

# Dowry as an Exercise of Exploitation Despite Prohibition

Maithili S<sup>1</sup>, Sahana G<sup>2</sup>

<sup>1,2</sup>Student, School of Law, SASTRA Deemed to be University, Thanjavur, Tamil Nadu.

## Abstract

A custom that is being swaddled as a practice of gifting women for financial security after their marriage or for building a strong bond between both the families is making the patriarchal behaviour stronger and is deleterious to the bride and her family. According to the report of the National crime record bureau, one dowry death every hour at rock bottom. The Asian women human rights commission states that the practice of dowry leads to death of around 25000 women between the ages of 15 and 34 years [1]. This harmful practice is continuing to persist in India in this 21st century which is not due to lack of legislation as the Indian legislature has passed Dowry Prohibition Act, 1961. Domestic violence and cruelty occur against women when the receiving end is not satisfied with the dowry brought in. Regardless of having a law which prohibits dowry, nothing has stopped the nation from practising it. This study discusses in detail about the origin of the dowry system in India, its transformation over the period, the reason for bullheaded behaviour of society in not letting go of the practice in spite of being in aggrieved side, enactment of prohibition not in unison with Volksgeist theory.

**KEYWORDS:** Custom, Marriage, Patriarchy, Domestic violence, Cruelty, Dowry, Volksgeist theory

## 1. Introduction

Dowry, a practice entrenched in Indian customs, ostensibly conceived as a means to provide financial security for women and foster familial bonds, has morphed into a pervasive social ill. Despite legislative measures like the Dowry Prohibition Act of 1961, the practice persists, exacerbating gender inequality and contributing to alarming rates of domestic violence. This research delves into the historical causes of dowry, its evolution over time, societal motivations for its perpetuation, and the complex legal challenges entangled with property rights. Through an exploration of indirect dowry practices and an examination of the dark consequences associated with this tradition, this study seeks to unravel the intricate web of issues surrounding dowry in contemporary India.

As we navigate through the causes of dowry, the societal standards it has evolved into, and the defence mechanisms employed, a critical lens is cast on the impact of this tradition on women's empowerment. From limiting career choices to influencing parental mindsets and impacting education, dowry's repercussions extend far beyond the ceremonial exchange of gifts. The study also sheds light on indirect forms of dowry, such as the maternal uncle's gifting tradition in Tamil Nadu, and unveils the dark

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1. <https://timesofindia.indiatimes.com/readersblog/politiclaw/dowry-and-dowry-death-42574/> last visited 10/10/2023

consequences, including the erosion of women's financial security, rising societal expectations, and the deterioration of familial relationships. In addressing these complexities, we propose multifaceted suggestions, emphasizing the need for societal awareness, legal fortification, and a concerted effort to disentangle cultural norms from legal principles to foster a more just and equitable society.

## **2. Causes of Dowry**

### **2.1 Family as Business Units**

The historical roots of dowry in Indian practices underscore its evolution as a mechanism that revolves around the departure of a female family member. Analogous to the functioning of business institutions, families operate as entities where each member, particularly women, assumes the role of a shareholder. Upon leaving the familial unit, a woman extracts her rightful share in the form of gifts, jewellery, and other movable assets. This practice is strategically advantageous for the woman, as it mitigates her potential lack of influence over immovable properties, such as ancestral lands or houses.

### **2.2 Deceptive Practices within Familial Dynamics**

In this familial business dynamic, the male descendants function as shareholders responsible for managing and eventually inheriting the family's properties. The inherent risk lies in the possibility of deceptive practices when a female descendent departs from the family. Property divisions typically occur post the demise of parents, creating a situation where male descendants may manipulate the actual value of the assets, potentially disadvantaging their sisters. In the ancient era, characterised by limited transportation and communication, women descendants faced challenges in participating in property-related processes or being informed promptly about the demise of their parents.

### **2.3 Dowry Served as Financial Security to Woman**

To circumvent such uncertainties and promote ethical practices, the tradition of dowry emerges as a pragmatic solution. Providing movable assets instead of immovable property becomes a safeguard against disputes over property divisions among descendants. Dowry, therefore, serves as a protective measure for women, ensuring they receive their due share without being susceptible to dishonest practices by male relatives. This practice not only secures the financial interests of women but also bolsters their authority, supremacy, and influence within their new familial context.

