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HISTORICAL AND THEORETICAL BACKGROUND OF DOWRY LAWS IN INDIA

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2.1 INTRODUCTION

Without searching on the theoretical foundations and historic improvement of dowry, it's far not possible to absolutely recognize its cutting-edge manifestation as a violent and exploitative coercive system. This bankruptcy engages with theoretical frameworks that shed mild on dowry as a domain of gender oppression, monetary exploitation, and patriarchal manipulate even as carrying out a diachronic evaluation that lines the evolution of marriage transactions in India from historic gift-giving customs to the cutting-edge dowry system. The evaluation suggests that the dowry is a traditionally contingent exercise that has been stimulated through transferring gender relations, monetary shifts, and criminal adjustments all through records in preference to being an unchangeable cultural tradition.

2.2 DOWRY IN ANCIENT INDIA: THE CONCEPT OF STRIDHAN

Eight specific styles of marriage (vivaha) had been diagnosed through the classical Hindu criminal tradition, of which 4 had been deemed righteous (dharma) (Brahma, Daiva, Arsha, and Prajapatya) and 4 had been deemed non-righteous (adharma) (Asura, Gandharva, Rakshasa, and Paishacha). The maximum meritorious of those became the Brahma sort of marriage, wherein a daughter became willingly given through her father to a appropriate groom in conjunction with presents. The bride's presents made up stridhan, which interprets to "women's wealth."

The concept of stridhan became advanced in top notch element in historic criminal texts including the Manusmriti (c. 2 hundred BCE–2 hundred CE), Yajnavalkya Smriti (c. 100–three hundred CE), and Narada Smriti (c. 100–four hundred CE). According to Manusmriti IX.194, stridhan is belongings given as tokens of affection (pritidatta), on the bridal procession (adhyavahanika), and previous to the nuptial fire (adhyagni). Whatever became given to a lady before, during, or after marriage remained her sole belongings, in line with

the text, which expressly stated a lady's entire possession over such belongings.¹

Importantly, stridhan became considered as having protecting instead of transactional functions in classical Hindu law. Given the patrilineal and patrilocal individual of historical Indian society, wherein ladies normally left their natal households upon marriage, the organization sought to present ladies monetary protection unbiased of male relatives. With confined inheritance rights in ancestral belongings, ladies might in any other case face monetary destitution; however, stridhan served as a sort of coverage in opposition to widowhood, abandonment, or marital dissolution. However, it need to now no longer be assumed that the normative best of stridhan represented in those texts is a frequent social exercise. The real switch and manage of stridhan have been impacted even in historical instances via way of means of nearby variances, caste-precise customs, and electricity imbalances inside households. However, voluntariness as opposed to coercion, safety as opposed to exploitation, and lady possession as opposed to husband manage are the principle variations among the historical stridhan and the current dowry. Sulka, a fee made via way of means of the groom's own circle of relatives to the bride's own circle of relatives this is broadly speaking utilized in Asura marriages, became additionally stated withinside the Dharmashastra literature. This exercise became much like brideprice traditions discovered in lots of specific societies. Ancient prison scholars' normative desire for gift-primarily based totally instead of fee-primarily based totally marriage transactions is confirmed via way of means of the overall disapproval of sulka- primarily based totally marriages, which have been visible as being pushed extra via way of means of mercenary than via way of means of dharmic considerations.

2.3 MEDIEVAL TRANSFORMATIONS: ECONOMIC PRESSURES AND SOCIAL STRATIFICATION

Significant adjustments in marriage customs came about for the duration of the medieval era (more or less the seventh to 18th centuries CE), consisting of the erosion of ladies unbiased belongings rights and the revolutionary hardening of dowry expectations. This evolution became motivated via way of means of some of interconnected factors. First, issues approximately marriage alliances as way of keeping or elevating social fame grew because the varna (caste) device have become extra inflexible and jati (sub-caste) hierarchies proliferated. In this setting, dowries have been used as a strategic tool to secure

¹ Manusmriti, IX.194–195. See also Wendy Doniger, *The Laws of Manu* (Penguin Books 1991).

marriages within or above one's social stratum, effectively acting as a premium paid to ensure a daughter's entry into a family of equal or higher ritual and economic status.

