

# **DOWRY PROHIBITION ACT - A BOON OR BANE**

## **-AN ANALYSIS**

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### **Introduction**

One of the most draconian social evils which exist in India since several decades is the evil of dowry system. Dowry is a deep-rooted evil and a curse on the society, which has an impact upon the female population. In its origin, it was associated with gifts of love and affection. Since many years, it has been a customary practice to give some presents to the bride, bridegroom and his family at the time of marriage. The parents of the bride or their relations out of love and affection and with good intention, used to provide the couple something to fall back upon in case of need. But unfortunately, over the years, bridegroom or his family members started demanding cash or in kind from the bride's parents. They started demanding dowry as a matter of right and prestige. The demand of dowry more often extended even after the marriage. At the same time, when parents of a bride fail to satisfy the lust for dowry, the married woman has to face in her matrimonial home is torture, harassment, humiliation and often subjected to cruelty, even to the extremity of being mercilessly murdered in most inhuman modes or instigated to commit suicide.<sup>1</sup> According to NCRB report, there were 58,121 incidents of cruelty inflicted by husbands and relatives against women in 2004 and 1, 55,553 crimes against women in 2005, including 68,810 cases connected with domestic violence leading to dowry death committed by husband and his family members.<sup>2</sup>

The evil of dowry has unfortunately spread like an epidemic in our society. In order to regulate this pernicious practice, the Parliament of India enacted the Dowry -Prohibition Act 1961. This Act prohibits the demand of dowry either giving or taking dowry in any form to prevent the offence of cruelty by husband or his relatives on his wife. Subsequently few amendments were introduced such as section 498-A

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1. Mulakh Raj Vs Sathish Kumar. AIR, 1992.S.C.1175.

2. According to National Crime Bureau Reports (NCRB), 2005.

was inserted to the Indian Penal Code, section 198-A were inserted to the Code of Criminal Procedure and section 113-A was included to the Indian Evidence Act.<sup>3</sup> The very object of these amendments is to punish the guilty and to protect the innocent from all kinds of atrocities and torture. Following are the issues that are to be addressed in the research paper,

1. What amounts to dowry for the purpose of prosecuting the violator in the Act?
2. Whether the concept of dowry is socially acceptable and legally justifiable?
3. Whether the Dowry Prohibition Act is a powerful weapon to prohibit the menace of social evil such as dowry system?
4. Whether the Government has adequately appointed Dowry Prohibition Officer for regulating the Dowry?
5. Even after the enactment of the Dowry Prohibition Act, why many dowry related deaths are taking place?
6. Whether the Dowry Prohibition Act is being used or abused?
7. If the death of a bride takes place within seven years of her marriage it amounts to dowry death within the meaning of the Act. Is it a reasonable provision under the legislation?

### **The Dowry Prohibition Act**

The main object of the Dowry Prohibition Act is to remove the social evil of dowry system from the society to prevent dowry death, dowry harassment, and violence on women and give protection to victims. The term 'Dowry' is the payment in cash or/in kind given by the bride's family to the bridegroom's family along with the giving away of the bride (called Kanyadana) in Indian marriage. Kanyadanam is an important ritual in the Hindu marriage, wherein 'Kanya' means daughter, and 'dana' means gift. According to Section 2 of the Dowry Prohibition Act 1961, defines "dowry", means any property or -valuable security given either directly or indirectly by one party to a marriage at or before (or any time after the marriage) (in connection with the marriage)<sup>4</sup> to the other parties but does not include dower.

In some of the cases, courts have also made an attempt to define the term 'Dowry' and what act constitutes Dowry? Dowry means a property or valuable security given or agreed to be given either directly or indirectly by one party to another party to a marriage<sup>5</sup>. Any property given by parents of the bride as consideration to the marriage to the bride groom or his relatives in connection with the marriage, the same would constitute 'dowry' under the Act.<sup>6</sup> Where dowry is

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3. The Criminal Law (Second Amendment) Act 1983. (No.46 of 1983)

4. Dowry Prohibition (Amendment) Act. 1985.

5. *Gurmukh sing and another Vs state of H.P.* 1997 Cr.R.240 (H.P.)

