

# The Dowry Prohibition Act, 1961

(Act no. 28 of 1961)

## CONTENTS

Sections	Particulars
	<u>Preamble</u>
	<u>Introduction</u>
1	<u>Short title, extent and commencement.</u>
2	<u>Definitions of 'dowry'.</u>
3	<u>Penalty for giving or taking dowry.</u>
4	<u>Penalty for demanding dowry.</u>
4A	<u>Ban on advertisement.</u>
5	<u>Agreement of giving or taking dowry to be void.</u>
6	<u>Dowry to be for the benefit of the wife or her heirs.</u>
7	<u>Cognizance of offences.</u>
8	<u>Offences to be cognizable for certain purposes and to be non-bailable and non-compoundable.</u>
8A	<u>Burden of proof in certain cases.</u>
8B	<u>Dowry Prohibition Officers.</u>
9	<u>Power to make rules.</u>
10	<u>Power of State Government to make rules.</u>
	<u>APPENDIX</u>
	<u>THE DOWRY PROHIBITION (MAINTENANCE OF LIST OF PRESENTS TO THE BRIDE AND BRIDEGROOM ) RULES, 1985</u>

# THE DOWRY PROHIBITION ACT 1961

(28 OF 1961)

(20th May, 1961)

An Act to prohibit the giving or taking the dowry

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

## INTRODUCTION

The ancient marriage rites in the Vedic period are associated with Kanyadan. It is laid down in Dharamshastara that the meritorious act of Kanyadan is not complete till the bridegroom was given a dakshina. So when a bride is given over to the bridegroom, he has to be given something in cash or kind which constitute varadakshina. Thus Kanyadan became associated with varadakshina i.e. the cash or gifts in kind by the parents or guardian of the bride to the bridegroom. The varadakshina was offered out of affection and did not constitute any kind of compulsion or consideration for the marriage. It was a voluntary practice without any coercive overtones. In the course of time, the voluntary element in dowry has disappeared and the coercive element has crept in. It has taken deep roots not only in the marriage ceremony but also post-marital relationship. What was originally intended to be a taken dakshina for the bridegroom has now gone out of proportions and has assumed the nomenclature 'dowry'.

The social reformers of the nineteenth and early twentieth centuries have striven hard for the abolition of various social evils including the evil of dowry system. Long before India gained independence, the then provincial Government of Sind passed an enactment known as "Sind Deti Leti Act, 1939" with a view to deal effectively with the evils of dowry system but the enactment had neither any impact nor could create the desired effect. During the last few decades the evils of dowry system has taken an acute form in almost all parts of the country and in almost all the sections of society. In a bid to eradicate this evil from the society, the State Governments of Bihar and Andhra Pradesh enacted "**The Bihar Dowry Restraint Act, 1950**" and "**The Andhra Pradesh Dowry Prohibition Act, 1958**" for the respective States, but both these enactments failed to achieve the objectives for which they were enacted.

The evil of dowry system was assuming enormous proportions and the minds of right thinking persons both outside and inside the State Legislatures and the Parliament were shattered. The matter was raised in the Parliament in very first session of the Lok Sabha. Many proposals for restraining dowry were placed in the Parliament in the form of Private Members Bills. During the course of discussions on a non-official Bill in the Lok Sabha in 1953, the then Minister of Law gave an assurance to the House that a bill on the subject would be prepared in consultation with the State Governments. In pursuance of the assurance, a Bill was subsequently submitted for consideration of the Cabinet. The Cabinet then decided that the proposal might be held in abeyance till the enactment of the Hindu Succession Act. After the enactment of the Hindu Succession Act in 1956, the Government felt that a separate legislation to prohibit dowry was not a matter of urgency. As the problem continued to increase the issue was again and again agitated in the Parliament as well as in State Legislatures. On account of pressure both at

political and social levels, the Government finally decided to process the legislation. On 24th April, 1959 the dowry Prohibition Bill, 1959 was introduced in the Lok Sabha. After some discussion, the Bill was referred to a Joint Committee of both the Houses of Parliament. The Joint Committee presented its report with some amendments in the Bill. Both the Houses of Parliament did not agree with the amendments as reported by the Joint Committee and ultimately the Bill was considered at the Joint Sittings of both the Houses of Parliament held on 6th and 9th May, 1961.

