



AN ANALYSIS OF THE 'DOWRY PROHIBITION ACT 1961' CONCEPT & EVOLUTION

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ABSTRACT

The paper contented the various things of dowry system and essentially examined The Dowry Prohibition Act, 1961 in India. Dowry implies giving of wealth or property to the Groom or his family by the bride 's family at the time of their marriage. The Dowry Prohibition Act, 1961 makes the compromising of share void and unlawful. Section 498A IPC penalizes the husband and his family members in case there is an act of cruelty on the bride within seven years of marriage. Though, the section constructs the crime non bailable and non-compoundable. These laws are absolutely favorable to women's and requires very little prior support in case there is any grievances under these provisions of law and this has given certain segment of women the freedom to misuse these segments to satisfy their mala-fide intentions. In additionally under the dowry system the ultimate goal to be achieved in one's life, especially that of a woman and those who feel that a woman can be happy only if married. In a perfect world that the talking a marriage would finish in joy for both a man and a woman in case everything is well in that relationship. A non-dowry marriage will bring down their status among the relatives or will demonstrate that the son is worthless.

INTRODUCTION

India is an immense and multi-social country. The Civilization of India is the antiquated most on the planet and with every time another social design is brought into the world since the introduction of our general public. With the second most noteworthy population in the world after China, India has progressed significantly in ideas of advancement in all circles of society. In Indian Law, The Dowry Prohibition Act, enacted on 1st May 1961, meant to save you the giving or receiving of a dowry. Under the Dowry Prohibition Act, settlement comprises of possessions, things, or cash given by one or the other party to the wedding, by utilizing the guardians of one or the other party, or by way of everybody else in connection with the marriage. The Dowry Prohibition Act applies to folks of all religions in India. The authentic text of the Dowry Prohibition Act becomes widely judged to be useless in curtailing the exercise of dowry. Moreover, precise kinds of violence in opposition to women endured to be connected to a failure to satisfy dowry needs. As a result, the regulation underwent next modification. Although, it became modified to specify as an example, that presents given to a bride or a groom on the time of a marriage are allowed in 1984. The law required, however, that a list be maintained describing each gift, its fee, the identification of the man or woman giving it,

and the individual's relation to both celebration to the wedding.

Though, the Dowry Prohibition Act and subsequent sections of the Indian Penal Code had been further amended to cover female sufferers of dowry-associated violence. Some other layer of felony safety was provided in 2005 underneath the safety of girls from home Violence Act. Amendments under the Dowry Prohibition Act additionally mounted insignificant and most disciplines for giving and getting settlement and made a punishment for tumult share or retailing offers of money or belongings in reference to a marriage. The Indian Penal Code turned into additionally changed in 1983 to set up specific crimes of dowry-related cruelty, dowry demise, and abetment of suicide. Hence, those endorsements punished violence in opposition to girls with the aid of their husbands or their relatives whilst proof of dowry needs or dowry harassment may be shown.

HISTORICAL BACKGROUND

Dowry is an old framework under which the guardians of the woman pay the man or bridegroom or his parent money, goods or home regarding the bridegroom's ability to acknowledge the woman in the marriage. The convincing organic inclination for mating among all creatures including humans creates a



magnetic pull between others.¹ The requirement for delayed parental consideration in advanced animals has fashioned the concept of family. Hence, these variables have cumulatively given birth to the concept of marriage to the human race. Though, Marriage viewed a sacred establishment in Indian society. The threat of dowry was obscure in earlier societies. Women delighted in thought about opportunity and regard in open life. Marriage was considered a sacrosanct association. In the Vedic culture dowry system was obscure.²

As per Hindu texts only Brahma type of marriage which was unconventional to the upper to the privileged that marriage implied the gift of a daughter with some ornaments and articles. Something else, the Dowry is the property which is obtained from the guardians of the bride by the parents of the groom under pressure, compulsion, or pressing factor.³ Although, it's not that property which comes from the side of the woman family out of their eagerness.

In India, it has additionally established in medieval times when a gift in real money or kind was given to a bride by her family to keep up with her autonomy after marriage.⁴ During the colonial period, it turned into the legal approach to get married, with the British making the practice of dowry needed. The modern dowry system has a modest start with a gift which as a manifestation of natural love and affection from the brides' parents and relatives. Slowly these gifts took giant shape contingent on the expectations for everyday comforts and status in the society.⁵

CONCEPT OF DOWRY

The Dowry alludes to the solid merchandise, money, and genuine or versatile property that the women's family provides for the man of the hour, his folks and his family members as a state of the

marriage.⁶ Dowry is basically in the concept of an installment in real money or some sort of gifts given to the groom's family alongside the woman and incorporates cash, adornments, electrical apparatuses, furniture, bedding, earthenware, utensils, vehicles and other family things that help the love birds set up their home.⁷ Dowry is alluded to as Dahez in Arabic. In the far eastern parts of India, it is called Aunnpot.⁸

The Dowry Prohibition Act 1961

In India under dowry prohibition, first it was done with the enactment of Sindh Deti-Leti Act, 1939.