6. *Rajeev v. Ram Kishan Jaiswal*, 1994 Cri L.J. 255 (All).

demand at the time of settlement of the marriage by either of the party as a consideration for the marriage, it is attracted by the definition of dowry. This clearly shows that, anything demanded, as a consideration for the settlement of marriage constitutes Dowry. But if the dowry items were not demanded as a part of consideration for the marriage they would not constitute "dowry".<sup>7</sup> Likewise, any demand of property or valuables, after the celebration of marriage, which was not demanded at the time of settlement of the marriage as consideration, would not constitute a dowry. Thus, the amount advanced to the prospective son-in-law did not amount to dowry and the same could be recovered as the amount was not paid or agreed to be paid at or before or after the marriage as consideration of marriage.<sup>8</sup> In order to remove the major loopholes exists in Dowry Prohibition Act, an amendment was brought replacing the word consideration to the Act in 1985 inserting the word 'in connection' with the marriage. As a result of this amendment, now any money or valuable security paid before or after or at the time of the marriage, it amounts to dowry.<sup>9</sup> Hence even if the demand is made long after the marriage, the same could constitute a dowry if the other requirements -of the sections are satisfied.<sup>10</sup> Land assigned as a gift as consideration for the marriage also constitutes a part of dowry.<sup>11</sup>

In *Arjun Dhondiba Kamble v. State of Maharashtra*<sup>12</sup>, it was held that the demand for valuable presents made by the appellants on the occasions of festivals like Deepavali is not connected with the wedding or marriage and therefore demands did not constitute dowry within the meaning of the Act. Where as in *Madhu Sudan Malhotra v. K.C. Bhandari*<sup>13</sup> the Supreme Court observed that, furnishing of a list of ornaments and other household articles such as refrigerator, furniture, and electrical appliances etc. at the time of the settlement of the marriage amounts to demand of dowry within the meaning of section 2 of the Dowry Prohibition Act. In *L.V. Jadhav v. Shankar Rao*<sup>14</sup>, it was held that, where the demand was made at the time when marriage ceremony was in progress and where demand was repeated even after the marriage, it fell within the definition of dowry. Recently, the Supreme Court has ruled that demand for money and presents from parents of a married girl at the time of birth of her child or for other ceremonies, as is prevalent in the Indian society, may be depreciable but cannot be construed as dowry to make it a punishable offence. That is customary payments, gifts are not dowry.<sup>15</sup> The

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7. Harbajan Singh Vs Smt.Gurucharan Kaur, 1990Cr.L.J, (Del).1591.

8. *Kunju Moideen Vs Sayed Mohammed*, AIR.1985, Ker.LT 516.

9. Substituted by the Act No.63 of 1984, w.e.f.2-10-1985.

10. *State of Himachal Pradesh Vs Nikku Ram*. 1995, CrLJ.4184.

11. *V.V.Rao and Others Vs Andrapradesh*.1992. CrLJ. 563.

12. 1995 CrLJ 273.

13. 1988 CrLJ 360.

14. (1983) 2 CrLJ. 470.

15. Supreme Court Decision Dated on 31st January, 2008, published in the Times of India, 1 Feb 2008.

Dowry Prohibition Act also provide that giving, taking or even abetting to give or take dowry amounts to an offence punishable with imprisonment for not less than Five years and with fine which should not be less than rupees Fifteen thousand or the amount of value of the dowry, which ever is more.<sup>16</sup> But in the following circumstances the act of the parties do not constitute dowry when -

- a) The presents, which are given at the time of a marriage to the bride (without any demand having been made in that behalf).
- b) The presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf).

But such presents are required to be entered in a list maintained in accordance with the Act. Further where such presents are made by the bride or any of her relatives and if such presents are of a customary nature and the value thereof is not excessive as regards to the financial status of the person by whom, or on whose behalf, such presents are given.<sup>17</sup>

In *Indrawati v. Union of India*<sup>18</sup>, petitioner challenged the constitutional validity of section 3 of Dowry Prohibition Act, which violates articles 14, 19, 21 and 22 of the Constitution. But court observed that Section 3 does not contravene to articles 14, 19, 21 and 22 of the Constitution and therefore this section is not ultra virus of the said articles. Besides if any person demands dowry directly or indirectly, from the parents or other relatives of a bride or bridegroom, he is punishable with an imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which may extend to rupees ten thousand.<sup>19</sup> In *Shankar Prasad Shaw and others Vs. State and another court held that*, demand for dowry always relates to property or valuable security given or agreed to be given at or before or after the marriage.<sup>20</sup>

Further, the Act also imposes restrictions upon any advertisement made in any newspaper, periodical, journal or through any other media offering dowry as consideration for marriage is an offence<sup>21</sup> punishable with imprisonment for a term not less than Six months and it extends up to Five years or with fine up to rupees fifteen thousand.<sup>22</sup>

The Act also points out the general principle that any agreement for giving and taking of dowry is invalid<sup>23</sup>. But there are some exceptions to this general rule contemplated under the Dowry Prohibition Act they are:

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16. Section 3. of Dowry Prohibition Act. 1961.

