

# The Dowry Prohibition Act, 1961

[Act 28 of 1961]

*along with*

**Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985**

**Code of Criminal Procedure, 1973 (Extracts)**

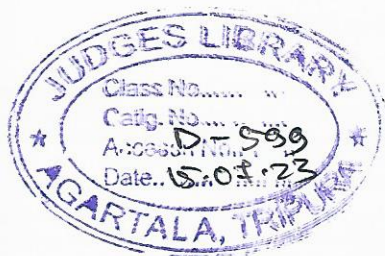
**Evidence Act, 1872 (Extracts)**

**Penal Code, 1860 (Extracts)**

**Important Supreme Court Judgment on Stridhana**

*and*

**Case Law**



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# The Dowry Prohibition Act, 1961

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# The Dowry Prohibition Act, 1961<sup>1</sup>

[Act 28 of 1961]

[20th May, 1961]

## *An Act to prohibit the giving or taking of dowry*

Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

**Statement of Objects and Reasons.**—"The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law which makes the practice punishable and at the same time ensures that any dowry, if given does ensure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside Parliament. Hence, the present Bill. It, however, takes care to exclude presents in the form of clothes, ornaments, etc., which are customary at marriages, provided the value thereof does not exceed Rs 2000. Such a provision appears to be necessary to make the law workable." Gazette of India, 1959, Extra., Pt. II, S. 2, p. 397. See Joint Committee Report at *id.*, pp. 1191-93.

**Statement of Objects and Reasons of Amendment Act 63 of 1984.**—The evil of dowry system has been a matter of serious concern to everyone in view of its ever-increasing and disturbing proportions. The legislation on the subject enacted by Parliament, *i.e.*, the Dowry Prohibition Act, 1961, and the far-reaching amendments which have been made to the Act by a number of States during the seventies have not succeeded in containing the evil. As pointed out by the Committee on the Status of Women in India, the educated youth is grossly insensitive to the evil of dowry and unashamedly contributes to its perpetuation. Government has been making various efforts to deal with the problem. In addition to issuing instructions to the State Governments and Union Territory administrations with regard to the making of thorough and compulsory investigations into cases of dowry deaths and stepping up anti-dowry publicity, Government referred the whole matter for consideration by a Joint Committee of both the Houses of Parliament. The Committee went into the whole matter in great depth and its proceedings have helped in no small measure in focusing the attention of the public and rousing the consciousness of the public against this evil.

2. The following observation made by the late Pandit Jawaharlal Nehru which has been quoted by the Committee indicates the role which legislation can play in dealing with the evil:—

"Legislation cannot by itself normally solve deep-rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have that educative factor as well as the legal sanctions behind it which help public opinion to be given a certain shape."

The recommendations made by the Joint Committee of the Houses to examine the question of working of the Dowry Prohibition Act, 1961, have been considered keeping in view these observations and after taking into consideration the comments received on the Report from the State Governments, Union Territory administrations and the different administrative Ministries of the Union concerned

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1. Extended to Pondicherry by Act 26 of 1968, S. 3 & Sch., Part I (w.e.f. 24-5-1968) and to Dadra and Nagar Haveli by Regn. 6 of 1963.

*State Amendments:* Bihar Act 4 of 1976; Haryana Act 38 of 1976; H.P. Acts 25 of 1976 and 39 of 1978; Orissa Act 1 of 1976; Punjab Act 26 of 1976 and W.B. Act 35 of 1975.



with the matter. One of the important recommendations of the Committee for dealing with cruelty to a married woman by the husband or the relatives of the husband on the ground of non-receipt of dowry or insufficient dowry has already been given effect to by the Criminal Law (Second Amendment) Act, 1983. This Act amended, inter alia, the Indian Penal Code to include therein a provision for punishment for cruelty to married women and was aimed at dealing directly with the problem of dowry suicides and dowry deaths.

3. The Joint Committee has recommended that the definition of “dowry” contained in Section 2 of the 1961 Act should be modified by omitting the expression “as consideration for the marriage” used therein on the ground that it is well-nigh impossible to prove that anything given was a consideration for the marriage for the obvious and simple reason that the giver, i.e., the parents who are usually the victims would be reluctant and unwilling to set the law in motion. The omission of the words “as consideration for the marriage” would make the definition not only wide but also unworkable, for, if these words are omitted, anything given, whether before or after or at the time of marriage by anyone, may amount to dowry. The Supreme Court has also placed a liberal construction on the word “dowry” as used in Section 4 of the Dowry Prohibition Act, 1961, relating to demanding dowry. In the circumstances, it is proposed to substitute the words “in connection with the marriage” for the words “as consideration for the marriage” instead of omitting those words.

4. Section 3 of the Dowry Prohibition Act relating to the offences of giving or taking of dowry is being amended in accordance with the recommendations of the Joint Committee to make the punishment for the offence more stringent. All presents given at the time of marriage to the bride and certain types of presents given at the time of marriage to the bridegroom are proposed to be excluded from the purview of the offences under the section. However, the recommendations of the Committee for exempting the giver of dowry from punishment is not being given effect to as such exemption may only prove to be counter-productive.

5. Section 4 of the Dowry Prohibition Act relating to penalty for demanding dowry is proposed to be amended to make the punishment thereunder more stringent on the lines recommended by the Joint Committee.

6. Section 6 of the Act is being amended in accordance with the recommendation of the Joint Committee, to reduce the time limit within which dowry received in connection with the marriage of a woman by any other person should be restored to the woman from one year to three months. Likewise, the punishment for failure to restore such dowry within the said time limit is being made more stringent on the lines recommended by the Committee. Under a special provision which is being included in Section 6 where a person is convicted for failure to restore the dowry to the woman concerned within the period specified in the section, the court may, in addition to awarding punishment, issue a direction requiring him to restore the property to the woman within the period specified in the direction. In case of non-compliance with the direction, the value of the property would be recoverable from such person as if it were a fine and the amount so recovered may be paid to the woman concerned or, as the case may be, her heirs.

7. Sections 7 and 8 of the Dowry Prohibition Act are proposed to be amended to give effect to the recommendations of the Committee as to cognizance of offences under the Act and making offences under the Act cognizable.

8. The Bill seeks to achieve the above objects—Gazette of India, Extra., Pt. II, Section 2, No. 33, pp. 13-14.

**1. Short title, extent and commencement.**—(1) This Act may be called the Dowry Prohibition Act, 1961.

(2) It extends to the whole of India <sup>2</sup>[\* \* \*].

2. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, Ss. 95, 96 & Sch. V (w.e.f. 31-10-2019).



(3) It shall come into force on such date<sup>3</sup> as the Central Government may, by notification in the Official Gazette, appoint.

**CASE LAW ► Nature and Object.**—The deep-rooted social evil of dowry requires to be controlled not only by effective implementation of the Dowry Prohibition Act, 1961, but also by the society. Society has to find out ways and means of controlling and combating this menace of receipt and payment of dowry, *Vikas v. State of Rajasthan*, (2002) 6 SCC 728 : 2002 SCC (Cri) 1508.

The Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage, *S. Gopal Reddy v. State of A.P.*, (1996) 4 SCC 596 : 1996 SCC (Cri) 792.

The Dowry Prohibition Act, 1961, was enacted to prohibit the giving or taking of "dowry" and for the protection of married woman against cruelty and violence in the matrimonial home by the husband and in-laws. The mere demand for "dowry" before marriage, at the time of marriage, or any time after the marriage, is an offence. The 1961 Act has been amended by Parliament on more than one occasion and by the (Amendment) Act, 1986, Parliament brought in stringent provisions and provided for offence relating to "dowry death". The amendments became imperative as the dowry deaths continued to increase to disturbing proportions and the existing provisions, in the 1961 Act were found inadequate in dealing with the problems of dowry deaths, *Bachni Devi v. State of Haryana*, (2011) 4 SCC 427.

Object of Dowry Prohibition Act, 1961 is to discourage the very "demand" of "dowry", *Reema Aggarwal v. Anupam*, (2004) 3 SCC 199 : 2004 SCC (Cri) 699.

Dowry Prohibition Act, 1961 is a social piece of legislation, the object of which is to prohibit the evil practice of giving and taking of dowry. The Act is intended for the benefit of the wife whose property is illegally retained and not returned by the wife's husband or some other person who received the same on his behalf, *Aimala Jayaram v. State of A.P.*, 1992 Cri LJ 2217.