It prohibited the giving and taking of any valuable article or dowry beyond permissible limit prescribed by the list enumerated by the panchayats or provincial governments.⁹ The next step was Bihar Dowry Restraint Act, 1950 and The Andhra Pradesh Dowry Prohibition Act, 1958. Although the provincial enactments could not bring the desired results, but they stimulated the general public to raise a voice against dowry as the dowry system started strangulating the peace of society.¹⁰

Perhaps the Central government felt that The Hindu Succession Act, 1956 may be a suitable alternative to the eradication of dowry system as many provisions in the Act were made with regard to the women.¹¹ All these enactments appeared to be really pro-women but due to the lack of effective awareness, and proper utilization, most of the Acts merely remained on papers rather than curbing the menace of dowry.¹² On 24th April, 1959, The Dowry Prohibition Bill, 1959 was introduced by the government. After a discussion and introduction of several changes, it was further moved to the joint committee. Finally, the bill was taken into the consideration at a joint sitting and was passed on 1st July 1961.¹³ Therefore, after a long-awaited time

¹ Dowry: its meaning, historical background and ill effects (thefactfactor.com)

² Haveripeth P.D., —Cause and consequences of dowry menace in India; RIJS Vol 2(2) 2013. (www.rierc.org)

³ Mehek Singh., —Dowry as a factor of violence in Marriage: A study of Women seeking help in family counselling centres in Chandigarh; International Journal of Advancements in Research & Technology, Vol-2 Issue-6 (2013)

⁴ Dowry: its meaning, historical background and ill effects (thefactfactor.com)

⁵ Reshma, Ramegouda .A., —Socio Legal Perspective of Dowry: A Study; International Journal of Scientific and Engineering Research; Vol-3, Issue-7 (2012).

⁶ Moneycontrol.com". 8 March 2007. Archived from the original on 11 January 2012.

⁷ Rani Jethmalani & P.K. Dey (1995). Dowry Deaths and Access to Justice in Kali's Yug: Empowerment, Law and Dowry Deaths. pp. 36, 38.

⁸ Paras Diwan and Peeyushi Diwan (1997). Law Relating to Dowry, Dowry Deaths, Bride Burning, Rape, and Related Offences. Delhi: Universal Law Pub. Co. p. 10.

⁹ The Dowry Prohibition Act, 1961 repealed the earlier local laws e.g. The Andhra Pradesh Dowry Prohibition Act, 1958 and The Bihar Dowry Restraint Act, 1950.

¹⁰ Section 3(1), Dowry Prohibition Act 1961

¹¹ Section 2, Dowry Prohibition Act 1961

¹² Section 3(1), Dowry Prohibition Act 1961

¹³ Sections 5 and 6, Dowry Prohibition Act 1961



period, The Dowry Prohibition Act, 1961 was finally enacted. This Act is considered to be a remedial as well as a penal statute simultaneously. Originally, there were ten Sections in the Act and afterwards Sections 4A ban on advertisement's 8A burden of proof in certain cases sec.8B dowry probation officer, were further added by the Dowry Prohibition (Amendment) act, 1986.¹⁴

Need of dowry prohibition act

The dowry is a deep-rooted evil in the society. It is started as customary presents with love and affection. In olden days, it was customary to give some presents to the bride and bridegroom and his family at the time of marriage. The parents of the bride or their relations out of affection and good intention used to provide the couple something to fall back upon in case of need. The system started at a time when girls were generally not very much educated and even if they were educated, they were unwilling to take up gainful employment.¹⁵ There was also less opportunity for them either to supplement the family income or to become financially independent. There was yet another reason for such customary gifts. The daughter then was not entitled to a share in the joint family properties when she had a brother. Hence the father out of affection or other consideration used to give some cash of kind to the daughter at the time of marriage.¹⁶ The right of the father to give a small portion of even the family property as a gift to the daughter at the time of her marriage was recognized. But unfortunately, over the years new practice developed. The boy or his family members started demanding cash or kind from the brides' parents.¹⁷ They started demanding dowry as a matter of right. The demand more often extended even after the marriage. There were instances of harassment of the Wife, if the demand was not complied with. In order to curb this evil practice, the Parliament enacted the Dowry Prohibition Act, 1961 (Act No. 28 of 1961).¹⁸ The Act prohibited the giving or taking of dowry. But in spite of this enactment, the pernicious practice continued in some communities. The joint Committee of Parliament appointed to examine the working of

Dowry Prohibition Act remarked "the evil sought to be done away with by the Act, on the other hand, increased by leaps and bounds and has now assumed grotesque and alarming proportions."¹⁹

