

TO BRING A NEW PERSPECTIVE ON DOWRY CRIME TO ATTAIN JUSTICE FOR WOMEN

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Abstract

India has great values, beliefs and cultures which has witnessed the richness of social bonding between various cultures. God has created this beautiful universe without discrimination. The ancient Indian period was from 3000 BCE to around 10th century AD when India was known as the “Golden Sparrow”. A woman is an embodiment of Shakti, the energy that drives the Creation. It is a misconception, amongst many others, that women were oppressed or were not given an equal status in our scriptures. Our Vedas have no mention of any prejudice against women. In fact, in earlier times there were no surnames, children were known by their mother’s names the womb that they came from. It is only with the merger of Shiv and Shakti that the Creation is manifested. If man is a vehicle, woman is the fuel, both are redundant without each other. Our Vedic seers knew of this and that is why our Vedas explicitly talk about how parents should provide for the best education to women, and that a woman with her competency should then marry a deserving man. She should then help her husband through her competency to achieve all worldly. Even after knowing the importance of the women, society is discriminating them and heisting to give equal rights. Our social and traditional beliefs follow dowry and cruelty with them though many legal provision are there.

“God Dwells-Where Women Are Honoured”

Keywords: - New Perspective, Dowry, Dowry Crime, Justice for Women.

INTRODUCTION

Meaning of dowry system¹

In this Act, dowry means any property or valuable security given or agreed to be given either directly or indirectly

- (a) By one party to a marriage to the other party to the marriage; or
(b) By the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

- Explanation I. At or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or *Mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.
- Explanation II. The expression valuable security has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

Essential Division by Researcher

Investigator divided into three basic parts

- (a) Primary Discrimination with women (By her own Parents)
(b) Secondary Discrimination with women (At her husband side)
(c) Population and Dowry

(a) Primary Discrimination with women (By her own Parents)

In general, property of family is not equally divide between male and female members which is the primarily cause of discrimination. If we as a parent are not giving their share in property then how we can expect from others (husband’s side).

(b) Secondary Discrimination with women (At her husband side)

Social status and tradition are considered more important than girl’s education etc. at the time of marriage.

(c) Population and Dowry

There is a direct correlation found between population increase and dowry. In general, if first 2 or 3 children are girls then people think that a boy should be present in the family and this increases population as well as being 2 or 3 girl children in the family has to marry first, and parent think that equal amount spent at the time of both girls marriage should be recover from boy’s marriage in terms of dowry.

