

THE DOWRY PROHIBITION ACT, 1961¹

(28 OF 1961)

[20th May, 1961]

An act to prohibit the giving or taking of dowry.

BE it enacted by Parliament in the Twelfth year of the Republic of India as follows:-

Statements of Objects and Reasons.- The object of this bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law which makes the practice punishable and at the same time ensures that any dowry, if given does ensure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside parliament. Hence, the present Bill. It, however, takes care to exclude presents in the form of clothes, ornaments, etc., which are customary at marriages, provided the value thereof does not exceed Rs. 2000. Such a provision appears to be necessary to make the law workable.

Amendment Act 63 of 1984-Statement of Objects and Reasons.- The evil of dowry system has been a matter of serious concern to every one in view of its ever-increasing and disturbing proportions. The legislation on the subject enacted by Parliament, *i.e.*, the Dowry Prohibition Act, 1961 and the far-reaching amendments which have been made to the Act by a number of States during the seventies have not succeeded in containing the evil. As pointed out by the Committee on the Status of Women in India, the educated youth is grossly insensitive to the evil of dowry and unashamedly contributes to its perpetuation. Government has been making various efforts to deal with the problem. In addition to issuing instructions to the State Governments and Union territory administrations with regard to the making of thorough and compulsory investigations into cases of dowry deaths and stepping up anti-dowry publicity. Government referred the whole matter for consideration by a Joint committee of both the Houses of Parliament. The Committee went into the whole matter in great depth and its proceedings have helped in no small measure in focussing the attention of the public and rousing the consciousness of the public against this evil.

2. The following observations made by late Pandit Jawaharlal Nehru which have been quoted by the Committee indicate the role which legislation can play in dealing with the evil:-

consideration the comments received on the Report from the State Governments, Union Territory administrations and the different administrative ministries of the Union concerned with the matter. One of the important recommendations of the Committee for dealing with cruelty to a married woman by the husband or the relatives of the husband on the ground of non receipt of dowry or insufficient dowry has already been given effect to by the Criminal Law (Second Amendment) Act, 1983. This Act amended, inter alia, the Indian Penal code to include

1. The Act has been extended to the Union territory of: (1) Pondicherry by Act 26 of 1963, S. 3 and Sch.:(2) Dadra and Nagar Haveli by Regn. 6 of 1963.

therein a provision for punishment for cruelty to married women and was aimed at dealing directly with the problem of dowry suicides and dowry deaths.

3. The Joint committee has recommended that the definition of “dowry” contained in section 2 of the 1961 Act should be modified by omitting the expression “as consideration for the marriage” used therein on the ground that it is well nigh impossible to prove that anything given were a consideration for the marriage for the obvious and simple reason that the giver i.e., the parents who are usually the victims would be reluctant and unwilling to set the law in motion. The omission of the words “as consideration for the marriage” would make the definition not only wide but also unworkable, for, if these words are omitted, anything given, whether before or after or at the time of marriage by any one, may amount to dowry. The Supreme Court has also placed a liberal construction on the word “dowry” as used in section 4 of the Dowry Prohibition Act, 1961, relating to demanding dowry. In the circumstances, it is proposed to substitute the words “in connection with the marriage” for the words “as consideration for the marriage” instead of omitting those words.

4. Section 3 of the Dowry Prohibition Act relating to the offences of giving or taking of dowry is being amended in accordance with the recommendations of the joint committee to make the punishment for the offence more stringent. All presents given at the time of marriage to the bride and certain types of presents given at the time of marriage to the bridegroom are proposed to be excluded from the purview of the offences under the section. However, the recommendations of the committee for exempting the giver of dowry from punishment is not being given effect to as such exemption may only prove to be counter-productive.

5. Section 4 of the Dowry Prohibition Act relating to penalty for demanding dowry is proposed to be amended to make the punishment thereunder more stringent on the lines recommended by the joint committee.

