



THE NATIONAL COMMISSION FOR WOMEN RECOMMENDATIONS AND SUGGESTIONS ON AMENDMENTS TO THE DOWRY PROHIBITION ACT, 1961

I. Introduction

The issue relating to the deep rooted evil of dowry was taken up in the CONVENTION organized by the NATIONAL COMMISSION FOR WOMEN on the 22nd of November, 2005, at the Symposia Hall of the NASC, Pusa, New Delhi.

Though the legislation, THE DOWRY PROHIBITION ACT, 1961, aptly prohibits the giving or taking of dowry, it was felt that the present law has been totally ineffective to curb this social evil. The convention, which was attended by chairpersons of various State Commissions for Women, members of NGOs', Civil Servants as well as retired and working police officers from various states, felt that there was a dire need to make the requisite amendments to the Act so as to make it effective.

The background note prepared by the lawyers collective as well as the inputs provided by the NCW and other delegates was discussed and on basis of which, after consultations with the Lawyers Collective, the following recommendations are being made suggesting suitable amendments to the Act.

II. PRESENT LAW AND PROPOSED AMENDMENTS:

1. SECTION 2: DEFINITION OF DOWRY

Present Act	Proposed	Remarks
<p>“Dowry” means any property or valuable security given or agreed to be given either directly or indirectly-</p> <p>(a) By one party to a marriage to the other party to the marriage; or</p> <p>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 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) applies.</p>	<p>“Dowry” means any property or valuable security given or agreed to be given either directly or indirectly</p> <p>(a) By one party to am marriage to the other party to the marriage</p> <p>(b) by the parent of either party to the 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, but does not include dower or <i>mahr</i> in the case of persons to whom the Muslim Personal Law (<i>shariat</i>) applies</p> <p>(2) Nothing in this section shall apply to, or in relation to,-</p> <p>(a) Gifts given at the time of marriage to the bride voluntarily (without any demand having been made in that behalf) Provided that such gifts are entered in a list maintained in accordance with the rules made under the Act;</p> <p>(b) Gifts which are given at the time of a marriage to the bridegroom voluntarily (without any demand having been made</p>	<p>Term in connection with marriage is proposed to be deleted</p> <p>The sub section (2) to section 3 is proposed to be included within the broad definition of dowry</p> <p>The expression “presents” to be substituted by the term “gifts”</p>



<p>Explanation II: The expression “valuable</p>	<p>in that behalf) Provided that such gifts are entered in a list maintained in accordance with the rules made under the Act;</p> <p>Provided further that where such gifts are made by or on behalf of the bride or any person related to the bride, such gifts 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.</p> <p>Provided further that the list of gifts is authenticated and signed by the Protection Officer or a service provider appointed / recognized under the Protection of Women Against Domestic Violence Act, 2005.</p> <p>Explanation I- for the purposes of this section, ‘indirectly’ means-Any willful conduct or harassment of such a nature, which is likely to coerce the woman to meet any unlawful demand of any property or valuable security or is on account of failure by her or any person related to her to meet such demand.</p> <p>Explanation II-The expression ‘valuable security’ has the same</p>	<p>A proviso regarding the registration of lists of gifts to be introduced.</p> <p>An explanation of the term “indirectly” to be included.</p> <p>An explanation to be provide to the items that</p>
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<p>security” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860)</p>	<p>meaning as in Section 30 of the Indian Penal Code.</p> <p>Explanation III-The expression “gifts” means the transfer by one person to another of any existing movable or immoveable property made voluntarily and without any consideration in money or in money’s worth. This expression includes and is not limited to the following:</p> <ul style="list-style-type: none"> (i) Gifts made before the nuptial fire (ii) Gifts made at the bridal procession, i.e. while the bride is being led from the residence of her parents to that of her husband. (iii) Gifts made in token of love, that is, those made by her father-in-law and mother-in-law and those made at the time of the bride-making obeisance at the feet of elders. (iv) Gifts made by the father of the bride. (v) Gifts made by the mother of the bride (vi) Gifts made by the brother of the bride (vii) Dower of mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies. - A gift would be said to be “Customary in nature” if it can be proved that 	<p>constitute “gifts” and should include a reference to items received in Stridhan and Mahr</p>
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	<p>a. A practice of such an exchange has been unbroken over a series of years</p> <p>b. If has existed sufficiently over a long period of time</p> <p>c. It is reasonable.d. It is not in derogation with the existing law of the land.</p> <p>EXPLANATION IV- the expression voluntary used in the explanation II above means gifts being given without any demand having been made in that behalf or pursuant to any form of coercion, threat, inducement or promise.</p> <p>Explanation V A gift would be said to be “Customary in nature” if it can be proved that</p> <p>e. A practice of such an exchange has been unbroken over a series of years</p> <p>f. If has existed sufficiently over a long period of time</p> <p>g. It is reasonable.</p> <p>h. It is not in derogation with the existing law of the land.</p> <p>However will not include gifts given at the time of child birth.</p>	<p>An explanation to be included to explain the term “voluntary” in relation to the exchange of gifts</p>
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A. Justification for the proposed amendments to the definition of “Dowry”

The definition of “dowry” as at present raises the following issues:

- *What is meant by the phrase “directly or indirectly”?*
- *How the phrase “in connection with marriage” be defined?*
- *What time period is envisaged by the use of the phrase “any time after marriage”?*
- *Does this definition include all gifts and exchanges given in connection with marriage?*

To gather an understanding of the coverage of this law, the definition in Section 2 has to be read in conjunction with Section 3 which provides for the penalties for the act of giving or taking of dowry. Under this provision, exemptions are provided to the following categories of exchanges:

- Presents given at the time of the marriage to the bride without any prior demands being made for such presents.
- Presents that are “customary” in nature and of a value that is not excessive having regard to the financial status of the person by whom, or on whose behalf such presents are being given.

- A list of all such presents have to be maintained according to the Rules formulated under this law.

It is evident from a reading of both these provisions, that the law does not prohibit all exchanges at the time of marriage. At the same time the Act, does put in place some safeguards to ensure that the presents given at the time of marriage are not pursuant to any demands being made or any other form of coercion. To this extent, Section 4 of the DPA stipulates separate penalties for those making any demands for dowry. Unfortunately, the DPA not only penalizes those who make demands for dowry or take dowry but also those who give dowry. This ignores the reality of the present society wherein the practice of dowry is so ingrained that dowry is given even without any demands made in this regard. Parents of the bride feel compelled to give dowry in order to ensure the “happiness” and “security” of their daughter by appeasing the in-laws by giving them dowry.

The following issues need to be addressed to ensure the effective implementation of the law in so far as the definition of “dowry” is concerned:

I. Definition of dowry to be brought under one provision

The stated objective of the DPA is to prohibit the practice of dowry. However, at the same time, the intention of the law is not to penalize all voluntary exchanges or gifts given at the time of the marriage or during the course of the marriage. The distinctions



between “dowry” and other “presents” have been given under 2 separate provisions of the DPA.

Section 2 provides the definition of dowry by enlisting the different forms of exchanges that take place “in connection with the marriage”. Section 3, while providing for penalties for the act of giving or taking dowry, provides exemptions to presents that are voluntarily made to either party to the marriages or relatives provided that a list is maintained of all such presents. An additional safeguard provided in Section 3 states that “gifts” should be customary in nature and that the value of such gifts should not be excessive, having regard to the financial status of the giver.

