

A Proposal for a Dowry Prohibition Law in Sri Lanka: An Assessment in the Light of Indian Dowry Prohibition Act No. 28 of 1961

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Background

Most of the countries including South Asian countries have started to include specific measures into their domestic laws to protect women's rights in order to comply with international standards. Nonetheless, the tragic situation is that when implementing these laws, the objectives to promote and protect human rights of women are diminished or negated by the impact of some extraneous factors. Those factors are rooted in social, cultural, religious, political and some of other patriarchal social values. 'Dowry' is the one of the critical areas which contradicts international standards, but still prevails with the support of above mentioned extraneous factors. The matter of dowry is yet to be addressed by the legislature or the judiciary in Sri Lanka. This paper aims to propose a new policy to prohibit dowry in Sri Lanka in the light of Indian Dowry Prohibition Act of 1961 (hereinafter mentioned as 'IDPA').

The Sri Lankan context indicates that dowry has over time transformed into a marriage gift to the bridegroom in all communities. Dowry still prevails in the Sinhala and Tamil communities as a customary requirement and as a legal requirement in the Muslim community under the Islamic religious law in Sri Lanka. Dowry has both social and legal legitimacy in Sri Lanka and most of the times it is openly referred to in marriage advertisements in public newspapers in Sri Lanka. However, this practice of dowry in its manifestation undervalues women and commercializes the marriage relationship. Non-payment of dowry has result in harassment, violence against women, breakdown of spousal relationships and conflict with extended family. In addition, Sri Lankan judiciary has also not taken an effort to consider the matter of the legality or illegality of giving and taking dowry.¹

The dowry problem in India arose out of a complex social situation and it was further strengthened by tradition, myths, and religion. Nevertheless, the most problematic situation in India regarding dowry was that it led to a lot of dowry deaths and bride burning by the groom or his relations. In this scenario, the IDPA had come in to force to protect the rights of women in India in relation to the matter of dowry. The purpose of IDPA is to prohibit the giving and taking of dowry with a view to prevent dowry deaths.² Although there are some problems relating to its implementation, the IDPA is a remarkable achievement of the legal system of India. As this legislation is enforced in multiple community which bears a gamut of personal laws and religious customs which contradict with the international standards. Therefore, this paper purports to identify the

¹ *Samarsinghe v. Samarasinghe* [1990] 1 SLR 31, *Somawathi v. Perera* [1984] 1 SLR 78

² Dowry Prohibition Act - 1961, as amended 1984, statement of objects and reasons 1(i), 1(ii)

advantages and disadvantages of the IDPA and propose recommendations for legislative reform to prevent the harmful traditional practices on dowry in Sri Lanka using the Indian model.

Methodology

For the purpose of this paper, salient provisions of the IDPA have been evaluated to discuss its impact on the dowry in the Indian context and to make proposals for a new policy on dowry in Sri Lanka. This research is a qualitative research mainly based on domestic legislation and international conventions. In addition, the paper is sustained by secondary sources which are library and internet research of books, journal articles, relevant statutes and case law of India and Sri Lanka.

Outcome

Although, the IDPA is a benchmark Indian legislation, it has certain problems in its enforcement as it makes both giving and taking of dowry equally liable. This may be the only legislation where both the plaintiff and the defendant are treated as equally guilty. Due to this issue concerning the legal proceedings, brides are not encouraged to litigate as both families are liable in violating the Act.³ In addition, there are some provisions which are in contradiction with the purpose of the IDPA. The Act defines dowry as '*any property or valuable security to be given by one party to the other party at or before or any time after the marriage in connection with the marriage*'.⁴ Accordingly, parties can exchange the property by interpreting these words fraudulently, mentioning that it is 'without the connection of marriage'. Section 03 of the Act provides the penalty for giving and taking dowry, but it does not include the gifts that are customary in nature. In addition, the Act mentions about the reversal of the dowry to the woman or heirs, but it makes no provision to return the gifts to the bride or her family.⁵ Therefore, this can be used as a trick to retain property by the party of the groom as mentioned in *Satish Chawla Case*.⁶

By considering the overall impact of the Act, the human rights of the women have been violated linguistically by some of the sections of this Act. For example, the section 03 and 04 mentioned that '*he shall be punishable*' and most of the other sections use the word '*woman*'. If the Act is gender neutral and respects the principle of equality it should not use the words which can be gender biased. Accordingly the Act should be subjected to certain amendments especially in sections 02, 03, 06, 07, 08(B) and 09 to abolish the male dominance and enhance the human rights of women. Therefore, IDPA can be used as guidance in the moderation of a new policy in Sri Lanka. However, the legislature should pay attention to the above mentioned loopholes in the IDPA. Apart from the above mentioned concerns, the IDPA marks a significant stage in the legislative history in a country like India which has assembled plural legal systems. Besides the proposed law to prohibit dowry in Sri Lanka, such an initiative must comply with the fundamental rights

³ Wanda.T, The Burning Bride: The Dowry Problem in India, Journal of Feminist Studies in Religion, vol.7, No.2 [Fall,1991], <http://www.jstor.org/stable/25002154> on 08/09/2011 , P.45

⁴ Section.02

⁵ Section.06

⁶ Supra.03.p.44

which are recognized under Chapter III of the Constitution of 1978 of Sri Lanka, especially with Articles 12(1) and 12(2) which describe the principles of equality and non-discrimination. Moreover, it should comply with the international standards on women's rights which are described under the Articles 01, 02, and 16 of the CEDAW.⁷

Conclusion and Recommendations

Though Sri Lanka has ratified the CEDAW, there are some hidden malpractices which violate the rights of women in Sri Lanka. Dowry is one of those, which can be identified as a harmful traditional practice in Sri Lanka. The current evidence indicates that this is the time to adopt new laws and policies to eliminate the practice of giving and taking dowry. Though the DPA of India is a legislation to eliminate inequality it has not been implemented in a practical manner because of several factors. However, it is a significant improvement of the legislative history of India. As a concluding remark it is suggested that Sri Lanka should implement a better mechanism to prohibit dowry practices by introducing an effective transformation of law by adopting the DPA of India as a model with certain amendments. Further, it should be emphasized that a policy or a law cannot be realized without infrastructure and commitment. The commitment should be by the government, non-governmental institutions and the community as well. Therefore, solutions need to be implemented at the grass root level.

References

- Savithri Goonasekere, Rangita De Silva - De Alwis, 'Women's and Children' Rights in a Human Rights Based Approach to Development', Working Paper, [UNICEF, 2005]
- Wanda Teays, The Burning Bride: The Dowry Problem in India, *Journal of Feminist Studies in Religion*, vol.7, No.2 [Fall, 1991], Retrieved from <http://www.jstor.org/stable/25002154> on 08/09/2011
- Catherine A. MacKinnon, 'Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence', *Vol.8, No.4* [Summer, 1983]
- Harmful Traditional Practices in Three Countries of South Asia, Culture, Human Rights and Violations against Women, Gender and Development, Discussion Paper Series No. 21, Economic and Social Commission for Asia and Pacific, Retrieved from http://www.unescap.org/sdd/publications/gender/SDD_pub_2530.pdf on 13/01/2012

⁷ Convention on the Elimination of the All forms of Discrimination against Women, 1979