Objectives of Dowry Prohibition Act, 1961

- To promote marital and family harmony.
- To effectively work for creating a dowry free society.
- To provide a base to fight against the abuse of dowry laws.
- To create awareness about the present cruelty/dowry/harassment related laws and their damaging effects on the family.
- To provide emotional, legal and social support to the innocent persons who are affected by the vindictive implication of the dowry laws. To provide legal aid to the weaker and needy section of the community.²⁰
- To safeguard children welfare and integrity of Indian families.
- To safeguard interests of Elderly people and their respect in society and to discourage elder abuse through dowry related laws.
- To promote deterrents against malicious complaints and arrests without investigation.
- To discourage malicious prosecutions in matrimonial cases.²¹

Analysis of The Dowry Prohibition Act, 1961

The Section 3 of Dowry Prohibition Act, 1961 makes a provision, which is as under: "If any person, after commencement of this Act gives or takes or abets the giving or get hold of dowry, he will be blame able with delay for term which will not be under five years and with fine which will not be under fifteen thousand rupees with the number of the worth of such dowry whichever is more; provided that the court may, force a sentence of detainment for a term of under five years. For satisfactory and extraordinary motivation to be recorded in the judgment."²²

Exception to section 3

Thus, Nothing in Sub-segment 3(1) will apply to, or corresponding to (1) presents which are given at the hour of union with be lady (with no interest having

¹⁴ Section 8A, Dowry Prohibition Act 1961

¹⁵ Agrahari, Gunjan (2011). Law Relating to Dowry Prohibition, Cruelty, and Harassment: An up-to-Date, Lucid, and Exhaustive Commentary with Case Law on the Dowry Prohibition Act, 1961. Delhi: India Law House.

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ *Ibid*

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

²¹ <https://wcd.nic.in/act/dowry-prohibition-act-1961>

²² <https://lawlex.org/lex-pedia/critical-analysis-of-the-dowry-prohibition-act-1961/23162>



been made for that benefit); Provided that such presents are entered in a list maintained in accordance with the rules made under this Act; Section 9 power to make rules the central government may make a rule for carry out the purpose of this act in particularly Such rules may provide for the person by whom list of customary present made under section 3(2)²³ and the manner and form in which it is prepared and all other matters connected therewith and the better coordination of policy and action with respect to the administration of this act. In exercise of the forces gave by Sec.9 of the Dowry Prohibition Act, 1961 (28 of 1961),²⁴ the Central Government makes the accompanying guidelines and such principles might be known as the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985. They will come into power on the second day of October, 1985, according to section 2 of the rules.²⁵

The list of presents which are given at the time of the marriage to the bride or bridegroom shall be maintained by the bride or bridegroom respectively.²⁶ The rundown of presents will be recorded as a hard copy and will be ready at the hour of the marriage or straightaway after the marriage will be endorsed by both the bride and the bridegroom. Where the bride or bridegroom is unable to sign, they may affix their thumb impression in lieu signature.²⁷

Specifics of the list

- (i) A short description of each present.
- (ii) The approximate worth of the present.
- (iii) The name of the individual who has given the present.

Exception 2 of section 3

where such presents are made by or in interest of the bride or any individual related to the bride, such presents are of a standard sort and the worth isn't exorbitant having respect to the financial status of the individual by whom, or for whose benefit, such presents are given.²⁸

²³ dowry prohibition act 3 (indiankanoon.org)
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<http://www.cyberabadpolice.gov.in/information/PDF/acts-laws/act-dowry.pdf>

²⁵ dowry prohibition act 3 (indiankanoon.org)

²⁶ A1860-45.pdf (legislative.gov.in)

²⁷ <https://crlreview.in/the-dowry-prohibition-act-what-you-must-know/>

²⁸ Agrahari, Gunjan (2011). Law Relating to Dowry Prohibition, Cruelty, and Harassment: An up-to-Date, Lucid, and Exhaustive Commentary with Case Law on

Analysis of section 3

1. The dowry Prohibition Act, ponders two stages. The principal stage is taking or giving or abetting of giving or taking of dowry. It is punishable and hence, such demonstration is a void.²⁹

The second stage is, subsequent to taking dowry and forthcoming exchange of something similar to the recipient, the individual holds it in trust to support the woman.³⁰ Along these lines, during the subsequent stage, it is available to a woman to document a suit to recuperate the sum from the individual who held the dowry in trust.

Victim is punishable under section 3

2. Since it rebuffs settlement provider i.e., for the most part guardians of casualty. Accordingly, casualty and her folks reluctant to hold up a case. Consequently, the deceitful provider ought to be excluded in any case this part will debilitate casualty to get the law rolling.³¹

3. Section 3 of the Act doesn't accommodate enrollment of the rundowns, nor does it set out that the gifts made to the woman couldn't be estranged during initial seven years of the marriage without her consent.