## ACT 28 OF 1961

The Dowry Prohibition Bill was passed in the Joint Sittings of both the Houses of Parliament and it became an Act - The Dowry Prohibition Act, 1961 (28 of 1961) and it received the assent of the President on 20th May 1961.

### **LIST OF AMENDING ACTS**

- 1.The Dowry Prohibition (Amendment) Act, 1984.
- 2.The Dowry Prohibition (Amendment) Act, 1986.

#### **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 (Note: It came into force on 1st July, 1961) 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 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 [(Note: Subs. by Act 43 of 1986, sec.2) or any time after the marriage] [(Note: Subs. by Act 63 of 1984, sec.2) in connection with the marriage of the said parties, but does not include] dower or mahr in the case or persons to whom the Muslim Personal Law (Shariat) applied.

**(Note:** Explanation I omitted by act 63 of 1984, sec.2).

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

## COMMENTS

(i) "**Dowry**" in the sense of the expression contemplated by Dowry Prohibition Act in 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. 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 these demands will not constitute dowry as defined in section 2 of Dowry Prohibition Act, 1961; Arjun Dhondiba Kamble v. State of Maharashtra, 1995 AIHC 273.

(ii) Any property given by parents of the bride need to be in consideration of the marriage, it can even be in connection with the marriage and would constitute dowry; Rajeev v. Ram Kishan Jaiswal, 1994 Cri L.J. NOC 255 (All).

(iii) The definition of dowry is wide to include all sorts of properties, valuable securities etc. given or agreed to be given directly or indirectly. Therefore the amount of Rs.20,000/- and 1.5 acres of land agreed to be given at the time of marriage is dowry, even though the said land was agreed to be transferred in the name of the deceased as 'pasupukumkuma' by executing a deed; Vemuri Venkateswara Rao v. State of Andhra Pradesh, 1992 Cri L.J. 563 AP HC.

(iv) There had been no agreement between either parties to give any property or valuable security to the other party at or before or after the marriage. The demand of TV, refrigerator, gas connection, cash of Rs. 50,000/- and 15 tolas of gold are not demand of dowry but demand of valuable security in view of section 2; Shankar Prasad Shaw v. State, I (1992) DMC 30 Cal.

(v) While dowry signifies presents given in connection with marriage to the bridal couple as well as others, stridhan is confined to property given to or meant for the bride; Hakam Singh v. State of Punjab, (1990) I DMC 343.

(vi) Dowry, means, any property given or agreed to be given by the parents of a part to the marriage at the time of the marriage or before marriage or at any time after the marriage in connection with the marriage. So, where the husband had demanded a sum of Rs. 50,000/- some days after the marriage from his father-in-law and on not being given became angry, tortured the wife and threatened to go for another marriage, it was held that the amount was being demanded in connection with the marriage and it was a demand for dowry though it was demand after the marriage; Y.K. Bansal v. Anju, All L.J. 914.

(vii) The furnishing of a list of ornaments and other household articles such as refrigerator, furniture, 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, 1961; *Madhu Sudan Malhotra v. K.C. Bhandari*; 1988 BLJR 360 (SC).

(viii) A sum of money paid by a Mohammedan in connection with his daughter's marriage to prospective bridegroom for the purchase of a piece of land in the joint name of his daughter and would-be son-in-law in not 'dowry' within the meaning of the Act; *Kunju Moideen v. Syed Mohamed*, AIR 1986 Ker 48.

(ix) Where the demand was made after the marriage for the purchase of a car, it was held that it did not fall within the definition; *Nirdosh Kumar v. Padma Rani*, 1984 (2) Rec. Cr. R. 239.

(x) Where the demand was made at the time when marriage ceremony was in progress and was repeated after the marriage, it was held that it fell within the definition of dowry; *L.V. Jadhav v. Shankar Rao*, (1983) 2 Crimes 470.