¹ https://en.wikipedia.org/wiki/Dowry_system_in_India

Explanations of the above three basic parts via diagrams

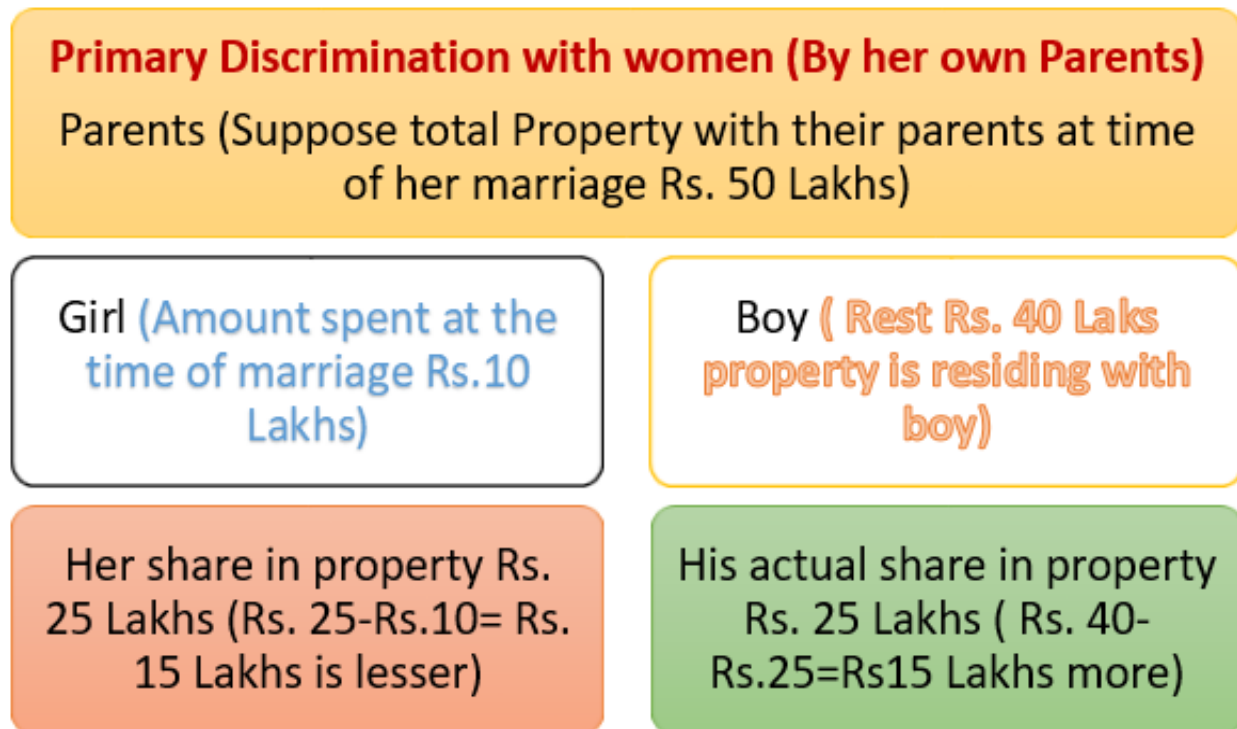


Diagram-1 Primary Discrimination with women (By her own Parents)

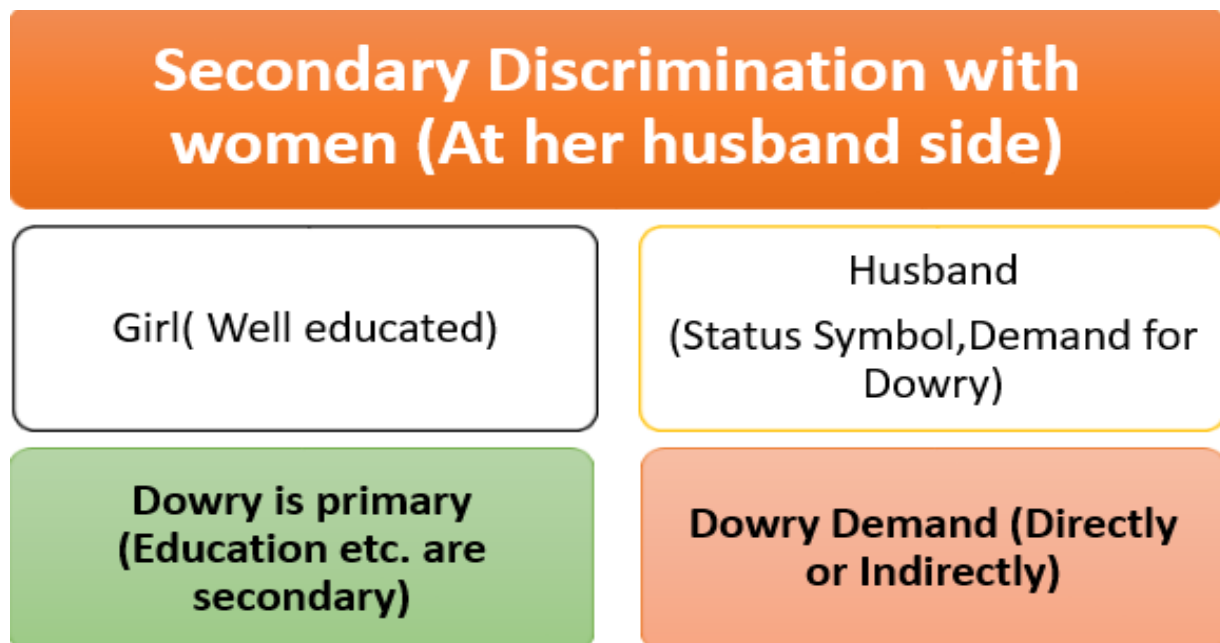


Diagram-2 Secondary Discrimination with women (At her husband side)