Third, women's assets rights had been steadily curtailed with the aid of using interpretative glosses added approximately with the aid of using the boom of commentarial literature on Dharmashastra texts. The shielding autonomy to begin with supposed for women's wealth changed into correctly undermined with the aid of using later commentators like Vijnaneshwara (eleventh century CE) and Mithila scholars, who constrained women's cappotential to alienate stridhan with out male relatives' consent and elevated husbands' rights to apply stridhan assets.²

Fourth, there has been a extra emphasis on nearby variations in marriage practices. In northern India, dowry customs had been exacerbated with the aid of using hypergamous marriage styles and concerns approximately daughters' own circle of relatives honor (izzat). During this time, the cultural production of daughters as liabilities that had to be "disposal" via marriage with big bills have become greater apparent, putting the degree for the coercive dowry device that could grow to be greater frequent throughout colonial rule.³ Rigid social hierarchies and complicated marriage rituals confronted a few ideological demanding situations from non secular reform moves, in particular the Bhakti movement. The cloth customs surrounding marriage transactions had been not, however, notably modified with the aid of using those moves, and in sure instances, counter-reformation moves reinstated conventional customs, together with the dowry.

2.4 COLONIAL IMPACT IN LEGAL CODIFICATION AND ECONOMIC TRANSFORMATION

Indian society underwent a giant adjustment because of the British colonial period (1757–1947), which has improved the dowry practice. The outcomes of this colonialism had been felt thro a number of interconnected mechanisms, along with monetary restructuring, assets regulation reforms, felony codification, and the solidification of non secular identities.

2.4.1 Legal Codification and Women's Property Rights

The "Hindu regulation" and "Muslim regulation" have been systematically codified through British colonial directors via textual content compilation, discussions with

² J. Duncan M. Derrett, *Religion, Law and the State in India* (Faber & Faber 1968), pp. 297–323.

³ Prem Chowdhry, *The Veiled Women: Shifting Gender Equations in Rural Haryana, 1880–1990* (Oxford University Press 1994).

maulvis and pandits, and British judges' rulings. Although it claimed to maintain indigenous criminal traditions, this system truly modified their essence.⁴ Women's belongings rights have been specifically negatively impacted through the codification system. British jurists selectively interpreted Dharmashastra texts in approaches that minimized ladies' belongings rights, motivated through Victorian gender ideologies that assumed male headship of the family and ladies' criminal subordination. Women's inheritance rights have been limited to confined pursuits within the estates of their deceased husbands because of the Mitakshara doctrine of coparcenary belongings, which excluded them from start rights in ancestral belongings. Overall styles in colonial jurisprudence reinforced ladies' financial dependence, regardless of the Dayabhaga school, which turned into extra normal in Bengal, acknowledging ladies' inheritance rights extra liberally.⁵ Importantly, stridhan guidelines have been regularly interpreted narrowly through colonial courts, which confined ladies' capacity to independently alienate themselves even as highlighting husbands' rights to manage and make use of wives' belongings. The judicial willingness to aid husbands' claims over stridhan belongings is tested through case regulation from the nineteenth and early twentieth centuries, which basically modified ladies' exceptional possession into certified ownership beneath male authority.

2.4.2 Property Law Reforms and Economic Restructuring

Private belongings in land turned into brought through colonial sales systems, which took the area of difficult pre-colonial tenure preparations that regularly protected plenty of usufruct rights. Many conventional customers have been displaced through the zamindari, ryotwari, and mahalwari agreement systems, which additionally produced new training of landowners. Because ladies have been denied same inheritance rights, households have been extra encouraged to provide massive dowries as the only supply of monetary protection for women.

2.4.3 Colonial Ethnography and the Construction of "Tradition"

In British ethnography, "local customs" had been recorded via district reports, census

⁴ Bernard S. Cohn, "Law and the Colonial State in India," in *Colonialism and Its Forms of Knowledge* (Princeton University Press 1996), pp. 57–75.

⁵ Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford University Press 1998), pp. 268–295.

operations, and gazetteers. In addition to generating beneficial ancient data, those sports solidified dynamic social practices as immutable customs precise to sure castes or communities. As a result, dowry have become a fixed, conventional exercise that, ironically, each justified its continuation and hid its ancient contingency.⁶ Ironically, British social reformers now and again denounced dowries as evidence of Indian society's backwardness, whilst colonial ethnographers documented them as a conventional Indian custom. The ambivalent courting among colonial governance and Indian social practices became typified through this contradictory stance, which concurrently condemned "indigenous customs" as barbaric and preserved them via felony codification.