17. Inserted by Act 63 of 1984, sec.3.

18. *1 (1991) CrLJ 117 (All)*.

19. Section 4 of Dowry Prohibition Act. 1961

20. 20.1991 Cr.L.J.639.

21. *Raksha Devi v. Aruna Devi, 1 (1991) CrLJ 46 (P&H)*.

22. Section 4-A of Dowry Prohibition Act. 1986

23. Section 5 of Dowry Prohibition Act. 1961.

The constitution has ensured equality of rights and opportunities to both men and women in social, economic and political spheres.<sup>32</sup> It has also provided to all including women right to live with human dignity.<sup>33</sup> Besides the Constitution also has empowered the state to make special provisions for the protection and advancement of women in all walks of life.<sup>34</sup> This clearly shows that Constitution of India has safeguarded the women against all kinds of inequality, injustice, harassment, torture and humiliation either by the husband or by his relatives in connection with the dowry related problems. In addition to this, the Directive Principles of State Policy also obligates the state to secure social order for the promotion of welfare of the people.<sup>35</sup>

In *Sushil Kumar Sharma Vs Union of India & others*<sup>36</sup>, the question came up before the Supreme Court through a writ petition filed under Article 32 was regarding the validity of Section 498-A of Indian Penal Code, contending that, 498-A which violates of articles 14, 15, 19 and 21 of the Constitution. But the Supreme Court struck down the contention and held that section 498-A of IPC is constitutionally valid as it regulates cruelty against women committed by men and to make the wrong doer liable for punishment. The Court also observed that, "*Dowry Law is a shield, not an assassin's weapon*" and demanding for dowry is considered as itself a cruel act and which can be a ground for divorce.

Again In *Indrawati v. Union of India*<sup>37</sup>, the constitutional validity of section 3 of Dowry Prohibition Act was challenged contending that it violates articles 14, 19, 21 and 22 of the Constitution. But court struck down the contention and observed that Section 3 does not contravene to articles 14, 19, 21 and 22 of the Constitution as it protects and safeguard the interest of women against all kinds of ill-treatments and harassment. As a result, the court declared that section 3 of the Dowry Prohibition Act is valid. The Supreme Court has held that legislations such as the Dowry Prohibition Act and the Commission of Sati (Prevention) Act 1987 are also valid laws, which protect the dignity of women. In same rationale it can be accepted that Domestic Violence Act is also a welfare legislation, which protects the interest and dignity of women and prevent all kinds of exploitations.

### **The role Criminal laws**

In order to regulate effectively all dowry related problems, there are many criminal laws like Indian Penal Code, Criminal Procedure Code and Indian Evidence Act. The Indian Penal Code was amended by inserting certain provisions to curb

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32. Article 14 of the Indian Constitution

33. Article 21 of the Indian Constitution

34. Article 15(3) of the Indian Constitution

35. Article 38 of the Indian Constitution

36. AIR 2005.SC.

the offence of dowry. Under the Indian Penal Code, it has been contemplated that where the death of women is caused by any burns or bodily injury or occurs unnatural circumstances as a consequences of which if she dies with in seven years of her marriage, it amounts to dowry death provided she had been subjected to cruelty or harassment by her husband or any of her husband relatives in connection with demand for dowry.<sup>38</sup> The above provision clearly points out that, in order to make a person liable under Section 304-B,

1. There must be a demand for dowry and harassment must have been made by the accused.
2. The death of the bride must have been occurred with in seven years of marriage.
3. Such death must have been occurred under unnatural circumstances.

Under the above provision, a person who commits an offence of dowry death is subjected to imprisonment for life but not less than seven years.

In *Vemuri Venkateshwara Rao v.State of Andhra Pradesh*<sup>39</sup> and *Shanti v. State of Haryana*<sup>40</sup> the High Court of Andhra Pradesh and Supreme Court have observed respectively that in order to attract section 304-B and to considered an act as an offence, there must be a demand for dowry followed by harassment and as a consequence of such harassment death must take place with in seven years of marriage. The above observation of the courts clearly show that before the death of a married woman takes place, she must have been subjected to cruelty and torture by her husband or relatives in connection with dowry. This observation was reiterated by High Court of Madhya Pradesh in *Rameshwar v. State of Madhya Pradesh*.<sup>41</sup>

For the purpose of regulating the dowry related deaths and offences, the general provision of 498-A may also be invoked. The provision of 498-A provides that whenever the husband or his relatives subjecting the woman for cruelty may be brought under this section and subject them to imprisonment up to three years with fine.<sup>42</sup>

In *Sukhbir Jain v. State*<sup>43</sup> the High Court of Delhi pointed out that where there is no specific allegation of cruelty is proved the same cannot be considered as an offence under section 498-A of IPC. In *Ishwari Devi Vs State*<sup>44</sup> the Patna and

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37. Supra.18.