(xi) Traditional presents and other articles given at the time of the marriage are the individual property of the Hindu wife. She is the absolute owner of the property and can own it in her own right, *Vinod Kumar v. State of Punjab*, AIR 1982 P & H 372: 1982 HLR 327: 1982 PLR 337.

### **3. Penalty for giving or taking dowry –**

[(Note: Section 3 re-numbered as sub-section (1) thereof by Act No.63 of 1984, sec.3)

(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 with imprisonment for a term which shall not be less than [(Note: Subs. by Act 43 of 1986, Sec.3) 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 a adequate and special reasons to be recorded in he judgment, impose a sentence of imprisonment of a term of less than [(Note: Subs. by Act 43 of 1986, Sec.3) five years.]

(2) [(Note: Ins. by Act 63 of 1984, sec.3) Nothing is 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).

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.

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 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.

## **COMMENTS**

(i) Section 3 does not contravene articles 14, 19, 21 and 22 of the Constitution and therefore this section is not ultra virus of the said articles; *Indrawati v. Union of India*, I (1991) DMC 117 (All).

(ii) The offence is founded in the relationship of the property demanded as abettor with the nature of demand. It should not bear a mere connection with marriage; *Madan Lal v. Amar Nath*, (1984) 2 Rec Cr. 581.

(iii) Abetment is a preparatory act and connotes active complicity on the part of the abettor at a point of time prior to the actual commission of the offence; *Muthummal v. Maruthal*, 1981 Cr. LJ 833 (Mad).

### **4. [(Note: Subs. by act 63 of 1984, sec.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.]

## **COMMENTS**

(i) Demand of dowry under section 4 is not a continuing offence but every demand of dowry whenever repeated constitutes another offence and the date of commission of offence under section 4 would be when the demand was made initially and also when the said demand was repeated afresh. The offence of demanding dowry stood committed even before the marriage was performed and also when the demand was repeated again and again after the performance of marriage in respect of the same items of dowry; *Harbans Singh v. Smt. Gurcharan Kaur alias Sharan Kaur*, 1993 Rec. Cr. R 404 (del).

(ii) The deceased had before being set on fire by her in-laws had written a letter to her father that she was being ill-treated, harassed and threatened of dire consequences for non-satisfaction of demand of dowry. Thereby proving that an offence of demanding dowry under section 4 had been committed; *Bhoora Singh v. State*, 1993 Cri LJ. 2636 All.

(iii) There had been no agreement between either parties to the marriage nor their relations to give any property or valuable security to the other party at or before or after the marriage. Held that the demand of TV, refrigerator, gas connection, cash of Rs.50,000/- and 15 tolas of gold will not amount to demand of dowry but demand of valuable security and the said offence does not attract section 4 of the Dowry Prohibition Act; Shankar Prasad Shaw v. State, I (1992) DMC 30 Cal.

(iv) Furnishing of a list of ornaments and other household articles at the time of settlement of marriage amounts to demand of dowry and accused are liable to be convicted under section 4; Raksha Devi v. Aruna Devi, I (1991) DMC 46 (P&H).

(v) Section 4 of Dowry Prohibition Act is not ultra virus nor does it contravene any articles 14, 19, 21, 22 of the Constitution; Indrawati v. Union of India, 1 (1991) DMC 117 All.

#### **4A. [(Note: Ins. by Act 43 of 1986, sec.4) Ban on advertisement. –**

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 fore the marriage of his son or daughter or any other relatives.
- b. Prints or published 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 –**

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 [(Note: Subs. by Act 63 of 1984, sec.5 for "one year") three months] after the date of marriage, or

b. If the dowry was received at the time of or after marriage, within [(Note: Subs. by Act 63 of 1984, sec.5 for "one year") three months] after the date of its receipt, or

c. If the dowry was received when the woman was a minor, within [(Note: Subs. by Act 63 of 1984, sec.5 for "one year") 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.

