

## **“Legislative Measures on Laws related to Dowry Prohibition”**

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### **Introduction**

“Dowry” is a word that is very prevalent and common in Indian households. It is a practice that has become a parasite for the Indian society and which has eroded the beautiful institution of marriage. It is not a new practice but has been followed from ages, and its impact is such in Indian society that one can make efforts to reduce it, but it cannot be totally eradicated. Several laws have been enacted to prohibit the practice of dowry, but the legal clutches are weaker than the ambit of the practice of dowry. Further, the article shall enumerate the social and legal consequences of practicing dowry along with its other various aspects.

### **What is dowry?**

According to section 2 of Dowry Prohibition Act, 1961, the term “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 parent 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 [or any time after the marriage] [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).

In *Arjun Dhondiba Kamble v. State of Maharashtra*<sup>1</sup>, the court held that, “Dowry” in the sense of the expression contemplated by Dowry Prohibition Act is a demand for property of valuable security having an inextricable nexus with the marriage, i.e., it is a consideration from the side of the bride’s parents or relatives to the groom or his parents and/or guardian for the agreement to wed the bride-to-be. But where the demand for property or valuable security has no connection with the consideration for the marriage, it will not amount to a demand for dowry.

In *Rajeev v. Ram Kishan Jaiswal*<sup>2</sup>, the court held that any property given by parents of the bride need not be in consideration of the marriage, it can even be in connection with the marriage and would constitute dowry.

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<sup>1</sup> 1995 AIR HC 273

<sup>2</sup> 1994 Cri LJ NOC 255 (All)

### **Who would be an offender under the law?**

According to section 3 of the Dowry Prohibition Act, 1961, it is an offence to both take dowry and give dowry. So, the family of bridegroom would be liable for taking dowry so would the family of bride be to consent to give dowry.

### **Legal framework in India for prohibiting dowry**

- **Dowry Prohibition Act, 1961**

Penalty for giving and taking dowry (Section 3) – According to section 3, if any person after the commencement of the Act gives or takes, abets the giving or taking of dowry shall be punished with an imprisonment for a term not less than five years and with fine which shall not be less than fifteen thousand rupees or the amount of the value of dowry, whichever is more.

Penalty for demanding dowry (section 4) – According to section 4, if any person directly or indirectly demands dowry from the parents, relatives or guardians of the bride or the bridegroom shall be punished with an imprisonment of not less than six months and which shall extend to two years and with fine which may extend to ten thousand rupees.

The Supreme Court has held in *Pandurang Shivram Kawathkar v. State of Maharashtra*<sup>3</sup> that the mere demand of dowry before marriage is an offence.

In *Bhoora Singh v. State of Uttar Pradesh*<sup>4</sup>, the court held that the deceased had before being set on fire by her in-laws written a letter to her father that she was being ill-treated, harassed and threatened with dire consequences for non-satisfaction of demand of dowry. Thus an offence of demanding dowry under section 4 had been committed.

Ban on advertisement (section 4-A) – According to section 4-A, the advertisement in any newspaper, journal or through any other medium or a share in the property, business, money, etc by any person in consideration for marriage shall be punished with an imprisonment which shall not be less than six months and which may extend to five years or with fine which may extend to fifteen thousand rupees.

Cognizance of offence– According to section 7, a judge not below the rank of a Metropolitan Magistrate or Judicial Magistrate of First Class shall try an offence under this Act. The court shall take cognizance of the offence only on the report by the victim, the parents or relative of the victim, police report or on its own knowledge of the facts of the offence.

According to section 8 certain offences under this Act shall be cognizable, non-bailable and non-compoundable.

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<sup>3</sup> 2001 Cr LJ 2792 (SC)

<sup>4</sup> 1993 Cri LJ 2636 All

- **Indian Penal Code, 1860**

Dowry Death (section 304 B)- Section 304(B) reads as follows-

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 relatives 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.

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.

In *Vemuri Venkateshwara Rao v. State of Andhra Pradesh*<sup>5</sup>, the court has laid down the following guideline for establishing an offence under section 304(B) and they are-

- That there is a demand of dowry and harassment by the accused,
- That the deceased had died,
- That the death is under unnatural circumstances. Since there was demand for dowry and harassment and death within 7 years of marriage, the other things automatically follow and offence under section 304-B is proved.

