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2007 Batch

The Dowry Prohibition Act 1961

Business Law - Project Report

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1. Introduction

Dowry is derived from the ancient Hindu custom of "kanyadan", where the father presents his daughter jewelry and clothes at the time of her marriage, and "vardakshina", where the father of the bride presents the groom cash or kind. Both of these were done voluntarily and out of affection and love. These days, these customs have rendered coercive and brutally dangerousⁱ. What was originally intended to be a taken dakshina for the bridegroom has now gone out of proportion and has assumed the nomenclature 'dowry'.

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.

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 Dowry Prohibition Bill was finally 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 1961ⁱⁱ.

Despite the fact that in the last few decades the Dowry Prohibition Act has been made more stringent, the culture of dowry-giving is spreading even to communities, which has no such tradition one or two generation ago. According to an article in Time magazine, deaths in India related to dowry demands have increase 15-fold since the mid-1980s from 400 a year to around 5,800 a year by the middle of the 1990sⁱⁱⁱ.

Dowry deaths in Punjab have risen from 55 in 1986 to 157 by 1997. Also, for every reported case, 299 go unregistered. According to sociologists, only 5 per cent of reported cases are legally pursued.^{iv}

An IDC study says that 85 per cent of dowry deaths and 80 per cent of dowry harassment cases in Punjab occur among the lower and middle classes. The main reason behind these deaths is the sudden affluence in rural Punjab in the mid '80s perpetuated dowry as a means to upward material mobility.

The category of "dowry-deaths" in a technical sense includes only those that have been booked by the police under the relevant sections of law. The accident cases that were closed for want of evidence however were largely due to stove bursts and kitchen accidents..... Data reported to Frontline magazine by police department of Karnataka as a whole shows that out of 3826 deaths recorded as an accident in 1997, 1715 were connected with stove and cooking gas cylinder bursts.^v

The main objective of this report is to understand the Dowry Prohibition Act and how this can be used to protect women and their families against the dowry evil. The second and third sections of the report describe Dowry Prohibition Act and the relevant provisions of Indian Penal Code and Evidence Act. The fourth section describes what are basic flaws and ambiguities in the law; it also presents few evidences where this law has not been properly implemented and been misused. The last section of the report talks about what should be done to make this law more effective.

2. The Dowry Prohibition Act

The dowry prohibition came into force on 1st July 1961; it was later amended in 1984 and 1986. It extends to whole India except the State of Jammu and Kashmir. According to the act, the dowry means:

Any property or valuable security given or agreed to be given either directly or indirectly:

- By one party to the marriage to the other party to the marriage, or
- By 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 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 applied.

Penalties under this Act

Offences related to those mentioned in subsection 1 & 2 below, are cognizable, non-bailable, and non-compoundable. The minimum stature of authority to take cognizance, try a case and pronounce a sentence under this Act shall be a First class Metropolitan Magistrate or Judicial Magistrate. The courts must take cognizance of offences by virtue of a police report or a complaint from the victim/relatives of the victim/recognized welfare organization, and such complaints cannot be withdrawn by out of court compromise.

The burden of proof, meaning, justifying that an offence under this act is not perpetuated by oneself, for such cases shall rest upon the accused.

Apart from this, Dowry prohibition officers are appointed by the State Governments to exercise their jurisdiction and power under the provisions of this Act.

1. Penalty for giving, taking or abetting dowry

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 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.

But if the presents are given at the time of marriage to the bride or bridegroom without any demand being made in that behalf, will not come under the Dowry Act, provided that such presents are entered in the list in accordance with the rules made in this Act. Also in such cases, if the presents are given by bride or by any person on her behalf, the value of these presents should not be excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

2. 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.

In both the above cases, Court may, for an adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term less than minimum term mentioned.

3. Ban on advertisement

If any person 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 relatives, 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.

4. Agreement

Any agreement for the giving or taking of dowry shall be void.

5. Dowry to be for the benefit of the wife or her heirs

When a 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-

- With in three months after the marriage, if the dowry was received before the marriage.
- With in three months after the date of receipts, if the dowry was received after the marriage.
- If the dowry was received when the woman was a minor, with in three months after she has attained the age of eighteen years.

If any person fails to transfer any property within the time limit specified therefore, 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, which shall not be less than five thousand rupees, but which may extend to ten thousand rupees or with both.

If a woman, entitled to any property under this act, dies before receiving it, the property shall be transferred to her children or in case she has no children, it will be transferred to her parents.

If a person convicted under this section, has not transferred the property to her heirs, parents or children before his conviction. The court can order that person to transfer this property within the period specified, otherwise an amount equal to the value of property may be recovered from him.

3. Relevant Provisions of Indian Penal Code and Evidence Act

IPC 304B: Dowry Death

Offence under this provision treats the situation of the death of a woman by any burns or bodily injury or other unnatural circumstances within seven years of her marriage, preceded by cruelty or harassment by her husband or any relative of her husband demanding dowry. Hence, the husband and/or his relatives shall be deemed to have caused her death.