<https://www.gapinterdisciplinaries.org/>

Population and Dowry

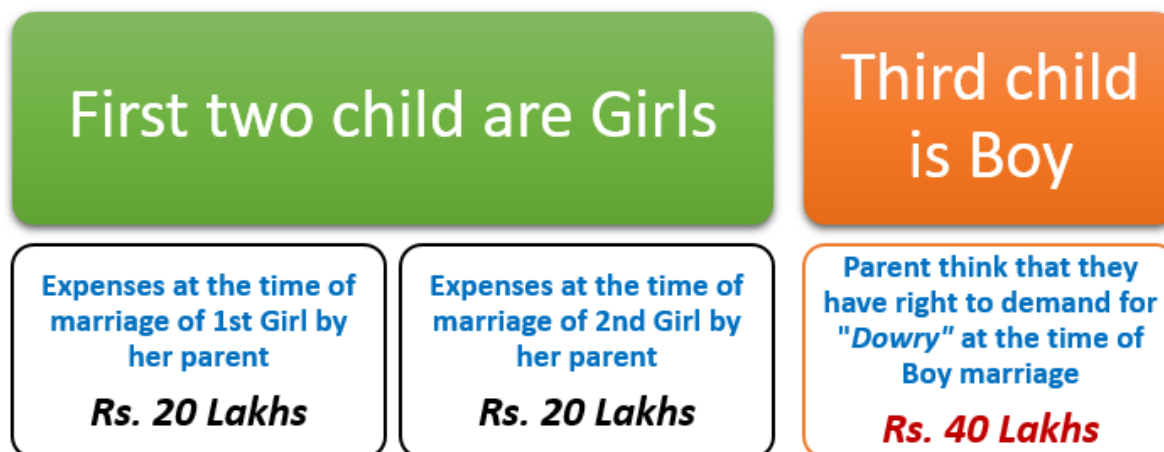


Diagram-3 Population and Dowry

Woman and Indian Religious History²

Manusmriti has been single-handedly responsible for the derogatory position accorded to women in the post-Vedic period. The watertight dichotomization of the public and private sphere and the confinement of the women in the former has found its requisite justification in a text like Manusmriti. The ubiquitous presence of women in Hindu texts can never be overlooked.

Women have always been regarded as the guardians of *dharma*, custodian and transmitter of patriarchal values. The Vedas and Upanishads are replete with anecdotes of how gods and sages from time immemorial have created, used and controlled women for their own benefits and other's destruction. *Manusmriti* imparts detailed knowledge of the rights and duties to be performed by married women and being subservient to her husband tops the list.

A woman who controls her mind, speech, and body and is never unfaithful to her husband attains the world of her husband, and virtuous people call her a 'good woman'. By following this conduct, a woman who controls her mind, speech and body obtains the highest fame in this world and the world of her husband in the next.

RESEARCH METHODOLOGY

Meaning of Legal Research³

Legal research has been defined as a process of finding the law that governs an activity and materials that explain or analyze that law. Legal research includes various processes ranging from gathering information to analyzing a problem's facts and communicating the investigation results.

Legal research means scientific and purposive investigation or inquiry of a problem or issue of any discipline. Likewise, legal research is a scientific investigation into a legal issue or problem and the process of gathering evidence or information for ascertaining an assumption or verifying some hypotheses. Legal research is an inquiry and investigation made by judges, lawyers, and legal researchers in the quest for a deeper and fuller understanding of the true nature of legal problems.