6. Section 6 of the Act is being amended in accordance with the recommendation of the Joint Committee, to reduce the time limit within which dowry received in connection with the marriage of a woman by any other person should be restored to the woman from one year to three months. Likewise, the punishment for failure to restore such dowry within the said time limit is being made more stringent on the lines recommended by the committee. Under a special provision which is being included in section 6 where a person is convicted for failure to restore the dowry to the woman concerned within the period specified in the section, the Court may, in addition to awarding punishment, issue a direction requiring him to restore the property to the woman within the period specified in the direction. In case of non-compliance with the direction, the value of the property would be

Amendment Act 43 of 1986-Statement of Objects and Reasons.-
The Dowry Prohibition Act, 1961 was recently amended by the Dowry Prohibition (Amendment) Act, 1984 to give effect to certain recommendations of the joint Committee of the Houses of Parliament to examine the question of

the working of the Dowry Prohibition Act, 1961 and to make the provisions of the Act more stringent and effective. Although the Dowry Prohibition (Amendment) Act, 1984 was an improvement on the existing legislation, opinions have been expressed by representatives from women's voluntary organizations and others to the effect that the amendments made are still inadequate and the Act needs to be further amended.

2. It is, therefore, proposed to further amend the Dowry Prohibition Act, 1961 to make provisions therein further stringent and effective. The salient features of the Bill are :-

- (a) The Minimum punishment for taking or abetting the taking of dowry under section 3 of the Act has been raised to five years and a fine of rupees fifteen thousand.

- (b) The burden of proving that there was no demand for dowry will be on the person who takes or abets the taking of dowry.
- (c) The statement made by the person aggrieved by the offence shall not subject him to prosecution under the Act.
- (d) Any advertisement in any newspaper, periodical journal or any other media by any person offering any share in his property or any money in consideration of the marriage of his son or daughter is proposed to be banned and the person giving such advertisement and the printer or publisher of such advertisement will be liable for punishment with imprisonment of six months to five years or with fine up to fifteen thousand rupees.
- (e) Offences under the Act are proposed to be made non-bailable.
- (f) Provision has also been made for the appointment of Dowry Prohibition Officers by the State Governments for the effective implementation of the Act. The Dowry Prohibition Officers will be assisted by the Advisory Board consisting of not more than five social welfare workers (out of whom at least two shall be women).
- (g) A new offence of “dowry death” is proposed to be included in the Indian Penal Code and the necessary consequential amendments in the Code of Criminal Procedure, 1973 and in the Indian Evidence Act, 1872 have also been proposed.

1. Short title, extent and commencement.-(1) This Act may be called THE DOWRY PROHIBITION ACT, 1961.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint.

2. Definition of “dowry”.-In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly-

- (a) by one party to a marriage to the other party to the marriage; or
- (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before ³[or any time after the marriage] ⁴[in connection with the marriage of the said parties, but does not include] dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

⁵[***]

Explanation II.-The expression “valuable security” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

State Amendment-[Haryana].-In its application to the State of Haryana, for S.2, substitute the following section, namely:-

“2. *Definitions.*-In this Act, unless the context requires,-

- (i) “dowry” means any property or valuable security given or agreed to be given either directly or indirectly-

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2. Brought into force on 1-7-1961.
 3. Substituted by Act 43 of 1986, S. 2, for “or after the marriage” (w.e.f. 19-11-1986).
 4. Substituted by Act 63 of 1984, S.2, for “as consideration for the marriage of the said parties, but does not include” (w.e.f. 2-10-1985).
 5. *Explanation I* omitted by Act 63 of 1984, S.2 (w.e.f. 2-10-1985).

at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or *mahr* in case of persons to whom the Muslim Personal Law (*Shariat*) applies.

Explanation I.-For the removal of doubts it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

Explanation II.-The expression “valuable securities” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

(ii) “marriage expenses” shall include expenses incurred directly or indirectly at or before the marriage on-

- (a) Thakka, Sagai, Tikka, Shagun and Milni ceremonies;
- (b) the gifts made by one party to a marriage to the other party to the marriage or by the parents, grant-parents and brothers of either party to a marriage, to either party to the marriage or the blood relations thereof;
- (c) illumination, food and the arrangements for serving food to the members of the marriage party and other expenses incidental thereto.

Explanation.-For the removal of doubts, it is hereby declared that any gifts made by a person other than those specified in sub-clause (b), at the time of marriage to either party to the marriage shall not be deemed to be marriage expenses”.-Haryana Act 38 of 1976, S.2 (w.e.f. 11-8-1976).

3. Penalty for giving or taking dowry.⁶[(1)] If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable ⁷[with imprisonment for a term which shall not be less than ⁸[five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more]:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than ⁹[five years]

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary

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6. S.3 renumbered as sub-S. (1) thereof by Act 63 of 1984. S.3 (w.e.f. 2-10-1985).
 7. Substituted by Act 63 of 1984, S. 3, for “with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both”(w.e.f. 2-10-1985).
 8. Substituted by Act 43 of 1986, S. 3, for “six months, but which may extend to two years, and with fine which may extend to ten thousand rupees or the amount of the value of such dowry, whichever is more” (w.e.f. 19-11-1986).
 9. Substituted by Act 43 of 1986, S.3, for “six months” (w.e.f. 19-11-1986).
 10. Inserted by Act 63 of 1984, S. 3 (w.e.f. 2-10-1985).

nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.]