Despite these provisions the Act does not provide adequate guidelines for differentiating items given under the guise of “gift/presents” from those extorted as “dowry”. If the intent of the law is to prohibit dowry, meaning thereby, any exchanges given pursuant to demands or under any form of coercion whether implicit or explicit, a clear distinction must be made between “gifts” given voluntarily from those given under duress or compulsion.

The definition of “dowry” along with the exemptions of exchanges that do not constitute dowry should be provided under the auspices of one provision.

The expression “presents” used in Section 3(2) of the Act should be substituted with the expression “gifts” to indicate the voluntary intent behind the exchange. The

expression “gifts” finds definition in law under the Gift-Tax Act 1958.

Further, a distinction between “dowry” and “Stridhan” or gifts received, as stridhan must be provided for.

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II Distinction between “Dowry and “Stridhan”.

There appears to be a certain amount of confusion over the terms “dowry” and “Stridhan”. “Stridhan” as a concept of Hindu

law has arisen from the concept of “Varadakshina” which is associated with an approved Hindu marriage practice of “Kanyadaan”. *Kanyadaan* being the gifts which the father of the bride gives to the father of the groom. “Varadakshina” was the presents in cash or kind which were to be given to the bridegroom. Both *kanyadaan* and *varadakshina* were considered meritorious acts and were voluntary in nature. Presents, given to the daughter on the occasion of the marriage constituted her “Stridhan” i.e. her separate property.

The term “Stridhan” literally means the “woman’s property”. According to the Smritika, the *Stridhan* constituted those properties which she received by way of gifts from her relatives, which included mostly movable property such as ornaments, jewellery, dresses. Sometimes even land or property or even houses were given as gifts. The purpose behind deeming properties as “Stridhan” was to ensure that

- The woman had full right over its disposal or alienation
- On her death, all types of Stridhan, devolved upon her heirs.

The husband of the woman had the limited power to use or alienate the “Stridhan” and that too only in cases of distress or emergency and even in such cases, he was obligated to return the same once the emergency period was tided over. Thus the conclusion is that all types of Stridhan are properties given to her by way of gifts and without any “demand, coercion, undue

influence or even pressure”. However in the past there have been a catena of cases where the distinction between dowry and Stridhan has been misunderstood. In the case of *Kailash Vati v. Ayodhya Prakash*² Chief Justice Sandhawalia, while recognizing the distinction between *stridhan* and dowry, used both the words interchangeably as if one meant the other. He opined as follows:

“The Dowry Prohibition Act 1961 does not bar traditional giving of presents at or about the time of wedding. Thus such presents or dowry given by the parents is therefore not at all within the definition of the statute”.

He further went on to state that:

“Law as it stands today visualizes a complete and full ownership of her individual property by a Hindu wife and in this context the factum of marriage is of little or not relevance and she can own and possess property in the same manner as a Hindu male ...Once it is held that a Hindu wife can own property in her own right, then it is purely a question of fact whether the dowry or traditional presents given to her, were to be individually owned by her or had been gifted to the husband alone.....Once it is found that as a fact that these articles of dowry were so given to her individually and in her own right, then I am unable to see how the mere factum of marriage would alter any such property right and divest her of ownership either totally or partially”.

Here the presumption is that whatever property the bride receives as “gifts” stays under her control in the matrimonial home



and that she can share it with her husband or the rest of the family by exercising her discretion. This is contrary to what happens in reality where the bride does not have any control over her belongings or her essentials.

It was only in the case of *Pratibha Rani V. Suraj Kumar*³ the Supreme Court tried to arrive at a definition of “*Stridhan*” by enlisting the following exchanges as constituting *stridhan*

- (i) gifts made before the nuptial fire
- (ii) gifts made at the bridal procession, i.e. while the bride is being led from her residence of her parents to that of her husband.
- (iii) Gifts made in token of love, that is, those made by her father-in-law and mother-in-law and those made at the time of the bride making obeisance at the feet of elders.
- (iv) Gifts made by the father of the bride
- (v) Gifts made by the mother of the bride
- (vi) Gifts made by the brother of the bride.

The judgment further clarified that

“The Hindu married woman is the absolute owner of her *Stridhan* property and can deal with it in any manner she likes. Ordinarily the husband has no right or interest in it with the sole exception that in times of extreme distress but he is morally

bound to restore it or its value when he is able to do so”

Fazl Ali J further observed that

“I am amazed to find that so deeply drowned and inherently are some of the High Courts concept of matrimonial home qua Stridhan property of married woman that they refuse to believe that such properties which were meant for exclusive use of the wife, could also be legally entrusted to the Husband and his relations. He specifically stated that the concept that the “Stridhan” of the woman becomes the Joint property of the two houses as soon as she enters her matrimonial house is in direct Contravention of Hindu law.”

The differentiation of the two terms is towards ensuring that in case of the future breakdown of marriage the woman can at least retrieve gifts received as *Stridhan*. Thus even if at the time of marriage or during the marriage “gifts” should be given under the cover of “*Stridhan*” so that she will at least have a right to claim them back. **A reference to the items that can be received as “Stridhan” should therefore find specific mention under the DPA.**

III. Deletion of the term “in connection with marriage” Deletion of the term “in connection with marriage”

This amendment of substitution of the phrase “in consideration” with “in connection with marriage” was brought about with the intention to include demand of property, giving of property or agreement to give

³ AIR 1985 S.C 628

property by one party to marriage to the other party of marriage etc need not be prior to or at the time of the marriage, the same may be even after marriage. This amendment was further explained in the case of *Yogendra Kumar Bansal v. Smt Anju*⁴ where the Allahabad High Court said that

“Now Dowry means any property given or agreed to be given by the parents (or any others) of a party to the marriage or before marriage or at any time after the marriage in connection with marriage”. Thus where the husband demanded an amount of Rs 50,000 by way of dowry some days after the marriage from the wife’s father and in the event of her not being able to give that amount was subjected to torture, it would mean that the amount was demanded in connection with the marriage and it was a demand of dowry even though it was demanded after marriage.

The phrase *“in connection with marriage”* however is ambiguous and has not been interpreted in a uniform manner. The question of whether gifts received under coercion/ pursuant to demands being made, after the completion of the marriage ceremony, but during the course of the marriage, are included in the definition of dowry remains unanswered.

The courts in the past have interpreted this clause in the favour of the defendants when they claimed that any gifts were exchanged out of affection rather than as a demand having any connection with marriage. Thus the defendants would often escape liability altogether solely based on

classification of the property demanded. The requirement that dowry be defined as being *“in connection with marriage”* fails to recognize that most marriage negotiations are done confidentially and that any discussion about dowry exchange will be covert. Defendants can easily be acquitted by arguing that gifts given during marriage over a period of years were voluntary, out of affection, or connected with events apart from marriage, such as childbirths or religious festivals. In the case of *Arjun Dhondida Kamble v. State of Maharashtra*⁵ where the deceased had committed suicide due to the non fulfillment of a demand made by the in-laws even though the demand was in conformity with the existent custom. The Bombay High Court held that *“giving presents are a part of a custom and giving such presents at festive occasions is in no connection with marriage. There is always an expectation amongst relatives thus such demands would not qualify as dowry”*. Similarly in the case of *Madan Lal v. Amar Nath*⁶ the court stated that *“property given either to secure an agreement to marry or given at the time of marriage in exchange for or as the reason for the marriage, as it were. It may also include property given subsequent to the marriage but expressly deferred as the reason for the marriage but “would not include property that may pass hands subsequent to the marriage, even months or years after it, merely to save the marriage from being broken or to smoothen the course of matrimonial life, or to keep the family of the in-laws of the wife better disposed towards her”*.