2.4.4 Indigenous Reform Movements

Indigenous social reform movements in the 19th and early 20th centuries worked against several oppressive customs like dowries, child marriage, sati, and bans on widow remarriage. Reformers such as Ishwar Chandra Vidyasagar, Pandita Ramabai, Jyotirao Phule, and Raja Ram Mohan Roy worked hard to secure women's rights to property, access to education, and freedom from unfair traditions that held them back. Raja Ram Mohan Roy not only spoke out against sati but also fought for women's rights, including their inheritance and property ownership. Vidyasagar challenged the idea that widows without property rights were a burden on their birth families by actively promoting widow remarriage. These reformers argued that property laws needed a complete overhaul to achieve real gender equality. They recognized how dowries were tied to women not having inheritance rights and being financially dependent.⁷ Social conservatives and orthodox religious leaders strongly opposed the reform movements, saying that holding onto "tradition" was key to Hindu and Indian identity. This was especially true during colonial rule, when holding on to "tradition" became a way to express nationalist feelings. Because of the political situation, reformers couldn't get the law changed, so traditions like dowries mostly stayed the same. The colonial government's response to what the reformers wanted was mostly just for show. To keep up the idea that religious communities had legal independence in

⁶ Nicholas B. Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (Princeton University Press 2001), pp. 207–237.

⁷ Sumit Sarkar, "Social Reform and Women's Rights in Nineteenth Century India," in P. Chatterjee & P. Jeganathan (eds.), *Community, Gender and Violence* (Columbia University Press 2000), pp. 73–96.

these matters, the colonial state usually stayed out of personal law areas like marriage, divorce, inheritance, and succession. This was true even when they introduced laws such as the Hindu Widows' Remarriage Act of 1856. Because of this approach, dowry traditions, which happened mostly within family settings, were largely left outside the reach of laws during the colonial period.^{14]}

2.5 POST-INDEPENDENCE DEVELOPMENTS: CONSTITUTIONAL COMMITMENTS AND SOCIAL REALITIES

After gaining independence in 1947 and adopting its Constitution in 1950, India built a strong legal system aimed at bringing social change. Directive Principles aimed to promote social justice by encouraging equal pay and better working conditions, while Fundamental Rights ensured equality through Articles 14 to 16 and protected personal liberty under Article 21. Following the views of leaders like Dr. B. R. Ambedkar stressed that social equality has to come first for political democracy to work, so these rules allowed the government to step in and act against things like dowry discrimination. Because of ongoing social and economic reasons, dowry practices kept going and even grew between the 1950s and 1970s, despite what the constitution aimed for. India's focus on industrialization and urban growth led to the rise of new groups of salaried professionals and government workers. For these people, things like job status and education became key factors when it came to deciding who to marry. Dowry demands these days are shifting toward cash and things like televisions, scooters, and refrigerators, showing changing habits around spending and status.⁸ In some places, the number of men slowly grew compared to women because men started living longer and there was still a strong preference for having sons. In some areas where the number of men and women didn't match up, families with daughters had a harder time finding grooms. This made difficult for them during dowry talks, giving more power to the grooms' family, even though the overall sex ratio in India stayed fairly balanced.⁹ Even though middle-class women gain more access to education, it often end up making the demands for dowry go up. Educated grooms started asking for high dowries, and families began to marry their daughters often to the men with better education and job prospects. The value placed on education often reinforced traditional

⁸ Patricia Jeffrey, "Agency, Activism, and Agendas," in Patricia Jeffrey & Amrita Basu (eds.), *Appropriating Gender: Women's Activism and Politicized Religion in South Asia* (Routledge 1998), pp. 221–243.

⁹ Monica Das Gupta, "Selective Discrimination Against Female Children in Rural Punjab, India," *Population and Development Review*, Vol. 13, No. 1 (1987), pp. 77–100.

gender roles instead of challenging them, making education more of a male credential.¹⁰ Even though the constitution promises equality, old patriarchal ideas still stick around. Women are often seen as needing support, marriage is treated like the main goal for them, and sons are viewed as financial benefits while daughters are seen as burdens. Religious talks, popular culture, and family customs all worked together to make dowries seem normal and necessary.¹¹ In the 1970s, there were more and more reports about violence linked to dowries, especially when young married women died in ways that seemed suspicious. These cases were started to catch the public's eye. Women's groups, especially in cities, came together to fight against dowry violence by framing it as a breach of human rights. The women's played a key role in getting dowries noticed in national policy and pushing lawmakers to take action.¹²

2.6 FEMINIST JURISPRUDENCE AND GENDER JUSTICE THEORIES

Feminist legal scholarship offers key ideas for understanding dowry as a clear example for gender inequality and patriarchal control. This part looks at the important ideas from feminist jurisprudence which help us to understand the dowry laws and how they are put into practice.

