by men. The language around rape and victim blame is one example of this subordination. Rape was not an inherent inclination among men in the 1970s, but rather a socialisation that portrayed women as objects, according to radical feminists. Rape was not simply a crime against virgin women, but against all women because of the dread of rape, which radical feminists, together with liberal feminists, amended rape statutes in all states during the

³ Laurel Remers Pardee (1996). The Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe?. *Ariz. J. Int'l & Comp. L.* 13: 491, 510.



1970s and 1980s. Radical feminism rejects the patriarchal premise that the private sphere for women concentrates on child-rearing, marriage, and the upkeep of the family unit. The political sphere of patriarchy harms women through rape, domestic abuse, and prostitution because of this private domain. There are many subfields of feminist criminology. Although other "strands" such as postmodernism and ecofeminism exist, liberal, radical, Marxist, and socialist feminism are well-known. There is no shortage of feminist criminology ideas and modifications, most of which focus on criticisms of how orthodox criminology has overlooked, misinterpreted, or stereotyped women offenders. The gender ratio issue has been addressed by most female criminologists or criminologists of women who study gender and crime why women are less likely, and men more likely, to commit crime. Others focus on the issue of generalizability whether traditional male theories can be modified to explain female offending. Although the major concern in most criminology is that gender matters and should not be overlooked, most feminists are eager to point out where stereotypes thinking, and theoretical dead ends exist.⁴ Therefore, all the Indian Legislations related to dowry prohibition, cruelty, abuse and death tries to deal with patriarchy system and are assuming that women are weaker sections of the society and protection of law is much needed.

2.2.Liberal feminism aims to raise awareness of women issues, promote women rights, expand women chances, and transform women's position in society by working

⁴ Chesney-Lind, M. (1997). *The Female Offender. Girls, Women and Crime*. Thousand Oaks, California: Sag.

within the current social institutions. It examines how women came to be subservient, what male authority is, and how society may be reformed as a result of radical feminism. If women are convicted for property or sexual offences, *Marxist feminism links patriarchy or male privilege to the economic framework of capitalism by threatening masculine dominance of property relationships or male control over women's bodies*. Socialist feminism advocates for more equal responsibilities for women, including those of sex providers, child bearers, nursemaids, and homemakers. Language production is replaced by economic production in postmodern feminism, which examines how speech and male-dominated thought is utilised to separate women from males.⁵

2.3.According to *D'Unger*, radical feminist theory focuses on how men have an unfair advantage over women in society. Domestic violence, pressure for dowry, abuse, death sexual assault as well as other related crimes are symptoms of male dominance and exploitation, in the opinion of radical feminist. Studies on men and women contrasting perspectives on pornography, sexual assault, and violence indicate viewpoints that provide implicit as opposed to overt approval of these interactions. Research on sexual oppression and victimisation of women, sexual harassment, and pornography is often the subject of radical feminist studies. Furthermore, radical feminists have led the charge in advocating for measures to combat domestic abuse, arguing that such crimes went unpunished for

⁵ Anthias F. (2013). The intersections of class, gender, sexuality and "race": The political economy of gendered violence. *International Journal of Politics, Culture, and Society*.27(2):153–171.



too long because of the widespread acceptance of violence against women in society. The radical feminist argues that the lack of public opposition to this form of crime normalizes such violence, and that as a result, women themselves come to accept it as normal and acceptable treatment, particularly in the lives of girls who are raised in an abusive family.⁶

2.4. The works of *Karl Marx and Friedrich Engels* are heavily cited by feminists who fall under this class. Women's subordination was attributed to a system in which men owned and controlled most private property in society, according to Marxist feminists' initial principles. Although men possess more private property than women do, this ownership tends to be passed down from father to son, further maintaining private property ownership among the male population.⁷

2.5. Women and men, Marxist feminists argue, must unite in order to recognise their shared condition of being exploited by the wealthy bourgeoisie. The ultimate goal of Marxist feminists is the overthrow of capitalism's power structure, just as it is with orthodox Marxism. As a result, the capitalism system is held up as the root cause of women's inequity. According to some feminists, the abolition of a capitalist system will also erase the gender prejudice in such a society.⁸

