

## Amendments to the Dowry Prohibition Act, 1961

### INTRODUCTION:

The Commission received the draft Cabinet Notes prepared by the Department of Women and Child Development proposing amendments to the Commission of Sati (Prevention) Act, 1987 and the Dowry Prohibition Act, 1961. The proposed amendments are based on the recommendations of various voluntary organisations as arrived at a National Workshop held on "Women and Law" in January, 1991. In view of the assurances given by the department in the Parliament that the aforesaid two Acts will be reviewed and suitable amendments bills as early as possible. Hence the Commission now applies its mind to the amendments proposed in the draft Cabinet Notes.

### A. Dowry Prohibition Act, 1961

Dowry Prohibition Act being a special Act, ordinarily police do not take much notice or interest in it, more particularly because offences under the Act are treated as cognizable offences for certain limited purposes only. There is no other special agency to detect and investigate into the offences under

the Act, as for instance, offences under the Prevention of Food Adulteration Act or the Prevention of Corruption Act. The result of these factors is that offences under the Act are treated, for all practical purposes, as offences not against the State but against individual woman. This is one of the main contributing factors for the ineffectuality of the Act. It is, therefore, desirable, in order that the general public may view main offences relating to Dowry as offences against the State in order that existing investigating agencies may become interested and involved in the detection and investigation of these offences, that the provisions of sections 3 and 4 of the Dowry Prohibition Act, being aggravated form of offence relating to dowry, may be removed from the Dowry Prohibition Act and transported into criminal law of the land by incorporating its provisions into the Indian Penal Code, and the Criminal Procedure Code at appropriate places, after making suitable amendments. Provisions of section 8A of the Act may accordingly be incorporated at appropriate place in the Indian Evidence Act.

2. At present, not only the taking but giving of dowry is also punishable. The persons giving dowry are, in truth, victims of the dowry system and it is, therefore, not fair that they should also be punished. Their inclusion among the offenders is another factor contributing to the ineffectuality of the Act. It is, therefore, suggested that the provisions of the Act be suitably amended to exclude persons giving dowry from liability. However, for the purposes of putting the legal position clearly, it may be stated that though sub-section (3) had been incorporated in section 7 to exempt the aggrieved persons from prosecution for any statement made by the person, that may not exempt explicitly the given from the purview of prosecution. Therefore, the aforesaid proposed amendment becomes necessary. Moreover, section 7 of the Dowry Prohibition Act is proposed to be omitted.

3. It is further suggested that persons participating in the negotiations of dowry should also be made liable along with those taking or demanding dowry. To

\*Proposals made by the National Commission for Women.

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make the implementation more effective the offence should be made cognizable for all purposes.

4. Sections 2,3,4,7,8 and 8-A of the Dowry Prohibition Act may be suitably brought into the Indian Penal Code, Criminal Procedure Code and Indian Evidence Act.

Amendments of the Indian Penal Code (45 of 1860)

5. The following amendments will be required to be made in the Indian Penal Code.

(1) In Section 304B,

(a) in sub-section (1), for the Explanation, the following Explanation shall be substituted, namely :

**‘Explanation** —In this section and section 498B, “Dowry” means any property or valuable securities given or agreed to be given, either directly or indirectly, by the bride or any person relates to her to the bridegroom or any person relates to him at, before or any time after the marriage in connection with, or as a consequence of the marriage :-

**Exception** :—Nothing in the Explanation shall apply to the presents which are given at the time of marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are of a customary nature and the value thereof is not excessive

having regard to the financial status of the persons by whom, or on whose behalf, such presents are given.”

(b) in sub-section (2) for the words “a form which shall not be less than seven years but which may extend to imprisonment for life”, the words “life or imprisonment for a term which shall not be less than seven years but which may extend to ten years” shall be substituted.

(2) In Chapter XXXA-

(a) for the heading, the following shall be substituted, namely :-  
“Of offences against women”;

(b) after section 498A, the following section shall be inserted, namely:-

**“498B. Dowry offences—**Whoever takes directly or indirectly or participates in the negotiation or otherwise the taking of, dowry shall be punished with imprisonment for a term which shall not be less than five years but which may extend to ten years and shall also be liable to fine which shall not be less than fifteen thousand rupees or the amount of value of such dowry, whichever is more :

Provided that the Court may, for adequate and special reasons to be recorded in the judgement, impose a sentence of less than five years.