2.6.1 Dowry as Structural Gender Violence

In Society Feminist scholars say that dowries are ongoing gender violence tied to patriarchal systems, its not just a one-time crime. By limiting women's independence, making them financially dependent, and punishing them for not following gender norms, the system keeps men in control.

2.6.2 Intersectionality and Dowry

According to Kimberlé Crenshaw and Patricia Hill Collins' intersectionality theory, a person's experiences of privilege and oppression are shaped by their multiple social positions, such as caste, class, and religion. This implies that women's experiences with dowries differ according to caste, class, and other variables. Dalit women experience

¹⁰ Srimati Basu, *The Trouble With Marriage: Feminists Confront Law and Violence in India* (University of California Press 2015), pp. 55–79.

¹¹ Sylvia Vatuk, "Divorce at the Wife's Initiative in Muslim Personal Law," in Flavia Agnes et al. (eds.), *Women and Law in India* (Oxford University Press 2004), pp. 129–157.

¹² Radha Kumar, *The History of Doing: An Illustrated Account of Movements for Women's Rights and Feminism in India, 1800–1990* (Zubaan 1993), pp. 117–138.

oppression based on both caste and gender. Lower-caste families often pay to appear more upwardly mobile, while upper-caste families may require large dowries to maintain their prestige. The experiences of Muslim women differ from those of Hindu women, leading to complicated legal problems. Class also matters; wealthy families donate large sums of money, while impoverished families donate less but encounter greater challenges in obtaining justice.

2.7 LAW AND SOCIETY PERSPECTIVES: SOCIOLOGICAL JURISPRUDENCE

Sociological jurisprudence, developed by scholars like Roscoe Pound, focuses on understanding law as a social institution that functions within broader social contexts. This perspective informs analysis of the relationship between anti-dowry legislation and social transformation.

2.7.1 Law as Social Engineering

Law can be understood as social engineering because it shapes and guides human behavior within society. By establishing the rules and regulations, law creates orders and resolves conflicts, also influencing how individuals and groups interact. This perspective of law is not just a set of abstract principles but as a practical tool designed to manage social relationships and promote the welfare of the community. Social engineering through law aims to mold social conditions by addressing issues such as justice, equity, and public policy. According to Pound's theory of social engineering, laws are tools that can reshape social relationships to match desired ideals. According to this viewpoint, laws against dowries are intentional attempts to end a detrimental social custom by outlawing it and punishing offenders. The gradual growth of dowry laws from their original ban in 1961 to later amendments that strengthened penalties and added new offenses reflects a growing awareness of the negative effects of dowries in society and a stronger resolve to eradicate them.¹³

2.7.2 Gap Between "Law in Books" and "Law in Action"

The gap between law in books and law in action refers to the difference between the written legal rules and how those rules are applied or enforced in real situations. When laws are clearly stated in legal texts, their practical implementation could vary due to

¹³ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Oxford University Press 1984).

factors such as social, economic, and institutional influences. Understanding this gap is important for analyzing how effectively the legal system operates in practice compared to its official framework. Sociological jurisprudence stresses the difference between formal legal rules called law in books and the real practices and outcomes known as law in action. This distinction draws attention to implementation gaps caused by factors such as inadequate resources, institutional dysfunctions, official discretion, corruption, and social resistance.¹⁴ There are differences between official legal prohibitions and actual dowry laws. Many police officials remain reluctant to register complaints, conduct thorough investigations, or arrest accused persons absent overwhelming evidence. Prosecutors may insufficiently prepare cases. Judges may interpret statutory provisions narrowly and show skepticism toward complainants. These implementation failures reflect not merely individual failures but systemic features of criminal justice administration characterized by resource constraints, institutional cultures, and officials' own internalization of patriarchal norms. Developing successful reforms requires an understanding of these implementation gaps. Statutory provisions must be changed to increase the efficacy of dowry laws, and institutional capacity, official training, accountability procedures, and comprehensive criminal justice reform must also be addressed.