State Amendments-[Bihar].-In its application to the State of Bihar, for S.3, substitute the following section, namely:-

“3. Penalty for giving or taking dowry.-If any person after the commencement of this Act, gives to takes or abets the giving or taking of dowry, he shall be punishable with imprisonment which may extend to six months and with fine which may extend to five thousand rupees.”-Bihar Act 4 of 1976, S.2 (w.e.f. 20-1-1976).

[Haryana].-In its application to the State of Haryana, for S.3, substitute the following section, namely:-

“3. Bar of certain acts.-No person shall-

- (a) give or take or abet the giving or taking of dowry;
- (b) demand, directly or indirectly from the parents or guardians of a bride or bridegroom, as the case may be, any dowry;
- (c) incur marriage expenses the aggregate value whereof exceeds five thousand rupees;
- (d) display any gifts made at or before the marriage in the form of cash ornaments, clothes or other articles;

which may extend to one year and with fine which may extend to five thousand rupees.”-H.P. Act 25 of 1976, S. 2 (w.e.f. 24-6-1976).

[Punjab].-In its application to the State of Punjab, in S. 3, for the words “six months or with fine which may extend to five thousand rupees”, substitute “one year, and fine which may extend to five thousand rupees”.-Punjab Act 26 of 1976, S. 2 (w.e.f. 20-5-1976).

[West Bengal].-In its application to the State of West Bengal, in S. 3, for the words “which may extend to six months, or with fine which may extend to five thousand rupees”, substitute “which shall not be less than three months, but may extend to three years or with fine which shall not be less than two thousand rupees, but may extend to ten thousand rupees”.-W.B.Act 35 of 1975, S. 2 (w.e.f. 23-9-1975).

COMMENTS

This deep-rooted social evil requires to be controlled not only by effective implementation of the Dowry Prohibition Act, 1961, but also by the Society. The Society has to find out ways and means of controlling and combating this menace of receipt and payment of dowry. It appears that instead of controlling payment and receipt of dowry in one or other form, it is increasing even in educated class. May be that, it is increasing because of accumulation of unaccounted wealth with few and others having less means follow the same out of compulsion: *Vikas v. State of Rajasthan* 2002 Cr.L.J. 3760 (S.C.).

Ss. 3 and 4 of the Dowry Prohibition Act make out independent offences, but in the instant case it was the demand for dowry coupled with harassment which constitutes the basis of the prosecution case. Once the main part of the charge under S. 304-B was not found established, it was not possible to record conviction under Ss. 3 and 4 of the Dowry Prohibition Act: *Sakhi Mandalani v. State of Bihar* (1999)5 S.C.C. 705: 1999 S.C.C.(Cr.)1039.

¹¹**[4. Penalty for demanding dowry.]**-If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with 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 ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.]

State Amendments-[Bihar].-In its application to the State of Bihar, for S. 4, substitute the following section, namely:-

"4. Penalty for demanding dowry.-If any person, after the commencement of this Act, demands directly or indirectly from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment which may extend to six months and with fine which may extend to five thousand rupees:

Provided that no Court shall take cognizance of any offence under this section except with the previous sanction of the State Government or of such officer as the State Government, may, by general or special order, specify in this behalf."-Bihar Act 4 of 1976, S.3 (w.e.f. 20-1-1976).

[Haryana].-In its application to the State of Haryana, for S.4, substitute the following section, namely:-

"4. Penalty.-(1) If any person contravenes any of the provisions of section 3, he shall be punishable with imprisonment which may extend to six months and with fine which may extend to five thousand rupees.

(2) The Court trying an offence under clause (f) of section 3 relating to conjugal rights may at any stage of the proceedings, on the execution of a bond by the husband undertaking not to demand dowry and to allow conjugal rights to the wife, drop the proceedings.

(3) Any proceedings dropped under sub-section (2) shall revive if the Court is satisfied, on an application made by the wife in this behalf, that the husband has failed to carry out the undertaking or has otherwise acted contrary to the terms of the bond, and thereupon the Court shall proceed with the case from the stage at which it was dropped:

Provided that no application under this sub-section shall be entertained if it is made after the expiry of a period of three years from the date on which the proceedings were dropped.