## **3. Gifts as Another Form of Dowry**

The practice of gifting, constituting another form of dowry, is pervasive and extends to providing an extensive array of household items such as cots, beds, pillows, kitchen utensils, cupboards, and even vehicles. Originally rooted in a woman-centred approach, this tradition evolved to ease the transition for brides entering their in-laws' homes. The act of gifting aimed to mitigate potential discomfort or hesitation on the part of brides, who might otherwise feel reluctant to freely use or touch items in their new environment.

As girls are sent to their in-laws' homes after marriage, the generous gifting of household essentials becomes a gesture to ensure their comfort and assist them in feeling at home. This practice goes beyond mere utensils; at times, it extends to substantial gifts like new houses and cars. The motivation behind such lavish gifting is not only to facilitate the bride's assimilation into her new family but also to adhere

to societal norms and expectations associated with the grandeur of marital arrangements. This broader practice of gifting thus mirrors the evolving dynamics and cultural expectations surrounding dowry customs. For some, dowry serves as a means of asserting authority and self-dependence within the household. This unintentionally contributes to insecurities among men regarding the potential dominance of women, highlighting the complex interplay of societal expectations and gender roles associated with dowry practices.

#### **4. Dowry as Social Standard**

##### **4.1 Dowry as a Pervasive Social Standard**

Dowry, accompanied by associated gifts, has evolved into a widespread social norm, significantly shaping societal perceptions and behaviours. The discussions surrounding marriage often centre around the grandiosity of the event and the quantifiable extent of dowry exchanged, establishing these elements as focal points in matrimonial discourse.

##### **4.2 Media Influence on Dowry Perceptions**

The impact of dowry extends to media portrayal, with news channels actively participating in the reinforcement of societal expectations. Broadcasting details such as the quantity of dowry and employing individuals to carry elaborately adorned gift plates contribute to perpetuating and amplifying societal norms associated with marriage and dowry.

##### **4.3 Confidentiality Issues and Social Pressure**

The lack of confidentiality surrounding dowry amounts becomes evident as news channels openly telecast marriage processions, emphasizing cultural and caste-specific norms. This phenomenon not only lacks discretion but also sets rigid social standards, subjecting individuals, families, and economically disadvantaged groups to substantial pressure to conform to predetermined levels of prestige and societal standing.

##### **4.4 Demands for a Nuclear Family**

Adding complexity to the dowry dynamics is the prevalent demand from the bride's side for a nuclear family setup. This demand triggers reciprocal expectations from the groom's side, encompassing not only essential household utensils but also furniture, electronic appliances, and, at times, substantial assets such as cars and houses. This illustrates the intricate interplay of societal expectations, economic factors, and gender roles within the context of dowry and marriage practices.

#### **5. Why People Defend Dowry**

##### **5.1 Dowry as Financial Support and Property Division**

Dowry, essentially a form of financial support and property division from parents, represents a complex facet of familial dynamics. Despite legal provisions establishing equal property rights for women, a substantial number of families have not fully embraced this concept. Lingering perceptions still regard male children as the primary heirs, leading to reluctance in acknowledging and implementing women's property rights. Consequently, women contemplating their property share often find themselves torn between upholding their rights and preserving the affectionate bonds within their families.

### **5.2 Navigating the Heir Dilemma**

The persistent notion that male children are the rightful heirs to family legacies poses a significant challenge for women seeking their property rights. To claim their share, women must confront familial expectations, particularly from brothers and parents. The fear of straining these familial bonds often steers women towards choosing dowry over a direct legal battle for property rights. In doing so, they secure a substantial share of movable assets while navigating the delicate balance of familial relationships.

### **5.3 Dowry as a Strategic Financial Opportunity**

In certain scenarios, girls view dowry as a strategic means to obtain their financial rights, especially in families where male children receive preferential treatment. Disparities in financial allocations, such as investing more in the education of male siblings while neglecting the female counterparts, drive women to perceive marriage as a pivotal juncture to rectify these imbalances. Dowry, in this context, becomes a pragmatic avenue for women to secure a more equitable financial standing.

### **5.4 Maternal Advocacy for Dowry**

Mothers, shaped by their experiences in patriarchal societies, often play a pivotal role in advocating for dowry. They see dowry not merely as a cultural practice but as a strategic tool for their daughters to assert financial rights while navigating the constraints of conservative societal norms. Mothers may actively influence fathers and brothers to contribute more towards dowry and the lifelong gifting ritual, aiming to ensure their daughters' financial security within the accepted boundaries of tradition [2].