2.6. This means that in order for males to organise themselves and each other as they do, billions of female individuals, nearly all of whom see life on this planet, are forced into a more-or-less willing subordination and servitude toward their male counterparts. *Marilyn Frye* is a philosopher who has written extensively on the subject of gender inequality. To a large extent, this reduction is focused on heterosexual relationships and encounters such as courtship, marriage-arrangement, married life, prostitution, the normative family, and child sexual abuse or abuse of children. When women and girls interact in heterosexual relationships, they are more vulnerable to being abused, insulted, and degraded. This is how women and girls are reduced to their sexual servitude, as well as to their roles as housewives and factory workers and the mothers of men's children.⁹ Therefore, there existed a sex-based division of labour according to Marxist gender theory, with males primarily responsible for the domestic sphere and women primarily responsible for reproductive activities. Women aren't seen as being capable of productive work in a patriarchal society, thus they aren't given the same opportunities as males. As a result of the patriarchal mindset, it is anticipated that women should first take care of domestic duties before taking on a professional role. As a result of patriarchal norms and ideals, women's reproductive activities are seen as preferable. Consequently, women's basic necessities are met only by their families. Gender prejudice

⁶ Jensen, Roberty. (2021). Getting Radical: Feminism, Patriarchy, and the Sexual-Exploitation Industries, *Dignity Journal*, 6(2).

⁷ MacKinnon CA. (1982). Feminism, Marxism, method, and the state: An agenda for theory. *Feminist Theory*. 7(3):515–544.

⁸ Meyers DT. Feminism and sex trafficking: Rethinking some aspects of autonomy and

paternalism. *Ethical Theory and Moral Practice*. 2013;17(3):427–441.

⁹ Angela K. Carlson-Whitey. (1994). Dowry Death: A Violation of the Right to Life Under Article Six of the International Covenant on Civil and Political Rights, *17 PUGET SOUND*.



in society is exposed as a result of the patriarchal attitude toward women. Consequently, the problem of dowry is becoming more and more prevalent, and this has a serious impact on society.

3. CRITICISM OF THE THEORY¹⁰

Male and female offenders are both criminals, but earlier criminologies have failed to acknowledge this truth. Men are assumed to be criminals when we talk about the term "offenders". Individual or biological abnormalities was emphasised in the consideration of female offenders, as well. Biochemical explanations were offered. As a result of feminist writing, women's treatment in the criminal justice system has been highlighted. By addressing the historical belief that women benefit from chivalry in a male-dominated society and hence have more lenient punishments, it has helped to change the outmoded and ambiguous premise of "common sense." Because feminism previously overlooked areas of legal studies now have begun to receive more attention. For example, women are subjected to crimes like domestic violence, dowry death and sexual assault, even in the supposedly safe house where they live facing all kinds of cruelty and abuse. Writing by women has helped shield girls and women from male violence and generated questions about how the victims or the survivors may be assisted. In the end, attention was drawn to the fact that criminal activity is disproportionately skewed toward men, leading to queries like, "Why do women commit so few crimes while men commit so many?" Males have been expected to be the most likely criminals due to the relatively low crime rates in this area.

¹⁰ Carlen, P., (1992) 'Criminal Women and Criminal Justice, the Limits to and the Potential of, Feminist and

As far as women's criminality is concerned, it's a sign of "class strife" and Poverty is a common problem for women when imprisoned. Feminist criminology is often criticised for being gender-centric and for having a nefarious ulterior aim of separating people. Feminists like Smart and Cain typically have theoretical and political ramifications because of their feminist ideology.

4. INDIAN v. PAKISTANI LAWS RELATED TO DOWRY

4.1. INDIAN LAWS

We have regulations in place to prevent dowry and dowry-related offences, such as the following:

1. **The Dowry Prohibition Act, 1961:** A dowry can no longer be given or received. The legislation defines and punishes dowry. It punishes anyone who gives or accepts dowry. The maximum penalty is fifteen thousand rupees (Rs.15,000) and up to five years of detention, if the Court deems it necessary or appropriate. Those who exhibit an interest in dowry can be fined up to Rs.10,000 and imprisoned for up to two years, depending on the severity of the offence. In India, however, the widespread practise of dowry remains unabated despite the law.
2. Sections 304-B and 498-A of the Criminal Law Amendment Act, 1983, are two of the most important provisions relating to dowry.
3. Indian Penal Code, 1860 defines dowry death and punishes it under **Section 304-B**. In

Left Realist Perspectives'. *Realist Criminology Sage London.*



1986, this part of the code was added. In this section, "dowry death" is defined as—

“If a woman's death is caused by any burns or bodily injury, or occurs in a way that is not typical of a normal death, and it can be shown that her husband or any relative of her husband subjected her to cruelty or harassment for, or in connection with, a demand for dowry, such death shall be referred to as a "dowry death," and such husband or relative shall be deemed to have caused her death”.