(4) The Court may direct that the fine, if any, imposed for the contravention of clause (f) of section 3, or such portion thereof, as the Court may deem proper, shall be paid to the wife."-Haryana Act 38 of 1976, S. 2 (w.e.f. 11-8-1976).

[Himachal Pradesh].-In its application to the State of Himachal Pradesh, for S.4, substitute the following section, namely:-

"4. Penalty for demanding dowry.-If any person demands, directly or indirectly from the parents or guardian of a bride or bridegroom or from any

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11. Substituted by Act 63 of 1984, S. 4, for S. 4 (w.e.f. 2-10-1985).
 12. Inserted by Act 43 of 1986, S. 4 (w.e.f. 19-11-1986).

or both as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative;

- (b) prints or publishes or circulates any advertisement referred to clause (a),

he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.].

State Amendments-[Himachal Pradesh].-In its application to the State of Himachal Pradesh, after S. 4. insert the following section, namely:-

“4-A. Bar of certain acts.-Any person who-

- (i) displays any presents made at the time of marriage in the form of cash, ornaments, clothes or other articles; or
- (ii) gives in the form of “shagun” at the time of “thaka”, betrothal or “tikka” anything the value of which exceeds eleven rupees; or
- (iii) gives to the parents or any other relation of a party to the marriage anything on the occasion of “milni” or any other ceremony performed in relation to betrothal or marriage,

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees, or with both.”- H.P.Act 25 of 1976, S. 4 (w.e.f. 24-6-1976).

[Punjab].-In its application to the State of Punjab, after S.4, insert the following section, namely:-

“4-A. Bar of certain acts.-Any person who-

- (i) displays any presents made at the time of such marriage in the form of cash, ornaments, clothes or other articles; or
- (ii) takes in a marriage party more than twenty-five persons exclusive of minors and the members of the band; or
- (iii) gives in the form of sagun at the time of thaka, betrothal or marriage, anything the value of which exceeds eleven rupees; or
- (iv) gives to the parents or any other relation of a party to the marriage anything on the occasion of “milni” or any other ceremony performed in relation to betrothal or marriage; or
- (v) serves to the marriage party more than two principal meals: shall

[West Bengal].-In its application to the State of West Bengal, after S. 4, insert the following section, namely:-

“4-A. Penalty for depriving any party of the rights and privileges of marriage.-(1) If after the marriage, any party to the marriage with or without assistance of his parents or guardians deprives the other party of the rights and privileges of marriage, or tortures or refuses to maintain the said other party for non-payment of dowry before, during or after marriage, he shall be punishable with imprisonment which shall not be less than three months, but may extend to one year or with fine which shall not be less than two thousand rupees, but may extend to five thousand rupees, or with both.

(2) The provisions of this section shall be in addition to, and not in derogation of, any provisions on the subject contained in any other law for the time being in force.”-W.B.Act 35 of 1975, S. 5 (w.e.f. 23-9-1975).

Section 4-B

State Amendments-[Himachal Pradesh].-In its application to the State of Himachal Pradesh, after S. 4-A, insert the following section, namely:-

“4-B. Penalty for depriving any party of the rights and privileges of marriage.-(1) If after the marriage, any party to the marriage with or without assistance of any other person deprives the other party of the rights and privileges of marriage or tortures or refuses to maintain the said other party for non-payment of dowry before, during or after marriage, he shall be punishable with imprisonment which may extend to one year and with fine which may extend to five thousand rupees.

(2) The provisions of this section shall be in addition to and not in derogation of, any provision on the subject contained in any other law for the time being in force.”-H.P. Act 25 of 1976, S. 4 (w.e.f. 24-6-1976),

[Punjab].-In its application to the State of Punjab, after S.4-A, insert the following section, namely:-

“4-B. Penalty for depriving any party of rights and privileges of marriage.-Any party to the marriage who, after the marriage, deprives the other party of the rights and privileges of marriage, or tortures or refuses to maintain the said other party, for non-payment of dowry, and any person who assists such party in the commission of such offence, shall be punishable with imprisonment for a term which may extend to one year, and fine which may extend to five thousand rupees.”-Punjab Act 26 of 1976, S. 4 (w.e.f. 20-5-1976).