4. The Act has made obligatory for the woman of the hour and husband to keep up with the rundown of the presents given to them in the marriage. It should be independently kept up with and properly endorsed by the gatherings. However, there is no functional execution and no veritable upkeep of such records happens in real. This standard is generally disregarded in the relationships as individuals don't approach it in a serious way.³²

5. Explanation 1 to Section 2 of the Dowry Prohibition Act 1961 the presents as money, trimmings, garments and different articles are not to be considered as settlement except if they are made as thought for the marriage of the said parties. This arrangement debilitates the law and invalidates the target for which it was ordered.³³ In this way, it has been excluded by Dowry Prohibition (Amendment) Act 1984, it doesn't imply that wedding presents have been restricted or their giving establishes any offense under the Act. The wedding presents by guardians, family members, companions and close colleague at or about the hour of marriage can in any case be given for the sake of

the Dowry Prohibition Act, 1961. Delhi: India Law House.

²⁹ *Ibid*

³⁰ *Ibid*

³¹ <https://wcd.nic.in/act/dowry-prohibition-act-1961>

³² dowry prohibition act 3 (indiankanoon.org)

³³ *Ibid*



presents of a standard sort. All things considered, these are the share in the name or under the shadow of presents which are legitimately endorsed by the section 3 of the Act.³⁴

Section 4 penalty for demanding dowry

If any person demands requests straight forwardly from the parents or by implication or Guardian of bride or bridegroom as the case may be any dowry, he shall be punishable with detainment for a term which will not be under half year however which might stretch out to two years and with fine which might reach out to 10000 rupees given that the court may impose a sentence of imprisonment for a term less than six month for adequate and special reason to be mentioned in the judgment.³⁵

Analysis of section 4

The object of Section 4 of the Act was to debilitate the very interest for property or important security as thought for a marriage between the gatherings. As indicated by Webster's

New World Dictionary, 1962 end. Woman of the hour implies a woman who has quite recently been married or is going to be married. If we give this strict meaning of a bride or a bridegroom used in Section 4 of the Act then property or valuable security demanded and consented to be given prior may not be "dowry" within the meaning of the Act.³⁶ Which is again the object section 4 of the Act therefore liberal construction has to be given to the word "dowry" to fulfill its object? Punishment not in consonance with the object of section 4 I.e. The punishment for demanding dowry is quite inadequate.³⁷

(i) Mere interest for "Dowry" before marriage, at the hour of marriage or any time after the marriage is an offense; Bachni Devi v. State of Haryana, AIR 2011

Outfitting of a list of ornaments and other household articles at the hour of settlement of marriage adds up to request of dowry and charged are obligated to be sentenced under section 4; Raksha Devi v. Aruna Devi, I (1991)

³⁴ *Ibid*

³⁵ <https://indiankanoon.org/doc/1023340/#:~:text=%E2%80%9494If%20any%20person%20demands%2C%20directly,which%20may%20extend%20to%20ten>

³⁶ https://www.indiacode.nic.in/bitstream/123456789/5556/1/dowry_prohibition.pdf

³⁷ <https://indiankanoon.org/doc/1023340/#:~:text=%E2%80%9494If%20any%20person%20demands%2C%20directly,which%20may%20extend%20to%20ten>

Section interest for "Dowry" before marriage, at the hour of marriage or any time after the marriage is an offense; Bachni Devi V. Union of India, 3 (1991)³⁸

Section 4 A. Ban on Advertisement.

If any person

(a) offers, through any ad in any newspaper, periodical, magazine or through some other media, any offer in his property or of any cash or both as an offer in any business or other premium as thought for the marriage of his child or girl or some other family member; Then, he will be punishable with detainment for a term which will not be under a half year, yet which might stretch out to five years, or with fine which might reach out to fifteen thousand rupees: Provided that the Court may, force a sentence of detainment for a term of under a half year for sufficient and exceptional motivations to be recorded in the judgment, This is added by the dowry prohibition Amendment Act 1986 with upheld on 19-11-1986.³⁹ Section 5. Arrangement for giving or taking share to be void. Any agreement for the giving or taking of dowry will be void.

The section based on maxim i.e., dolo malo non torture action which implies that No court will loan its guide to a hit man reason for action upon a corrupt or an illicit demonstration. In straightforward words we can say that if offended parties by his own action violate positive law of this country, he has no option to be assisted by court.⁴⁰

Meaning of Word Agreement.

Area 2(e) of Indian Contract Act characterizes the term arrangement as under:

"Each guarantee and each set of guarantees framing the thought for one another is an Agreement." One of the basics of a substantial agreement is that the thought and the item ought to be legal.⁴¹

Section 23 of the Indian Contract Act, 1872 - What contemplations and articles are legal and what not the thought or object of an understanding is legal, except if it is illegal by law; or is of such a nature that, whenever allowed, it would overcome the arrangements of any law; or is deceitful; or includes or infers injury to the individual or property of another; or

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https://www.indiacode.nic.in/bitstream/123456789/5556/1/dowry_prohibition.pdf

³⁹ India Code: Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954

⁴⁰ <https://indiankanoon.org/doc/1023340/#:~:text=%E2%80%9494If%20any%20person%20demands%2C%20directly,which%20may%20extend%20to%20ten>

⁴¹ Advertising in Legal Profession (legalservicesindia.com)



the Court sees it as corrupt, or went against to public approach. In every one of these cases, the thought or object of an arrangement said to be unlawful. Each agreement of which the item or thought is unlawful is void.