It seeks to expound on various aspects of the legal system, the legislative and judicial process, and the nature and function of law in society. Legal research is also concerned with "the understanding and internal coherence of legal concepts and legal reasoning. Legal research is not a mere description of facts but a purposive investigation to explain or interpret a legal phenomenon. It goes beyond description and requires analysis. In this sense, it is a creative process and involves normative activities. Legal research is diligent, and continued search is for the more probably accepted answer to a legal question.

² <https://pulitzercenter.org/projects/dowry-system-india-trend>.

³ https://en.wikipedia.org/wiki/Legal_research

Definitions of important terms (New Perspective in Law, Dowry, Justice, Crime against Women)

"This gives you a fresh perspective on the people and situations involved".

By:-Collins Cobuild

"The money, goods, or estate that a woman brings to her husband in marriage"

By:- English Dictionary

"Dowry" means any property or valuable security given or agreed to be given either directly or indirectly.

By:- Dowry Prohibition Act, 1961

"A concern for justice, peace, and genuine respect for people"

By:- English Dictionary

"Cruelty in the form of torture or harassment of a woman with the objective of forcing her to meet a demand for property or valuable security is a form of dowry crime".

By:-Wikipedia

VARIABLE OF THE STUDY

Variables are names that are given to the variance we wish to explain. A variable is either a result of some force or is itself the force that causes a change in another variable. In experiments, these are called dependent and independent variables respectively.

OBJECTIVES OF THE STUDY

Aims are statements of intent. They are usually written in broad terms. They set out what you hope to achieve at the end of the project. Objectives, on the other hand, should be specific statements that define measurable outcomes, e.g. what steps will be taken to achieve the desired outcome.

- To study the adverse impact of dowry system on woman and her family.
- To 'know' and 'understand' a phenomenon with a view to criticize the problem.
- To identify the reasons of dowry system in India.
- To give new insight to legal system on dowry crime.
- To explore the preventive measures of dowry.

HYPOTHESIS OF THE STUDY

A hypothesis is a statement that introduces a research question and proposes an expected result. It is an integral part of the scientific method that forms the basis of scientific experiments. Therefore, you need to be careful and thorough when building your hypothesis.

POPULATION OF THE STUDY

A research population is also known as a well-defined collection of individuals or objects known to have similar characteristics. All individuals or objects within a certain population usually have a common, binding characteristic or trait.

SAMPLE OF THE STUDY

A sample is a group of people, objects, or items that are taken from a larger population for measurement. The sample should be representative of the population to ensure that we can generalize the findings from the research sample to the population as a whole.

TOOL OF THE STUDY

Articles, Research papers, Thesis and Dissertations, Reports of Commissions, Court judgments and Case commentaries etc. General source materials relating to problem, their background knowledge and knowledge of previous findings in similar cases is easily read in numerable available material in the library.

RESEARCH METHODOLOGY OF THE STUDY

There are essentially 2 main methods of legal research – doctrinal and non-doctrinal. Doctrinal or non-empirical research is a type of research wherein the subject material for the research is found in existing material such as books, articles, statutes, judgments etc. In the present study researcher used doctrinal research methodology.

CONSTITUTIONAL PROVISION

Women Rights in India as per constitution⁴

The Constitution of India not only allows equality to women but also empowers the State to use measures of positive discrimination in favor of women for neutralizing the cumulative socio-economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of the law; prohibits discrimination against any resident on the grounds of religion, race, caste, sex or place of birth, and ensure equality of opportunity to all citizens in concerns relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of special importance in this regard.

Constitutional Privileges to women⁵

- Equality before the law for women (**Article 14**).
- The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (**Article 15 (i)**).
- The State to make any special provision in favor of women and children (**Article 15 (3)**).
- Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (**Article 16**).
- The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (**Article 39(a)**); and equal pay for equal work for both men and women (**Article 39(d)**).
- To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (**Article 39 A**).
- The State to make provision for securing just and humane conditions of work and for maternity relief (**Article 42**).
- The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (**Article 46**).
- The State to raise the level of nutrition and the standard of living of its people (**Article 47**).
- To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (**Article 51(A) (e)**).
- Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (**Article 243 D(3)**).
- Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (**Article 243 D (4)**).
- Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (**Article 243 T (3)**).
- Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (**Article 243 T (4)**).
- **Dowry Prohibition Act India [1961]⁶**
- Dowry Prohibition Act, Indian law, enacted on May 1, 1961, intended to prevent the giving or receiving of a dowry. Under the Dowry Prohibition Act, dowry includes property, goods, or money given by either party to the marriage, by the parents of either party, or by anyone else in connection with the marriage. The Dowry Prohibition Act applies to persons of all religions in India.