⁴ 1989 Allahabad Law Journal 914

⁵ (1993)1 Mh LJ 1007



The misinterpretation of the term ‘in connection with marriage’ is manifested in the recent case of the Supreme Court- *Satvir Singh v State Of Punjab*² The Court held:

There are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is at any time after the marriage. The third occasion may appear to be an unending period. But the crucial words are in connection with the marriage of the said parties. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of dowry.

The definition of “dowry”, in the DPA, must be amended to include a specific prohibition of exchanges made both at the time of and any time after the marriage. Emphasis needs to be placed on the existence of “**demand**” even if the gifts may be “Customary” in nature. Hence the term “in connection with marriages” should be deleted.

Recently the supreme court of India in criminal appeal no. 1613 of 2005 Decided on: 05.01.2007, in the matter of Appasaheb and anr. Vs. state of Maharashtra held that

“Demand for money on account of some financial stringency or for meeting

some urgent domestic expenses cannot be termed as a demand for dowry as the said word is normally understood. dowry means any property or valuable security to be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties hence a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential”

in the case , a demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure could not be termed as a demand for dowry The evidence adduced by the prosecution did not, therefore, show that any demand for “dowry as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of section 304B IPC viz. demand for DOWRY is not established, the conviction of the appellants Could not be sustained.

The case reinforces the need for amendment as proposed above

iv. Clarification of the term “indirectly”

The meaning of the term “indirectly” used in Section 2 remains unclear. Does the term “indirectly” apply in cases where the in-laws do not demand for it but create an environment wherein the bride is compelled

⁶ 26(1984) DLT 480

to bring lavish gifts for her in laws? Does this term include situations where the bride is not coerced but there is an expectation from the in-laws to bring certain gifts? Would demands for more “customary gifts” also fall under the act of “Demanding Dowry”?

Leaving this term undefined places the burden of proving that dowry was demanded, in an indirect manner, on dowry victims and their families. There have been inconsistencies in the manner in which this term has been interpreted by various courts. It is a known fact that even after the marriage, demand for more valuables is continuously made. What is more difficult is make the distinction between “voluntary” and “involuntary”. In the case of *Chandrashekar v. State Representative Inspector of Police*⁸ the issue was whether the demand for more customary gifts at the time of “Pongal Servasi” would amount to demand for dowry? The Counsel for the accused submitted that expecting gifts at the time of a function would not fall under the definition of dowry. In the case of *S. Reddy v. State of Andhra Pradesh*⁹ the Supreme Court has clearly said that Dowry as a quid pro quo for marriage is prohibited and not the giving of traditional presents to bride or the bridegroom by friends and relatives. Thus voluntary gifts given at or before or after the marriage as the case may be would not fall within the ambit of dowry. In these cases what needs to be looked into is not the fact as to whether a particular item is “Customary” in nature or not. What needs deeper analysis is whether the fact of “demand” was present or not. Would the demand for valuables under the cover of “customary gifts” be an indirect way of

demanding Dowry? What needs to be looked into is whether that item was “Demanded” or not.

The definition of dowry, under the DPA, must therefore include an explanation of the term “indirectly” to include all conduct or harassment to coerce the woman into meeting any demands for property or valuable security.

Conclusion:

Amendments required in the definition of “dowry”

- The definition of dowry along with the exceptions should be provided under one provision.
- The expression “presents” to be substituted by the term “gifts” to indicate the voluntary nature of the exchange.
- An explanation to be provided to the items that constitute “gifts” and should include a reference to items received as *stridhan* and *mahr*
- An explanation to be included to explain the term “voluntary” in relation to the exchange of gifts.
- An explanation of the term “indirectly” to be included.
- A proviso should be introduced allowing for the registration of lists of gifts maintained under this Act by the Protection Officer appointed under the Protection of Women Against Domestic Violence Act, 2005. (Hereinafter the “PWDV Act”)

¹ AIR 2003 Mad

² AIR 1996 SC 2184



2. SECTION 3: PENALTY FOR GIVING OR TAKING DOWRY

Present Law	Proposed amendments	Remarks
<p>(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 [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]:</p> <p>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].</p> <p>(2) Nothing in sub-section (1) shall apply to or in relation to-</p> <p>(a) presents given at the time of marriage to the bride (without any demand having been made in that behalf) Provided that such gifts are entered in a list maintained in accordance with the rules made under the Act;</p> <p>(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that</p>	<p>(1) If any person, after the commencement of this Act, takes or abets the 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.</p> <p>Provided that the court may, for adequate and special reasons to be recorded in the judgement impose a sentence of imprisonment for a term of less than five years</p> <p>Omitted</p>	<p>Provide for separate penalty for giving and taking of dowry</p> <p>The sub section (2) is proposed to be included in the broad definition of dowry</p>

<p>behalf) Provided that such presents are entered in a list maintained in accordance with the rules made under the Act; Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such gifts 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.</p>	<p>(2) If any person after the commencement of the Act, gives dowry, shall be punishable with imprisonment of a term which shall not be less than 1 year, and with a fine which shall not be less than fifteen thousand rupees, unless, such person can prove that he was compelled to give dowry.</p> <p>(3) If parents, or in the absence of the parents, the relatives of the bride or the bridegroom fail to maintain a list of gifts in accordance with Section 2(2)(a) and (b) and the provisos there under, shall be punishable with imprisonment of not less than 3 years and with a fine of not less than fifteen thousand rupees.</p> <p>(4) Notwithstanding anything contained in any law for the time being in force a statement by the person aggrieved or the parents or the relatives of the person aggrieved by the offence shall not subject such person to a prosecution under this Act.</p>	<p>Introduce penalties for the non-maintenance of lists of gifts received at the time of the marriage.</p> <p>Section 7(3) of the Present Act proposed to be incorporated as Section 3(4) Giver can be treated as an aggrieved and it becomes important to state that such an aggrieved will not be liable to prosecution.</p>
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Justification for the proposed amendments in section 3 of the Act

Section 3 of the Dowry Prohibition Act 1961 reads as follows:

[(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 ¹[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 ¹[five years].

This provision penalizes the acts of both giving and taking dowry. The Supreme Court, emphasized on the role played by the giver and not only the taker of dowry in the case *'In Re: Enforcement of Dowry Prohibition Act'*¹. It was held that refusal by the bride's father to pay dowry, refusal of the girls to get married if dowry is insisted upon and the attaching of a social stigma to those who demand dowry, can alone ultimately put an end to this system or at least reduce its prevalence. This automatically implies that the giver is also equally responsible in the prevalence of dowry in our society. It would thus be logical to prosecute not only the taker, but also the giver if the need arises.

This raises two highly problematic issues. First, if both the giver and taker of

dowry are held culpable under the law then there is no one left to complain against the act. Section 3 has, therefore, had the effect of discouraging parents of the bride from complaining against a demand for dowry.

Secondly, the practice of dowry has to be examined in the broader context of the devalued status of women. Parents are often compelled to pay dowry to ensure the security and happiness of their daughter in her matrimonial home. Misguided as their actions may be, they are in no way comparable to the malicious intent of the persons making the demand for dowry. If the groom's family did not demand, threaten or coerce the payment of dowry then there would be no question of the bride's family succumbing to such demands. Social and cultural pressures on the givers of dowry must also be taken into account. Hence the giver and the taker of dowry cannot be placed on the same footing under the law. At the same time, the culpability of the givers of dowry cannot be negated. Hence there must be a distinction made between the extent of culpability of the givers and the takers of dowry.