The giving or taking of dowry in any structure overcomes the arrangements of Dowry Prohibition Act. Consequently, the Act is void itself. Area 6 Dowry to be to help the spouse or her beneficiaries.⁴²

(1) Where any dowry is gotten by any individual other than the lady that individual will move it to the woman-

(a) If the dowry was gotten before marriage, inside one year after the date of Marriage; or

(b) If the dowry was gotten at the hour of or after the marriage, inside one year after the date of its receipt; or

(c) If the dowry was gotten when the woman was a minor, inside one year after she has accomplished the age of eighteen years; and forthcoming such exchange, will hold it in trust for the Advantage of the woman.⁴³

(2) If such individual neglects to move than he will be culpable with detainment which might stretch out to a half year, or with fine which might reach out to 5,000 rupees, or with both; however, such discipline will not exculpate the individual from his commitment to move the property.

(3) Where the woman qualified for any property under section 6 (1) dies before prior to getting it, the beneficiaries of the woman will be qualified for guarantee it from the individual holding it for now.⁴⁴

Exemption of section 6 According to sec 6 (4)

Nothing contained in this part will influence the arrangements of section 3 punishment for compromising dowry or Section 4 penalty for demanding dowry.

The excellent target was to clear off the social picture of the women's of being an economic burden and to work on their economic condition by ensuring their material resources. In basic words we can say that Section 6 of the D.P.A. focuses on the advantage of such woman/spouse/bride of the hour whose property has been wrongfully held by her better half or some

other individual and when they are not prepared to return back such property to her.⁴⁵

Other provision in support of section 6

Section 406 of I.P.C. is invoked where the husband or in-laws do not transfer the property of dowry to the wife or her legal heirs in the situations mentioned under Section 6. On failure to do so a proceeding under the offence of criminal breach of trust can be initiated at either of the place where the property was received or retained or the place of occurrence of criminal breach of trust.⁴⁶ The Section 6 provides that if dowry is received by any person other than the bride, such a person must transfer it to the woman within a stipulated time and on failure to do so, the person is punishable with imprisonment or fine.⁴⁷

Bobbili Ramakrishna Raju Yadav vs. State of Andhra Pradesh. AIR 2020

Supreme Court on Tuesday has held that giving of dowry and the customary presents at or about the hour of wedding doesn't in any capacity raise an assumption that such a property was in this way depended and put under the territory of the parents' in-law of the lady or other close relations in order to draw in elements of Section 6 of the Dowry Prohibition Act. Secondly, if the woman/bride entitled to such property dies before receiving it, then the legal heirs of the woman are entitled to claim it. Thus, by virtue of this Section, dowry is to be for the benefit of the bride or her legal heirs.⁴⁸

Section 7. Cognizance of offenses

(1) Although, anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) No Court substandard compared to that of a Metropolitan Magistrate or a Judicial Magistrate of the top of the line will attempt any offense under this Act;

(b) No court will take awareness of an offense under this Act besides upon

(I) Its own insight or a police report of the realities which establish such offense, or

⁴² Objectionable Advertisements Act, 1954 - iPleaders

⁴³ Agrahari, Gunjan (2011). Law Relating to Dowry Prohibition, Cruelty, and Harassment: An up-to-Date, Lucid, and Exhaustive Commentary with Case Law on the Dowry Prohibition Act, 1961. Delhi: India Law House.

⁴⁴ Legal-Status-1.pmd (cghealth.nic.in)

⁴⁵ <https://indiankanoon.org/doc/1023340/#:~:text=%E2%80%94%20any%20person%20demands%2C%20directly,which%20may%20extend%20to%20ten>

https://www.indiacode.nic.in/bitstream/123456789/5556/1/dowry_prohibition.pdf

⁴⁷ <https://indiankanoon.org/doc/1023340/#:~:text=%E2%80%94%20any%20person%20demands%2C%20directly,which%20may%20extend%20to%20ten>

⁴⁸ dowry prohibition act 3 (indiankanoon.org)



(ii) A complaint by the individual wronged by the offense or a parent or other relative of such individual, or by any perceived government assistance establishment or association; According to Explanation connected to section 7(1)(b). For the "recognized welfare institution or organization" signifies a social government assistance establishment or association perceived for this sake by the Central or State Government.⁴⁹

(c) It will be legal for a Metropolitan Magistrate or a Judicial Magistrate of the top of the line to pass any sentence approved by this Act on any person indicted for an offense under this Act.