5. Agreement for giving or taking dowry to be void.-Any agreement for the giving or taking of dowry shall be void.

6. Dowry to be for the benefit of the wife or her heirs.-(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman-

(a) if the dowry was received before marriage, within ¹³[three months]

not be less than six months, but which may extend to two years or with fine¹⁶[which shall not be less than five thousand rupees, but which may extend to ten thousand rupees] or with both.]

(3) Where the woman 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:

¹⁵[Providing that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,-

13. Substituted by Act 63 of 1984, S. 5, for “one year” (w.e.f. 2-10-1985).

14. Substituted by Act 63 of 1984, S. 5, for sub-S. (2) (w.e.f. 2-10-1985).

15. Inserted by Act 43 of 1986, S. 5 (w.e.f. 19-11-1986).

16. Substituted by Act 43 of 1986, S. 5, for “which may extend to ten thousand rupees” (w.e.f. 19-11-1986).

(a) if she has no children, be transferred to her parents, or

(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.]

¹⁷[(3-A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) ¹⁸[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, ¹⁹[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, ¹⁹[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, ¹⁹[her heirs, parents or children].

(4) Nothing contained in this section shall affect the provisions of section 3 or section 4.

State Amendments-[Haryana]. In its application to the state of Haryana, in sub-S. (2) of S. 6, for “or with fine which may extend to five thousand rupees, or with both”, substitute “and with fine which may extend to five thousand rupees”.-Haryana Act 38 of 1976, S. 3 (w.e.f. 11-8-1976).

Sections 6-A and 6-B

State Amendments-[Orissa].-In its application to the State of Orissa, after S. 6, insert the following sections, namely:-

“6-A. *Penalty for denial of conjugal right by the husband.*-(1) If any

husband has failed to carry out the undertaking or has otherwise acted contrary to the terms of the bond, and thereupon the Court shall proceed with the case from the stage at which it was dropped:

Provided that no application under this sub-section shall be entertained if it is made after the expiry of three years from the date on which the proceedings were dropped;

(4) The Court may direct that the fine, if any, imposed under this section or such portion thereof as the Court deems proper, shall be paid to the wife as compensation.

6-B. Maintenance to be paid by husband on his conviction.-(1) On conviction of a person for an offence under section 6-A, the Court trying the offence may, on a claim made by his wife in that behalf within two months from the date of the order of conviction, order such person to make a monthly allowance for the maintenance of his wife at such monthly rate not exceeding five hundred rupees, as the Court deems proper:

Provided that no such order shall be made without giving the parties concerned a reasonable opportunity of being heard.

17. Inserted by Act 63 of 1984, S. 5 (w.e.f. 2-10-1985).

18. Inserted by Act 43 of 1986, S. 5 (w.e.f. 19-11-1986).

19. Substituted by Act 63 of 1984, S. 5, for "her heirs" (w.e.f. 19-11-1986).

(2) In determining the monthly allowance under this section regard shall be had to-

- (a) the position and status of the parties;
- (b) the reasonable wants of the wife;
- (c) the value of the wife's property and any income derived from such property, or from the wife's earnings or from any other source; and
- (d) the amount of compensation awarded under section 6-A.

(3) The maintenance allowance so ordered shall be a charge on the property, if any, of the husband, whether acquired before or after the date of the order.

(4) Where a complaint has been filed by the wife for an offence under section 6-A, the husband shall not transfer any of his assets till-

- (a) where no claim for maintenance has been preferred under this section, the date of expiry of the period of limitation specified in sub-section (1) for filing such claim; and
- (b) where such claim is preferred, the disposal of the claim.

²⁰**[7. Cognizance of offences.**-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

- (a) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;
- (b) no Court shall take cognizance of an offence under this Act except upon-
 - (i) its own knowledge or a police report of the facts which constitute such offence, or
 - (ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution or organization;
- (c) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorized by this Act on any person convicted of an offence under this Act.

Explanation.-For the purposes of this sub-section, “recognized welfare institution or organization” means a social welfare institution or organization recognized in this behalf by the Central or State Government.

(2) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to any offence punishable under this Act.]

²¹[(3) 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.]

State Amendments-[Bihar].-In its application to the State of Bihar, for S.7, substitute the following section, namely:-

20. Substituted by Act 63 of 1984, S.6, for S.7 (w.e.f. 2-10-1985).

21. Inserted by Act 43 of 1986, S. 6 (w.e.f. 19-11-1986).

“7. Trial of offences.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.”-Bihar Act 4 of 1976, S. 4(w.e.f. 20-1-1976).