**2. Definition of "dowry".**—In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly—

- (a) by one party to a marriage to the other party to the marriage; or
- (b) by the 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 <sup>4</sup>[or any time after the marriage] <sup>5</sup>[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.

*Explanation I.*—<sup>6</sup>[\* \* \*]

3. 1-7-1961 [*Vide* Noti. No. S.O. 1410, dt. 20-6-1961].

4. *Subs.* by Act 43 of 1986 (w.e.f. 19-11-1986).

5. *Subs.* by Act 63 of 1984, S. 2 (w.e.f. 2-10-1985).

6. *Omitted* by Act 63 of 1984 (w.e.f. 2-10-1985). Prior to omission it read as:

"*Explanation I.*—For the removal of doubts, it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties."

*Explanation II.*—The expression “valuable security” has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860).

### STATE AMENDMENTS

**Haryana.**—For S. 2 the following Section shall be *substituted*, namely,—

“2. *Definitions.*—In this Act, unless the context otherwise requires,—

- (i) ‘dowry’ means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or after the marriage as consideration for 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.

*Explanation I.*—For the removal of doubts it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

*Explanation II.*—The expression “valuable security” has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860);

- (ii) ‘marriage expenses’ shall include expenses incurred directly or indirectly at or before the marriage on—

(a) Thakka, Sagai, Tikka, Shagan and Milni ceremonies;

(b) the gifts made by one party to a marriage to the other party to the marriage or by the parents, grantparents and brothers of either party to a marriage, to either party to the marriage or the blood relations thereof;

(c) illuminations, food and the arrangements for serving food to the members of the marriage party and other expenses incidental thereto.

*Explanation.*—For the removal of doubts, it is hereby declared that any gifts made by a person other than those specified in sub-clause (b), at the time of marriage to either party to the marriage shall not be deemed to be marriage expenses.”—*Vide* Haryana Act 38 of 1976, S. 2 dt. 11-8-1976.

**CASE LAW ▶ Dowry, Nature and Scope.**—Dowry does not cover the amount awarded by Motor Accident Claims Tribunal on account of the death of her previous husband, *Ram Rakhi v. Subhas Chander Kohli*, 1981 Cri LT 233 (Punj).

Mere allegation of giving of cash to bridegroom in absence of clear evidence of source from which the cash allegedly paid was brought and as the evidence is discrepant as to the exact amount of money allegedly paid does not prove acceptance of dowry, *Nilakantha Pati v. State of Orissa*, 1995 Cri LJ 2472.

Demand made after the solemnization of marriage would constitute dowry, *State of H.P. v. Nikku Ram*, (1995) 6 SCC 219 : 1995 SCC (Cri) 1090, overruling *Inder Sain v. State*, 1981 Cri LJ 1116 : (1981) 20 DLT 309 (Del).

In view of clause (b) of Section 2 of Dowry Prohibition Act, 1961, the ornaments given to a wife by her mother-in-law after marriage are her dowry and accusation of their misappropriation against the wife in a complaint under Section 406, IPC cannot be maintained, *Ranjit Kaur v. Atam Singh*, (1992) 2 Cri 527 (P&H).





In view of the definition of "Dowry" under Section 2 of Dowry Prohibition Act, the mere demand thereof would not be an offence under Section 4 of that Act. It should either be given or agreed to be given at or before or after the marriage in connection with the marriage. Although in common parlance one very often uses the term "dowry demand" in the cases where the husband or his relations demand valuable security from the parents and other relations of the wife after the marriage, yet this will not amount to demand for dowry under the Act in view of the definition of dowry contained in Section 2 of the Act. Demand for dowry under the Act and in the legal sense will mean the demand for dowry only when it refers to property of valuable security given or agreed to be given at or before or after the marriage. The alleged offence as made out in the complaint petition may attract the penal provision as contained in Section 498-A of the Penal Code. The Parliament in its wisdom appended the explanation as to what "cruelty" means and has constructed sub-clause (b) of Section 498-A in the following words, "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 an account of failure by her or any person related to her to meet such demand." If the cases of this nature are to be brought within the ambit of Section 4 of the Act, then the word "dowry" under Section 2 of the Act shall have to be redefined in the light of sub-clause (b) under Section 498-A of the Penal Code. The term "extortion demand" popularised by the media may also find a place in the definition of dowry, *Sankar Prosad Shaw v. State*, 1991 Cri LJ 639 (Cal).

Demand made subsequent to marriage is also covered under "Dowry", *Vidhya Devi v. State of Haryana*, (2004) 9 SCC 476 : 2004 SCC (Cri) 1473.

Demand of share in ancestral property does not amount to dowry, *Baldev Singh v. State of Punjab*, (2008) 13 SCC 233.

Any property given by the parents of the bride in connection with the marriage constitutes dowry. It is not necessary that the property should be given in consideration of the marriage, *Rajeev v. Ram Kishan Jaiswal*, (1993) 1 Crimes 504 (All).

There are three occasions related to dowry i.e. one before the marriage, second at time of marriage and third at "any time" after the marriage. Third occasion may appear to be an unending period, but the crucial words are "in connection with the marriage of the said parties" but payments which are customary payments for e.g. given at time of birth of a child or other ceremonies as are prevalent in different societies, are not covered by "dowry", *Kamesh Panjiyar v. State of Bihar*, (2005) 2 SCC 388 : 2005 SCC (Cri) 511.

Dowry as a quid pro quo for marriage is prohibited and not the giving of traditional presents to the bride or the bridegroom by friends and relatives. Thus, voluntary presents given at or before or after the marriage to the bride or the bridegroom, as the case may be, of a traditional nature, which are given not as a consideration for marriage but out of love, affection or regard, would not fall within the mischief of the expression "dowry" made punishable under the Dowry Prohibition Act, *Reema Aggarwal v. Anupam*, (2004) 3 SCC 199 : 2004 SCC (Cri) 699.

The argument that there has to be an agreement at the time of the marriage in view of the words "agreed to be given" occurring in Section 2 of the Dowry Prohibition Act, and in the absence of any such evidence it would not constitute a dowry is not tenable since the definition of dowry in Section 2 of the Act by amendment includes not only the period before and at the marriage but also the period subsequent to the marriage, *State of A.P. v. Raj Gopal Asawa*, (2004) 4 SCC 470 : 2004 SCC (Cri) 1306.

All the expressions used under Section 2 of the Dowry Prohibition Act, 1961 are of a very wide magnitude. The expression "in connection with the marriage" cannot be given a restricted or a narrower



meaning. Even in common parlance and on its plain language, it has to be understood generally. The object being that everything, which is offending at any time i.e. at, before or after the marriage, would be covered under this definition, but the demand of dowry has to be "in connection with the marriage". "In connection with the marriage" is an expression which has to be given a wider connotation. However, the demand of dowry should not be so customary that it would not attract, on the face of it, the provisions of this section. The customary payments given at the time of birth of a child or other ceremonies as are prevalent in the society or families to the marriage, would not be covered under the expression "dowry". But where the husband had demanded a specific sum from his father-in-law and upon not being given, harassed and tortured the wife and after some days she died, such cases would clearly fall within the definition of "dowry" under the Act, *Ashok Kumar v. State of Haryana*, (2010) 12 SCC 350.

If a demand for property or valuable security, directly or indirectly, has a nexus with marriage, such demand would constitute "demand for dowry". Cause or reason for such demand is immaterial, *Bachni Devi v. State of Haryana*, (2011) 4 SCC 427; (2011) 2 SCC (Cri) 280.

► **Interpretation.**—Definition of "dowry" covers all demands made at the time, before or even after marriage, provided the same were in connection with the marriage. Expression "in connection with the marriage" should be given wide meaning and understood generally. Customary payments such as those made at the time of birth of a child or other ceremonies do not fall within the ambit of dowry, *Ashok Kumar v. State of Haryana*, (2010) 12 SCC 350.

The definition of the term "dowry" under Section 2 of the Act shows that 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 "at or before or after the marriage" as a "consideration for the marriage of the said parties" would become "dowry" punishable under the Act. Property or valuable security so as to constitute "dowry" within the meaning of the Dowry Prohibition Act must be given or demanded "as consideration for the marriage", *Reema Aggarwal v. Anupam*, (2004) 3 SCC 199 : 2004 SCC (Cri) 699.