This clause imposes a minimum sentence of seven years in prison and a maximum sentence of life in prison for those found guilty of the offence.

The Dowry Prohibition Act, 1961 has previously failed to prosecute numerous perpetrators because of this part and section 113-B of the Indian Evidence Act, 1872.

4. '*Cruelty by husband or relatives of the husband*' is defined in Section **498-A** of Chapter XX-A of the IPC, which imposes a three-year prison sentence and a \$2,500 fine on husbands or relatives of husbands who abuse or harass their wives.
5. Both the Sections **304-B of Indian Penal Code** and **The Indian Evidence Act Section 113-B** are predicated on the premise that dowry suicide is only the result of cruelty, as defined in Section **498-A**.
6. According to **Section 113-A of the Indian Evidence Act**, "*when a woman has committed suicide and the question is whether she was abetted by her husband or any relative of his and it is established that*

her suicide occurred within a period of seven years from the date of her marriage as well as her husband or such a relative of his had subjected her to cruelty, the court may presume”. It was reaffirmed by the Supreme Court in ***Pinakin Mahipatray Rawal v. State of Gujarat***,¹¹ that under Section 113-A, the Court may presume that a woman's husband and family members abetted her suicide if there is evidence that her husband or his relatives subjected her to cruelty as defined in Section 498-A of the Indian Penal Code.

7. “When a person is accused of the dowry death of a woman and it is proven that she had been oppressed and harassed by that person shortly before her death, the court will assume that the individual was responsible for the death”, according to **Section 113-B of the Indian Evidence Act, 1872. *State of Punjab v. Iqbal Singh***¹², decided by the Supreme Court, revealed that the lawmakers attempted to strengthen the arraignment's hands by including section 113-B in the Indian Evidence Act, which allows an assumption to be raised if certain facts are established and the horrendous incident has occurred within seven years of marriage.
8. In ***Pawan Kumar v. State of Haryana***¹³, the Hon'ble Supreme Court set down that the basic elements of Section 304-B IPC were: “*Death of a woman is either by burns or bodily injury or otherwise than under normal circumstances; it should be within seven years of marriage; it should also be shown that soon before her death she was subjected to cruelty or harassment by husband or any relative of husband; such harassment or cruelty should pertain to demand for dowry”.*

¹¹ (2013) 10 SCC 48.

¹² AIR 1991 SC 1532.

¹³ (1998) 3 SCC 309.



9. Protecting women in India from domestic violence was made easier with the passage of the Protection of Women from Domestic Violence Act, 2005 ("Domestic Violence Act"). A part of the anti-dowry legislation, the Domestic Violence Act covers all forms of domestic violence, including physical, verbal, emotional, economic, and sexual abuse. A woman can be compelled to pay dowry if she is subjected to harassment, injury, or other harm as outlined in **Section 3 of the Domestic Violence Act, 2005**.¹⁴
10. Code of Criminal Procedure includes **Sections 174 and 176** deals with the investigations and inquiries into the causes of unnatural deaths by police and magistrate

4.2. PAKISTAN LAWS RELATED TO DOWRY¹⁵

1. When it came time for a change, the Dowry and Bridal Gifts (Restriction) Act, 1976 was passed. A dowry is anything provided to the bride by her parents in connection with the marriage, whether directly or indirectly, but it does not include whatever the bride may receive under the laws of inheritance and succession that apply to her. According to the Dowry and bridal gifts Restriction Act, 1976, dowry is "any property provided to the bride by her parents in connection with the marriage", but it excludes any property that she may receive under the laws of inheritance and succession. According to the Act, a dowry or gift given to a bride or groom must not exceed Rs. 5,000. By law, any property provided to the bride by her husband as a

dowry or bridal present will be hers, as stated in the Act. There must be a list of gifts received in connection with a marriage for the purposes of this Act: "dowry, bridal gifts, and other presents received." Within fifteen days, the Registrar will deliver the list to the Deputy Commissioner. Punitive provisions of the Act provide for a term of up to six months in prison or a fine of up to ten thousand rupees. 1980 saw an amendment to the Dowry and Bridal Gifts (Restriction) Act. Parental declarations that they have not exceeded the prescribed limitations for their child's wedding expenditures will be made. Anyone in attendance at a wedding ceremony can now notify the Deputy Commissioner if they see anything that appears to be a breach of the Act. As a result, the dowry system in Pakistan has been addressed by the country's government. The first piece of law to address dowry in Pakistan was the West Pakistan Dowry (Prohibition of Display) Act 1967. It was a futile effort. Restrictions were established on dowry displays and confirmed that all gifts received by a bride were hers to keep. However, it failed to address the fundamental problem with dowry, namely the act of providing dowry in response to the groom's request. Under the Act, violators of restrictions were to be punished with a fine of PKR 1000 fine or imprisonment.¹⁶