The provisions of the DPA provide limited protection to the givers of dowry seeking to file a complaint under this law. Under Section 7(3), of the DPA, prosecutions under this law cannot be initiated based on statements made by a person aggrieved. This provision reads as follows:

“Notwithstanding anything contained in any law for the time being in force a statement made by the person aggrieved by the offence

¹ I (2005) DMC 805 (SC)

shall not subject such person to a prosecution under this Act”

This immunity, however, is inadequate and does not specifically cover the parents or relatives of the bride. Further, there is no definition of the term “person aggrieved” under the Act.

Finally, there are no penalties provided for the failure to maintain lists of gifts exchanged in connection with the marriage. The maintenance of lists of gifts is crucial for the effective implementation of the law. Further, this list provides the basis for a woman to retrieve items given to her at the time of the marriage. The persons responsible for the maintenance of such lists should be identified and penalties imposed for the failure to maintain such lists.

Hence amendments are required in Section 3 of the DPA to the following effect

- provide for separate penalties to the giver and takers of dowry
- Introduce penalties for the non-maintenance of lists of gifts received at the time of the marriage.
- Include parents and relatives of the bride as aggrieved persons within the ambit of Section 7 (3) of the DPA.



3. SECTION 6: REVERSION OF DOWRY

Present Law	Proposed amendments	Remarks
<p>1. 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 –</p> <p>(a) if the dowry was received before marriage, within [3 months] after the date of marriage; or</p> <p>(b) if the dowry was received at the time of or after the marriage, within [3 months] after the date of receipts; or</p> <p>(c) If the dowry was received at the time of or after the marriage, within [3 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</p> <p>[(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified thereof [or as required by sub-section 3[(3)] he shall be punishable with imprisonment for a term which shall not be less than 6 months, but which</p>	<p>Dowry ,gifts or stridhan to be for the benefit of the wife or her heirs- (1) where any dowry or stridhan or gifts 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 -</p> <p>(a) if the dowry, stridhan or gifts was received before marriage, within [3 months] after the date of marriage; or</p> <p>(b) if the dowry ,stridhan or gifts was received at the time of or after the marriage, within [3 months] after the date of receipts; or</p> <p>(c) If the dowry , stridhan or gifts was received at the time of or after the marriage, within [3 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</p> <p>[(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified thereof [or as required by sub-section</p>	<p>Inclusion of stridhan and gifts</p>

<p>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.]</p> <p>(3) Where the woman entitled to a 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:</p> <p>[Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,-</p> <p>(a) if she has no children, be transferred to her parents, or</p> <p>(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children]</p> <p>[(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 section, transferred such property to the woman entitled thereto or, as the case may be [her heirs, parents or children] the court shall,</p>	<p>3[(3),] he shall be punishable with imprisonment for a term which shall not be less than 6 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.</p> <p>(3) Where the woman entitled to a property under sub-section (1) dies before receiving it-</p> <p>——Deleted</p> <p>(a) if she has no children, be transferred to her parents, or</p> <p>(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children]</p> <p>[(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 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</p>	<p>The provision relating to death of a woman in unnatural circumstances should be deleted and property obtained by dowry to revert to the parents of the woman or her children, as the case may be on the death of the woman</p>
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<p>in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to the 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 fail 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 heir, parents or children].</p> <p>(4) Nothing contained in this sub-section shall affect the provisions of section 3 or section 4.</p>	<p>punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to the 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 fail 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 heir, parents or children].</p> <p>(4) Nothing contained in this sub-section shall affect the provisions of section 3 or section 4.</p>	
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Justification of proposed amendments in reversion of Dowry

This clause provides that all property or movables given as dowry will have to be transferred to the woman. Till such time the transfer takes place, such property is held in trust for her benefit by the person in whose possession the property is. Failure to transfer the property within the period prescribed will attract the penalties provided for in the clause.

The problematic issue that arises *vis-à-vis* this provision is in relation to the manner of devolution of such property on the death of the woman.. Hence if the woman dies:

- Due to natural circumstances, the property will devolve on the heirs of the woman.
- However if the woman dies in unnatural circumstances, that too within the first seven years of marriage, then such property devolves upon only her children and in the absence of her children, reverts back to her parents.

Thus as per this provision, if the woman dies due to natural causes, the property is equally divided amongst her heirs. Under most inheritance laws in India, the husband is recognized as an heir of the wife. Let us take for instance

- Under Section 15(1) of the Hindu Succession Act, 1956, the husband

is recognized as a Class I heir in addition to her children and the children of any pre-deceased son or daughter. The exception to this says that the property if was “inherited” from her parents then upon her death it shall revert back to the heirs of her parents. However gifts received at the time of marriage from her parents which would basically amount to Stridhan would be governed by Section 15(1).

- The Hanafi law states that in case a woman dies leaving behind her husband and children then her husband would take $\frac{3}{4}$ th as a sharer and the residue $\frac{1}{4}$ th goes to her children. The Shai law of inheritance states that in case there is a lineal descendants then the husband takes $\frac{1}{4}$ th of the property else takes $\frac{1}{2}$ of the property.

This means that the property will in most cases devolve upon the perpetrator of the offence, in this case the husband, on the death of the woman. This situation is averted only, if it is shown that the woman died in unnatural circumstances within the first seven years of marriage. The prescribed time period of seven years is not reflective of the situations in which dowry demands and dowry related harassment continue beyond the first seven years of marriage. Secondly, death caused in unnatural situations is difficult to prove in most cases, as is evident



from the discussions in details in the subsequent sections on Section 304B IPC. Sufficed to state, that the difficulties in proving death due to natural causes is resultant from an incorrect recording of such deaths as accidents, reluctance to place reliance on the dying declarations of the women, lack of witnesses as the offence takes place within the confines of the home, *inter alia*.

Recommendation

- The provision relating to the death of the woman in unnatural

circumstance should be deleted and all property obtained as dowry to revert to the parents of the woman or her children, as the case may be on the death of the woman for any reason whatsoever. The justification for this is that the taking of dowry by the husband itself was illegal, the Dowry liable to be returned in her lifetime or on her death cannot give rise to a claim of inheritance.

4. SECTION 7: COGNIZANCE OF OFFENCES

Present Law	Proposed amendments	Remarks
<p>(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-</p> <p>(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;</p> <p>(b) No court shall take cognizance of an offence under this Act except upon-</p> <p>(i) Its own knowledge or a police report of the facts which constitute such offence, or</p> <p>(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;</p> <p>(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 any offence under this Act.</p> <p><i>Explanation:</i> For the purposes of this sub-section, "recognized</p>	<p>(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-</p> <p>(a) the person aggrieved permanently resides or carries on business or is employed; or</p> <p>(b) the respondent resides or carries on business or is employed; or</p> <p>(c) the cause of action has arisen,</p> <p>Shall be the competent court to try offences under this Act.</p> <p>(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -</p> <p>(a) No court shall take cognizance of an offence under this Act except upon-</p> <p>(i) Its own knowledge or a police report of the facts which constitute such offence, or</p> <p>(ii) A complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any</p>	<p>A clause regarding the jurisdiction to be included.</p>