## **6. Impact of Dowry Tradition on Women's Empowerment**

The implications of the dowry tradition extend beyond the marital union, significantly affecting women's empowerment and financial independence. The societal perspective, deeply rooted in traditional gender roles, perpetuates an image of women as lifetime dependents rather than active contributors to the financial aspects of a family.

### **6.1 Financial Dependency and Lifetime Liability**

In the context of family functioning as a business unit, where both male and female members are expected to contribute significantly to the financial aspect, the dowry tradition takes a different turn. Males often assume the role of breadwinners, viewing their wives as lifetime liabilities. This perspective, rooted in traditional norms, diminishes the recognition of the significant contributions made by non-working women to household responsibilities.

Despite the hidden opportunity costs associated with managing households, husbands tend to overlook these contributions. The expectation arises that wives depend solely on their husbands for sustenance, ranging from basic needs to lifestyle choices. Dowry, in this context, transforms into a perceived lifetime settlement, adding a layer of financial burden on the bride's family.

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2. <https://timesofindia.indiatimes.com/readersblog/giveitathought/seervarisai-the-gifting-ritual-9323/> last visited 01/11/2023

## 6.2 Impact on Career Choices and Job Perception

The perpetuation of dowry as a financial settlement rather than a shared financial responsibility reinforces the notion that a job is optional for women, not mandatory. This perception, prevalent in society, limits women's career choices and often confines them to household roles. The societal lens tends to view a woman's financial input as dowry, neglecting the potential for real financial assistance where women actively share the financial burdens of the family.

The discouragement of women from pursuing careers and the restriction to household roles create a cyclical effect, reinforcing gender stereotypes. The societal expectation becomes a barrier to women seeking financial independence through employment, restricting their potential contributions to both the household and broader society.

## 6.3 Impact on Education and Objectification

The dowry tradition also influences parental mindsets, perceiving the girl child as a financial burden due to the anticipated dowry expenses upon reaching marital age. Consequently, there is a prioritisation of saving in the form of gold and jewellery over investing in the girl's education and overall well-being.

This prioritisation has a direct impact on women's employment opportunities, as they are often objectified as burdens rather than individuals with unique talents and potential. The focus on gifting jewellery and sarees perpetuates the image of women as beautiful dolls, undermining the importance of their education, skills, and professional capabilities.

## 6.4 Unravelling the Layers of Impact

The multifaceted impact of the dowry tradition on women's empowerment reveals deep-seated gender biases and societal expectations. From reinforcing traditional gender roles to restricting career choices and perpetuating the objectification of women, the tradition's repercussions extend far beyond the ceremonial exchange of gifts. Recognizing these layers of impact is crucial for dismantling age-old norms and fostering an environment that empowers women to pursue education, careers, and financial independence without being constrained by archaic traditions.

## 7. Indirect Forms of Dowry

### 7.1 Unveiling the Intricacies of Indirect Dowry Practices

The dimensions of dowry extend beyond the overt exchange of gifts during wedding ceremonies, permeating into various aspects of life, especially in Tamil Nadu, where a distinctive practice named Seervarisai prevails. This intricate web of gifting culture transcends the boundaries of the wedding event, persisting throughout a married couple's life, entwined with auspicious occasions, festivals, and significant life events.

### 7.2 Ongoing Tradition of Gifting Rituals

The gifting ritual, deeply embedded in Tamil Nadu's cultural fabric, unfolds as a consistent stream of gifts bestowed by the girl's parents or brothers during a myriad of events post-marriage. The generosity of these gifts knows no bounds, manifesting during auspicious moments and festive celebrations, sculpting an elaborate tapestry of cultural practices.

### **7.3 Festive Bestowals of First Diwali and First Pongal Celebrations**

As the couple embarks on their marital journey, the first Diwali after marriage becomes a pivotal moment, marked by the wife's parents gifting gold jewellery to the groom alongside traditional dresses. This symbolic act intertwines familial ties with material expressions, reflecting the significance of the occasion.

