

Legal Framework of Dowry Prohibition Act-1961: An Overview

Akshay Kumar

Research Scholar, LLM

M.D.U., Rohtak (HR)

Abstract:Most of the findings of the studies related to dowry deaths show that section 498-A and section 304-B have provided teeth to the Dowry Prohibition Act, 1961, but Article 51-A of the constitution remains ineffective because the socio-cultural norms related to the practice of dowry have remained unchanged and therefore, the practice of giving and receiving dowry continues as such. Even otherwise law abiding citizens are giving and receiving dowry. Adequate social awareness and education is necessary, along with legal punishment, to do away with this evil practice. Today we need to change the existing framework of the Dowry Prohibition Act 1961 and make it more effective to combat dowry death in India. The present research paper makes an overview of the legal framework of Dowry Prohibition Act-1961.

Keywords:Dowry, Death, Awareness, Women, Marriage, Society, DP Act 1961, IPC.

Introduction:The fact is that marriage is a basic custom of Indian society. Dowry has been practiced in the Indian society since historic times. In Epic periods gifts from parents, brothers and relatives and relatives were recognized as women's property-stridhan. According to Kautilya, Means of subsistence or jewelry constitutes what is called the use of property of the woman. It is no guilt for a wife to make use of this property in maintaining her son her daughter-in-law or herself if her absent husband has made no provision for her maintenance. However, one of the longest standing shades of malice related with marriage from a lady's perspective in the Indian culture is the Dowry framework. In spite of a great deal being said and done against the custom, it is as yet pervasive in the 21st century, in both unobtrusive and clear ways. The foundation of a large group of social outrages against ladies, the custom of introducing endowment is the crudest articulation of the male-predominance in the general public. It is regularly the compulsory custom of a young lady's folks providing a lot of money, gold as gems, electronic gear, portable or ardent

properties, to the prepare and his family, at the season of marriage. In spite of the fact that the starting point of the custom lies with guardians attempting to guarantee budgetary soundness for their little girls, in current viewpoint it has converted into guardians paying up for the affirmation of prosperity of their girls. The dowry to be paid as share has no set standard, the measuring stick incredibly relies upon the boys calling/social standing and is frequently seen as the prep's family as the remuneration they have made to instruct their kid. Many women in India each year face harassment and even death due to dowry related incidents.

Furthermore, it is to say that dowry system in Indian Marriages can be called the commercial aspect of the marriage. The practice of giving dowry was very common among all people of all nations. A girl gets all the domestic utensils that are necessary to set up a family. Dowry system in India was prevalent since the Vedic period. Today, dowry is not the only problem of Indian society, attached to it is the whole bunch of corresponding evils. International women's conference in Australia accepted that female feticide is directly related to dowry. Middle and lower middle income groups who are not able to fulfill the demand of dowry think it wise to nip in the bud. Domestic violence is another consequence of this evil. This colossal problem persists even after centuries, is mainly because stringent laws alone cannot bring change at level of mentality of people for that mass movement needs to be initiated. Mass awareness is to be created. Often dowry related incident are covered up by the culprits as just kitchen accidents or suicides.

THE DOWRY PROHIBITION ACT, 1961: The Government of India framed a dowry prohibition Act and it was enacted by Parliament in the Twelfth Year of the Republic of India. The legal framework of the Act is as follows:

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 date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definition of Dowry.—According to the 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 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.

3. Penalty for Giving or Taking Dowry.— The Act makes the provision that if any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than 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 five years.

Nothing in sub-section (1) shall apply to, or in relation to,—(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf). Provided that such presents are entered in a list maintained in accordance with the rules made under this Act; (b) presents which are given at the time of a marriage to the bridegroom without any demand having been made in that behalf: Provided that such presents are entered in a list maintained in accordance with the rules made under this Act.

The Act further provided 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 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.

4. Penalty for Demanding Dowry.—According to the Act, 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.

4A. Ban on Advertisement.—The Act ensures that if any person—(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 for the marriage of his son or daughter or any other relative, (b) prints or publishes or circulates any advertisement referred to in 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.