<p>welfare institution or organisation” means a social welfare institution or organisation recognized in this behalf by the Central or State Government</p> <p>(2) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to any offence punishable under this Act.]</p> <p>⁴[(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.</p>	<p>recognized service provider or protection officer;</p> <p>(b) 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 any offence under this Act.</p> <p><i>Explanation 1:</i> For the purposes of this sub-section, “service provider” “has the same meaning as in the Protection Of Women from Domestic Violence Act.2005</p> <p><i>Explanation 2:</i> For the purposes of this sub section, the expression “protection officer” will have the same meaning as in Section 8B of the Act.</p> <p>(3) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to any offence punishable under this Act.]</p> <p>— Shifted as above mentioned</p>	<p>The term “any recognized welfare institution or organization” to be replaced by “any recognized service provider or protection officer.</p>
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Justifications for proposed amendments:

1. Justification for adding Section 7(1) to the present Section

The present clause, while specifying the court in which an offence under the DPA can be tried, makes no mention of the place in which the court should be based. Ordinarily, due to a marital discord, the wife starts living at the residence of her parents or any other place, which may be completely unconnected with the place of occurrence of the marital offence. Therefore, it becomes imperative that law provides to the woman the opportunity to file a case not only where the offence was committed, but also where she permanently or temporarily resides. This would make the process of filing a case convenient for the victims and will encourage them to come forward in this regard. The Protection of Women from Domestic Violence Act” 2005 explicitly states that the court where the woman resides or is employed is competent to try the offence, even if the cause of action had not arisen there. This provision needs also to be incorporated in the Dowry Prohibition Act.

The need to include this provision explicitly can also be inferred from the Supreme Court decision in the case *Y Abraham Ajith & Ors V. Inspector of Police, Chennai*. The court held that no part of cause of action pertaining to dowry arose in Chennai where the victim was residing, and therefore, the magistrate at Chennai had no jurisdiction

to deal with the matter. Accordingly, the proceedings were quashed.

2. Recognizing the role of authorities under the Protection of Women against Domestic Violence Act 2005 for effective implementation of the DPA

- **Inclusion of Service Providers** - The recently enacted Protection of Women from Domestic Violence Act, 2005 recognizes any registered voluntary association desirous of protecting the rights of women and registered with the State Government as a service provider. Hence the term ‘any recognized welfare institution of organization’ can be assimilated into the term ‘service provider’ for better clarity as to who can complain to the magistrate.
- **Inclusion of Protection Officers**- Under the PWDV Act, the State Government has the power to appoint Protection Officers in each district to ensure that the provisions of the Act are complied with. These officers have the power to present an application to the magistrate. These officers should, therefore, be empowered under the Dowry Prohibition Act to bring complaints against the offence of dowry.

5. Insertion of a new section - SECTION 7A-procedure for obtaining orders of relief's:

SECTION 7A(1) An aggrieved person, or a parent or relative of such person, or a



protection officer or a service provider may present an application to the Magistrate seeking one or more reliefs under Chapter IV (section 12 – 26) of the Protection Of Women From Domestic Violence Act 2005

(2) Provided further that provisions contained in **section 31 of the protection of women from domestic violence Act 2005 shall apply in relation to this Act**

JUSTIFICATION

The Protection of Women from Domestic Violence Act, 2005 has moved in a positive direction from mere punishments and arrests to the necessity of providing victim protection. It must be realized that just empowering the law to give punishments to the accused will not help the victim overcome her economic or mental trauma caused by the act of violence or harassment. In this situation it is important for the law to take a humane step towards the aggrieved and provide her with the necessary protection orders.

The term 'dowry' is stated to have the same meaning in the Protection Of Women

from Domestic Violence Act, 2005 as given in Section 2 of the Dowry Prohibition Act, 1961 This automatically implies that all the protection and residence orders which can be given under the Act also applies to violence or harassment in connection to a demand for dowry. But the Dowry Prohibition Act, 1961 only deals with punishment or penalty imposed with regard to the giving or taking of dowry. It does not authorize the magistrate to issue any protection orders, monetary relief or residence orders in favour of the victim. Thus if a case is registered with regard to the taking or demanding of dowry, the Magistrate, if reading the sections of the Dowry Prohibition Act, 1961 might not be able to Issue the required protection orders in favour of the victim. It thus becomes imperative that the necessary orders that can be passed to benefit the victim be also incorporated in the Dowry Prohibition Act, 1961.

Further that the applicability of section 31 of the Protection of women from domestic violence Act would further harmonize the Acts and there may not be an immediate recourse to invoking the provisions of section 498A of IPC

6. SECTION 8B-DOWRY PROHIBITION OFFICERS

Present Law	Proposed amendments	Remarks
<p>(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.</p> <p>(2) Every Dowry Prohibition Officers shall exercise and perform the following powers and functions, namely-</p> <p>a) to see that the provisions of this Act are complied with;</p> <p>(b) to prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry;</p> <p>(c) to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act; and</p> <p>(d) to perform such additional functions as may be assigned to him by</p>	<p>(1) The protection officers appointed under section 8 of the Protection of women from domestic violence Act 2005 , shall exercise and perform the following powers and functions, in addition to those provided under the protection of women from domestic violence Act 2005 , namely.</p> <p>(a) to see that the provisions of this Act are complied with;</p> <p>(b)to prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry;</p> <p>(c) to authenticate and sign the list of presents which are given at the time of marriage to the bride or bridegroom or direct the service provider to do so</p> <p>(d) to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act</p>	<p>‘shall & ‘Protection Officers</p>



<p>the State Government, or as may be specified in the rules made under this Act.</p>	<p>(e) To create awareness among the people about the evils of dowry and give wide publicity through the concerned Government Department.</p> <p>f) To issue directions that schools and colleges be given awareness about dowry as a social evil and to this effect take assistance of the advisory boards and/or voluntary organizations</p> <p>(g) 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.</p> <p>(h) to perform such duties as assigned to him in the Protection Of Women From Domestic Violence Act, 2005</p> <p>(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 Protection Officer who shall exercise such powers subject to such limitations and conditions as may be specified by rules made under this Act.</p> <p>4) The State Government shall, for the purpose of advising and assisting the</p>	
<p>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.</p>		

<p>4) The State Government may, for the purpose of advising and assisting the 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).]</p>	<p>Protection Officers in the efficient performance of their functions under this Act, appoint an advisory board of not more than five members consisting of</p> <ul style="list-style-type: none"> • The SDM as the Chairman • A Representative from the police • An Advocate • Representatives from the social sector/NGO <p>Out of whom at least two shall be women from the area in respect of which such Protection Officer exercises jurisdiction under sub-section (1).</p>	
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Justification for proposed amendments:

1.Substitution of “Dowry Prohibition Officers” with “Protection Officers”:

Section 3 of the PWDV Act provides a definition of domestic violence and includes within its ambit, under sub clause (b) the following:

“Harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demands for any dowry or any other property or valuable security.”

The Protection Of Women from Domestic Violence Act, 2005 includes harassment in regard to a demand for dowry in the definition of domestic violence. Under this Act, dowry has the same definition as Section 2 of the Dowry Prohibition Act, 1961. The State Government under the PWDV Act shall appoint Protection Officers in each district with specific duties and powers. The Dowry Prohibition Act, 1961 on the other hand also directs the State Government to appoint Dowry Prohibition Officers under Section 8B.

To avoid overlapping of powers and confusion in the minds of common people, it is important to assimilate the two. The Protection Officer being already given specific powers and functions under the Protection of Women from Domestic Violence Act, 2005, the appointment of additional Dowry prohibition officers would lead to confusion as to the powers of each of these appointees.