2. As stated in Pakistan's Penal Code (Act XLV of 1860), "property" is both movable and immovable, and includes any valuable security". The dowry property that was to be "provided before or after six months of nikah" could not exceed PKR 5000. It

¹⁴ Anita, Rao .(2011). *Leading Cases on Dowry. Human Rights Law Network.*

¹⁵ Siasat Staff.(2020, 16 October).From Dowry Ban To Raise In Dowry Limit – Here Is Everything The New ‘Dowry And Bridal Gifts Law’. *Siasat.*

¹⁶ Caplon, Lionel. Bride groom price in Urban India, *Man (N.S.)* 19 (1984) pp 216-233.



overturned the 1967 ruling that prohibited the presentation of dowry by requiring "the display of all dowry objects". Under the Act, punishment for noncompliance included imprisonment and/or a fine of no more than 10,000 Pakistani rupees (PKR). The federal government would collect dowry items and distribute them to poor families that couldn't afford them. Afterwards, the rest is history. Despite the fact that dowry is an utter nuisance, no federal legislation has been passed on the subject. This makes a certain amount of sense. After the Constitution's Eighteenth Amendment, provincial administrations were responsible for enforcing marriage laws.¹⁷

3. There have been more revisions proposed than there have been genuine laws reducing or prohibiting dowry, which is hardly surprising. Balochistan was the first province to reply to the 1976 Act. *The Balochistan Dowry and Bridal Gifts (Restriction) Rules 1981* were passed by the province administration as an addition to the 1976 Act. The Rules outline how confiscated dowry articles must be used if the total sum exceeds the law's declared limit, which is set by the Rules. In accordance with the Family Courts' guidelines, a particular list of things must be established and must be given to the jahez khana. Since then, there has been no more legislation in Balochistan on the matter or the horrors committed there. Customary practises of bijjar, when tribes exchange gifts with each other at a marriage ceremony, are often utilised as an alternative to the traditional practise dowry (as many of them

condemn the practise of dowry). Bijjar, on the other hand, is only practised by a few people in the area.

4. Amendments made to the 1976 Act were made in 2016 by a private member of the National Assembly, the Dowry and Bridal Gifts Restriction (Amendment) Act. Efforts to ban the demand for dowry and make it punishable by six months in prison and a fine of no more than PKR 10,000 were the goal of the proposed legislation. According to the proposed legislation, the cost of weddings in urban areas should be increased from PKR 5k to 50k, and those in rural areas should be increased by 20k. According to the law, it said that a "detailed list of dowry" must be included in the marriage contract in order to avoid disputes over the dowry in the event of divorce. There was never a vote on the bill.¹⁸
5. To now, Punjab has kept its mouth shut about the situation. There are no prohibitions on dowry itself under the Punjab Marriage Functions Act 2016, a provincial regulation that restricts its public exhibition. Pakistan's Prime Minister's party, the PML-N, proposed legislation in 2019 to abolish the "menace".¹⁹
6. It was also Murad Ali Shah, Sindh's former chief minister, who opposed an outright prohibition because of his belief that a smooth execution was neither feasible nor possible. Similar attitudes could be seen in 2017 when the Women Development Department moved forward with the Sindh Dowry Act, he reflected.

¹⁷ Ahtisham Bashir(2020 February 14). K-P trying to control wedding spending Law passed in 2018 still needs to be implemented. *Tribune*.

¹⁸ Arshad, Arwa (2020 June 23). Dowry: A Hushed But Existing Relic. *Courting the law. courting the law*.

¹⁹ Ahtisham Bashir(2020 February 14). K-P trying to control wedding spending Law passed in 2018 still needs to be implemented. *Tribune*.