38. Section 304B of IPC. (Note: Ins. by Act 43 of 1986, sec.11 (w.e.f. 8-9-1986

39. 1992 Cri.LJ.563 A.P.

40. 1 (1991) CrLJ. 187 P&H.

41. II (1992) CrLJ. 486 M.P.

42. Section 498A of IPC. [Note: Ins. by Act 46 of 1983, sec.2 (w.e.f. 25.11.1983)

43. 1994 (1) CC cases 609 (HC) Del.

44. (1992)I CC Cases 278, (P &H).

Haryana High Court said that where there was death of a woman, as a result of all sorts of torture and harassment inflicted on her as she was demanded to bring Maruthi Car, it was considered as an offence under section 498-A of IPC and therefore the bail which was sought by the accused was refused.

For the purpose of conducting investigation on death of a woman caused through suspicious circumstances within seven years of her marriage, many procedures are contemplated under Criminal Procedure Code.<sup>45</sup>

### Presumption as to the dowry death

Whenever the death of a woman takes place and before such death woman had been subjected to cruelty or harassment in connection with the demand for dowry, it is presumed by the court that the death is caused due to dowry.<sup>46</sup> Interestingly in *Reema Agarwal Vs Anupam and others*<sup>47</sup> the Supreme Court observed that, the criminal law can also be applied relating to such dowry death of a woman who married a man whose first marriage was still subsisting. It also observed that even though the woman was not technically the wife of the accused, where his first marriage is still subsisting, and the husband might be subjected to punishment if the wife receives any injury or cruelty by him. The apex court held :

*“The demand of dowry in respect of invalid marriage would be legally not recognizable. Even then the purpose for which sections 498-A, 304-B of IPC and section 113-B of Indian Evidence Act were introduced cannot be lost sight of”...*

### Period of Limitation

There is no period of Limitation for filing a complaint under the Dowry Prohibition Act. For example, if a person was harassed for dowry in the year 2003 she can file a complaint in the year 2007 or even later as for prosecution under the Act bar of limitation has been removed.

### Conclusion

The demand of dowry from the parents of the bride has shown a phenomenal increase in last few years. Dowry killing is a crime of its own kind where elimination of daughter-in-law becomes immediate necessity if she or her parents are no more able to satiate the greed and avarice of her husband and their family members.<sup>48</sup>

45. Section 198-A, of Criminal Procedure Code

46. Section 113B of Indian Evidence Act (Ins. by Act 43 of 1986, sec.12 (w.e.f. 8-9-1986

47. AIR 2004 S.C.1418

48. *Ashok Kumar Vs State of Rajasthan*. AIR 1990, S.C.2134.

Though we have umpteen numbers of legislations in order to eliminate the pernicious practice of dowry, unfortunately, despite all these legislations, ill treatment of women in society still continues. Legislations cannot by itself normally solve the deep-rooted social problems. Laws exist only on paper, and have little meaning for those for whom they are made. Paper laws are just 'bargaining endowments' — to be used if possible. Laws do not protect human rights, only people do. Since 1986, an advertisement for dowry has been banned (Section 4A). Agreements for dowry are void (Section 5), but it is valid when it benefits the wife and her heirs (Section 6). The 1986 changes also enable State Governments to appoint Dowry Prohibition Officers (Section 8-B). But they are not heard of. Many instances of dowry harassment don't reach the judicial realm for reasons such as family prestige, police collusion, and economic hardship to indulge in legal battles and fear for social insecurity outside the family.

The system of dowry and evil of dowry still continue to exist. Dowry deaths and dowry suicide are occurring everyday. What is surprising is, that such demand of dowry, such harassment for dowry, dowry deaths and dowry suicides are even found in the affluent and educated family. However, the objects of legislation such as Dowry Prohibition Act and amendments made to the other Acts is not lost. On account of such laws, the evils of dowry have substantially been regulated. However, at the same time dowry laws have been subjected to criticism as they are misused by women and their families. Draconian laws are abused by dishonest daughter-in-law to victimize innocent mothers and unmarried sisters. Well, every coin has two sides. It cannot be denied the fact that, Dowry Prohibition Act is being misused. But this law has certainly helped the bride and has reduced the evil of dowry.

Unless there is a strong awareness in the minds of the people, unless the entire society believes that dowry is an evil, unless the entire society objects to the demand for dowry, unless every mother-in-law thinks that at one time she too was a daughter-in-law, unless every mother thinks that the treatment which she gives to her daughter-in-law may also be received by her own daughter, the evils of dowry will remain in society.