Already, it has been seen that the appointment of Dowry Prohibition Officers has been mainly ceremonial. Even the Supreme Court in the case *In Re: Enforcement of Dowry Prohibition Act*, has also issued directions to the Union of India and the states to activate the officers has recognized need to take more effective steps to make the Dowry Prohibition Officers effective.

Keeping the present scenario in mind, it would thus be a logical step to substitute the Dowry Prohibition Officers with the Protection Officers. Besides having the same duties as assigned in the Protection of Women From Domestic Violence Act, 2005 the Dowry Prohibition Act, 1961 can give power to the officers to authenticate the list of gifts prepared at the time of marriage.

2. Additional Functions to the already existing functions of the Protection Officers

Dowry is a social evil having its roots in the conservative mindset of many people. To make sure that the practice of giving and taking dowry is completely eradicated from the society, it becomes imperative that people are made aware of the practice as an unnecessary evil. Hence, the Protection Officer apart from ensuring the compliance of the Dowry Prohibition Act, 1961 should also be given the responsibility to create awareness among the people through various means.

Further, it is important that children at a young age in schools and colleges be imparted the necessary awareness so that the youth of this country can bring about a

positive change. The manner of appointment and qualifications of the protection officers will be provided under the Rules formulated under the Protection of Women from Domestic Violence act

3. Justification for substituting the word “may” by “shall” regarding the appointment of advisory boards

The appointment of the advisory boards should be made mandatory for the State Government. This would not only ensure more effectiveness of the Protection Officers but will also help them in carrying out their duties. Hence, the word ‘may’ has been replaced by ‘shall’ in the recommendation.

4. Appointment of an Advisory Board

Section 8B (4) allows for the appointment of an advisory board to assist the Dowry Prohibition Officers in discharging functions. The appointment of such advisory boards should be made mandatory for the State Government. This would not only ensure more effectiveness of the Protection Officers but will also help them in carrying out their duties. Hence, the word ‘may’ has to be replaced by ‘shall’ in the recommendation.

Separate rules laying down the constitution and the manner of functioning of such advisory boards must be formulated. The overall objective behind the appointment of the Advisory Board is to ensure that the provisions of the Act are complied with.

It is suggested that the Advisory Board may comprise of the following:

- The District Magistrate as the Chairman
- A Representative from the police
- An Advocate
- Representatives from the social sector

The Advisory Board so constituted should act in an advisory capacity to the Protection Officers. This Board will also be effective in monitoring the functions of the Protection Officers and ensuring accountability. The Protection Officers can seek the help of the members in carrying out his functions under the Act. It shall be the duty of the Protection Officer to submit a monthly report to the board regarding the number of dowry complaints received and the action taken by the respective Protection Officers. The members of the board shall analyze this report and a comprehensive report stating the progress of the state towards the eradication of dowry may be presented to the State Government by the advisory boards.

7. Insertion of new section 8C-Duties of the Government

Recommended Section 8 C

The Civil Services (Conduct) Rules, 1964 specifically prohibits government servants from giving and taking Dowry or abetting the giving and taking of Dowry¹. Rule



13A of the Central Civil services (Conduct) rules lays down:

No government servant shall –

- (i) Give or take or abet the giving and taking of Dowry or
- (ii) Demand directly or indirectly, from the parents or guardians of a bride or bridegroom, as the case may be, any Dowry.

Explanation – For the purpose of this rule, dowry has the same meaning as in the Dowry prohibition Act, 1961.

A similar provision has also been enacted in the Indian Services (Conduct) Rules, 1968.

However at present, there is no provision under the DPA to ensure the accountability of the government to spread awareness against the practice of dowry. To this extent, public servants who hold positions of responsibility should lead the campaign against dowry as models to be emulated. The cue for the insertion of a provision in this regard may be taken from the Kerala Dowry Prohibition Rules. In order to counter the growing menace of dowry, the Kerala State Government made it mandatory for all its employees to give a declaration, at the time of marriage, stating that they had not accepted any dowry. This declaration has to be signed by the wife, father and father-in-law of the employee.

The government should also be vested with the responsibility of creating awareness against the practice of dowry. Dowry is a social evil and it is essential that a strong message is sent out against the giving and taking of dowry. The government should, therefore, be vested with the responsibility of providing maximum publicity to the provisions of this law.

To incorporate these provisions, there should be an introduction of Section 8C as follows

- (1) The Central Government shall issue instructions to the effect that every Government Servant as well as public servant shall after his marriage furnish a declaration to his Head of Department stating that he has not taken any dowry. The declaration shall be signed by his wife, father and father in law.
- (2) The Central Government shall take all steps to ensure that the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals.

It is also suggested that similar provision be incorporated for state government employees

¹¹ Government of India , cabinet Secretariat , Department of Personal and Administrative Reform , Notification No 11013/12/75 Est .(A) 13.2.1976

8. SECTION 9: POWER TO MAKE RULES

Present Law	Proposed amendments	Remarks
<p>(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.</p> <p>[(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-</p> <p>(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</p> <p>(b) the better co-ordination of policy and action with respect to the administration of this Act.</p>	<p>(1) The Central Government, may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-</p> <p>(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</p> <p>(b) The better co-ordination of policy and action with respect to the administration of this Act.</p> <p>(c) The constitution and tenure of the advisory committee and the qualifications for the members appointed to the advisory committee.</p> <p>(d) The powers and functions of the advisory committee.</p> <p>(e) procedure to be followed by advisory committee for inter alia convening meetings and providing assistance to PO</p>	



<p>6[(3) Every rules 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.</p>	<p>in the discharge of his functions</p> <p>(f) format in which a declaration shall be made by a public or government servant stating that he has not received any dowry</p> <p>6[(3) Every rules made by the central government 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.</p>	
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Justification on the proposed amendment:

1. Justification for proposing the power to make rules regarding the qualifications of a protection officer to vest with the Central government

The Protection Officers, as stated in the Protection of Women from Domestic Violence Act, 2005 are appointed not only to provide assistance to the victim but also assist the Magistrate in the implementation of the Act. It is important that the rules regarding appointment etc. to such a position should be uniform throughout the country. Hence the power to decide their qualifications etc should vest with the Central Government. The Central Government should prescribe such a qualification that is competent and qualified enough to carry out the duties. The object is to make the Protection Officers as effective as possible and not be a failure like the Dowry Prohibition Officers.

2. Justification for recommending the issuance of special Instruction with regard to government employees

It must be especially made sure that Government Servants, who bear the responsibility of being the representatives of the public, do not take or demand dowry. Thus, a special provision has been suggested in this context. An example can be cited from the state of Kerala, where, in a move to end the increasing dowry menace, the State Government has made it mandatory for all its employees to give a declaration after marriage stating that they have not accepted

any dowry. The declaration to be submitted to the head of department would have to be signed by the father, father-in-law and wife of the employee, as per the amended Kerala Dowry Prohibition Rules under the Dowry Prohibition Act 1961.

3. Justification for recommending the Central Government to give wide publicity of the Act

Dowry is a social evil and hence it is essential that a strong message against the giving or taking of dowry be circulated among the public. Advertisements shown on popular media such as radio and television

4. Inclusion of power to make rules for the appointment and functioning of advisory boards under Section 8B In view of the recommendations made in the preceding section on the role and functions of the Protection Officers, the Central Government should be vested with the powers to formulate Rules on the appointment and manner of functioning of the Advisory Boards appointed under this law.

9. SECTION 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 Officer 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.