Domestic Violence Act - 2005

Causing hurt, injury or danger to life, limb, health, safety or well-being, whether mental or physical. Causing harm, injury, or danger to the woman with an intention to coerce her or any other person related to her to meet any demand for dowry.

(Physical abuse, Sexual abuse, Verbal abuse, Economic abuse)

Power of Magistrate under this act

- Direct the respondent or the aggrieved person, either singly or jointly, to undergo counseling.
- Direct that the woman shall not be evicted or excluded from the household or any part of it.
- If considered necessary, the proceedings may be directed to be conducted in camera.
- Issue Protection order, providing protection to the woman.

⁴ <https://madhavuniversity.edu.in/women-rights-in-india>.

⁵ <https://vikaspedia.in/social-welfare/women-and-child-development/women-the-indian-constitution>.

⁶ <https://wcd.nic.in/act/dowry-prohibition-act-1961>.

- Grant monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence.
- Grant custody orders, i.e., temporary custody of any child or children to the aggrieved person.
- Grant compensation/damages for the injuries. Including mental torture and emotional distress caused by the acts of domestic violence committed by that respondent.
- Breach of any order of the Magistrate is an offence which is punishable under the law.

JUDICIAL REVIEW

Common Provisions in IPC

- The Crimes Identified Under The Indian Penal Code (IPC) Rape (Sec. 376 IPC)
- Kidnapping & Abduction for different purposes (Sec. 363-373)
- Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
- Torture, both mental and physical (Sec.498-A IPC)
- Molestation (Sec. 354 IPC)
- Sexual Harassment (Sec. 509 IPC)
- Importation of girls (up to 21 years of age)

Major recommendations made by the Justice Verma Committee are as follows⁷

- The Panel rejects the death penalty for rape, retains existing punishment of 7 years of life imprisonment (in which convict may be released after 14 years at govt's discretion)
- But if rape causes death or leaves the victim in a vegetative state, imprisonment should be 20 years to rest of convict life.
- Punishment for gang rape to 20 years to rest of convict life. If gang rape causes death or leaves the victim in a vegetative state, convicts should be jailed for the rest of their lives. Same punishment for repeat offenders.
- If the victim is a minor, the panel recommends a minimum 10 years of jail, going up to life sentence. If the minor dies during rape or is reduce to a vegetative state, the sentence should range from 20 years to rest of convict's life.
- Panel for recognizing new offenses, such as disrobing a woman, trafficking and stalking.
- Introducing offense of 'breach of command responsibility', making a senior officer of security forces liable to the jail of 7-10 years if subordinates commit rape.
- 'Intentional touching' to constitute the offense of sexual assault with a maximum punishment of 5 years.
- Custodial rape to attract a minimum of 10 years jail, a maximum life term.
- Public disrobing of a woman made a specific offense and will attract jail 3 to 7 years.
- 'Voyeurism' or 'peeping toms' could get 3 years in jail.
- Stalking offense referred to as 'eve teasing' included in the specific offense.
- Rape to be made gender-neutral. Violent and forced sex on either gender to be 'sexual assault'.
- The panel doesn't recommend lowering juvenile age but wants juvenile justice system strengthened.
- Marital rape to be an offense for women of all ages.
- Recommended the rape cases by Armed Forces be treated in ordinary court, not Court Marshal.
- Acid attack to be a specific offense: will attract a minimum of 10 years in jail as the victim's right to live with dignity is impaired.