The definition of "dowry" contained in Section 2 of the 1961 Act, shows that the term is defined comprehensively to include properties of all sorts, as it takes within its fold "any property or valuable security" given or agreed to be given in connection with marriage, either directly or indirectly, *Bachni Devi v. State of Haryana*, (2011) 4 SCC 427.

The word "agreement" referred to in Section 2 of the Dowry Prohibition Act, 1961, has to be inferred on the facts and circumstances of each case. The interpretation that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with penalty for demanding dowry, under the 1961 Act and the Indian Penal Code. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable, *Pawan Kumar v. State of Haryana*, (1998) 3 SCC 309 : 1998 SCC (L&S) 740.

Court's approach should be realistic in dealing with a case under the Act. Provisions of the Act should be interpreted in the light of the object of the Act so as to further that object but it being a penal statute court should be cautious and careful so that suspicion, conjectures and surmise may not influence its judgment. At the same time it cannot acquit an accused merely on the basis of technicalities and minor discrepancies, *S. Gopal Reddy v. State of A.P.*, (1996) 4 SCC 596 : 1996 SCC (Cri) 792.

► **“Dowry” — Meaning of.**—Following *Rajinder Singh*, (2015) 6 SCC 477, any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the 1961 Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless the facts of a given case clearly and unequivocally point otherwise, *M. Narayan v. State of Karnataka*, (2015) 6 SCC 465 : (2015) 3 SCC (Cri) 214.

Emphasis under Section 2 is on property or valuable security given “at or before” or “at any time after” marriage, in connection with marriage. Amount or things demanded must, therefore, have a nexus with marriage. Words “insufficient and inferior quality of dowry” are important. They indicate that transaction of giving dowry was not complete, *Surinder Singh v. State of Haryana*, (2014) 4 SCC 129 : (2014) 4 SCC (Cri) 769.

► **Definition of “dowry”.**—The expression “in connection with” would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean “in relation with” or “relating to”. Thus, any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise. Such giving or agreeing to give of any property or valuable security can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised, *Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225.

► **“Any property or valuable security”.**—The word “any” is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever, *Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225.

► **Dowry death — Ingredients.**—Connotation and essential elements of “soon before her death”, explained. It is not synonymous with “immediately before”. Days or months are not what is to be seen. Time-lags may differ from case to case. Dowry demand should not be stale but should be a continuing cause of death. Section 304-B must be construed fairly, pragmatically and with common sense so as to fulfil object of remedying the great social evil it seeks to achieve, *Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477 : (2015) 3 SCC (Cri) 225.

**3. Penalty for giving or taking dowry.**—<sup>7</sup>[(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 <sup>8</sup>[with imprisonment for a term which shall not be less than <sup>9</sup>[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 <sup>10</sup>[five years]].

7. Ins. by Act 63 of 1984, S. 3 (w.e.f. 2-10-1985).

8. Subs. by Act 63 of 1984, S. 3, (w.e.f. 2-10-1985).

9. Subs. by Act 43 of 1986 for “six months, but which may extend to two years, and with fine which may extend to ten thousand rupees or the amount of the value of such dowry, whichever is more” (w.e.f. 19-11-1986).

10. Subs. for “six months” by Act 43 of 1986 (w.e.f. 19-11-1986).



<sup>11</sup>[(2) Nothing in sub-section (1) shall apply to, or in relation to,—

- (a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

- (b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.]

### STATE AMENDMENTS

**Bihar.**—For Section 3 of the Dowry Prohibition Act, 1961 (Act 27 of 1961) (hereinafter referred to as the said Act), the following section shall be *substituted*, namely:

“3. *Penalty for giving or taking 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 which may extend to six months and with fine which may extend to five thousand rupees.”—*Vide* Bihar Act 4 of 1976, S. 2, w.e.f. 20-1-1976.

**Haryana.**—For Section 3, the following Section shall be *substituted* namely:—

“3. *Bar of certain acts.*—No person shall—

- (a) give or take or abet the giving or taking of dowry;
- (b) demand directly or indirectly, from the parents or guardians of a bride or bridegroom, as the case may be, any dowry;
- (c) incur marriage expenses the aggregate value whereof exceeds five thousand rupees;
- (d) display any gifts made at or before the marriage in the form of cash, ornaments, clothes or other articles;
- (e) take or carry in excess of—
  - (i) twenty-five members of the marriage party; and
  - (ii) eleven members of the band;
- (f) deny conjugal rights to his wife on the ground that dowry has not been given or the dowry given is insufficient.”—*Vide* Haryana Act 38 of 1976, S. 2, dt. 11-8-1976.

**Himachal Pradesh.**—For Section 3 of Dowry Prohibition Act, 1961, in its application to the State of Himachal Pradesh (hereinafter referred to as the principal Act,) the following section shall be *substituted*, namely:

“3. *Penalty for giving or taking dowry.*—If any person gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment which may extend to one year and with fine which may extend to five thousand rupees.”—*Vide* H.P. Act 25 of 1976, S. 2, w.e.f. 24-6-1976.

**Punjab.**—In Section 3 of the Dowry Prohibition Act, 1961, in its application to the State of Punjab (hereinafter referred to as the principal Act), for the words “six months, or with fine which may extend to five thousand rupees”, the words “one year, and fine which may extend to five thousand rupees” shall be *substituted*.—*Vide* Punjab Act 26 of 1976, S. 2, dt. 20-5-1976.



**West Bengal.**—In Section 3 of the said Act, for the words “which may extend to six months or, with fine which may extend to five thousand rupees”, the words “which shall not be less than three months, but may extend to three years or with fine which shall be less than two thousand rupees, but may extend to ten thousand rupees” shall be *substituted*.—*Vide* W.B. Act 35 of 1975, S. 3.

**CASE LAW ▶ Penalty.**—If a bargain is made or some money is extorted as consideration for the marriage of two persons, the person demanding the dowry shall be liable to punishment under Section 4 of the Act. The earlier concept of the ‘dowry’ which embraced in its ambit the presents made to the newly wedded wife which were to form part of her stridhan has not at all been affected by the provisions of the Act, *Bhai Sher Jung Singh v. Virinder Kaur*, 1979 Cri LJ 493 : (1978) 80 PLR 737.

▶ **Stridhan, Misappropriation of.**—The articles of dowry and gifts received by the wife constitute her stridhan which if dishonestly misappropriated by the husband or his close relatives would make them liable to punishment for the offence of criminal breach of trust under Section 406, IPC, *Pratibha Rani v. Suraj Kumar*, (1985) 2 SCC 370 : 1985 SCC (Cri) 180.

▶ **Dowry — What is.**—Customary gifts exchanged in accord with prevailing practice and custom not “dowry”, *State of Karnataka v. Dattaraj*, (2016) 12 SCC 331 : AIR 2016 SC 882.

▶ **Quantum of punishment.**—No reasons recorded for granting less than minimum sentence provided under statute is improper, *Savarala Sai Sree v. Gurramkonda Vasudevarao*, (2014) 2 SCC 485 : (2014) 4 SCC (Cri) 60.

▶ **Retrial/“de novo” trial.**—Direct retrial/“de novo” trial is permissible only when appellate court is satisfied and records how omission or irregularity concerned has occasioned miscarriage of justice. When accused prefers appeal against their conviction, appellate court is duty-bound to consider evidence on record and independently arrive at its own conclusion. Without showing as to how alleged lapses pointed out by High Court resulted in miscarriage of justice, High Court could not have, remitted matter to trial court for retrial, *Ajay Kumar Ghoshal v. State of Bihar*, (2017) 12 SCC 699 : (2017) 4 SCC (Cri) 458.

<sup>12</sup>[**4. Penalty for demanding dowry.**—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.]

#### STATE AMENDMENTS

**Bihar.**—For Section 4 of the said Act, the following section shall be *substituted*, namely:

“4. *Penalty for demanding dowry.*—If any person, after the commencement of this Act, demands directly or indirectly from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment which may extend to six months and with fine which may extend to five thousand rupees:

Provided that no Court shall take cognizance of any offence under this section except with the previous sanction of the State Government or of such officer as the State Government may, by general or special order, specify in this behalf.”—*Vide* Bihar Act 4 of 1976, S. 3, w.e.f. 20-1-1976.

