

Dowry Prohibition Act, 1961

The system of dowry in marriages has been haunting our society for a long time. This is a social curse, which has gone unchecked, though time and again it has tormented the people in general. It has become a routine affair that we come across news-reports on dowry deaths and agony of women, which reflect the evils of the dowry system. It is like a scar on a healthy society. Degradation of society due to pernicious system of dowry and the unconscionable demands made by greedy and unscrupulous husbands and their relatives, resulting in an alarming number of suicidal and dowry deaths by women, has shocked the legislative consciousness. Generally, an important part of the power relationship between spouses and their families relates to dowry and its ramifications. To prohibit this evil system in 1961, the Government of India passed *Dowry Prohibition Act*, making the dowry demands in wedding arrangements illegal.

Details of the Dowry Prohibition Act

Section I

This Act was called the Dowry Prohibition Act, 1961 which extends to the whole of the country except Jammu and Kashmir. It shall come into force from the date of its notification in Official Gazette.

Section II

This Act defines dowry as the money, valuables, goods or estate that a woman brings to a marriage. It is a gift demanded directly, indirectly, or given as per a precondition for a marriage by the groom's family at the time of marriage, but it doesn't include the dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Section III

After the commencement of this Act, if any person gets or gives money, valuables, goods or estate on the name of dowry, shall be punished with imprisonment of three years and a fine of fifteen thousand or the amount of the

value of such dowry, whichever is more. For any special reason, the Court may impose the punishment of imprisonment for less than 5 years. Nothing in sub-section (1) shall apply to or, in relation to the presents which are given at the time of a marriage to the bride or the bridegroom (without nay demand having been made in that behalf): provided that such presents are entered in list maintained in accordance with rule made under this Act provided that presents which are of customary in nature given by any person related to the bride, and the value of the present is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

Section IV

If a person demands any dowry directly or indirectly from the parents, guardian or relatives of the bride or bridegroom, he shall be punished with imprisonment for a term, which shall not be less than six months, but it can be enhanced to two years and a fine, which may extend to ten thousand rupees. The Court may, for a adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months. Under Section IV A, offers through any advertisement in any newspaper, periodical, journal or through any other media, any share in his property or of any money or both as a share in any business or other interest as consideration fore the marriage of his son or daughter or any other relatives are punishable and an imprisonment of six moths to five years or fine of fifteen thousand shall be imposed on the concerned person. For any special reason, the Court impose a sentence of imprisonment for a term of less than six months and the judgement shall be recorded with adequate reason.

Section V

Any agreement for the giving or taking of dowry shall be void.

Section VI

If the dowry is received before the marriage in the name of the bride, it should be transferred in the name of the bride within three months of the marriage. If the dowry was received at the time of marriage or after the marriage, it should be transferred in the name of bride within three months after the date of its receipt. In case bride is minor, as she attains the age of eighteen years, she should get the dowry back in her name and pending such transfer, shall hold it in trust for the benefit of the woman. If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefore, or as required by sub-section (3), he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees or with both.

If the woman who is entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being. Where the woman entitled to any property dies within seven years of her marriage, otherwise than due to natural causes, such property shall, if she has no children, be transferred to her parents; or if she has children, be transferred to such children or transfer the money in trust for such children.

If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefore or as required by sub-section (3), he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend two years or with fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees or with both.

Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) or sub-section (3) has not, before his conviction under that sub-section, transferred such property to the woman entitled thereto or, as the case may be, her heirs, parents or children, the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman or, as the case may be, her heirs, parents or children within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman or, as the case may be, her heirs, parents or children. Nothing contained in this section shall affect the provisions of section 3 or section 4.

Section VII

Section VII of this Act describes those persons who can take decisions/actions of this issue. This section gives the following directions even if notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), ---

- Only a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.
- No court shall take notice of an offence under this Act except upon-
 - (i) Police reports the fact regarding the offence
 - (ii) If the aggrieved person, or a parent or other relatives of the person or any recognized welfare institution or organisation complains about the offence.

(iii) A Metropolitan Magistrate or a Judicial Magistrate of the first class can pass the order for conviction under this Act.

- Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to any offence punishable under this Act.
- Notwithstanding anything contained in any law for the time being in force, a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under this Act.

Section VIII

- Offences to be notice for certain purposes and to be non-bailable and non-compoundable (not suitable for reaching on agreement) —(1) The Code of Criminal Procedure, 1973 (2 of 1974), shall apply to offences under this Act as if they were cognizable offences—

(i) For the purposes of investigation of such offences

(ii) For the purposes of matters other than

(iii) Matters referred to in section 42 of that Code; and

(iv) The arrest of a person without a warrant or without an order of a Magistrate.

- Every offence under this Act shall be non-bailable and non-compoundable.

Section VIII A.

If a person is prosecuted for taking of any dowry under section 3, or the demanding of dowry under section 4, the burden of proving innocent to himself shall be on him under this Act.