(2) Chapter XXXVI of the Code of Criminal Procedure, 1973 i.e., constraint for taking insight of specific offenses will not have any significant bearing to any offense punishable under this Act.

(3) Notwithstanding anything contained in any law for the time being in power an assertion made by the person oppressed by the offense will not expose such person to an indictment under this Act.

Yashpal Kumar v. Bhola Nath Khanna,

It isn't required that lone the casualty young woman/bride of the hour be considered as oppressed person. Indeed, even father of the casualty young woman, who was constrained to give dowry, can be considered as an oppressed person.⁵⁰

Analysis of Section 7

Subramaniam v. State of Madras AIR1983 The effect of the non-obstante clause in Section 7 of the Act has now to be considered by Supreme Court and said that section 7 stated with non obstante clause thus provision of this section 7 would prevail over any other provision contained in criminal procedure code, 1973. Family Courts have not been empowered with Jurisdiction to try dowry cases. Offences under the Act should be tried only by the Family Courts, because family problems, being of a sensitive and delicate nature, require careful handling and a different kind of treatment.⁵¹ Locus Standing to File a Complaint under the Act. Only four categories of persons have a locus

standing for moving the court to take the cognizance of offence under the Act:

(i) The Court on its own knowledge.

(ii) Police officials.

(iii) A complaint by individual bothered by offense or a parent or other relative of such person.

(iv) Or by any Recognized Welfare Institution or Organization.

It can be clearly seen that the provisions of the Act itself have created certain practical challenges in the implementation of the Act. For an instance, if the parents of the aggrieved person have given dowry at the initial stage, they will hesitate to report matter to the authorities afterwards. Because they have given the dowry and therefore, they are also liable for the punishment under this Act.

Another drawback is that no third person for example a neighbor or anyone else in public who is aware of a dowry transaction in any marriage cannot file the complaint. It mitigates the chances of reporting the dowry related matters.⁵²

The State of Assam v. Sri Shyamal Sil.

It is very natural that at the early stage of the marriage no bride will speak alleging against her husband to any neighbouring people. Even misbehavior and ill treatment that happens within the four walls of a house in between spouse generally remains unexposed to the neighborhood.⁵³ Section 8. Offenses to be cognizable for specific purposes and to be billable and non-Compoundable.⁵³

(1) The Code of Criminal Procedure, 1973 (2 of 1974) will apply to offenses under this Act as though they were cognizable offenses

(a) For the motivations behind investigation of such offenses; and

(b) For the motivations behind issue other than (I) Matters alluded to in area 42 of that Code; and

(ii) The arrest of an individual without a warrant or without a request for a Magistrate.

(2) Every offence under this Act shall be non-billable and non-compoundable.

By making these non-billable, the Legislature has tried to give biting teeth to the provision to curb the evil of dowry.⁵⁴

Analysis of section 8

The Act has not defined the meaning of the expression to take cognizance 'nor is defined in Cr PC.

⁴⁹ Dowry Offence: Its cognizance under S. 7 of the Dowry Prohibition Act (thefactfactor.com)

⁵⁰ Section 7 Dowry Prohibition Act| cognizance of offences | 7 The Dowry Prohibition Act 1961 (aaptaxlaw.com)

⁵¹ A.S. Altekar, The Position of Women in Hindu Civilization, Motilal Banarsidass, Delhi, 1999,. Act No. 28 of 1961, Ministry of Law and Justice, Government of India.

⁵² *Ibid*

⁵³ *Ibid*

⁵⁴ *Ibid*



However, the term cognizance 'indicates the point when the judicial notice of an offence is taken by the Magistrate as held in *Darshan Singh v. State of Maharashtra*, AIR 1971

The legality of cognizance can be determined at the point of time when the cognizance of an offence is actually taken by the court as held in *M.L. Sethi v. R.P. Kapur*, AIR 1967 According to section 2 (C) of Criminal Procedure Code cognizable offence means when a police officer may arrest without warrant in accordance with the first schedule or then again under some other law for the time being in power. As per area 156 (1) of CrPC any official responsible for police headquarters Mein without the request for judge examine any cognizable case. This section makes it expressly clear that a collection cognizable case can be investigated by the police officer without the order of magistrate but on the point of arrest in cognizable case reference may be made to Section 41 clause 1 of CrPC it says that any police officer May without order of magistrate and without warrant only under the circumstance mentioned under section 41 of the code But section 8 of the dowry prohibition act,1961 makes cognizable offence only for the purpose of investigation .on the point of arrest sanction of magistrate is required under the act.⁵⁵

The offences under the Act are non-billable i.e., bail cannot be demanded as a matter of right and if the criteria of granting bail are fulfilled under section 437 of criminal procedure code,1973 i.e., when bail may be taken in case of non-billable offence as per satisfaction of court only then the bail can be granted. By making these non-billable, the Legislature has tried to give biting teeth to the Provision to curb the evil of dowry. The victims of dowry related matters are more interested in reaching to a compromise with husband and in-laws rather than punishing them. Therefore, the non-billable and non-compoundable nature of offences may lead to reluctance in filing the complaint as it will end the chances of compromise.