7. The Khyber Pakhtunkhwa Marriage Functions (Prohibition of Ostentatious Displays and Wasteful Expenses) Act 2018 hailed for being the first to establish measures to avert the dangers encountered by families who cannot afford dowries or who refuse to embrace the practise.
8. In the case of *Masud Sarwar v. Farah Deeba*²⁰, the PKR 5000 limit was referred to as "restrictive law" rather than "prohibitory law." An amount up to one lakh rupees (about \$1,500) might be retained notwithstanding the PKR 5000 restriction because the law did not ban any dowry items mentioned above this amount in *Tanveer Salamat v. Additional District Judge*²¹. Balochistan courts have virtually always allowed the wife to retain her dowry. *Mst Samina, v. Ali Akbar*, won her case, in which the court noted that she could not preserve receipts for all the items she bought to fulfil the dowry list's requirements. Therefore, the husband had to verify that no dowry had been paid. It was held that "solitary comments" by the wife in *Aziz-ur-Rehman v. Mst Bibi Jameela*,²² proved the existence or grant of dowry.²³

5. CRITICISM OF INDIAN LEGISLATION²⁴

1. Despite the **Dowry Prohibition Act, 1961**, and its two revisions in 1984 and 1986, no one has been able to stop the social evil of dowry. The following are the main reasons why the legislation has fallen short of its goal.

The Act gives a vague definition of "dowry" and is defined under the Act in a way that is confusing and vague. **Section 2** of the Act provides an explanation that undermines the law and nullifies its purpose. Unless they are given as consideration for the marriage of the parties, gifts of money, jewellery, clothing, and other items are not dowry. Both the giver and the taker of dowry are guilty of the same crime. As a result, the victim is held to the same standard of accountability as the perpetrators. The punishment for requesting a dowry is ineffective because it is too lenient. There is no deterrence here.²⁵

2. The Act failure is mostly due to the fact that it lacks enforcement. There is a dearth of investigative and enforcement machinery in place to properly implement its requirements, or to assist dowry victims in pursuing their cases. There may be fewer dowry tragedies if there is some sort of equipment that can step in when needed and provide assistance to the victim. A complaint must be filed within a year of when the offence occurred in order for the court that has jurisdiction under Section 7(a) to take cognizance of the case.
3. It is pointless to expect even the aggrieved party to submit a complaint because the bride's parents, who are generally the victims, would be reluctant or unwilling to do so out of concern that their daughters would be victimized by the perpetrators of the crime. Because of this, the Act failed to even reduce the evil, much less eliminate it.

²⁰ 1988 CLC 1546.

²¹ (2019 YLR 1862).

²² 2020 CLC 380.

²³ Arshad, Arwa (2020 June 23). Dowry: A Hushed But Existing Relic. Courting the law. courting the law.

²⁴ Kapadia, K.M. (1955), *Marriage and Family in India*, Geoffrey Cumberledge, Bombay, Oxford University Press.

²⁵ Achar, M.R. and Venkanna, T. (1962), *Dowry Prohibition Act*, Allahabad, Law Book Company.



4. Cruelty to a wife by her husband or any of his family is punishable by up to three years in prison and a fine under Section 498-A of the Indian Penal Code. Women who commit suicide or suffer life-threatening injuries as a result of "cruelty" are described here as those who engage in willful misbehaviour, both mental and physical. A violation of this clause is not eligible for bail or commutation. The concept of "cruelty" under this clause includes dowry harassment.
5. However, dowry harassment does not necessarily include all forms of brutality. It is up to the courts to draw a line to limit the extent of dowry harassment and to specify the exact conditions required to constitute the offence, as well.
6. Through several pieces of legislation, women's equality and justice have been steadily progressed. Families of the victims have found solace and justice thanks to these legal provisions. Married women have suffered and do suffer at the hands of their husbands and the members of their families who support them. Such rules make it impossible for perpetrators to hide behind outmoded customs that violate a person's right to life, such as the right of a wife to survive. However, similar clauses have their drawbacks, as crafty women may use them to blame their husbands and in-laws for domestic spats and other minor disagreements. Indian judicial system is not powerful enough to distinguish between frivolous and legitimate claims, and it will do so for a long time to come.
7. The absence of severe penalties is a major contributing factor to the prevalence of such crimes. Various laws exist to safeguard women against dowry violence, but they need to be strengthened. Capital punishment is common in countries like the United States and Saudi Arabia. However, in our country, the death penalty is not readily available. It was held in *Bachan Singh V. State of Punjab*²⁶, that capital penalty can be awarded in the "rarest of rare circumstances", but that even in such cases, death sentence is largely avoided. According to humanitarian principles it is recommended that those who harass and assist their victim to the point where they take their own lives should be punished severely.
8. Although section **304B of the Indian Penal Code** guarantees penalties for crimes committed within seven years of marriage, there are numerous reasons why the in-laws may turn against her after that length of time. When complaints are made beyond this time period, it is necessary to file charges of dowry violence.
9. Expressions such as "soon before marriage" is not clear in terms of cruelty and vagueness can be observed.
10. State and region-based laws are also required as in case of Pakistan. For e.g., Kerala, Assam face more dowry issues as compared to other states and there are no clarity for the same. Also, the recent bill and amendment in 2020 suggested the following reforms in the main Act of the Pakistan which can be imbibed in Dowry Prohibition Laws. *"The new dowry bill will increase the aggregate value of the dowry and bridal gifts from Rs. 5,000 to four Tolas of gold (Rs. 470,000). It will prohibit the demand of dowry by a bridegroom and his parents and ban the display of bridal gifts and prohibit a*