RECOMMENDATION-SECTION 10

- (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 Protection Officer 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) The State Government, in case where registration of marriages is compulsory under certain laws, may provide for powers to the competent authority registering marriage to order the

list as per the dowry prohibition (maintenance of lists of presents to the bride and bridegroom) Rules 1985 to be annexed to the memorandum required for obtaining marriage certificate.

(4) The State Government shall issue such instructions to the effect that every government servant and public servant shall after his marriage furnish a declaration on affidavit, to his head of office stating that he has not taken any dowry and such declaration may be signed by his wife or her relative.

(5) 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.

Recommendations on better co-ordination of policy and action with respect to administration of this Act.

- There should be a central and state monitoring committee
- which could coordinate with the advisory boards
- Representatives from the National commission for women and state women commissions should be included in the committee
- The committee may function under the Ministry looking into women issues
- Power to issue advisories to the state government and central

government on effective implementation of the Act and Rules

- Monitor the role ,functions and effectiveness of Protection officers
- Provisions need to be made for composition and effective functioning of the CAW Cells which should involve NGO's for conciliation and mediation proceedings

Justification for recommending it to be mandatory to submit the list of presents with the marriage registrar

It has already been recommended that the list of presents under the Dowry Prohibition (Maintenance Of Lists Of Presents To The Bride And Bridegroom) Rules, 1985 has to be signed by the Protection Officer for authentication. The same has also to be maintained by him. However, in some states in India like Tamil Nadu and Andhra Pradesh, the registration of marriage has been made compulsory. Hence the Registrar should also be made the verifying authority. Also recently the Hon'ble Supreme court in transfer petition 291/2005 *seema vs ashwini kumar* has directed the states to frame rules for compulsory registration of marriages

10. Recommendation - section 304B IPC

304B. Dowry Death (Indian Penal Code (45 of 1860). – (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.

- The words ‘soon before’ used in section 304-B (1) must be deleted and replaced by the words ‘anytime before’.
 - The minimum punishment in section 304 B (2) be raised from seven years to ten years.
 - After the words “imprisonment for life” occurring in section 304 B (2), the words “or death” may be added.
- Rationale -

The punishment is to be enhanced for the following reasons -

- a) To keep this offence at par with murder and by no stretch of imagination it is less grave an offence than the murder.



- b) To create deterrence in the minds of the people indulging in such heinous crimes. By now it is more than clear that neither the Dowry Prohibition Act nor the amended provisions of I.P.C. could deter the people and could not register the success. The committee found that because of the above said discrepancies in the provision the law has failed in its objective. By incorporating the above changes law can be made effective.
- c) Also the time limit of presumption may be increased because seven years is very short a time and often the offence is executed in a pre-planned manner.
- d) The minimum punishment should be increased from seven to ten years.

Section 304 B of the IPC was inserted by an amendment to the IPC in the year. This provision penalizes “dowry death” and puts in place presumption to arrive at a finding of dowry death. However prior to benefiting under this presumption the following has to be proved

- (i) Death of a married woman within 7 years of her marriage;
- (ii) Proof that the said woman was subjected to cruelty or harassment by her husband or relations of the husband, such cruelty should have taken place “soon before” her death

- (iii) Such cruelty or harassment should have a nexus with a demand for dowry.

The difficult however lies in proving all these components simultaneously.

I. The “Seven years” limit

A first issue of Section 304 B, which requires some perusal is the seven years limit for dowry death, claims to benefit from the presumption that the defendant caused the death. Section 113 B of the Indian Evidence Act, 1872 will only allow this presumption if evidence of cruelty is shown and only if unnatural death occurred within the first seven years of marriage. The seven years limit must be reassessed since the reasoning for its existence is flawed. The rationale behind providing this limitation was that seven years would be an ample time to calm an abusive relationship. But as we hear about cases where criminals are waiting until the seven years are over to kill their victims, it becomes clear that the abuse will not stop as long as there is economic gain from it. Seven years limit only postpones murder since demands for dowry recur throughout a marriage; time should not be a determining factor when claims may be brought. As long as the abuse continues it should be punishable by law.

II. The exclusion of the term “soon before”

The second issue is that

- The woman should have been subjected to harassment/cruelty just soon before her death

While Section 304B of the Indian Penal Code (45 of 1860) and Section 113 B of the Indian Evidence Act, 1872 strengthens dowry death prosecutions by allowing the court to presume that dowry death had occurred if the prosecution can prove that the husband or his relatives subjected the Dowry victim to “cruelty”. It has to be further proved that the victim was subject to cruelty and harassment “soon before” her death.

In most cases the circumstances and the premises in which incidents of dowry death occurs, acts as a major deterrent because

- The husband or the relatives tamper with the evidence
- The few witnesses who are available are generally the relatives or the neighbors who in most cases are not forthcoming with their support to the victim.
- Due to very little contact with the natal family or any kind of organization, there is a tremendous lack of written evidence, as far as any previous incidents of cruelty are concerned.

The dilemma that most courts face is in the interpretation of how soon is “soon before”. In the case of *Dinesh Seth and others v. State*¹² the deceased had left her matrimonial home due to the harassment faced. She was found dead after 15 days on her return to her matrimonial home. It was held by the Delhi High Court that there was proof of harassment

but does not qualify to be “soon before” hence will not fall under Section 304B of the IPC. However in the case of *Vipin Kumar and others V State*² where the deceased was found dead 2 days after her return to her matrimonial home the Delhi High Court held it to be “soon before” her death. The Courts in a catena of cases have held that the proximity and the live link test have to be applied for a case to qualify under section 304B. Thus in the case of *Kunhiabduklah and another v. State of Punjab*³ the Court stated that “soon before” is a relative term and would depend upon the circumstances of each case. The fact of time interval has to be kept in mind but there has to be proximity and a live link connection between the Dowry related harassment and death. In the case of *Savalram v State of Madras*⁴ there was an eight month gap between the last report of Dowry related harassment and the death of the deceased. The Bombay High Court held that it would not fall under Section 304B because “soon before” is not proved. The court fails to take into account the difference between last occurrence of harassment and the last report of occurrence of harassment. Thus there is a need to draw light upon the fact that just because no harassment was reported there was actually no harassment and that harassment can continue over a period of time.

“Subject to harassment in connection with Dowry”

The third issue which requires perusal is that, for 304B to be applicable the harassment or cruelty should have occurred

¹² 2003 CrLJ 4532

¹³ 64(1996) DLT 781

¹⁴ 2004(48) ACC 950 SC

¹⁵ (2004)1 DMC 339



“in connection with Dowry”. In understanding what “cruelty in connection to Dowry” meant, the Bombay High Court in the case of *Bhivia Tukaram Tarkase v. State of Maharashtra*⁵ where the deceased other than many incidents of violence had not been allowed to attend her brothers wedding, held that it was harassment but cannot be linked to demand for dowry. Here the court seems to have taken very narrow interpretation of the law. Violence may take different forms. Dowry may be the cause and the effect is manifested in the form of violence. In the case of *Nandkishore @ Kishore v. State of Maharashtra*⁶, where the deceased had died due to severe burns and earlier she had filed a complaint to the police about harassment faced but nothing specific about “dowry harassment”. The Court said that Section 304B would not be applicable as there is no nexus between dowry demand and Cruelty. The court two must coexist and should not be independent of one another.