[Haryana].-In its application to the State of Haryana, for S.7, substitute the following section, namely:-

“7. Cognizance of offences.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

- (a) no Court inferior to that of a Judicial Magistrate of the first class shall try any offence under this Act;
- (b) no Court shall take cognizance of any such offence except on a

- (e) no woman shall be called to a Police Station for the purpose of an enquiry regarding any offence under this Act.”-Haryana Act 38 of 1976, S. 4 (w.e.f. 11-8-1976).

[Himachal Pradesh].-In its application to the State of Himachal Pradesh, for S. 7, substitute the following section, namely:-

“7. *Trial of offences.*-[*] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no court inferior to that of a Judicial Magistrate of the first class shall try any offence under this Act.

[*] No Court shall take cognizance of any offence under this Act, except that of offence under section 4-B, except on a police report or complaint made within one year of the marriage.”-H.P.Act 25 of 1976, S. 5(w.e.f. 24-6-1976) as amended by H.P. Act 39 of 1978, S. 5, (w.e.f. 4-12-1978).

[Punjab].-In its application to the State of Punjab, for S.7, substitute the following section, namely:-

“7. *Cognizance of offences.*-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

- (1) No Court inferior to that of a Judicial Magistrate of the first class shall try any offence under this Act;
- (2) No Court shall take cognizance of any offence punishable under sections 3, 4 and 4-B, except upon a complaint made within one year from the date of the offence, by some person aggrieved by the offence:

Provided that-

- (a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public some other person may, with the leave of the Court, make a complaint on his or her behalf;
- (b) where the person aggrieved by an offence is the wife, complaint may be made on her behalf by her father, mother, brother, sister, or by her father’s or mother’s brother or sister, and
- (3) every offence under section 4-A shall be cognizable:

Provided that no police officer below the rank of a Deputy Superintendent of Police shall investigate any offence punishable under this Act or make any arrest therefor.”-

Punjab Act 26 of 1976, S.5 (w.e.f. 20-5-1976).

[West Bengal].-In its application to the State of West Bengal, in S. 7,-

- (a) for the words and figures “Code of Criminal Procedure, 1898”, substitute “Code of Criminal Procedure, 1973”:

²²**[8. Offences to be cognizable for certain purposes and to be** ²³**[non-bailable] and non-compoundable.**-(1) The Code of Criminal Procedure, 1973 (2 of 1974), shall apply to offences under this Act as if they were cognizable offences-

- (a) for the purposes of investigation of such offences; and
- (b) for the purposes of matters other than-
 - (i) matters referred to in section 42 of that Code; and
 - (ii) the arrest of a person without a warrant or without an order of a Magistrate.

(2)Every offence under this Act shall be ²³[non-bailable] and non-compoundable.]

State Amendments-[Bihar].-In its application to the State of Bihar, for S.8, substitute the following section, namely:-

“8. Offences to be cognizable, non-bailable and non-compoundable.-Every offence under this Act shall be cognizable, non-bailable and non-compoundable.”-Bihar Act 4 of 1976, S. 5 (w.e.f. 20-1-1976).

[Himachal Pradesh].-In its application to the State of Himachal Pradesh, for S.8, substitute the following section namely:-

“8. Offences to be cognizable, non-bailable and non-compoundable.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act shall be cognizable, non-bailable and non-compoundable”.-H.P.Act 25 of 1976, S. 6 (w.e.f. 24-6-1976).

[Orissa].-In its application to the State of Orissa, in S.8, for “every offence”, substitute “save as otherwise provided, every offence”-Orissa Act 1 of 1976, S. 3 (w.e.f. 18-1-1976).

[Punjab].-In its application to the State of Punjab, for S.8, substitute the following section namely:-

“8. Offences to be bailable and non-compoundable.-Every offence under this Act shall be bailable and non-compoundable.”-Punjab Act 26 of 1976, S. 7 (w.e.f. 20-5-1976).

²⁴**[8-A. Burden of proof in certain cases.**-Where any person is prosecuted for taking or abetting the taking of any dowry under section 3, or the demanding of dowry under section 4, the burden of proving that he had not committed an offence under these sections shall be on him].