Punishment for this offence can amount to imprisonment for a minimum of seven years but which may extend to imprisonment for life.

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

1. That there is a demand of dowry and harassment by the accused,
2. That the deceased had died,
3. That the death is under unnatural circumstances.

IPC 498A: Husband or relative of husband of a woman subjecting her to cruelty

Offence includes that of the husband or his relatives subjecting his wife to cruelty. Such offences are punishable with imprisonment for a maximum term of upto three years and shall also be liable to fine.

For the purpose of this section "cruelty" means –

- 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
- 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.

IEA 113B: 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.

4. Basic Flaws and Ambiguities in the Law

On perusing the Act document, one can raise a variety of questions against the intention of the design of the Act. To list a few,

1. Definition of Dowry

As per this definition, gifts of jewelry, clothes and cash traditionally given by the groom's family would also be covered by the anti-dowry law and hence declared illegal.

2. Legalizing the illegal

After declaring that giving or taking of dowry is illegal, the Act adds a curious rider that 'where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person will transfer the dowry to the woman within three months after the date of marriage or within three months after the date of receipt.'^{vi}

3. Bail provisions for 'dowry crimes'

It is quite simple to accuse someone with a dowry crime as the 'Burden of Proof' will be on the accused and hence the non-bailable provisions can be misused. Merely stating that the case cannot be withdrawn by compromise will not discourage people from using this as a quick and desperate move to inflict immediate burden on the accused. So there will then be a ironical situation of the accused becoming the victim.

4. *Feminine Bias*

Though the Act treats the case of a bride and bridegroom in the same intensity, the IPC 304B, 498A etc, specifically and exhaustively address the crimes with a feminine bias. Hence, the law itself is incomplete in terms of treatment of cases where the husband, might become the victim. As per the law, even dowry giving is an offence, but there is hardly ever an instance of the bride's family being prosecuted for giving dowry. The assumption is that only 'takers' are guilty while 'givers' are hapless creatures yielding to the greed and callous demands of the groom's family.

5. *Who decides what is a “voluntary gift”*

The act excludes voluntary gifts from the provisions. In cases where a gift has been given, it is almost impossible to ascertain the voluntariness of the act of giving the gift at a time of conflict that happens much later. Hence exclusions are not defined in concrete terms.

6. *Lack of Holistic approach*

In spite of the provisions for an Anti-Dowry officer, there are not many of them appointed by the states. Also the level of awareness is so low (owing to illiteracy and other socio-economic factors) that the Act does not reach the victims from the various strata of the society. Though laws are necessary to provide basic rights and punish offenders, what is required is a more holistic approach to effectively implement the same.^{vii}

7. *Disturbs Social Fabric*

Since the Act discourages withdrawal by means of compromise, although the intention may be noble and aims at removing evil practices in society, it may give a spark to rise in criminal activities where the victim may be inflicted with more harm and even loss of life in a bid to get rid of the legal obligations. It may also lead to social isolation of the complainant as the Indian society treats such complainants with contempt.

5. Evidence and Scope of misuse

After the amendment made in 1984 and 86, a phenomenal number of cases have been filed under Dowry Prohibition Act but there are many problems in the manner these cases have been dealt by Police and by Judiciary. Many of these cases have been prosecuted so badly in court that conviction was hardly likely.

For example, in the case of Masood Ahmed and Others Vs State (1991) the High Court overruled the judgment of trial court and held that the death was not a dowry death, though the court admitted that the demand for Rs. 10,000 and colour TV but these

demands did not constitute dowry, and harassment on account of this demand could not be said in connection with dowry. The court also held that it was proved that the deceased had left her home and told her parents that her mother-in-law had spat on her face, and her husband had not interfered and that because of this, she refused to go back to her husband's house^{viii}.

In the case of Lichhamadevi vs State of Rajasthan (1988), The Supreme Court condemned poor police investigation. In this case a girl named Pushpa was alleged to have been burnt by her mother-in-law and locked in the kitchen. Neighbors saw the flames and opened the bolted door from outside and took Pushpa to hospital, the mother-in-law and Pushpa's husband, who were present in the house refused to take her to the hospital and arrange for blood. Pushpa subsequently died. Before death, Pushpa had stated that her mother-in-law poured kerosene on her and set on fire. The Supreme Court held that 'investigation in the case did not proceed as there appeared to be soft peddling of the whole case by the Police'.

It's not that this law has not been properly implemented by the Government, Police and Judiciary. They are also not able to stop the misuse of this law. There are many instances where this law has been misused by unscrupulous women to extort money and harass their husbands' family. The statistics on suicides in India tell the tale of harsh ground realities faced by men in Indian society.