The tradition extends its reach to the vibrant festivities of Pongal, where the girl's parents present an array of valuable items. Costly vessels, cooking utensils, and even grocery items become tokens of familial affection, intricately woven into the customs surrounding post-marital life.

### **7.4 Symbolism in Child Related Ceremonies**

The gifting tradition further extends its influence to ceremonies related to the girl's children. There are certain special practices (called Thaa Maaman Seer in Tamil Nadu) where the child's uncle, often the mother's brother, bestows various gold jewellery during significant life events like ear-piercing ceremonies and puberty rites for girl children. This custom intricately intertwined familial bonds with material expressions, reinforcing the cultural significance of the ritual "Seervarisai".

### **7.5 Evolution from Voluntary Gifting to Societal Demands**

The origins of this ritual trace back to the altruistic intention of the girl's parents to visit their daughter regularly, ensuring her well-being. Laden with gifts during these visits, the practice initially embodied voluntary expressions of familial love and care. However, over time, this voluntary tradition metamorphosed into a societal demand, particularly from the groom's side.

### **7.6 Emotional Ramifications from Gift to Demand**

The transition from voluntary gifting to societal expectations has introduced emotional complexities. Grooms and their families, fuelled by societal pressures, resort to emotional attacks against women whose parents or brothers fail to meet anticipated gifting standards. What once was a symbol of familial love now bearing the weight of societal norms, resulting in emotional turmoil for the women at the centre of these expectations.

### **7.7 Unravelling the Threads of Gifting Custom**

The Seervarisai tradition, initially woven with threads of familial love and care, has evolved into a complex tapestry of societal expectations. As this cultural practice transcends various life events, its impact on familial dynamics and emotional well-being cannot be understated. Unravelling the threads of the gifting custom requires a nuanced understanding of its evolution, from voluntary expressions to societal demands, in order to address the emotional complexities, it imposes on the women caught in its intricate weave.

## **8. Dark Consequences of Dowry and Gifting Customs in the Crosshairs**

### **8.1 Dowry's Erosion of Women's Financial Security**

Originally conceived as a means to provide financial security and a share of property to women, the institution of dowry has undergone a disconcerting metamorphosis. In contemporary settings, the notion of dowry has shifted from its altruistic origins to becoming a coercive tool. More often, dowries are not

only demanded but directly transferred to the groom, leaving brides in precarious, dependent situations despite their substantial contributions.

### **8.2 Rising Expectations and Societal Pressure**

The voluntary nature of early dowry practices has morphed into a societal standard with far-reaching consequences. Those who once gave dowry voluntarily inadvertently set expectations, creating a ripple effect where others feel compelled to demand similar dowries. The pervasive fear of societal humiliation propels families to conform, perpetuating a cycle where even those who disapprove of dowry find themselves contributing to maintain societal standards. The Special Marriage Act, 1954 requires parties to declare that dowry has been exchanged during the marriage ceremony. It aims to discourage the practice of dowry in inter-religious and inter-caste marriages [3].

### **8.3 Deterioration of Gift Customs and Relationships**

Gift customs, initially intended to foster and nurture relationships, have taken an unforeseen turn. The exponential rise in expectations surrounding these gifts has strained familial ties. What was meant to be a heart-warming gesture has transformed into a source of tension, adversely affecting the relationships between the bride's and groom's families. The very essence of these customs has been overshadowed by material expectations.

### **8.4 Impact on Education and Employment**

Dowry, conceived as a financial provision, has unintentionally reshaped perceptions of the girl child. Viewed more as a potential source of dowry expenses than as a recipient of investment in education, daughters often face limited opportunities. This detrimental practice acts as a deterrent to female education and employment, hindering not only financial independence but perpetuating the cycle of dependence on male counterparts.

### **8.5 Female Infanticide**

A startling consequence of dowry practices is the correlation with an increase in female infanticide. The financial burden associated with raising a girl child, given the eventual dowry expectations, tragically leads some parents to resort to such extreme measures. This shocking outcome underscores the grave societal implications of perpetuating dowry traditions.