State Amendments-[Himachal Pradesh].-In its application to the State of Himachal Pradesh for S. 8-A, substitute the following section, namely:-

“8-A. Cognizance of offences-No Court shall take cognizance of any offence under this Act except on a police report under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint made by a person aggrieved by the offence, as the case may be, within one year from the date of the commission of the offence:

Provided that no police officer of the rank lower than that of the Deputy Superintendent of Police shall investigate any case registered under this Act:

22. Substituted by Act 63 of 1984, S. 7, for S. 8 (w.e.f. 2-10-1985).

23. Substituted by Act 43 of 1986, S. 7, for “bailable” (w.e.f. 19-11-1986)

[Punjab].-In its application to the State of Punjab, after S.8, insert the following section, namely:-

“8-A. Institution of proceedings.-No prosecution shall be instituted against any person in respect of any offence committed under this Act without the previous sanction of the District Magistrate of such officer as the State Government may by special or general order appoint in this behalf.”-Punjab Act 26 of 1976, S. 7 (w.e.f. 20-5-1976).

²⁵**[8-B. Dowry Prohibition Officers.**-(1) The State Government may appoint as many Dowry Prohibition Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act.

(2) Every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely:-

- (a) to see that the provisions of this Act are complied with;
- (b) to prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry;
- (c) to collect such evidence as may be necessary for the prosecution of persons committing offences under this Act; and
- (d) to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

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

(4) 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 exercises jurisdiction under sub-section (1).]

9. Power to make rules.-(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

²⁶[(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-

- (a) the form and manner in which, and the persons by whom, any list of presents referred to in sub-section (2) of section 3 shall be maintained and all other matters connected therewith; and

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25. Inserted by Act 43 of 1986, S. 8 (w.e.f. 19-11-1986).
 26. Inserted by Act 63 of 1984, S. 8 (w.e.f. 2-10-1985).
 27. Sub-S. (2) renumbered as sub-S. (3) thereof by Act 63 of 1984, S. 8 (w.e.f. 2-10-1985).
 28. Substituted by Act 20 of 1983, S. 2 and Sch., for certain words (w.e.f. 15-3-1984).

following the session or the successive sessions aforesaid], 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.

State Amendments-[Himachal Pradesh].- In its application to the State of Himachal Pradesh, in S. 9,-

- (a) after the words “Central Government”, insert “or the State Government with the prior approval of the Central Government”;
- (b) in sub-S. (2), after the words “every rule made” and before the words ‘under this section”, insert “by the Central Government”;
- (c) after sub-S. (2), add the following sub-section, namely:-

“(3) 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 while it is in session for a total period of not less than seven days, which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the sessions immediately following, the Legislature requires any modification in the rule or desires 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”.- H.P.Act 25 of 1976, S. 7 (w.e.f. 24-6-1976).

[Punjab].- In its application to the State of Punjab, in S. 9,-

- (i) in sub-S. (1), after the words “Central Government”, insert “or the State Government”;
- (ii) in sub-S.(2), after the words “every rule made”, insert “by the Central Government”; and
- (iii) after sub-S. (2), add the following sub-section, namely:-

“(3) Every rule made under this section by the State Government

Punjab Act 26 of 1976, S. 8 (w.e.f. 20-5-1976).

²⁹**[10. Power of State Government to make rules.**-(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the additional functions to be performed by the Dowry Prohibition Officers under sub-section (2) of section 8-B;
- (b) limitations and conditions subject to which a Dowry Prohibition Officer may exercise his functions under sub-section (3) of section 8-B.

(3) 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.]

29. Substituted by Act 43 of 1986, S. 9, for S. 10 (w.e.f. 19-11-1986).

THE DOWRY PROHIBITION (MAINTENANCE OF LISTS OF PRESENTS TO THE BRIDE AND BRIDEGROOM) RULES, 1985¹

In exercise of the powers conferred by section 9 of the Dowry Prohibition Act, 1961 (28 of 1961), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.-(1) These rules may be called THE DOWRY PROHIBITION (MAINTENANCE OF LISTS OF PRESENTS TO THE BRIDE AND BRIDEGROOM) Rules, 1985.

(2) They shall come into force on the 2nd day of October, 1985 being the date appointed for the coming into force of the Dowry Prohibition (Amendment) Act, 1984 (63 of 1984).

2. Rules in accordance with which lists of presents are to be maintained.-(1) The list of presents which are given at the time of the marriage to the bride shall be maintained by the bride.

(2) The list of presents which are given at the time of marriage to the bridegroom shall be maintained by the bridegroom.

(3) Every list of presents referred to in sub-rule (1) or sub-rule (2)-

- (a) shall be prepared at the time of the marriage or as soon as possible after the marriage,
- (b) shall be in writing,
- (c) shall contain,-
 - (i) a brief description of each present;
 - (ii) the approximate value of the present;
 - (iii) the name of the person who has given the present; and
 - (iv) where the person giving the present is related to the bride or bridegroom, a description of such relationship;
- (d) shall be signed by both the bride and the bridegroom.