Section VIII B.

The State Government may appoint Dowry Prohibition Officers for each area to whom it finds competent and they shall exercise their jurisdiction and

powers under this Act. The duties of the Dowry Prohibition Officer are as follows-----

- To see the compliance of the Act in toto.
- To prevent the act of giving and taking dowry
- To collect such evidences as may be necessary for the prosecution of persons committing offences under the Act
- To do other functions as per the direction of State Government under this Act.

The State Government may notify such powers of a police officer as may be specified in the notification on the Dowry Prohibition Officer who shall exercise them with subject to such limitations and conditions as may be specified by rules made under this Act in the Official Gazette.

The State Government may, for the purpose of advising and assisting Dowry Prohibition Officers in the efficient performance of their functions under this Act, appoint an Advisory Board consisting of not more than five social welfare workers (out of whom at least two shall be women) from the area in respect of which such Dowry Prohibition Officer exercise jurisdiction under sub section (1).

Section IX

By notifying in Official Gazette, the Central Government may make the rules without prejudice to the generality of the foregoing power for successful implementation of this Act as follows-----

- The form and manner in which, and the person by whom, any list of presents referred to in such section (2) of section 3 shall be maintained and all other matters connected therewith.

- The better co-ordination of policy and action with respect to the administration of this Act.

Every rule made under this section shall be passed through the Parliament (both houses) in a full session of thirty days and if, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Section X

- The State Government may, make rules for carrying out the purposes of this Act by notification in the Official Gazette.
- Such rules may provide for all or any of the following matters without any prejudice of fordoing power—

(i) Additional functions of the Dowry Prohibition Officers under sub section of Section 8B.

(ii) Limitations and conditions subject to which a Dowry Prohibition Officer may exercise his functions under sub section (3) of section 8B.

Every rule made by the State Government under this section shall be laid as soon as may be after it is made before the State Legislature.

The Dowry Prohibition (Maintenance of List of Presents to the Bride & Bridegroom) Rules, 1985

The Central Government while exercising the power under section 9 of the Dowry Prohibition Act, 1961 (28 of 1961), hereby makes the following rules—

- These rules may be called The Dowry Prohibition (Maintenance of List of Presents to the Bride & Bridegroom) Rules, 1985, which shall be implemented on 2nd October 1985 being the date appointed for the coming into force of the Dowry Prohibition (Amendment) Act, 1984 (63 of 1984).
- The list of presents given at the time of marriage shall be prepared by the bride and gifts given to the bridegroom shall be prepared by the bridegroom itself under the sub rule (1) or sub rule (2).
- The list shall be prepared at the marriage or as soon as possible after the marriage in writing and it shall contain a brief description of each present, the approximate value of the present, name of the person who has given the present, and whether the person giving the present is related to the bride or bridegroom, a description of such relationship. Lastly both the bride and the bridegroom shall sign the list.
- The bride or the bridegroom may, if she or he so desires obtain on either or both of the lists referred to in sub-rule (1) or sub rule 92) the signature or signatures of any other person or persons present at the time of the marriage.

There are some other Sections in Indian Penal Code, which deals with dowry as follows:

Section 304 B

It is related with dowry deaths. Under this Section, if a women dies within seven years of her marriage by burns, injury and there is sufficient evidences of cruelty and harassment by her husband and his family for demand of dowry, there is imprisonment for not less than 7 years.

Section 406

This Section deals with recovery of *Streedhan*, which a woman can claim as her own property within a marital household. It may include jewellery, gifts, and dowry articles. It is a non-bailable and cognizable offence if she doesn't get this.

Section 498A

If any act of cruelty is found against the bride/woman, there is a provision of imprisonment of three years for husband and his relatives. It will be non-bailable offence and no agreement will be signed after lodging the case. But violations of rule are rampant, especially in high-class people.

Loopholes in the Law regarding the Act

- There is no clear-cut difference in dowry and Streedhan in IPC, Section 406.
- Non-compoundable nature of Section 498A should be amended according to Law commission in 2012 as well as Justice Malimath Committee 2003 because it hampers the possibilities of reformatory justice
- The Act doesn't have provision for protection of the complainant. The victim or complainant face insecurity from the people against whom she has register complaint. They face financial hardship in the absence of

maintenance from the matrimonial house and sometimes she is forced to leave the home.

- In most of the cases, no witnesses are available to give evidences against the murderers.

So, strict enforcement of laws is essential. The society and the enforcement agencies should be sensitized against the menace of dowry. Dowry is a social malaise, one that can be tackled by the society alone. Marriages without any dowry should be encouraged in which our youth can play a vital role. Social boycott and public shaming of people who give and take dowry has to be the first step. Money should be spent on the education of the children and making them self-sufficient, self –reliant, not on band, baza and barat. The judiciary should make updated guidelines on the expenditures at weddings and ensure their effective implementation.