### **8.6 Cruelty and Abuse**

The pressure for dowry frequently transmutes into cruelty against women. Instances of mental, physical, emotional, and verbal harassment escalate as families demand more dowry and property transfers. This egregious cruelty, manifesting in harm up to and including death or abetment of suicidal thoughts, serves as a stark testament to the warped evolution of these customs, indicating a severe departure from their intended purposes. The following laws protect women from these cruelties:

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3. Special Marriage Act, 1954

1. Section 498A of the Indian Penal Code (IPC) deals with cruelty towards a married woman by her husband or in-laws for dowry. Offenders can face imprisonment and fines for subjecting a woman to cruelty or harassment [4].
2. Indian Evidence Act, 1872 allows for the admission of evidence related to the giving or receiving of dowry in court [5].
3. National Commission for Women Act, 1990 empowers the National Commission for Women to investigate and examine all matters related to the safeguards provided for women against dowry [6].
4. Protection of Women from Domestic Violence Act, 2005 addresses not only physical violence but also emotional, verbal, and economic abuse related to dowry. It provides for protection orders, residence orders, and monetary relief to victims [7].
5. The Criminal Law (Amendment) Act, 2013 amended the IPC to include specific offences related to dowry deaths (Section 304B). It introduces stringent punishment for causing the death of a woman within seven years of marriage due to dowry-related harassment [8].

### 8.7. Impact on Women's Property Rights

The intertwining of dowry and property rights creates a complex legal scenario, posing significant challenges for women advocating for their rightful share in familial assets. While legal frameworks exist to protect women's property rights, the insidious influence of dowry has given rise to distortions and denials, hindering the pursuit of justice.

In many instances, when women assert their right to an equal share in family property, they are confronted with a disheartening response. Families, often leveraging the substantial dowry and gifts provided during marriage, unjustly argue that these contributions serve as a de facto settlement of the woman's share. This misinterpretation not only undermines the principles of gender equality but perpetuates a skewed understanding of financial contributions within the family structure.

Moreover, the prevalence of dowry as a societal norm has, in some cases, led to a systemic bias within legal circles. Judges and legal authorities may inadvertently carry societal perceptions into the courtroom, influencing their decisions and inadvertently perpetuating gender disparities. The very legal systems designed to safeguard women's rights find themselves contending with deeply ingrained cultural norms that blur the lines of justice.

In **Terezinha Martins David vs. Miguel Guarda Rosario Martins & Others** [9], the Goa Bench of the Bombay High Court ruled that girls possess an inherent entitlement to familial property, notwithstanding the receipt of dowry during marriage. Thus, the deed transferring her property, without petitioner's consent, to her brothers, was quashed by Justice MS Sonak. However, a prevalent trend observed across

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4. Sec 498A of Indian Penal Code, 1860

5. Indian Evidence Act, 1872

6. National Commission for Women Act, 1990

7. Protection of Women from Domestic Violence Act, 2005.

8. Sec 304B of Indian Penal Code, 1860

9. Terezinha Martins David vs. Miguel Guarda Rosario Martins & Others (Second Appeal No. 89 of 2005, decided on 16/03/2023)



various cities and villages indicates reluctance among many women to pursue legal recourse to claim their rightful share. This hesitation often stems from a multitude of reasons, including societal pressures and familial expectations, leading them to forego their legal entitlements.

Even if women seek legal redress and obtain a decree in their favour, they frequently encounter emotional and, at times, physical coercion from their families and relatives to relinquish or transfer their rightful portion to male members. Moreover, societal perceptions and personal beliefs sometimes dissuade females from asserting their claims, feeling undeserving due to their prior receipt of dowry, leading to a relinquishment of their legitimate share in family property.

This distortion in property rights not only affects the immediate financial well-being of women but also contributes to a broader cycle of gender-based economic disparities. Women, who should rightfully access their share of familial assets, find themselves thwarted by the systemic repercussions of dowry practices. This poses a formidable barrier to achieving gender equity in both legal and societal realms.

### **9. Volksgeist Theory and Dowry Prohibition Act**

The Dowry Prohibition Act of 1961 came into existence in India primarily as a response to the harmful consequences of the prevalent dowry system. While it's true that at certain times and in certain communities, there might be social acceptance or even an expectation of dowry, the negative outcomes associated with dowry practices prompted legislative intervention. The law aimed to address issues such as financial exploitation, harassment, and discrimination against women.

The Volksgeist theory, associated with German philosopher Johann Gottfried Herder, suggests that the spirit or essence of a people (Volksgeist) shapes their collective identity, culture, and norms. In the case of India, diverse cultural practices and traditions exist, and attitudes towards dowry can vary widely [10].