Explanation 1.-Where the bride is unable to sign, she may affix her thumb-impression in lieu of her signature after having the list read out to her and obtaining the signature, on the list, of the person who has so read out the particulars contained in the list.

Explanation 2.-Where the bridegroom is unable to sign, he may fix his thumb-impression in lieu of his signature after having the list read out to him and obtaining the signature, on the list, of the person who has so read out the

APPENDIX
RELEVANT PROVISIONS OF INDIAN PENAL CODE (45
OF 1860),
CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974)
AND
INDIAN EVIDENCE ACT, 1872 (1 OF 1872)
INDIAN PENAL CODE (45 OF 1860)

[* * * * *]

304-B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.-For the purposes of this sub-section, “dowry” shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

COMMENTS

S. 306, I.P.Code when read with S. 113-A of the Evidence Act has only enabled the Court to punish a husband or his relative who subjected a woman to cruelty (as envisaged in S. 498-A, I.P.Code) if such woman committed suicide within 7 years of her marriage. It is immaterial for S. 306, I.P.Code whether the cruelty or harassment was caused “soon before her death” or earlier. If it was caused “soon before her death” the special provision in S. 304-B, I.P.Code would be invocable, otherwise resort can be made to S. 306, I.P.Code: *Satvir Singh v. State of Punjab* 2001 Cr. L.J. 4625.

Prosecution in a case of offence under S. 304-B, I.P. Code cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused “soon before her death”. The word “dowry” in S. 304-B has to be understood as it is defined in S. 2 of the Dowry Prohibition Act, 1961: *Satvir Singh v. State of Punjab* 2001 Cr. L.J. 4625.

Through the death of the deceased was caused by the burns within seven years of marriage yet soon before her death she was not subjected to cruelty or harassed by the appellants for or in connection with the demand of

without the said offence forming part of the charge, but the conviction would be valid only if it did not occasion a failure of justice in view of S. 464(1) of Cr.P.Code: *Shamnsaheb M. Multtani v. State of Karnataka* 2001 Cr. L.J. 1075 (S.C.).

Demand for dowry and harassment for that reason are the essential ingredients of the offence under S. 304-B: *Sakhi Mandalani v. State of Bihar* (1999) 5 S.C.C.705:1999 S.C.C.(Cri.) 1039.

Ss. 3 and 4 of the Dowry Prohibition Act make out independent offences, but in the instant case it was the demand for dowry coupled with harassment which constitutes the basis of the prosecution case. Once the main part of the charge under S. 304-B was not found established, it was not possible to record conviction under Ss. 3 and 4 of the Dowry Prohibition Act: *Sakti Mandalani v. State of Bihar* (1999) 5S.C.C.705:1999 S.C.C.(Cri.)1039.

Validity of second marriage, is required to be proved by the prosecution by satisfactory evidence: *S.Nagalingam v. Sivagami* (2001) 7 S.C.C. 487.

The essential components of S. 304-B are : (i) Death of a woman occurring otherwise than under normal circumstances, within 7 years of marriage. (ii) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. When the above ingredients are fulfilled, the husband or his relative, who subjected her to such cruelty or harassment, can be presumed to be guilty of offence under S. 304-B: *Satvir Singh v. State of Punjab* (2001) 8 S.C.C. 633:A.I.R. 2001 S.C.2828.

498-A. Husband or relative of husband of a woman subjecting her to cruelty.-Whoever, being the husband or the relative of the husband of a woman subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purpose of this section, 'cruelty' means-

- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974)

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First Schedule

Section	Offence	Punishment	Cognizable or non-	Bailable or non-	By what Court triable
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498-A	Punishment for subjecting a married woman to cruelty.	Imprisonment for three years and fine.	Cognizable in information relating to the commission of the offence is given to an officer in charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative, by any public servant belonging to such class or category as may be notified by the State Government in this behalf.	Non-bailable	Magistrate of the first class.
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INDIAN EVIDENCE ACT, 1872 (1 OF 1872)

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113-A. Presumption as to abetment of suicide by a married woman.- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.-For the purposes of this section, “cruelty” shall have the same meaning as in section 498-A of the Indian Penal Code (45 of 1860).

113-B. Presumption as to dowry death.-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.-For the purposes of this section, “dowry death”, shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).