12. Subs. by Act 63 of 1984, S. 4 (w.e.f. 2-10-1985).

**Haryana.**—For Section 4, the following section shall be *substituted*, namely:—

“4. *Penalty.*—(1) If any person contravenes any of the provisions of Section 3, he shall be punishable with imprisonment which may extend to six months and with fine which may extend to five thousand rupees.

(2) The court trying an offence under clause (f) of Section 3 relating to conjugal rights may, at any stage of the proceedings, on the execution of a bond by the husband undertaking not to demand dowry and to allow conjugal rights to the wife, drop the proceedings.

(3) Any proceedings dropped under sub-section (2) shall revive if the court is satisfied on an application made by the wife in this behalf, that the husband has failed to carry out the undertaking or has otherwise acted contrary to the terms of the bond and thereupon the court shall proceed with the case from the stage at which it was dropped:

Provided that no application under this sub-section shall be entertained if it is made after the expiry of a period of three years from the date on which the proceedings were dropped.

(4) The court may direct that the fine, if any, imposed for the contravention of clause (f) of Section 3 or such portion thereof, as the court may deem proper, shall be paid to the wife.”—*Vide Haryana Act 38 of 1976, S. 2, dt. 11-8-1976.*

**Himachal Pradesh.**—For Section 4 of the principal Act, the following section shall be *substituted*, namely:

“4. *Penalty for demanding dowry.*—If any person demands, directly or indirectly, from the parents or guardian of a bride or bridegroom or from any other person, as the case may be, any dowry, he shall be punishable with imprisonment which may extend to one year with fine which may extend to five thousand rupees.”—*Vide H.P. Act 25 of 1976, S. 3, w.e.f. 24-6-1976.*

**Punjab.**—In Section 4 of the principal Act,—

- (a) for the words “six months, or with fine which may extend to five thousand rupees”, the words “one year, and fine which may extend to five thousand rupees”, shall be *substituted*; and
- (b) the proviso shall be *omitted*.—*Vide Punjab Act 26 of 1976, S. 3, dt. 20-5-1976.*

**West Bengal.**—In Section 4 of the said Act,—

- (a) after the words “bride or bridegroom”, the words “or from any other person” shall be *inserted*;
- (b) for the words “which may extend to six months, or with fine which may extend to five thousand rupees” the words “which shall not be less than three months, but may extend to three years or with fine which shall not be less than two thousand rupees, but may extend to ten thousand rupees” shall be *substituted*;
- (c) for the proviso, the following provisos shall be *substituted*, namely:

“Provided that no court shall take cognizance of any offence under this section except on a complaint made by any aggrieved party or his parents or by any other person with the previous sanction of the authority specified by the State Government in this behalf:

Provided further that no such previous sanction shall, be necessary for taking cognizance on a complaint made by such organisation for social welfare with a minimum standing of five years as may be specified by the State Government by notification in the Official Gazette or by any person duly authorised by such organisation.”—*Vide W.B. Act 35 of 1975, S. 4.*

**CASE LAW ► Nature and Object.**—The object of Section 4 of the Act is to discourage the very demand for property or valuable security as consideration for a marriage between the parties thereto. Section 4 prohibits the demand for ‘giving’ property or valuable security which demand, if satisfied, would constitute



an offence under Section 3 read with Section 2 of the Act, *L.V. Jadhav v. Shankarrao Abasaheb Pawar*, (1983) 4 SCC 231 : 1983 SCC (Cri) 813.

The ambit and scope of Sections 3 and 4 of the 1961 Act is different from the ambit and scope of Section 304-B IPC, *State of U.P. v. Santosh Kumar*, (2009) 9 SCC 626.

► **Dowry, Nature and Scope.**—It is apparent from the definition of 'dowry' that it is necessary that the property or valuable security so as to constitute dowry must be given as consideration for marriage. The word 'consideration' means motive, reason or reward for marriage. Hence only those articles are dowry which are given or are agreed to be given as a reward or reason or motive for solemnization of marriage. Anything given after the marriage, may be on account of demand from boy or his parents, is only a consideration for continuance of marriage or for happy or conducive to good matrimonial relationship. Anything given after marriage is dowry if it was agreed or promised to be given as 'consideration' for marriage. The definition of the word 'consideration' as given in the Contract Act also leads to the conclusion that the property or valuable security should be demanded or given whether in the past, present or future for bringing about solemnization of marriage. After the marriage giving of property or valuable security cannot constitute a 'consideration' for marriage unless it was agreed at the time of or before the marriage that such property or valuable security would be given in future, *Inder Sain v. State*, 1981 Cri LJ 1116 : (1981) 2 Del LT 309 : 1981 MLR 238.

► **Interpretation.**—The entire definition of the word 'dowry' should not be imported into Section 4. Property or valuable security demanded and consented to be given prior to the time when the woman had become a bride or the man had become a bridegroom, should fall within the expression 'dowry'. So the word 'bride' or 'bridegroom' in Section 4 should not be strictly construed to mean woman or man who has just been married or is about to be married. Having regard to the object of the Act, a liberal construction has to be given to the word 'dowry' used in Section 4 of the Act to mean that any property or valuable security which if consented to be given on the demand being made would become dowry within the meaning of Section 2 of the Act. What is made punishable under this section is the demand itself whether direct or indirect, from the parents of a bride or bridegroom, *L.V. Jadhav v. Shankarrao Abasaheb Pawar*, (1983) 4 SCC 231 : 1983 SCC (Cri) 813.

A conjoint reading of the two sections would show that any person who demands, dowry either directly or indirectly, from the parents of any other person who was the guardian of the bride before her marriage, within 3 years after the solemnisation of marriage, is punishable. "Demand of dowry" within 3 years of the date of solemnisation of marriage, has been equated with taking of dowry Under Section 3 of the Act, *G.S. Baroca v. Kanwaljit Singh*, 1989 Cri LJ 1272 (J&K).

► **Exercise of power of arrest.**—Due to the rampant misuse of these provisions, it would be prudent and wise for a police officer, that no arrest is made without reasonable satisfaction reached after some investigation as to genuineness of allegations, *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449.

► **Personal appearance of accused.**—When can be exempted, *Rameshwar Yadav v. State of Bihar*, (2018) 4 SCC 608.

<sup>13</sup>[4-A. Ban on advertisement.—If any person—

13. Ins. by Act 43 of 1986 (w.e.f. 19-11-1986).



- (a) offers, through any advertisement in any newspaper, periodical, journal or through any other media, any share in his property or of any money or both as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative,
- (b) prints or publishes or circulates any advertisement referred to in clause (a),

he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.]

#### STATE AMENDMENTS

**Himachal Pradesh.**—After Section 4 of the principal Act, the following sections shall be inserted, namely:

“4-A. *Bar of certain acts.*—Any person who—

- (i) displays any presents made at the time of marriage in the form of cash, ornaments, clothes, or other articles; or
- (ii) gives in the form of ‘shagun’ at the time of ‘thaka’, betrothal or ‘tikka’ anything the value of which exceeds eleven rupees; or
- (iii) gives to the parents or any other relation of a party to the marriage anything on the occasion of ‘milni’ or any other ceremony performed in relation to betrothal or marriage;

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees, or with both.

4-B. *Penalty for depriving any party of the rights and privileges of marriage.*—(1) If after the marriage, any party to the marriage with or without assistance of any other person deprives any other party of the rights and privileges of marriage or tortures or refuses to maintain the said other party for non-payment of dowry before, during or after marriage, he shall be punishable with imprisonment which may extend to one year and with fine which may extend to five thousand rupees.

(2) The provisions of this section shall be in addition to and not in derogation of, any provision on the subject contained in any other law for the time being in force.”—*Vide* H.P. Act 25 of 1976, S. 4, w.e.f. 24-6-1976.

**Punjab.**—After Section 4 of the principal Act, the following sections shall be inserted, namely:—

“4-A. *Bar of certain acts.*—Any person who—

- (i) displays any presents made at the time of such marriage in the form of cash, ornaments, clothes or other articles; or
- (ii) takes in a marriage party more than twenty-five persons exclusive of minors and the members of the band; or
- (iii) gives in the form of shagun at the time of thaka, betrothal or marriage, anything the value of which exceeds eleven rupees; or
- (iv) gives to the parents or any other relation of a party to the marriage anything on the occasion of ‘milni’ or any other ceremony performed in relation to betrothal or marriage; or

- (v) serves to the marriage party more than two principal meals; shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

*Explanation.*—In this section the expression ‘principal meal’ means lunch or dinner.