FINDINGS

Dowry payments in Indian villages have been largely stable over the past few decades, a World Bank study has found. Researchers looked at 40,000 marriages that took place in rural India between 1960 and 2008. They found that dowry was paid in 95% of the marriages even though it's been illegal in India since 1961.

Various reasons found for dowry during the research

- The practice, often described as a social evil, continues to thrive and leaves women vulnerable to domestic violence and even death.
- Paying and accepting dowry is a centuries-old tradition in South Asia where the bride's parents gift cash, clothes and jewellery to the groom's family.
- Rural Indian culture has typical social system which encourage dowry more.
- Majority of the parents are discriminating the girl child in the family.
- Boys are having more autonomy than girl child.
- Social system is restricting girl child in many ways.

⁷ <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary>.

- In general, a close relationship between population and dowry is shown if first 2 or 3 children are girls and then a Boy comes. At the time of marriage parent has to spend on both girls, and parents believe that they can recover equivalent amount of dowry at the time of boy marriage.
- Distribution of parental property is not proper.
- Ever after 2005 legal provision which give right to girl child in parental property but parent forcefully (direct or indirect way) transfer property to boys member and thereafter they do not give much importance the to them.

SUGGESTIONS

We as the citizens of India, marching towards the new millennium, should also strive for the discontinuation of this evil practice. Dowry is a black spot on the bright face of the country. But it cannot be done away by the elderly people. Only the younger generation can do it.

- Need right of equality to girl child.
- Parent's property should be equally divided between girl child and boy child at the time of girl's marriage.
- As per 2005 legal provision, girls right in parental property need to change and make this right into whole life non-transferable (But women's Legal heirs does not have any right in such case otherwise it will be more complicated).
- Both Wife and Husband & his family should be given enough time to prove innocent herself by magistrate before to police involvement except some criminal cases.

CONCLUSION

In a society which is highly divided into various social stratification, wiping out custom, values and beliefs which is being easily be wiped out so easily. New Indian society could not go far from ancient India in the sense that girls are not treated equal to boys and dowry is considered to be an integral part of marriage even today. Dowry is a social evil which is 'hated' by most of the competent Indians but 'practiced' very proudly in their own lives. It shows the crude material difference between theory and reality, delivering a speech and living that out, ethics and practicality. Today marriages are longer the combination of two soul, it is just a kind of business transaction. Dowry system is against the law of equality between man and woman. In spite of modernization and the increasing role of educated women in all walks of life, the practice of the dowry in India is becoming widespread, and the value of dowries is increasing indirectly. If a bride's family fails to pay the amount of dowry demanded by the prospective groom's family, the bride will be cruelly treated by the husband and in-laws, and in many cases it can lead to conspiratorial death. In conclusion, I would say that laws and provisions alone cannot cure the social maladies, there has to be a strong campaign for creating awareness among young men and women and society. Modern women need real social, political, financial and moral support in their fight against the system. They have to be empowered so that they can take their decisions about their own life by refusing the dowry system. Above all, the social attitudes and mindsets of society and people should change their self-first.

"Education to a Girl Means, Knowledge for Three Generations"

REFERENCES

(a) Books:

- [1] DR.S.R, Mayani (2012), Legal research methodology.
- [2] Deepu Krishna (2021), the Dowry Prohibition Act, 1961.
- [3] Mangala Subramaniam (2009), Dowry," Bridging the Gap between Theory and Practice".
- [4] Ram Shelkar (2021), Dowry Deaths.
- [5] B.V.R Sharma (2020), Law Relating To Cruelty and Dowry Death.
- [6] Dr Jyoti (2018), the Dowry Death - A Deep Analysis of Burning Issue Ailing Our Society
- [7] Dr. Ajay Chauhan (2009), Dowry, Bribe, Crime and Punishment.