(2) [(Note: Subs. by Act 63 of 1984, sec.5) If any person fails to transfer any property as required by sub section (1) within the time limit specified therefore, [(Note: Ins. by Act 43 of 1986, sec.5) 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 be extended to two years or with fine [(Note: Subs. by Act 43 of 1986, sec.5) 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.

[(Note: Ins. by Act 43 of 1986, sec.5) 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

a. If she has children, be transferred to such children and pending such transfer, be held in trust for such children.

(3A) [(Note: Subs. by Act 63 of 1984, sec.5) Where a person convicted under sub section (2) for failure to transfer any property as required by sub section (1) [(Note: Ins. by Act 43 of 1986, sec.5) or such 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 [(Note: Subs. by Act 63 of 1984, sec.5 for "one year") 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, [(Note: Subs. by Act 63 of 1984, sec.5 for "one year") 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, [(Note: Subs. by Act 63 of 1984, sec.5 for "one year") her heirs, parents or children.]

4. Nothing contained in this section shall effect the provisions of section 3 or section 4.

## **COMMENTS**

(i) Since the woman had died issueless, the articles constituting dowry are to be returned to her parents and not to her husband; *Rajeev v. Ram Kishan Jaiswal*, 1994 Cri. LJ NOC 255 (All).

(ii) The wife had died within less than three months of her marriage, therefore not leaving behind any issue and the contention of the husband that he was the heir of the dowry articles was negated and dowry articles were transferred to the parents of the wife; *Prithichan v. Des Raj Bansal*, II (1990) DMC 368 P & H; See also *Manas Kumar Dutt v. Alok Dutta*, II (1990) DMC 115 (Ori).

(iii) Dowry items are required to be transferred to the parents and not to husband of the deceased; *Pradeep Kumar v. State of Punjab*, 1990 (1) CC Cases 594.

### **7. [(Note: Subs. by Act 63 of 1984, sec.6) 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 organisation.

a. 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.

**Explanation -** For the purpose of this sub section, "**recognized welfare institution or organisation**" means a social welfare institution or organisation 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.

(3) [(Note: Ins. by Act 43 of 1986, sec.6) 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.]

## **COMMENTS**

- (i) The point of time at which the legality of cognizance is to be judged is the time when cognizance is actually taken; M. L. Sethi v. R. P. Kapur, AIR 1967 SC 528.
- (ii) The expression '**to take cognizance**' has not been defined in this Act nor in the Criminal Procedure Code. The word 'Cognizance' is however, used in the Code to indicate the point when the Magistrate takes judicial notice of an offence. It is a word of indefinite import and is perhaps not always used in exactly the same sense; Darshan Singh v. State of Maharashtra, AIR 1971 SC 2372.
- (iii) Taking cognizance is a judicial action taken with a view eventually to prosecution and preliminary to the commencement of the inquiry or trial; Food Inspector v. Laxmi Narayan, 1969 Cut LT 863.
- (iv) If a Magistrate has no jurisdiction to try an offence, he is not barred from taking cognizance of the offence; Jaddu v. State, AIR 1952 All 873.

8. [(Note: Subs. by Act 63 of 1984, sec.7) **Offence to be cognizable for certain purpose and to be** [(Note: Subs. by Act 43 of 1986, sec.7) **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 purpose of investigation of such offences, and
  - (b) for the purpose of matter 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 [(Note: Subs. by Act 43 of 1986, sec.7) non-bailable] and non-compoundable.]

## **COMMENTS**

The original section provided that the offences under the Act be non-cognizable, bailable and non-compoundable. The Amendment Act, 1984 made the offences cognizable and the provisions of Criminal Procedure Code, 1973 is made applicable subject to the exceptions spelt out under the section. Further by the Amendment Act, 1986, the offences under the Act are made non-bailable also.

**8A. [(Note: Ins. by Act 43 of 1986, sec.8) **Burden of proof in certain cases-****

(1) Where any person is prosecuted for taking or betting the taking of any dowry under Section 3, or the demanding of dowry under section 4, the burden of providing that he had not committed an offence under these section shall be on him.