4-B. *Penalty for depriving any party of rights and privileges of marriage.*—Any party to the marriage who, after the marriage, deprives the other party of the rights and privileges of marriage, or tortures or refuses to maintain the said other party, for non-payment of dowry, and any person who assists such party in the commission of such offence, shall be punishable with imprisonment for a term which may extend to one year, and fine which may extend to five thousand rupees.”—*Vide* Punjab Act 26 of 1976, S. 4, dt. 20-5-1976.

**West Bengal.**—After Section 4 of the said Act, the following section shall be inserted, namely:

“4-A. *Penalty for depriving any party of the rights and privileges of marriage.*—(1) If after the marriage, any party to the marriage with or without assistance of his parents or guardians deprives the other party of the rights and privileges of marriage, or tortures or refuses to maintain the said other party for non-payment of dowry before, during or after marriage, he shall be punishable with imprisonment which shall not be less than three months, but may extend to one year or with fine which shall not be less than two thousand rupees, but may extend to five thousand rupees, or with both.

(2) The provisions of this section shall be in addition to, and not in derogation of, any provisions on the subject contained in any other law for the time being in force.”—*Vide* W.B. Act 35 of 1975, S. 5.

**5. Agreement for giving or taking dowry to be void.**—Any agreement for the giving or taking of dowry shall be void.

**6. Dowry to be for the benefit of the wife or her heirs.**—(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman—

- (a) if the dowry was received before marriage, within <sup>14</sup>[three months] after the date of marriage; or
- (b) if the dowry was received at the time of or after the marriage, within <sup>15</sup>[three months] after the date of its receipt; or
- (c) if the dowry was received when the woman was a minor, within one year after she has attained the age of eighteen years,

and pending such transfer, shall hold it in trust for the benefit of the woman.

<sup>16</sup>[(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor <sup>17</sup>[or as required by sub-section (3),] he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine <sup>18</sup>[which shall not be less than five thousand rupees, but which may extend to ten thousand rupees] or with both.]

14. Subs. by Act 63 of 1984, S. 5 (w.e.f. 2-10-1985).

15. Subs. by Act 63 of 1984, S. 5 (w.e.f. 2-10-1985).

16. Subs. by Act 63 of 1984, S. 5 (w.e.f. 2-10-1985).

17. Ins. by Act 43 of 1986 (w.e.f. 19-11-1986).

18. Subs. for “which may extend to ten thousand rupees” by Act 43 of 1986 (w.e.f. 19-11-1986).



(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being.

<sup>19</sup>[Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,—

(a) if she has no children, be transferred to her parents, or

(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.]

<sup>20</sup>[(3-A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) <sup>21</sup>[or sub-section (3)] has not, before his conviction under that sub-section, transferred such property to the woman entitled thereto or, as the case may be, <sup>22</sup>[her heirs, parents or children] the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman or, as the case may be, <sup>23</sup>[her heirs, parents or children] within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman or, as the case may be, <sup>24</sup>[her heirs, parents or children].]

(4) Nothing contained in this section shall affect the provisions of Section 3 or Section 4.

#### STATE AMENDMENTS

**Haryana.**—In sub-section (2) of Section 6 of the principal Act, for the words “or with fine which may extend to five thousand rupees, or with both”, the words “and with fine which may extend to five thousand rupees” shall be substituted.—*Vide* Haryana Act 38 of 1976, S. 2, dt. 11-8-1976.

**Orissa.**—In the Dowry Prohibition Act, 28 of 1951 (hereinafter referred to as the principal Act), after Section 6 the following new sections shall be inserted, namely:

“6-A. *Penalty for denial of conjugal right by the husband.*—(1) If any person denies conjugal rights to his wife on the ground that dowry has not been given or on the ground that the dowry given is insufficient, he shall be punishable with imprisonment which may extend to one year, or with fine which may extend to ten thousand rupees or with both.

(2) The Court trying an offence under this section may, at any stage of the proceedings, on the execution of a bond by the husband undertaking not to realise the dowry or any portion thereof, as the case may be, and to allow conjugal rights to the wife, drop the proceedings.

(3) Any proceedings dropped under sub-section (2) shall revive if the Court is satisfied, on an application made in that behalf by the wife, that the husband has failed to carry out the undertaking or has otherwise acted contrary to the terms of the bond, and thereupon the Court shall proceed with the case from the stage at which it was dropped:

<sup>19</sup> Ins. by Act 43 of 1986 (w.e.f. 19-11-1986).

<sup>20</sup> Ins. by Act 63 of 1984, S. 5 (w.e.f. 2-10-1985).

<sup>21</sup> Ins. by Act 43 of 1986 (w.e.f. 19-11-1986).

<sup>22</sup> Subs. by Act 43 of 1986 (w.e.f. 19-11-1986).

<sup>23</sup> Subs. by Act 43 of 1986 (w.e.f. 19-11-1986).

<sup>24</sup> Subs. by Act 43 of 1986 (w.e.f. 19-11-1986).



Provided that no application under this sub-section shall be entertained if it is made after the expiry of three years from the date on which the proceedings were dropped.

(4) The Court may direct that the fine, if any, imposed under this section or such portion thereof as the Court deems proper, shall be paid to the wife as compensation.

**6-B. Maintenance to be paid by husband on his conviction.**—(1) On conviction of a person for an offence under Section 6-A, the Court trying the offence may, on a claim made by his wife in that behalf within two months from the date of the order of conviction, order such person to make a monthly allowance for the maintenance of his wife at such monthly rate not exceeding five hundred rupees, as the Court deems proper:

Provided that no such order shall be made without giving the parties concerned a reasonable opportunity of being heard.

(2) In determining the monthly allowance under this section regard shall be had to—

- (a) the position and status of the parties;
- (b) the reasonable wants of the wife;
- (c) the value of the wife's property and any income derived from such property, or from the wife's own earning or from any other source; and
- (d) the amount of compensation awarded under Section 6-A.

(3) The maintenance allowance so ordered shall be a charge on the property, if any, of the husband, whether acquired before or after the date of the order.

(4) Where a complaint has been filed by the wife for an offence under Section 6-A, the husband shall not transfer any of his assets till—

- (a) where no claim for maintenance has been preferred under this section, the date of expiry of the period of limitation specified in sub-section (1) for filing such claim; and
- (b) where such claim is preferred, the disposal of the claim.

(5) Notwithstanding anything contained in any other law, the wife may enforce any claim for maintenance against any property transferred by the husband in contravention of the provisions of sub-section (4) as if such transfer were *null* and *void*.

(6) The provisions contained in sub-section (3) of Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the recovery of the maintenance allowance ordered under this section.”—*Vide* Orissa Act 1 of 1976, S. 2, dt. 18-1-1976.

**Payment of Maintenance by Husband on his conviction.**—On husband's conviction Section 6-B empowers a court to make provision for the maintenance of the wife under Section 125, CrPC. Section 6-B(2) gives court the discretion to regulate the quantum of maintenance on practically the same considerations which regulate such determination under Section 125, CrPC. Such maintenance is a charge on the husband's property. He can be restrained from alienating his property also.

The main provisions regarding grant of maintenance is contained in Section 125 CrPC, which runs as follows:

**125. Order for maintenance of wives, children and parents.**—(1) If any person having sufficient means neglects or refuses to maintain—

- (a) his wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
- (d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

*Explanation.*—For the purposes of this Chapter,—

- (a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is deemed not to have attained his majority;
- (b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

*Explanation.*—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.



## STATE AMENDMENTS UNDER SECTION 125 OF CrPC, 1973

**Madhya Pradesh.**—(1) In sub-section (1) of Section 125 of the Principal Act, for the words “five hundred rupees” the words “three thousand rupees” shall be *substituted*. [vide M.P. Act 10 of 1998, S. 2 (30-5-1998)].

(2) In Section 125,—

(i) for the marginal heading, the following marginal heading shall be *substituted*, namely:—  
“Order for maintenance of wives, children, parents and grand parents.”