**Explanation**—A person who

gives dowry shall not be deemed to be an *abettor*.”

6. Incidentally section 3 of the Dowry Prohibition Act, 1961 does not prescribe the sentence for the offence, but prescribes the minimum sentence only. This defect is removed by the proposed section 498B of the I.P.C. by incorporating therein the maximum term as ten years. Further, imprisonment for life is a different kind of sentence from imprisonment of a term of certain years (see section 53, I.P.C.). It is wrong to prescribe the sentence for an offence as imprisonment extending to imprisonment for life. If imprisonment for a term of years is to be provided as an alternative to imprisonment for life, the section should provide for “imprisonment extending to...”, as for example in sections 394 and 395. Therefore section 304B (2) has been suitably redrafted as above.

Amendments of Code of Criminal Procedure.

7. Once the offence is brought under the Indian Penal Code, there is no need for sections 7 and 8 of the Dowry Prohibition Act. However, in the Chapter heading occurring immediately before section 498A in the Schedule to the Cr. P.C., the words of offences against women” will have to be substituted and the following further entry will have to be inserted after the entry relating to section 498A:-



1	2	3	4	5	6
"498B	Taking, demanding or abetting to take dowry	Imprisonment for not less than 5 years which may extend to 10 years to 10 Years and fine not less than 15,000 rupees, of the amount of value of the dowry, whichever is use.	Cognizable	Non-bailable or Chief Metropolitan Magistrate."	Chief Judicial Magistrate or

Opportunity may be availed of in making consequential amendment in relation to section 304B in the Cr. P.C. on the following lines :-

In the First Schedule to the Code of Criminal Procedure, 1973 against section 304B, for the entry in column 3 the following entry shall be substituted namely:-

"Imprisonment for life or imprisonment of not less than seven years but which may extend to ten years."

8. A part from the suggestions made above, section 498A of the Indian Penal Code should be suitably amended to enhance the punishment from 3 to 7 years, as cruelty to women is taking serious dimensions. Further, the offence under section 498A is now cognizable, if information relating to the commission of the offence is given to an officer incharge of a Police Station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative, by any public servant belonging to such class or category as may be

notified by the State Government in this behalf. The whole of the qualifying clause may be omitted and the word "cognizable" alone be retained in the entry relating to section 498A in the First Schedule to the Code of Criminal Procedure. Similarly, the restrictions now placed by section 198A in the First Schedule to the Code of Criminal Procedure. Similarly, the restrictions now placed by section 198A Cr. P.C. upon a Court taking cognizance of an offence punishable under section 498A I.P.C. may also be lifted so as to one to lay a complaint for that offence before a Court. Section 198A, Cr. P.C. may, therefore be omitted from the statute. Further to cast duty on public to give information as to dowry offences, necessary amendments may also be made in section 39 of the Cr. P.C.

9. Amendments above may be on the following lines :-

In the Code of Criminal Procedure, 1973.

(a) In section 39

(i) in clause (v) for the work,

figures, "and 304, the figures, word and letter "304 and 304B shall be substituted;

(ii) after clause (xii), the following shall be inserted, namely:-

"(xiii) Section 498B (that is to say, offences relating to dowry)"

(h) section 198 A omitted.

(i) in the first Schedule, against section 498A.

For the entry in column 3, the entry "cognizable" shall be substituted.

#### Amendment of Indian Evidence Act

10. Since the dowry offences are incorporated in I.P.C., the burden of proof should be shifted to the Indian Evidence Act by inserting section 113AA after section 113A, namely :-

"113AA.- **Presumption as to dowry offences-** Where a person is charged with the Commission of any offence under section 498A of the Indian Penal Code (45 of 1860), the burden of proving that he had not committed the offence shall be on him."

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11. In spite of the equal rights given in the parental property, the parents are still reluctant to give an equal share in their property to the girls and also justify the same by saying that they cannot give fat dowries to sons-in-law and also give an equal share in the property to the daughters. It is becoming a vicious circle and the sufferer is the girl since the dowry is eaten away by the husband and husband's family and she is in no way benefitted by it. At the same time, if girl giving by the parents, relatives and friends at the time of the marriage is totally banned, the girl would be left penniless. That is why Dowry Prohibition Act was amended in the recent past to allow the gifts which may be given to the girl with a safeguard that all of them should be listed. Now the proposal is to get such a list registered. It is a welcome proposition. As a matter of fact, it is high time that the Hindu Marriage Act is amended to make registration of Marriage under that Act compulsory. It may be worthwhile to give a thought to provide tax exemption to such gifts if they are of higher value attracting gift-tax to facilitate parents to settle property, by way of gifts, openly on the girls.