**8B. 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 evidences 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 rule 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) form the area in respect of which such Dowry Prohibition Officer exercise 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 purpose of this Act.

(2) [(Note: Ins. by Act 63 of 1984, sec.8) 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 person by whom, any list of presents referred to in such section (2) of section 3 shall be maintained and all other matters connected therewith, and

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

[**(Note:** Sub-section (2) renumbered as sub-section 3 thereof by Act 63 of 1984, sec.8) (3)] 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 successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following 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. [(Note: Subs. by Act 43 of 1986, sec.9) **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 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.

## **Appendix I**

### **RELEVANT PROVISIONS OF INDIAN PENAL CODE, 1860 & INDIAN EVIDENCE ACT, 1872**

#### **Indian Penal Code, 1860**

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

(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**

(i) After the marriage demand for valuable presents by the husband from the wife's parents and the suicide of the wife by the constant harassment does not amount to dowry death; Arjun Dhondiba Kamble v. State of Maharashtra, 1995 AIHC 273.

(ii) Section 304-B is creating a substantive offence and is not merely a provision effecting a change in the procedure for the trial of a pre-existing substantive offence. Section 304-B is prospective in nature, death taking place before section 304-B came into force; Bhoora Singh v. State, 1993 Cri. LJ 2636 All.

(iii) Three essential ingredients are to be established before the offences under section 304-B can be made punishable. They are -

- a. That there is a demand of dowry and harassment by the accused,
- b. That the deceased had died,
- c. 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; Vemuri Venkateshwara Rao v. State of Andhra Pradesh, 1992 Cri. LJ. 563 A.P. See also Shanti v. State of Haryana, 1 (1991) DMC 187 SC.

(iv) Though the death of the deceased within 7 years of marriage took place by burns, section 304-B was held not attracted as there was nothing to show that the deceased before her death was subjected to cruelty or harassment for dowry by her husband or relative; Rameshwar v. State of Madhya Pradesh, II (1992) DMC 486 M.P.

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

## **COMMENTS**

(i) In the absence of any specific allegations of cruelty against the petitioners there is no offence under section 498-A. the complainant had also started living with the petitioner thereby condoning the acts of cruelty; Sukhbir Jain v. State, 1994 (1) CC cases 609 (HC) Del.

(ii) The husband and in-laws subjected the wife to 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; Bhoora Singh v. State, 1993 Cri. LJ 2636 All.

(iii) Section 498-a contemplates the offence of subjecting a woman to cruelty by the husband or relatives of the husband. As the applicants are not relatives of the husband rather they are co-villagers consequently summoning them for offence under section 498-A of Indian Penal Code amounts to abuse of process of court; Dukhi Ram v. State of Uttar Pradesh, 1993 Cri. LJ 2539 (All).

(iv) Section 498-A of Indian Penal Code is not ultra vires of articles 14, 19, 21, 22 of constitution and do not contravene these provisions; Indrawati v. Union of India, I (1991) DMC 117 (DB) (All).

(v) The newly wed daughter-in-law was abused by her mother-in-law of ill-luck when the daughter-in-law had an abortion, the husband assaulted her on various occasions that bridal presents brought by her were of inferior quality, thereby treating her with cruelty as defined in section 498-A of Indian Penal Code driving her to commit suicide; State of West Bengal v. Orilal Jaiswal, 1994 Cri. LJ 2104 SC.

### **Indian Evidence Act, 1872**

113B. [(Note: Ins. by Act 43 of 1986, sec.12 (w.e.f. 8-9-1986) **Presumption as to dowry death-** When the question is whether a person has committed by 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).

### **THE DOWRY PROHIBITION (MAINTENANCE OF LIST OF PRESENTS TO THE BRIDE AND BRIDEGROOM) RULES, 1985**

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 Bridgroom) 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.
- a. 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 affix 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 particulars contained in the list.

(4) The bride or the bridegroom may, if she or he so desires obtain on either or both of the lists referred to in sub-rule (1) or sub rule 92) the signature or signatures of any other person or persons present at the time of the marriage.

\*\*\*\*\*