(ii) In sub-section (1),—

(a) After clause (d), the following clause shall be *inserted*, namely:—

“(e) his grand father, grand mother unable to maintain himself or herself.”;

(b) In the existing para, for the words “a magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding three thousand rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct”, the words “a Magistrate of the first class may upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father, mother, grand father, grand mother at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct” shall be *substituted*;

(c) After the existing first proviso, the following proviso shall be *inserted*, namely:—  
“Provided further that the relatives in clause (e) shall only be entitled to monthly allowance for maintenance if their sons or daughters are not alive and they are unable to maintain themselves.” [Vide M.P. Act 15 of 2004, S. 3]

**Maharashtra.**—In Section 125 of the Code of Criminal Procedure, 1973, in its application to the State of Maharashtra (hereinafter referred to as “the said Code”),—

(a) in sub-section (1),—

(i) for the words “not exceeding five hundred rupees” the words “not exceeding fifteen hundred rupees” shall be *substituted*;

(ii) before the existing proviso, the following proviso shall be *inserted*, namely:—

“Provided that, the Magistrate on an application or submission being made, supported by an affidavit by the person who has applied for the maintenance under this sub-section, for payment of *interim* maintenance, on being satisfied that, there is a *prima facie* ground for making such order, may direct the person against whom the application for maintenance has been made, to pay a reasonable amount by way of *interim* maintenance to the applicant, pending the final disposal of the maintenance application:

Provided further that, such order for payment of *interim* maintenance may, in an appropriate case, also be made by the Magistrate *ex parte*, pending service of notice of the application, subject, however, to the condition that such an order shall be liable to be modified or even cancelled after the respondent is heard in the matter:

Provided also that, subject to the ceiling laid down under this sub-section, the amount of *interim* maintenance shall, as far as practicable, be not less than thirty per cent of the monthly income of the respondent.”;

(iii) in the existing proviso, for the words “Provided that” the words “Provided also that” shall be *substituted*;

(b) after sub-section (2), the following sub-section shall be *inserted*, namely:—

“(2-A) Notwithstanding anything otherwise contained in sub-sections (1) and (2), where an application is made by the wife under clause (a) of sub-section (1) for the maintenance allowance, the applicant may also seek relief that the order may be made for the payment of maintenance allowance in lump sum in lieu of the payment of monthly maintenance allowance, and the Magistrate may, after taking into consideration all the circumstances obtaining in the case including the factors like the age, physical condition, economic conditions and other liabilities and commitments of both the parties, pass an order that the respondent shall pay the maintenance allowance in lump sum in lieu of the monthly maintenance allowance, covering a specified period, not exceeding five years at a time, or for such period which may exceed five years, as may be mutually agreed to, by the parties.”

(c) in sub-section (3),—

- (i) after the words “so ordered” the words, brackets, figures and letters “either under sub-section (1) or sub-section (2-A), as the case may be”, shall be *inserted*;
- (ii) after the words “each month’s allowance” the words “or, as the case may be, the lump sum allowance to be paid in lieu of the monthly allowance” shall be *inserted*. [*vide* Maharashtra Act XXI of 1999, S. 2 (20-4-1999)].

**Rajasthan.**—In its application to the State of Rajasthan, in Section 125, sub-section (1), for the words “five hundred” occurring after the words “at such monthly rate not exceeding” and before the words “rupees in the whole”, the words “two thousand five hundred” shall be *substituted*.—[*Vide* Rajasthan Act 3 of 2001, S. 2].

**Tripura.**—In the Code of Criminal Procedure, 1973 (hereinafter referred to as the Principal Act) in its application to the State of Tripura, in sub-section (1) of Section 125, for the words “five hundred rupees” the words “one thousand five hundred rupees” shall be *substituted*. [*Vide* Tripura Act 9 of 1999, S. 2 (w.e.f. 12-5-1999)].

**Uttar Pradesh.**—In Section 125 of the Code of Criminal Procedure, 1973, hereinafter referred to as the principal Act,—

- †(a) in sub-section (1), for the words “five hundred rupees” the words “five thousand rupees” shall be *substituted*;
- (b) after sub-section (5), the following sub-section shall be *inserted*, namely:—

“(6) Where in a proceeding under this section it appears to the Magistrate that the person claiming maintenance is in need of immediate relief for his support and the necessary expenses of the proceeding, the Magistrate may, on his application, order the person against whom the maintenance is claimed, to pay to the person claiming the maintenance, during the pendency of the proceeding such monthly allowance ‡[\* \* \*] and such expenses of the proceeding as the Magistrate considers reasonable and such order shall be enforceable as an order of maintenance.” [*Vide* U.P. Act 36 of 2000, S. 2 (w.e.f. 13-8-2001)].

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† Provisions of the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 1999 (U.P. Act No. 36 of 2000) regarding amendment of sub-section (1) of Section 125 and sub-section (1) of Section 127 of the principal Act which have become redundant consequent upon the commencement of the Code of Criminal Procedure (Amendment) Act, 2001 (Act No. 50 of 2001) enacted by Parliament, shall stand *omitted*. [*Vide* U.P. Act 15 of 2011, S. 3]

‡ The words “not exceeding five thousand rupees” *omitted* by U.P. Act 15 of 2011, S. 2

**West Bengal.**—(1) In sub-section (1) of Section 125 of the principal Act,—

- (a) for the words “five hundred rupees”, the words “one thousand and five hundred rupees” shall be *substituted*;
- (b) after the existing proviso the following proviso shall be *inserted*:



"Provided further that where in any proceeding under this section it appears to the Magistrate that the wife referred to in clause (a) or the minor child referred to in clause (b) or the child (not being a married daughter) referred to in clause (c) or the father or the mother referred to in clause (d) is in need of immediate relief for her or its or his support and the necessary expenses of the proceeding, the Magistrate may, on the application of the wife or the minor child or the child (not being a married daughter) or the father or the mother, as the case may be, order the person against whom the allowance for maintenance is claimed, to pay to the petitioner, pending the conclusion of the proceeding, and monthly during the proceeding such allowance as, having regard to the income of such person, it may seem to the Magistrate to be reasonable." [Vide W.B. Act 25 of 1992, S. 4 (w.e.f. 2-8-1993)].

(2) In sub-section (1) of Section 125 of the principal Act, as amended by the Code of Criminal Procedure (West Bengal Amendment) Act, 1992 (West Bengal Act 25 of 1992), the words "not exceeding one thousand and five hundred rupees" shall be *omitted*. [Vide W.B. Act 33 of 2001, S. 3, w.e.f. a date to be notified]

**CASE LAW ► Criminal breach of trust.**—When a female makes an allegation in the complaint that either her husband or her parents-in-law had converted to their own use the ornaments forming the part of her stridhan which she had entrusted to them, the court has to give legal effect to such allegation and to assume that such ornaments had been made subject-matter of criminal breach of trust. Such complaint cannot be quashed without giving the aggrieved wife an opportunity of proving that the ornaments had been given to her at the time of her marriage for her use only, *Bhai Sher Jung Singh v. Virender Kaur*, 1979 Cri LJ 493 : (1978) 80 PLR 737.

Failure to return articles of dowry after one year or misutilising them within one year amounts to criminal breach of trust. The provisions of CrPC would apply to the trial of the case under Section 6. The relevant provision is Section 181 of the CrPC which provides that the offence of criminal breach of trust or criminal misappropriation may be inquired into or tried by a court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed. This section gives concurrent jurisdiction to the court where the property was received or where it was retained or where the offence was committed, *Surinder Singh v. Rajinder Kaur*, (1972) 74 PLR 18.

**► Dowry, Prohibition of.**—Giving and taking dowry is prohibited an agreement for giving or taking dowry is void and hence under forceable the law provides that if any dowry has really been given, the same would ensure to the benefit of the woman in connection with whose marriage it is given and the person who receives the dowry (even in contravention of the law) must transfer it to the woman and pending such transfer, shall hold it in trust for the benefit of the woman, *Gulaichi (Smt.) v. Umashanker Prasad*, (1996) 2 AWC 1083 : 1997 ALJ 14.

Where the dowry amount is received by the father of the husband on his son's behalf both are liable for offence under this section, *P. T. S. Saibaba v. P. Mangatayaru*, 1978 Cri LJ 1362 (AP).