11. Importance of prompt medical examination and investigation

As mentioned in the above paragraphs, in most cases it is very difficult to prove a case of dowry death due to the nature and the circumstances under which such crimes occur. Immediate medical examination of the deceased and proper investigation of the site of crime is then, the only evidences available for the prosecution. In the case of *State of Uttar Pradesh v. Satya Narain Tiwari*⁷ where the deceased was found dead due to severe burns and the in-laws said that she had committed suicide. It was the post mortem

report which indicated the fracture of the hyoid bone and the fact that the door was found properly intact whereas the accused had claimed that they had to break down the door since the deceased had locked herself in which assisted the prosecution in their case. Similarly in the case of *Mulakh Raj v. Satish Kumar*⁸ where the deceased was found with 95% burns the post Mortem report revealed that she died due to asphyxia as a result of strangulation and that the body had been burnt as an attempt to destroy the evidence of death.

As clearly reflected from the above cases where the prosecution has benefited from the prompt investigation and Post mortem report. Attention may have to be drawn to Section 174(4)(v) of the CrPC, which states that

(v) *Police officer for any other reason considers it expedient so to do, he shall subject to such rules as the state government may prescribe in this behalf*”

The State Governments will have to lay formulate rules laying in detail the steps and the time period to be followed while carrying out an investigation.

12. Dying Declarations

A dying declaration made by a person on the verge of his death has a special sanctity as in that solemn moment; a person is most likely to make any untrue statement. A dying Declaration therefore enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. In case there are more than

⁵ (2000)1 Mh LJ 593

⁷ 1995 Cri LJ 3706

⁸ 2005 Cri LJ 3684

⁹ AIR 1992 SC 1175

one Dying Declarations then the court also has to scrutinize all of them and find out if each one of them pass the test of being trustworthy.⁹ Though dying declarations are by no means the only evidence that can be relied upon or obtained in cases of death and in fact proper investigation of the scene of crime may lead to further evidences so will the post mortem results. The statement of the deceased is sought to be relied upon to reveal the real cause of death.

Section 113A and B of the Indian Evidence Act, 1872 shifts the burden of proof on the accused that he did not abet the suicide or cause the dowry death in cases where there is evidence of harassment. Given the context where neighbors or the Husbands family are bound to support the accused and the little contact the victim may have had with her parents or any social organization are in most cases the only bit of evidence which would help her case. However as experience reveals, in most cases where the woman may be in a position to make a statement after her marriage she prefers not to implicate the husband for various reasons. The negative repercussion of this lack of dying declaration implicating the husband often leads to closer of investigation and the police tend to not look into any other evidence, though in a few cases of death of women where the woman has made a dying declaration not implicating the husband, the court has convicted the husband on the basis of other evidences.¹⁰ In the case of *Laxman*¹¹ the Trial Court and the High Court acquitted the husband but the Supreme Court found him guilty of burning

his wife to death. This reflects that unless our courts scan the evidence carefully there is a likelihood of culprits escaping punishment.

As far as dying declarations are concerned there is a certain amount of legal privilege it receives. However it has been observed that this privilege has been diluted when the maker is a woman. Thus in the case of *Laxmi v. Om Prakash*¹² The Supreme Court discarded five dying declarations made by a woman to five different people including the Doctor in the space of that one day that she had remained alive on the ground that no doctor certified that she was fit enough to make a statement. There is a need to look into this entire factor of how violence against women is accepted by society without any qualms.

The recording of the statement of the victim, which often becomes her dying declaration, is a part of the investigative procedure but it often turns into a procedure for absolving the real perpetrator of the crime. Meant to be recorded in privacy, the dying declaration is often taken in the presence of the victims' husband and the rest of the in laws.

Section 174 of the Code of Criminal Procedure, 1973 contains a provision that empowers a magistrate to make an inquiry into cases of suspicious deaths. The new amendment made in 1983 empowers the magistrate to hold such an inquiry when a woman dies while living with her husband and her in laws or other relations within the first seven years of marriage. However the

²⁰*Kundula bala Subrahmanyam vs . State of A.P (1993)2 SCC 684*



callousness of our investigating authorities is brought to clear relief by the Supreme Court's decision in *Lichhamadevi v. State of Rajasthan*¹³. In this particular case the mother in law was found to have poured kerosene and ignited it on the victim and she said that her elder son might have burnt the victim. The husband who was a silent spectator to all of these and who did not even go to rescue his wife or called the ambulance after the incident was never charge sheeted. Also the victim's statement before the doctor was not treated as a dying declaration it was treated merely as a communication between a doctor and a patient.

Thus what may be needed over here is the strengthening of the entire structure be it the investigation, the complaint mechanism and the attitude of the judiciary. The Vimochana and the House committee made various recommendations regarding the holistic approach while dealing with Dowry Deaths.

- The death of woman in unnatural circumstances has to go through 2 procedural tiers. The first is investigation by the police and the inquest officer with the assistance from the Doctor who perform the post mortem as well as forensic experts. Since the fate of the case will depend on the thoroughness of this investigation.
- There is a great need to make sure that the police register a complaint immediately after receiving

information about grievous injuries sustained by a woman under suspicious circumstances. There is a need for the police to go and actually seal up the house where the incident occurred so that the evidence does not get tampered but which never happens in most cases. Since most of the cases of "Dowry Death" are reduce to accidents and suicidal in order to avoid workload there is a need for the higher authorities in the investigative department to investigate all cases of attempted suicides and death under suspicious circumstances.

Implementation

Even after the campaign and amendments in the Dowry laws there has not been any lessening of the evil of Dowry .A writ was filed in the Supreme Court in the year 1997 praying that the Central and the State government should frame rules under Section 9 and 10 of the Dowry Prohibition Act 1961 and providing for additional functions to be performed by the concerned officers under Section 8B of the Act. It also pleaded for appointment of Dowry Prohibition Officers by states as required under Section 8B ,to furnish details regarding the working of Dowry Prohibition Officers wherever they have been appointed and for setting up of Advisory Boards as mandated under Section 8B of the Act. Various interim orders were passed and it was submitted that most of the states have framed rules under this act and

²¹ *Pawan Kumar v. State of Haryana* 2001 AIR SCW 1111

²² AIR 1986 SC 250

Dowry prohibition officers have been appointed in most states. However what seems to be the concern is that will the purpose of the law be achieved?

Thus In Re Enforcement and Implementation of the Dowry Prohibition Act 1961¹⁴ the Supreme Court stated that in addition to directing the respondents to implement all the interim directions which were issued in this case thus far, we further

- Direct the Union of India and the States to take more effective steps to implement the provisions of the Dowry various rules framed there under. In that process, they are also directed to activate the Dowry Prohibition officers. It directed the Central Government to frame rules under Section 9(2)(b) of the Act if it has not already been framed.
- It directed the respondents to take steps to ensure that submitting of the list as contemplated by the act and the rules is strictly implemented.

- We direct the Union of India and the State government to consider whether appropriate rules cannot be framed for compelling males, seeking government employment, to furnish information on whether they had taken Dowry and if taken, whether the same has been made over to the wife as contemplated by Section 6 of the Act, calling for such information also from those already in employment. Since it is necessary to arouse the conscience of the people against the demand and acceptance of Dowry.
- We also direct the Union of India and the State Governments to take steps for the effective stepping up of anti-dowry Literacy among the people through Lok Adalats, radio broadcasts, television and newspapers. These directions will be implemented and continue to be implemented rigorously by the respondents.

²³ (2001) 6 SCC 118

²⁴ AIR 1988 1785

²⁵ I (2005) DMC 805 (SC)