12. With the incorporation of the provisions of sections 3, 4 and 8A of the Dowry Prohibition Act in the Indian Penal Code, Criminal Procedure Code and Indian Evidence Act, the sections which

will remain in the Dowry Prohibition Act are as under :

**Long title** :— The Long title will be required to be changed as follows:-

“An Act to provide for the additional, ancillary or incidental matters connected with the taking, demanding or abetting the taking of dowry.”

**Section 1 : Short title extent and commencement.** For sub-section (1) of this section the following sub-section has to be substituted :

“(1) This Act may be called the Dowry Prohibition (Additional provisions) Act, 1961.”

**Section 3 : Definition of dowry** : Now that the definition of “dowry” is proposed to be included in the explanation to section 304 B of the I.P.C., this section may be changed as under:

“2. Definition.-In this Act, unless the context otherwise requires, “dowry” has the same meaning as in the Explanation to section 304B of the Indian Penal Code, 1860 (45 of 1860).”

**Section 3 :**

and to be omitted.

**Section 4 :**

**Section 4A** : Regarding “Ban on advertisement” does not require any change

**Section 5** : Agreement for giving or taking dowry to be void.

This section provides that any agreement for the giving or taking of dowry shall be void. No express provision appears to be necessary since such agreements will be void under the express provisions of the Contract Act. This section may, therefore be substituted by a new section regarding the maintenance of list of presents on the following lines :-

“5. List of presents.—All the presents given to the bride or bridegroom at the time of the marriage shall be entered in a list signed by the bride, bridegroom and two independent witnesses.”

**Section 6** : This section provides that dowry, if received is to be transferred to the bride within certain period of periods. This section may be retained with amendment of sub-section (4) thereof in the following lines :-

For the words and figures “section 3 or section 4”, the words, figures and letter “section 498B of the Indian Penal Code (45 of 1860)” shall be substituted.

**Section 7** : This may be substituted as under so, as to remove the application of Chapter XXXVI of the Cr. P.C., on the following lines:—

“7. Chapter XXXVI of the Code of Criminal Procedure not to apply.-Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to any offence punishable under this Act.”



Sections 8 and 8A : to be omitted. with respect to the administration of the Act.”

**Section 8B : Dowry Prohibition Officers.**-This section empowers the State Government to appoint Dowry Prohibition Officers. It also empowers the State Government to appoint Advisory Boards. The following changes are required therein :-

In sub-section (2), in items (a) & (c), after the words “the Act”, the words, letters, figures and brackets “and the offences under sections 304B and 498B of the Indian Penal Code (45 of 1860)” shall be inserted.

**Section 9 : Power to make rules :-** This section empowers the Central Government to make rules for carrying out the purposes of the Act. Sub-section (2) may be redrafted on the following lines:

“(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the better coordination of policy and action

**Section 10 : Power of the State Government to make rules.**-This section empowers the State Government to make rules. It may not require any change.

13. It is also proposed that marriage expenses in no case should exceed Rs. 5,000/- or 2 per cent of the annual income of the bride's parents. Though the Commission appreciates this amendment, it nevertheless feels that it may not be a workable or realistic figure unless registration of marriages are contemplated and guest control system is adopted. In this connection, the Law Commission's recommendations may be looked into which provide for 20 per cent of the annual income or Rs. 10,000/- whichever is less. To start with, the amendment may be to the extent that the marriage expenses in no case should exceed 20 per cent of the annual income of the bride's parents or guardians.

14. The Commission also appreciates the multipronged scheme of the Department to tackle the issue. Unless the laws which are made to eradicate deep rooted social evils are properly implemented in their true spirit, any amount of amendments are not going to really solve the problem. For instance in the Act, there is a provision for the appointment of Dowry Prohibition Officers. Either they are not appointed or if they are appointed, the duties under the Act will be unimportant additional ones. Even the smaller number of cases which are registered surmounting all obstacles, end in acquittals due to lack of evidence which are registered surmounting all obstacles, end in acquittals due to lack of evidence which the Dowry Prohibition Officers are supposed to be collecting with the help of social workers and organisations. Commission lays great emphasis on the proper and strict implementation of the provision by appointing full time officers who shall be accountable to the Advisory Boards.