**► Jurisdiction.**—It is obligatory on the part of the person who has received the dowry to transfer it to the woman. He can transfer it at the place where woman is, residing. If he fails to transfer it, then the woman gets cause of action for filing a complaint at the place where it should have been transferred to her. Consequently where the woman is, she can file the complaint there for return of the amount, *P.T.S. Saibaba v. P. Mangatayaru*, 1978 Cri LJ 1362 (AP).

► **Limitation.**—Limitation for return of articles of dowry provided in clause (b) of Section 6(1) is for the purpose of an offence envisaged under Section 6(2) of the Act, (1979) 6 Cri LT 286 : 1980 Marriage LJ 128 (Punj).

Prosecution before expiry of one year prescribed would amount to misuse of the process of law. A complaint filed before expiry of the period prescribed under the section is premature, (1976) 3 Cri LT 386.

If the articles of dowry are not transferred to the woman within one year from the date of marriage or date of the receipt of dowry articles whichever is applicable, then the offence is complete. Offence under Section 6 of the Act is not a continuing offence and thus the complaint made beyond the period of limitation as prescribed in Section 6 of the Act, is barred, *Gurusharan Singh v. Smt Gurusharan Kaur*, 1990 Cri LJ 2469 (Del).

A complaint for the return of the articles given as dowry, cannot be barred as the complainant has a right to file a suit for the recovery of the same, *Rajeev v. Ram Kumar Jaiswal*, (1993) 1 Crimes 504 (All).

► **Dowry death.**—The legislative intent as appears from the introduction of Section 304-B and 498-A of IPC and Sections 113-A and 113-B of the Evidence Act is to curb the menace of dowry deaths, etc. with a firm hand. Court must keep in mind this legislative intent even if there is no evidence as to whether suicide had been committed within a period of seven years from the date of marriage so as to attract Section 113-A of the Evidence Act and the court has to decide whether the accused husband could be convicted under Section 306, IPC (the case pertaining to a period prior to coming into force of Section 304-B, IPC). Where the husband or his relative by his wilful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of Section 306, IPC. In such a case the conduct of the person would tantamount to inciting or provoking or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide, *State of Punjab v. Iqbal Singh*, (1991) 3 SCC 1.

► **Criminal proceedings.**—Criminal proceedings under Section 6 are independent of criminal prosecution under Sections 3 and 4, *Bobbili Ramakrishna Raja Yadav v. State of A.P.*, (2016) 3 SCC 309 : (2016) 1 SCC (Cri) 850.

<sup>25</sup>[7. **Cognizance of offences.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(b) no court shall take cognizance of an offence under this Act except upon

—

(i) its own knowledge or a police report of the facts which constitute such offence, or

(ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognised welfare institution or organisation;

(c) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorised by this Act on any person convicted of any offence under this Act.

25. Subs. by Act 63 of 1984, S. 6 (w.e.f. 2-10-1985).





*Explanation.*—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(2) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to any offence punishable under this Act.]

<sup>26</sup>[(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 under this Act.]

#### STATE AMENDMENTS

**Bihar.**—For Section 7 of the said Act, the following section shall be *substituted*, namely:

“7. *Trial of offences.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act 2 of 1974), no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.”—*Vide* Bihar Act 4 of 1976, S. 4, w.e.f. 20-1-1976.

**Haryana.**—For Section 7 of the principal Act, the following section shall be *substituted*, namely:

“7. *Cognizance of offences.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

- (a) no court inferior to that of a Judicial Magistrate of the first class shall try any offence under this Act;
- (b) no court shall take cognizance of any such offence except on a complaint made by any party to the marriage or her father, mother or brother or a Gazetted Officer specially authorized by the State Government in this behalf, within a period of one year from the date of the marriage;
- (c) no court shall take cognizance of any such offence except with the previous sanction of the District Magistrate or of such officer as the State Government may, by general or special order, specify in this behalf;
- (d) no enquiry shall be carried out through any Police Officer below the rank of a Deputy Superintendent of Police;
- (e) no woman shall be called to a Police Station for the purpose of an enquiry regarding any offence under this Act.”—*Vide* Haryana Act 38 of 1976, S. 4, dt. 11-8-1976.

**Himachal Pradesh.**—For Section 7 of the principal Act, the following shall be *substituted*, namely:

“7. *Trial of offences.*—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act 2 of 1974), no court inferior to that of Judicial Magistrate of first class shall try any offence under this Act.

(2) No court shall take cognizance of any offence under Section 4-B, except on a police report or complaint made within one year of marriage.”—*Vide* H.P. Act 25 of 1976, S. 5, w.e.f. 24-6-1976.

In Section 7 of the Dowry Prohibition Act, 1961 (28 of 1961), (hereinafter referred to as the principal Act) the brackets and figure “(1)” at the beginning of sub-section (1) and also sub-section (2) shall be *omitted*.—*Vide* H.P. Act 39 of 1978, S. 2, w.e.f. 4-12-1978.

**Punjab.**—For Section 7 of the principal Act, the following shall be *substituted*, namely:

“7. *Cognizance of offences.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1973—

26. *Ins.* by Act 43 of 1986 (w.e.f. 19-11-1986).

- (1) no court inferior to that of a Judicial Magistrate of the first class shall try any offence under this Act;
- (2) no court shall take cognizance of any offence punishable under Sections 3, 4 and 4-B except upon a complaint made within one year from the date of the offence, by some person aggrieved by the offence:

Provided that—

- (a) where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on his or her behalf;
- (b) where the person aggrieved by an offence is the wife, complaint may be made on her behalf by her father, mother, brother, sister or by her father's or mother's brother or sister; and
- (3) every offence under Section 4-A shall be cognizable:

Provided that no police officer below the rank of a Deputy Superintendent of Police shall investigate any offence punishable under this Act or make any arrest therefor.”—*Vide* Punjab Act 26 of 1976, S. 5, dt. 20-5-1976.

**West Bengal.**—In Section 7 of the said Act,—

- (a) for the words and figures “Code of Criminal Procedure, 1898 (5 of 1898)”, the words and figures “Code of Criminal Procedure, 1973 (2 of 1974)”, shall be *substituted*;
- (b) for the words “presidency magistrate or a magistrate of the first class” in the two places where they occur, the words “Metropolitan Magistrate or a Judicial Magistrate of the first class” shall be *substituted*;
- (c) in clause (b), for the words “one year from the date of the offence”, the words “three years from the date of the offence” shall be *substituted*.—*Vide* W.B. Act 35 of 1975, S. 6.

**CASE LAW ► Applicability.**—Provisions of CrPC are applicable to the criminal trials under special law also. Therefore offences under Dowry Act are to be investigated, tried, etc. under the provisions of the Code, *Inder Sain v. State*, 1981 Cri LJ 1116 : (1981) 2 Del LT 309;

In absence of indication of intention of the legislature to give retrospective operation to the amended Section 7 of the Act, cognizance of offence under the Act which took place in 1982 could not be taken on 6-2-1985 according to Section 7(b) as it stood prior to the amendment. Section 7 which came into operation on 2-10-1985, was not retrospective, but prospective in its effect. So, in view of the provisions contained in repealed Section 7(b) cognizance of the offences thereunder was barred after expiry of one year. Therefore, even to a case under Section 7 of the Act before its amendment, provisions of Section 473 of the new code are applicable and in a suitable case on being satisfied, the court may condone limitation for the purpose of taking cognizance, *Baikunthanath Jena v. State of Orissa*, 1990 Cri LJ 2626.

► **Interpretation.**—Police report is a complaint within the meaning of Section 7(b), *Lajpat Rai Sehgal v. State*, 1983 Cri LJ 888 (Del).

► **Cognizance.**—Sanction of the District Magistrate is not necessary to enable the trial court to take cognizance for offence under Section 4 of the Act after the 1984 Amendment, *Harinder Kaur v. State of Punjab*, 1989 Cri LJ 1032 (P&H).

► **Limitation.**—The Act as amended in Punjab provides a limitation of one year, from the date of the offence for filing complaint under Sections 3 and 4 of the Act. The offences under these sections can be



deemed to have been committed whenever any demand of dowry is made as consideration, *Ram Rakhi v. Subhash Chander Kohli*, 1981 Cr LT 233 (Punj).

Where a complaint under Section 4 was filed beyond the period of limitation, it was held that subsequent amendment to Section 7 deleting the period of limitation altogether from the section cannot revive the limitation, *T.K. Narayanaswamy v. State of Karnataka*, 1991 Cri LJ 2115 (Kant).