2.8 ECONOMIC ANALYSIS OF DOWRY

Economic theory provides additional analytical lenses for understanding dowry practices and evaluating legal interventions. This section provides an overview of key economic perspectives

2.8.1 Dowry as Market Transaction

Dowry as Market Transaction dowries can be understood as part of the marriage market, where the imbalance between demand and supply leads to grooms who have desirable attributes such as education, potential income, and family status receiving higher dowries. This view comes from some economists who analyze how these factors influence marriage transactions. According to this viewpoint, dowries are seen as a reasonable economic decision made by families who want to improve their daughters'

¹⁴ Marc Galanter, "The Aborted Restoration of Indigenous Law in India," *Comparative Studies in Society and History*, Vol. 14, No. 1 (1972), pp. 53–70.

marriage outcomes in markets for competitive marriages. This economic framework helps explain some observed patterns, such as the relationship between dowry amounts and groom attributes like education, occupation, and family background. Critics argue that by presenting exploitative practices as effective market transactions, this type of analysis normalizes and validates those practices. Aspects that are essential to feminist analyses of dowries, such as power dynamics, coercion, and the gendered construction of women as commodities, are frequently overlooked by economic models.¹⁵

2.8.2 Dowry and Women's Property Rights

Economic analyses also examine the relationship between inheritance and dowry systems. According to anthropologist Jack Goody, dowries function as premortem inheritance, where daughters receive their parents' wealth at the time of marriage instead of after the parents' death. The dowry may be the only way for daughters to access family wealth in patrilineal societies where daughters do not have equal inheritance rights. This analysis is not entirely applicable to the modern Indian dowry. In contrast to *stridhan*, which remained the property of women, a modern dowry typically becomes the property of the husband's family. Dowries do not compensate for the absence of inheritance rights; instead, they increase women's economic dependence and expose them to the risk of violence if the payments are seen as inadequate. Legal reforms that grant women equal inheritance rights in ancestral property, such as amendments to the Hindu Succession Act, have not abolished the dowry. This suggests that dowries serve purposes beyond compensating for exclusion from inheritance.

2.8.3 Economic Empowerment as Prevention Strategy

According to economic viewpoints, women's economic empowerment through work, education, property rights, and financial independence is essential to lowering their susceptibility to dowry demands and violence associated with them. Women who own property and have their own sources of income have more negotiating power in the home, can leave abusive marriages when necessary, and rely less on their natal families for dowry payments.¹⁶ Policy recommendations based on this analysis emphasize both legal intervention and economic empowerment. Detractors point out that dowries have

¹⁵ Nancy Folbre, "Hearts and Spades: Paradigms of Household Economics," *World Development*, Vol. 14, No. 2 (1986), pp. 245–255.

¹⁶ Martha Chen (ed.), *Widows in India: Social Neglect and Public Action* (Sage Publications 1998), pp. 198– 229.

not been completely eradicated by women's economic independence and participation in the workforce, as educated, working women still encounter dowry demands sometimes referred to as gifts. Economic security improves women's ability to fight exploitation and obtain legal remedies, supporting the case for integrated strategies that combine socioeconomic empowerment with legal protection.¹⁷

2.9 CONCLUSION

The chapter shows the modern dowry is a historically contingent practice shaped by changing gender relations, economic shifts, and legal codifications throughout history. The shift from ancient stridhan, which was a voluntary gifts considered women's exclusive property, to current coercive dowry demands reflects a complex play between property regimes, economic modernization, legal reforms, and enduring patriarchal ideologies. Colonial legal codification weakened women's property rights by formalizing patrilineal inheritance and treating dowries as fixed aspects of tradition. Dowry practices also grown as economic growth, urbanization, and consumerism after independence. At the same time, constitutional guarantees of gender equality provided a basis for legal measures addressing these practices. The current issues states dowries are ingrained in economic systems, social structures, and cultural ideologies that have been developed over centuries and cannot be eradicated by prohibiting them legally. Theoretical frameworks from sociological jurisprudence, feminist jurisprudence, and economic analysis provide different perspectives for understanding dowry. These perspectives says dowry as an economic phenomenon embedded in marriage markets and property systems, as a social practice that resists legal change, and as a form of structural gender inequality. The analysis of legislative frameworks, judicial interpretation, and the empirical realities of dowry law implementation in later chapters is informed by these theoretical insights.

¹⁷ Naila Kabeer, "Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment," *Development and Change*, Vol. 30 (1999), pp. 435–464.