The Law Commission of India in its reports as well as the report given by the Malimath Committee also suggested making the offence compoundable. But the view point is discarded on the grounds that it will dilute the provision and hence defeat its objective. But on practical grounds, the non-compoundable nature of this offence seems to be a major obstacle in the smooth implementation of this provision. This non-compoundable nature of the offence leaves no

probability of compromise between the both spouses, howsoever regretful the husband might be and howsoever willing the wife might be.⁵⁶ The only option left for the victim to reach to the compromise is only through the route of Section 482 of Criminal Procedure Code inherent power of the High Court to intercept abuse of the process of any Court or otherwise to secure the ends of justice. Which is again time consuming and expensive process, it is of course not a very good option. 8A. Burden of proof in certain cases. Where any individual is indicted for taking or abetting the taking of any settlement under segment 3, or the requesting of share under section 4, the weight of demonstrating that he had not submitted an offense under those areas will be on him.

Analysis of section 8A by using the word shall no room left for discretion of the court i.e. it is mandatory for Court to take the fact as proved unless the party interested in disproving gives sufficient evidence for that purpose. This section 8A shifts the burden of proof on the accused. However, the initial burden of bringing the accused within the circumference still lies on the prosecution, as essentials of term dowry 'must be proved to have been fulfilled in accordance with Section 2 of Dowry Prohibition Act. It signifies that Section 8(a) must be read with Section 2 of the Act.

Need of presumption under section 8A the offence is usually committed within the Four walls of matrimonial house of the victim. The victim is all alone among the majority of her husband and his relatives who are usually the culprits or the mute spectators of the crime.

1. It creates the difficulty for the prosecution to find the genuine witnesses of the crime.
2. Several times, the circumstantial evidence is also tampered by the accused or their family members to escape the chances of prosecution.
3. The victim is not taken to the hospital on time which not only mitigates her chances of survival but also minimize the chances of recording of her dying declaration.

The effect of presentation is that it will shift the burden of proof on husband and his family to establish that's he is not committed offence under section 8A.⁵⁷

⁵⁵ Dowry Prohibition Act, 1961 | Ministry of Women & Child Development (wcd.nic.in)

⁵⁶ Section 8 in the Dowry Prohibition Act, 1961 (indiankanoon.org)

⁵⁷ Dowry Prohibition Act, 1961 | Ministry of Women & Child Development (wcd.nic.in)



Other provisions in support of section 8A

1. In order to curb the menace of dowry death and incidents related to dowry death section 113A of Indian evidence act, 1872 presumption as to abetment of suicide by married woman was incorporated by Criminal Law (Amendment) Act, 1983. According to Section 113A, when the question is whether the commission of suicide by a woman had been abetted by her husband or any of his relatives and it is shown that:

(a) She had committed suicide within 7 years of her marriage; and

(b) Her husband or such relatives had subject her to cruelty as defined under Section 498A of I.P.C., 1860 which was of such a nature as was likely to drive her to commit suicide or cause danger to her life limb or health, then the Court may presume, having regard to other circumstances, that such suicide, had been abetted by her husband or relatives of her husband.

Pinakin Mahipatray Rawal v. State of Gujarat, (2013) 10 SCC 48 Supreme Court held that prerequisites as stated in Section 113-A must be established by prosecution before presumption can be invoked.⁵⁸

Retrospective application of section 113B

Supreme Court in Gurbachan Singh v. Satpal Singh, AIR 1990 and reaffirmed in Arvind Kumar v. State of M.P., (2007) held that section 113A of Indian evidence act, 1872 does not create any new offence. It lays down merely matters of procedure and do not affect the substantive right. Hence this provision has retrospective application. Section 113B of Indian evidence act, 1872 i.e. presumption as to dowry death was inserted by Dowry Prohibition (Amendment) Act, 1986. Under this section, when it is shown that soon before the death, the woman had been subjected to cruelty or harassment by the accused for dowry, the court shall presume that the accused had caused the dowry death and the burden is on the accused to rebut the presumption.

Dowry death is defined under Section 304B of Indian Penal Code.⁵⁹ Unnatural death occurring within seven years of marriage and preceded by cruelty or harassment in connection with dowry is covered within the ambit of this section. Initial burden is on the prosecution to prove by preponderance of probability the ingredients of Section 304B of Indian Penal Code. Prosecution is not required to prove these ingredients beyond reasonable doubt because it will defeat the purpose of Section 304-B. Once this initial burden is

discharged by the prosecution it gets replaced by deemed presumption of guilt of the accused.