The Dowry Prohibition Act doesn't necessarily violate the Volksgeist theory; rather, it reflects a legal response to protect the rights and well-being of individuals, particularly women, who may be adversely affected by dowry-related practices. It acknowledges the evolving societal values and the need to address issues that arise from certain cultural practices.

Legislation is often a means to strike a balance between preserving cultural diversity and safeguarding individual rights, especially when certain practices can lead to exploitation and discrimination. The Dowry Prohibition Act reflects a legal recognition of the need to protect individuals from potential harm, even if some aspects of the society may traditionally support dowry. This demonstrates the complexity of navigating cultural traditions while upholding fundamental human rights and gender equality.

### **10. Suggestions**

In addressing the complex issues surrounding dowry, a multifaceted approach is imperative.

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10. <https://blog.iplayers.in/savignys-theory-law-applicability-india/> last visited 28/10/2023

1. There is a pressing need to promote equality within family management, both in financial aspects and household responsibilities. Encouraging financial empowerment for women and advocating for shared responsibilities between spouses is crucial. Collaborating with the cinema and television industry to depict gender-equitable roles can significantly influence societal perceptions, with government initiatives and media campaigns playing pivotal roles in driving this cultural shift [11].

2. The empowerment of women through education should be a focal point. Education is positioned as the ultimate source of authority and empowerment. Moreover, it is imperative to cultivate awareness regarding the patriarchal shifts within our society. Understanding the root cause of this phenomenon involves recognizing the historical role wherein men predominantly assumed the position of breadwinners in families. By acknowledging this historical context, it becomes evident that women actively contributing to the financial stability of their families through employment represents a pivotal transformation. This shift not only bestows upon women a newfound authority within their families but also garners respect for their indispensable roles in society. Creating awareness about the evolving societal dynamics, where women contribute significantly to the family through employment, is paramount. Leveraging social media and other channels, government bodies and NGOs can effectively communicate the benefits of active female participation in the workforce.

3. An extensive awareness campaign is necessary to enlighten women about their equal rights to property. This should encompass practical insights into managing properties when women are not physically present and emphasise the support mechanisms provided by the law and government. Such initiatives aim to embolden women to assert their property rights without succumbing to emotional pressures. Addressing this issue requires a twofold approach. First, legal frameworks must be fortified to explicitly disentangle dowry from property rights, affirming that dowry does not supersede a woman's entitlement to her family's assets. Second, awareness campaigns and societal dialogues are essential to challenge and reshape ingrained perceptions, fostering an environment where women can confidently exercise their legal rights without facing unwarranted obstacles.

4. It is essential to address the impact of lifelong gifting practices, such as Seervarisai, on familial relationships. Raising awareness about the corrosive effects of these customs, especially on the bond between women and their brothers, is critical. Encouraging families to reconsider perpetuating such practices and exploring alternative means of expressing familial affection without straining relationships forms an integral part of fostering societal change. Additionally, legal frameworks must be fortified to explicitly disentangle dowry from property rights, fostering an environment where women can confidently exercise their legal rights without facing unwarranted obstacles.

## 11. Conclusion

This comprehensive exploration into the intricate facets of dowry and its associated practices reveals a deeply entrenched societal challenge that persists despite legislative interventions. Dowry, conceived as a means to provide financial security and strengthen familial bonds, has, over time, morphed into a

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11. <https://www.drishtiias.com/daily-updates/daily-news-editorials/dowry-system-in-india> last visited 30/10/2023

system perpetuating gender inequality, domestic violence, and a myriad of social issues. The societal standards contribute to the perpetuation of dowry as a pervasive social norm. The defence mechanisms employed by families, justified as financial support and strategic opportunities, further complicate the landscape.

The impact on women's empowerment is far-reaching, affecting career choices, education, and perpetuating traditional gender roles. Indirect forms of dowry, exemplified by the gifting tradition, reveal the evolving dynamics of gifting practices and their emotional ramifications. The distortion of property rights within the context of dowry practices is a critical facet of the larger conversation surrounding gender equality. A concerted effort to disentangle cultural norms from legal principles is essential to ensure that women can access their rightful share in familial property, thereby fostering a more just and equitable society. Dark consequences, including the erosion of women's financial security, rising expectations, and the deterioration of familial relationships, highlight the urgent need for a nuanced and multifaceted approach.