In the recent years, the number of suicides by males in every age group studied outnumbered the number of suicides by females in those respective age groups. Nearly twice as many married men committed suicide compared to married women in the years 2004 and 2005. Also, nearly twice as many men separated from their wives committed suicide compared to separated women in both years.

Men outnumbered women in every method of committing suicide, except by fire and self-immolation. Nearly nine times more men committed suicide by consuming excessive amounts of alcohol, or by machines. Nearly four times more men committed suicide by firearms, by jumping of trains and fast moving vehicles, or by self-electrocution. In almost every other category of suicide such as hanging, poisoning, or overdose of pills etc., suicides of men were nearly twice the rate of suicides of women.

Overall, the total number of suicides by men nearly tripled between 1983 and 2005 (whereas during the same period female suicides only nearly doubled). Incidentally, the draconian provisions of IPC 498A were introduced in the year 1983, and overwhelming evidence points to the increasing misuse of these provisions ever since.

Every year, there is a rising number of cases fabricated by wives only to threaten, extort money from, and wreak revenge on husbands and their relatives, in case of marital discord. Between 1995 and 2005, the number of cases filed annually nearly doubled. According to data obtained

from the Ministry of Home Affairs, in the year 2005 alone, 58,319 cases were registered under charges of cruelty by husband and relatives (IPC 498A), and resulted in the arrest of 1,27,560 individuals including 339 children, 28,579 women and 4,512 adults over the age of 60. ^{ix}

In one judgment at Karnataka High Court (ruling CrI.A. No. 589 of 2003, decided on 4-9-2003 (case of M.F.Saldhana & M.S. rajendra Prasad JJ)), Judge highlighted; in about 45% cases prosecution is thoroughly unjustified. Following are important excerpts from the judgment.

“.....we need to sound a note of caution that the police and investigating authorities should not improperly and technically jump to the conclusion that merely because death has occurred that ipso facto a criminal offense has been committed. **In as many as 44% of these cases prosecution is thoroughly unjustified.** Unless there is cogent and convincing evidence and unless there is material to sustain these charges, it would be totally impermissible and completely unjustified to embark upon legal action. The consequences of these charges are extremely grave because the accused husband and invariably family members are placed under arrest. There are serious social and economic repercussions.....”

“.....The fact that we do come across considerable number of instances where prosecution was unjustified seems to indicate that in every case of death of young woman or recently married women that prosecution and filing of charge sheet has become automatic. There does not appear to be a proper application of mind at the stage of scrutiny and having regard to this position we direct the concerned authorities to ensure that requirements of the law are correctly and responsibly followed. Copy to be followed to D.G. (Police).....”^x

On July 21, 2005, while hearing the PIL filed by Sushil Kumar Sharma, The Supreme Court has asked the legislature to find ways for plugging the loopholes in the law against “false” dowry complaints against the in-laws and husband by a woman in view of the increasing number of such cases coming to courts. Describing such misuse of law as “legal terrorism”, the court said no one could be allowed to unleash frivolous proceedings on this count as the provisions of Section 498A “is intended to be used as shield (a woman against harassment) not as an assassin’s weapon.”^{xi}

6. Conclusion

Many social activist, NGOs and in many cases Court’s judgments have highlighted that the Dowry Prohibition Act, in its current form is not very effective. Instead of providing security to lower and middle class women, who are mainly the victims of dowry, this law has been misused by rich unscrupulous women to harass their husbands. Many feminist organizations are requesting Government to make these laws stricter, but we feel that instead of making these laws

stricter, Government should come up with an effective implementation plan, in which, it should try to diagnose the roots of the problem, how this evil is spreading to different sections of population and what can be done to eradicate this issue. The Government should also make amendments in the law, which will stop woman from misusing this law against Husband and his family.

ⁱ http://www.hindunet.org/srh_home/1996_2/msg00193.html, Bride burning and dowry deaths in India

ⁱⁱ The Dowry Prohibition Act 1961, dowryprohibition.doc

ⁱⁱⁱ <http://www.wsws.org/articles/2001/jul2001/ind-j04.shtml>, Rising number of dowry deaths in India, Amanda Hitchcock, July 2001

^{iv} <http://www.india-today.com/itoday/15121997/behave.html>

^v <http://www.thehindu.com/fline/fl1617/16170640.htm>

^{vi} <http://www.indiatogether.org/manushi/issue148/dowry.htm>

^{vii} Violence, Law and Women's Rights in south Asia- by Savitri Goonesekere

^{viii} Violence against women and the Indian Law by Kirti Singh, Page 120-133

^{ix} <http://mynation.files.wordpress.com/2007/10/press-release-for-protest.doc>

^x <http://genderindian.sulekha.com/blog/post/2008/01/dowry-death-misuse-a-justice-saldhana-judgment.htm>

^{xi} <http://www.tribuneindia.com/2005/20050722/nation.htm>