5. Agreement for Giving or Taking Dowry to be Void.—The Act makes the provision that 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.—The Act ensures 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 [three months] after the date of marriage; or (b) if the dowry was received at the time of or after the marriage, within [three months] after the date of its receipt; or (c) if the dowry was received when the woman was a minor, within [three months] after she has attained the age of eighteen years; and pending such transfer, shall hold it in trust for the benefit of the woman.

Furthermore, the Act provides that, if any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor 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. 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: provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,—(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. (3A) 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.

7. Cognizance of Offences.—The Act provides that 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 recognised welfare institution or organisation; (c) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorised by this Act on any person convicted of an offence under this Act.

8. Offences to be Cognizable for Certain Purposes and to be Bailable and Non-Compoundable.—The Act ensures that 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. It also says that every offence under this Act shall be non-bailable and non-compoundable.

8A. Burden of Proof in Certain Cases.—The Act provides 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 those sections shall be on him.

8B. Dowry Prohibition Officers.—The Act ensures that 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. Furthermore, it says that 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 the 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.

Furthermore, it also has provisions that, 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. 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.—The Act provides that the Central 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—(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 (b) the better co-ordination of policy and action with respect to the administration of this Act.

It also provides that every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or [in two or more successive sessions, and if, before the expiry of the session immediately 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.

10. Power of the State Government to Make Rules.—The DP Act 1961 provides that, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. 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 8B; (b) limitations and conditions subject to which a Dowry Prohibition Officer may exercise his functions under sub-section (3) of section 8B. (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.

Concluding Remarks: To conclude we can point out that, dowry as well as bride price humiliate and dehumanize women in India. It is true that the increasing coercive character of dowry has led to a decline in the status of women. But it must be pointed out that contrary to popular wisdom; women do not have a higher status in those castes and communities where dowry and bride price is paid for them. Though some laws are framed to provide basic rights and to punish offenders. Nevertheless, the practice of dowry abuse is rising in India. The most severe in —bride burning, the burning of women whose dowries were not considered sufficient by their husband or in-laws. Most of these incidents are reported as accidental burns in the kitchen or are disguised as suicide. It is evident that there exist deep rooted prejudices against women in India. Cultural practices such as the payment of dowry tend to subordinate women in Indian society. Though prohibited by law in 1961, the extraction of dowry from the bride's family prior to marriage still occurs. When the dowry amount is not considered sufficient or is not forthcoming, the bride is often harassed, abused and made miserable. The DP Act 1961, mentions many provisions related to dowry deaths but dowry incidents in the country are no more decreasing particularly in poor and middle families. Here it is an urgent need that public awakening programs should be implemented by Government and NGOs.

References:

- Anwar Yagin, Protection of Women under the Law, Deep and Deep Publications, New Delhi, 1982.
- Jessie B. & Nayak, Indian Women Hood: A Case Study, Sat Prakashan Sanchar Kendra, 1983.
- Flavia Agnes, Law and Gender Equality, the Politics of Women's Rights in India, Oxford University Press, 2001.
- S.K. Ghosh, Women in Changing Society, Deep & Deep publications, New Delhi, 2001.
- Sayed Masood, Laws Relating to Women, Orient law House, New Delhi, 2004.
- P. Kapoor, Changing Role and Status of Women, Sterling Publishers, New Delhi, 2005.

- Monica Chawla, Gender Justice —Women and Law in India, Deep & Deep Publications, New Delhi, 2006.
- Monica Chawla, Gender Justice: Women and Law in India, Deep&Deep Publications, New Delhi, 2006.
- <https://wcd.nic.in/act/dowry-prohibition-act-1961>.
- <http://www.cyberabadpolice.gov.in/information/PDF/acts-laws/act-dowry.pdf>.
- <https://www.gktoday.in/gk/issues-with-dowry-laws-in-india>.