Thakkan Jha v. State of Bihar, (2004) 13 SCC 348 Supreme Court held that 'soon before' does not mean 'immediately before'. It implies that there should be presence of general and live connection between savagery/badgering and the censured death. It is a relative term and depends upon facts and circumstances of the case. 8B.

Dowry Prohibition Officers

(1) The State Government might appoint though many Dowries Prohibition Officers as it may suspect fit and specify the regions in interpret of which they will practice their ward and powers under this Act.

(2) Every Dowry Prohibition Officer will practice and play out the accompanying forces and capacities, specifically:

(a) To see that the arrangements of this Act are agreed with;

(b) To forestall, beyond what many would consider possible, the taking or abetting the taking of, or the requesting of, dowry;⁶⁰

(c) To gather such proof as might be important for the indictment of people submitting offenses under the Act; and

(d) To perform such extra capacities as might be allocated to him by the State Government, or as might be indicated in the standards made under this Act.

As indicated by Section 10 enabled state government to make rules for do the motivations behind this demonstration by notice in official gazette?

Section 10(2) explicitly engaged state government to make rule for the extra capacities to be performed by Dowry post trial agent under Section 8B (2).

(3) The State Government might notice in the Official Gazette; adjacent such powers of a cop as might be determined in the notice on the Dowry Prohibition Officer who will exercise such powers subject to such restrictions and conditions as might be indicated by rules made under this Act. As per Section 10(2) state government can make a standard for impediment and conditions subject to which an endowment forbiddance official might practice his capacity under section 8B (3) Each standard made by State Government under this part 10 will be laid before the state legislature.

(4) The State Government may, to exhort and helping Dowry Prohibition Officers in the proficient execution of their capacities under this Act, delegate a warning board comprising of not in excess of five social

⁵⁸ Section 8 in the Dowry Prohibition Act, 1961 (indiankanon.org)

⁵⁹ Dowry Prohibition Act, 1961, India-legitquest

⁶⁰ Dowry Prohibition Officers. | Dowry Prohibition Act, 1961 | Bare Acts | Law Library | AdvocateKhoj



government assistance laborers (out of whom somewhere around two will be women's) from the space in regard of which such Dowry Prohibition Officer practices jurisdiction.⁶¹

Analysis of section 8 B

Provision is inserted with an aim to create a social instrument designed to eradicate the dowry practice from the society i.e., to employ social means to curb this evil but unfortunately the practical implementation of this Section is lingering on. The Act envisages the appointment of, "Dowry Prohibition Officers" as well as establishment of Advisory boards for advising and assisting these officers. But the problem is that in most of states, no separate appointments of DPOs have been done. The other state officers like sub divisional magistrates, superintendents of police, probation officers etc.⁶² have been given the charge of Dowry Prohibition Officers.⁶³ The provisions for appointment of DPOs under the Act were inserted with an objective of effective implementation of this Act. If no separate and dedicated officers would be appointed, then such DPOs will probably be an eye wash and formality. Another concern is that by giving the additional charge of DPOs to the already existing officers will again result in pendency of cases and hence a delayed justice.⁶⁴

CONCLUSION

And last, Dowry is a social problem, it emerged in Ancient Indian society and social awareness is the most important element to eradicate this evil practice. All things considered, the Dowry Prohibition Act ought to be made more powerful, tough and changes ought to be brought out every once in a while, as per the conditions. In keeping view with Hindu mythology, marriages are made in heaven, though mother-in-law, sister-in-law, husbands and different respected ones are being an increasing number of worried within the breaking of the marriage for the lust of dowry. The woman should be made as the owner of all the properties and gifts given to her at the time of marriage and the registration of these gifts should be made compulsory. Though, the changes should also to be made in laws which give equal rights to women in

parental and matrimonial property. Women should be aware of legal remedies and their right. At the same time, they should avoid misusing the laws as one has to accept the bitter truth that the practice cannot be eradicated easily, the government, social activists, the Non-Governmental Organizations and the public themselves should come forward to create awareness through camps, cultural programmes and pamphlets among people about the evils of this practice. Since everyone knows that the legal procedure is time consuming and expensive it may be difficult for the girl's family to spend too much and wait for long to get justice. Hence, it is very important that the courts should register the cases and dispense judgment quickly. However, it is also true that justice delayed is justice denied. Legislative measures, education, socio-economic status alone cannot put an end to this evil practice which is the major cause for so many crimes against women in the society. It is the attitudinal change of the people and the end of the dominance of the patriarchal system that could help to lower the crime and gradually it may put an end to this inhuman social evil.

⁶¹ dowry prohibition officer (indiankanoon.org)

⁶² Ibid

⁶³ Sections 8B, 9 and 10 of the Dowry Prohibition Act, 1961

⁶⁴ Section 8B in the Dowry Prohibition Act, 1961 (indiankanoon.org)