Husband or relative of husband subjecting women to cruelty (section 498-A) – Section 498- A reads as follows-

Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relatives of the husband of a woman, subject 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 –

Any wilful 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,

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.

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<sup>5</sup> 1992 Cri. LJ. 563 A.P

In *Bhoora Singh v. State*<sup>6</sup>, it was held that the husband and in-laws subjected the wife the cruelty for bringing insufficient dowry and finally burnt her down, thereby inviting a sentence of three years rigorous imprisonment and a fine of Rs.500/- for an offence committed under section 498-A of Indian Penal Code.

- **Indian Evidence Act, 1872**

Presumption as to dowry death (Section 113 B) – Section 113 B reads as follows-

When the question is whether a person has committed 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 purpose of this section “dowry death” shall have the same meaning as in section, 304B of the Indian Penal Code (45 of 1860).

### **Social evils of dowry**

The practice of dowry has many ill effects on society and has eroded the beautiful institution of marriage to a mere contract of giving and taking of money and valuable assets in exchange for marriage. A few social evils which the practice of dowry bring along itself are-

Female foeticide– Even today, when there are so many for prohibiting female foeticide laws yet the statistics of the same are much more to one’s expectations. One of the biggest reasons behind this practice is the thought that if a female child is born then she would turn out to be a burden on the exchequer of her parents as a lot would have to be spent in her marriage. Therefore, people find it better to eradicate the root of the problem- “Female Child”.

Suicide by Young Girls– Many times when the parents are not able to marry off their daughters because of dowry, this brings in harassment to the family which leads the young girls to commit suicide to bring an end to the mental harassment to their families.

No education to girls– Many families do not give good education to their daughters with a thought of saving the money being used for education to be used for the purpose of dowry.

Often the girls are subjected to mental harassment because of them being of dark colour, fat or any other lack in physical appearance because the parents or the relatives think that to marry them off a lot of dowry would have to be given and their constant taunts and statements not only mentally harass the girls but also bring in them an inferiority complex.

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<sup>6</sup> 1993 Cri. LJ 2636 All

### **Misuse of dowry laws by women**

There are always two sides of a coin; similarly, every law has its use as well as misuse. The anti-dowry laws have proved to be a panacea for women at the same time they have also proved to be a nuisance for men. Not all dowry cases filed by women are true and in more than 40% cases filed; the allegations made by women are false.

The two-judge bench of the Supreme Court headed by Justice Chandramauli Kumar Prasad recently in a 21-page order said that the simplest way to harass the husband is to get him and his relatives arrested.

The Judges stated a notable point that in many cases the bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested.

The judges also reminded the authorities that they must follow a so-called nine-point checklist that has been part of the anti-dowry law before noting down a dowry-related complaint.

The court also said that in case the police makes an arrest, a magistrate must approve further detention of the accused.

According to the National Crime Records Bureau statistics, nearly 200,000 people, including 47,951 women, were arrested in regard to dowry offences in 2012, but only 15% of the accused were convicted.

### **Conclusion**

“DOWRY” as a practice is deeply rooted in Indian society, and it cannot be totally eradicated. The major reason that this practice cannot be eradicated is the mentality, thought and mindset of Indians. In India, a boy is made highly educated so that parents can demand a huge dowry for him in the marriage. The more educated the man is, and the more stable his financial situation is, the more he gets dowry. Similarly, the parents of girls will educate them a lot so that they can marry her to a rich family. They are not hesitant in giving dowry because this practice has now become a custom and despite many laws, a very few percentages of offenders are convicted. This social evil can only be eradicated when there would be a change in the mentality of the people. When people might understand that giving and taking dowry is like selling your daughters and sons may be from then the roots of the practice would start eroding, and the practice shall get totally eradicated but that period seems to be very far off.

### **Footnotes**

Here are the footnotes for the provided text:

1. Arjun Dhondiba Kamble v. State of Maharashtra, 1995 AIR HC 273
2. Rajeev v. Ram Kishan Jaiswal, 1994 Cri LJ NOC 255 (All)

3. Pandurang Shivram Kawathkar v. State of Maharashtra, 2001 Cr LJ 2792 (SC)
4. Bhoora Singh v. State of Uttar Pradesh, 1993 Cri LJ 2636 All
5. Vemuri Venkateshwara Rao v. State of Andhra Pradesh, 1992 Cri. LJ. 563 A.P
6. Bhoora Singh v. State, 1993 Cri. LJ 2636 All

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