(b) Others:

(i) Internet References:

- [1] https://en.wikipedia.org/wiki/Dowry_system_in_India
- [2] <https://pulitzercenter.org/projects/dowry-system-india-trend>.
- [3] <https://www.globalcitizen.org/en/content/8-reasons-dowries-are-bad-for-women/>
- [4] https://www.researchgate.net/publication/321683825_Chapter_2_The_Global_Context
- [5] <https://www.quora.com/Why-do-the-European-and-American-culture-don-t-pay-dowries-to-get-married>
- [6] <https://timesofindia.indiatimes.com/india/10-of-dowry-cases-false-government>
- [7] <https://www.researchgate.net/publication>

- [8] https://www.researchgate.net/publication/358646801_Dowry_System
[9] https://www.arabianjbm.com/pdfs/KD_VOL_4_5/5.pdf
[10] <https://valleyinternational.net/index.php/theijsshi/article/view/2430>
[11] <https://iiste.org/Journals/index.php/JLLL/article/view/38689>
[12] <http://www.isca.in/rjrs/archive>.
[13] <https://www.legalserviceindia.com/legal/article-4686-dowry-system>
[14] https://en.wikipedia.org/wiki/Legal_research
[15] <https://www.iedunote.com/legal-research>.
[16] <https://blog.ipleaders.in/all-you-need-know-about-legal-research>
[17] <https://madhavuniversity.edu.in/women-rights-in-india>.
[18] <https://vikaspedia.in/social-welfare/women-and-child-development/women-the-indian-constitution>.
[19] <https://wcd.nic.in/act/dowry-prohibition-act-1961>
[20] https://en.wikipedia.org/wiki/Dowry_system_in_India.
[21] https://ncrb.gov.in/sites/default/files/crime_in_india

(ii) References:-Top 20 Landmark Judgments on Dowry Crime⁸

- [1] Case-1. Kamesh Panjiyar @ kamlesh Panjiyar vs. State of Bihar (2005) 2 SCC 388
[2] Case-2. Reema Aggarwal vs. Anupam and Ors. (2004) 3 SCC 199
[3] Case-3. Pamiben vs. State of Gujrat (AIR 1992 SC 1817)
[4] Case-4. Appasaheb and Anr. vs. State of Maharashtra (2007) 9 SCC 72
[5] Case-5. Baldev Singh vs. State of Punjab (2008) 13 SCC 233
[6] Case-6. Dasrath vs. State of M.P. (2010) 12 SCC 198
[7] Case-7. Rajbir @ Raju & Anr vs. State of Haryana (AIR 2011 SC 568)
[8] Case-8. Thathamsetty Suresh vs. State of A.P. (2010) 13 SCR 890
[9] Case-9. Raja Lal Singh vs. The State of Jharkhand (AIR 2007 SC 2154)
[10] Case-10 Kailash vs. State of M.P. (AIR 2007 SC 107)
[11] Case-11. Anil Kumar Gupta, Etc vs State Of Uttar Pradesh And Ors 1995 SCC (5) 173
[12] Case-12. Om Prakash V/s State of Punjab [(1992) 4 SCC 212]
[13] Case-13. Hiralal v. State (Government of NCT) Delhi 2003 Cri. L.J. 3711 (S.C.)
[14] Case-14. Kamesh Panjiyar v. State of Bihar 2005 Cri. L.J. 1418 (S.C.)
[15] Case-15. Deen Dayal & Ors. Vs. State of U.P. [(2009) 11 SCC 157]
[16] Case-16. Prem Singh v. State of Haryana AIR 1988 SC 2628
[17] Case-17. K. Prema S. Rao v. Yadla Srinivas Rao 2003 Cri L.J. 69 (SC)
[18] Case-18. Gurucharan Kumar v. State of Rajasthan 2003 Cri. L.J. 1234 (SC)
[19] Case-19. Gopal Versus State of Rajasthan [(2009) 11 SCC 314]
[20] Case-20. Soni Devrajbhai Babubhai V/s State of Gujarat and Ors. [(1991) 4 SCC 298]

⁸ <https://www.lawnn.com/top-20-landmark-judgments-on-dowry-in-india>.