Every demand of dowry whenever repeated constitutes another offence and thus, the dates of commission of the offence under Section 4 would be when the demand was made initially and also when the said demand was repeated afresh. The wording of Section 4 does not make the demand as an offence which has been made only prior to the marriage. It is also very clear that if some dowry items which were demanded as consideration for the marriage are not given at the time of the marriage but are given after the performance of the marriage even then such person taking such dowry would be deemed to have committed offence punishable under Section 3 of the Act. Similarly, even though the dowry items demanded prior to the marriage as consideration for the marriage are not given to all, even then the offence stands committed, when the demand was made, would come within the forecorners of Section 4 and similarly, if a demand is repeated after the marriage the person repeating such a demand would be deemed to have committed an offence again under Section 4 and the date of offence would be also when the demand is repeated in respect of the dowry items demanded at the time of the marriage as consideration for the marriage, *Harbans Singh v. Gurucharan Kaur*, 1990 Cri LJ 1591 (Del).

<sup>27</sup>[8. Offences to be cognizable for certain purposes and to be <sup>28</sup>[non-bailable] and non-compoundable.—(1) The Code of Criminal Procedure, 1973 (2 of 1974), shall apply to offences under this Act as if they were cognizable offences—

(a) for the purposes of investigation of such offences; and

(b) for the purposes of matters other than—

(i) matters referred to in Section 42 of that Code; and

(ii) the arrest of a person without a warrant or without an order of a Magistrate.

(2) Every offence under this Act shall be <sup>29</sup>[non-bailable] and non-compoundable].

#### STATE AMENDMENTS

**Bihar.**—For Section 8 of the said Act, the following section shall be substituted, namely:

“8. Offences to be cognizable, non-bailable and non-compoundable.—Every offence under this Act shall be cognizable, non-bailable and non-compoundable.”—*Vide* Bihar Act 4 of 1976, S. 5, w.e.f. 20-1-1976.

**Himachal Pradesh.**—For Section 8 of the principal Act, the following section shall be substituted, namely:

“8. Offences to be cognizable, bailable and non-compoundable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act 2 of 1974), every offence under this Act shall be cognizable, bailable and non-compoundable.”—*Vide* H.P. Act 25 of 1976, S. 6, w.e.f. 24-6-1976.

27. Subs. by Act 63 of 1984, S. 7 (w.e.f. 2-10-1985).

28. Subs. for “bailable” by Act 43 of 1986 (w.e.f. 19-11-1986).

29. Subs. for “bailable” by Act 43 of 1986 (w.e.f. 19-11-1986).

**Orissa.**—In Section 8 of the principal Act, for the words “Every offence” the words “Save as otherwise provided, every offence” shall be *substituted*.—*Vide* Orissa Act 1 of 1976, S. 3, dt. 18-1-1976.

**Punjab.**—For Section 8 of the principal Act, the following section shall be *substituted*, namely:

“8. *Offences to be bailable and non-compoundable.*—Every offence under this Act shall be bailable and non-compoundable.”—*Vide* Punjab Act 26 of 1976, S. 6, dt. 12-5-1976.

<sup>30</sup>[**8-A. Burden of proof in certain cases.**—Where any person is prosecuted for taking or abetting the taking of any dowry under Section 3, or the demanding of dowry under Section 4, the burden of proving that he had not committed an offence under those sections shall be on him.

#### STATE AMENDMENTS

**Himachal Pradesh.**—For Section 8-A of the principal Act, the following Section 8-A shall be *substituted*, namely:

“8-A. *Cognizance of offences.*—No court shall take cognizance of any offence under this Act except on a police report under Section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint made by a person aggrieved by the offence, as the case may be, within one year from the date of the commission of the offence:

Provided that no police officer of the rank lower than that of the Deputy Superintendent of Police shall investigate any case registered under this Act:

Provided further that no court shall take cognizance of any offence under this Act except with the previous sanction of the District Magistrate, having jurisdiction in the area.”—*Vide* H.P. Act 39 of 1978, S. 2, w.e.f. 4-12-1978.

**Punjab.**—After Section 8 of the principal Act, the following section shall be *inserted*, namely:

“8-A. *Institution of proceedings.*—No prosecution shall be instituted against any person in respect of any offence committed under this Act without the previous sanction of the District Magistrate or of such officer as the State Government may by special or general order appoint in this behalf.”—*Vide* Punjab Act 26 of 1976, S. 7, dt. 20-5-1976.

**8-B. Dowry Prohibition Officers.**—(1) The State Government may appoint as many Dowry Prohibition Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act.

(2) Every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely:—

- (a) to see that the provisions of this Act are complied with;
- (b) to prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry;
- (c) to collect such evidence as may be necessary for the prosecution of persons committing offences under this Act; and
- (d) to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

(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

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30. *Ins.* by Act 43 of 1986 (w.e.f. 19-11-1986).



Prohibition Officer who shall exercise such powers subject to such limitations and conditions as may be specified by rules made under this Act.

(4) The State Government may, for the purpose of advising and assisting 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).]

**CASE LAW ► Dowry Prohibition Officers, Powers of.**—Chief Dowry Prohibition Officer has neither power of appeal nor of review over the orders passed by the Dowry Prohibition Officers. He has no power under the Act or the Rules to appoint a Committee to investigate a complaint regarding dowry made by an aggrieved party, *Ashok Kumar Shukla v. State of U.P.*, (2003) 5 AIC 662 (All).

Dowry Prohibition Officer is competent to conduct enquiry and if prima facie case is made out he is empowered to file report to Magistrate, *Suresh v. Inspector of Police, All-Women Police Station*, (2006) 5 CTC 844 (Madurai Bench).

**9. Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

<sup>31</sup>[(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the form and manner in which, and the persons by whom, any list of presents referred to in sub-section (2) of Section 3 shall be maintained and all other matters connected therewith; and
- (b) the better coordination of policy and action in respect of the administration of this Act.]

<sup>32</sup>[(3)] Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

#### STATE AMENDMENTS

**Himachal Pradesh.**—In Section 9 of the principal Act,—

- (a) after the words “Central Government” occurring in sub-section (1) the words “or the State Government with the prior approval of the Central Government” shall be *inserted*;
- (b) in sub-section (2) after the words “Every rule made” and before the words “under this section” the words “by the Central Government” shall be *inserted*;
- (c) after sub-section (2), the following sub-section (3) shall be *added*, namely:

31. *Ins.* by Act 63 of 1984, S. 8 (w.e.f. 2-10-1985).

32. *Renumbered* by Act 63 of 1984, S. 8 (w.e.f. 2-10-1985).

“(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 while it is in session for a total period of not less than seven 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 sessions immediately following, the Legislature requires any modification in the rule or desires 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.”—*Vide H.P. Act 25 of 1976, S. 7, w.e.f. 24-6-1976.*

**Punjab.**—In Section 9 of the principal Act,—

- (i) in sub-section (1), after the words “Central Government”, the words “or the State Government” shall be *inserted*;
- (ii) in sub-section (2), after the words “every rule made” the words “by the Central Government” shall be *inserted*; and
- (iii) after sub-section (2), the following sub-section shall be *added*, namely:  
 “(3) Every rule made under this section by the State Government shall be laid as soon as may be after it is made before the House of the State Legislature while it is in session for a total period of ten days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive session aforesaid, the House agrees in making any modification in the rule or the House agrees 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.”—*Vide Punjab Act 26 of 1976, S. 8, dt. 20-5-1976.*

**CASE LAW ► Government, Duty of.**—The Central Government should frame rules under Section 9(2)

(b) if they have not been framed already and to take steps to ensure that submitting of the list as contemplated by the Act and the Rules is strictly implemented, *Enforcement and Implementation of Dowry Prohibition Act, 1961, In re, (2005) 4 SCC 565 : 2005 SCC (Cri) 1163.*

<sup>33</sup>[10. **Power of the State Government to make rules.**—(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the additional functions to be performed by the Dowry Prohibition Officers under sub-section (2) of Section 8-B.
- (b) limitations and conditions subject to which a Dowry Prohibition Officer may exercise his functions under sub-section (3) of Section 8-B.

(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.]

33. *Subs. by Act 43 of 1986 (w.e.f. 19-11-1986).*