²⁶ AIR 1980 SC 898.



wedding guest from making any present exceeding the value of Rs. 1,000 as compared to the previous limit of Rs. 100. The new dowry law will increase the limit to four Tolas gold from Rs. 2,500 for the total expenditure on a marriage, excluding the value of dowry, bridal gifts, and presents. The marriage expenses include Mehndi, Baarat, and Valima's functions. The draft law proposes that at the time of Nikkah, the parents of each party to a marriage shall prepare and enter in the appropriate column of the Nikahnama the complete list of dowry items and bridal gifts, along with their values, according to the details of the summary”.

11. No clear authority for the power of police and hence more frivolous complaints due to arbitrary use of Section 498A. The police's job is to protect the public, yet they actually instil terror in the hearts and minds of the general population when they carry out an act of police. It is also alleged that the police's own attitudes, behaviours, and perceptions are hampering their ability to effectively implement laws in today's society. The most common accusations levelled against police by the general public are that officers arrive on the scene of a crime too late, misrepresent the facts in the First Information Report, preferentially label dowry deaths as suicides, and conduct investigations in an inefficient and slow manner. The police are reluctant to file cases of violence against women because they see it as a family matter.
12. Indian laws are more focused on what can be done after the death or cruelty rather than what can be done with more stringent punishment at early stage itself before asking for dowry and incidence happening.

6. SUGGESTIONS AND CONCLUSION

In my opinion, these laws have helped to develop equality between the sexes in our society. **Section 498A of the Indian Penal Code** has laid the groundwork for the criminalization of domestic violence and cruelty. **Section 498A of the IPC** now protects women from being subjected to domestic violence as a result of their husbands' mistreatment. Section 304-B IPC, which for the first-time recognised dowry death as a particular crime, is another crucial clause that fascinates me. By being put into effect, it further legitimised dowry death's status as a social ill. The legislature's decision to include this clause has proven to be beneficial to the state's female residents. Dowry deaths can be penalised using Section 113-B of the Evidence Act, which places the burden of proof on the accused in such circumstances. Dowry death has been put into perspective today. The Indian legal system has come a long way since it was first established, but there is still more to be done. The victim's relatives may make false and spurious claims in dowry death cases, which is unfortunate. Oftentimes, the husband's entire family is arrested, even if they aren't involved in the crime. It can be understood how difficult it may be to put in place safeguards to ensure that members of a family, especially children, are not unfairly penalised for actions they had nothing to do with. As a result of this, there is some protection for the innocent in the courts. All systems have flaws, and India is no exception. Misuse should be dealt with appropriately rather than undermining the laws' intrinsic necessity. These laws serve an important social purpose. Because of this, as a citizen of India, improvement in the current legal framework and hope for future



advancements in the fight against this crime. Progressive legislation, progressive judicial interpretations, and increased social awareness will soon put an end to such heinous acts. Steps that can be taken to improve the well-being of women in our society include efforts must be made to educate the public about all legislation that benefit women, recommendations for how courts can better serve the needs of dowry victims by expediting the process of justice, the Judicial Magistrate should perform the victim's death declaration immediately because the victim is in a critical state and the government should set up counselling centres to help women who are being harmed physically and mentally. Further, priority should be given to dowry death cases so that they can be listed quickly and efficiently.

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