

# THE DOWRY PROHIBITION ACT, 1961

BY PAVAN KUMAR SHARMA

MSIT,LL.M

ADVOCATE

# INTRODUCTION

-> Practicing throughout the country.

-> Symbol of High Social Prestige and Rank.

-> Amended Twice

In 1984- Basic & 1986- Punishment.

# Origin Of Dowry

- > Origin of Dowry Dowry is present in various societies but is an integral and institutionalized part of the Hindu Marriage System.
- > Finds its origins in the Manusmrit, where Manu talks about 8 types of marriages.

->The first four are: Brahma, Daiva, Arsha, Prajapatya: characterised by Kanyadana by the father and were the Dharmya or socio-culturally acceptable norms,

The last four are the Asura, Gandharva, Rakhshasa, Pisachas forms of marriage which were adharmya or against socio-cultural norms



As per Section 2 of the Dowry Prohibition Act, 1961 which says that :

Dowry is any property or valuable security directly or indirectly agreed to be given by-

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

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties.

The various causes are-

-> In the name of tradition :

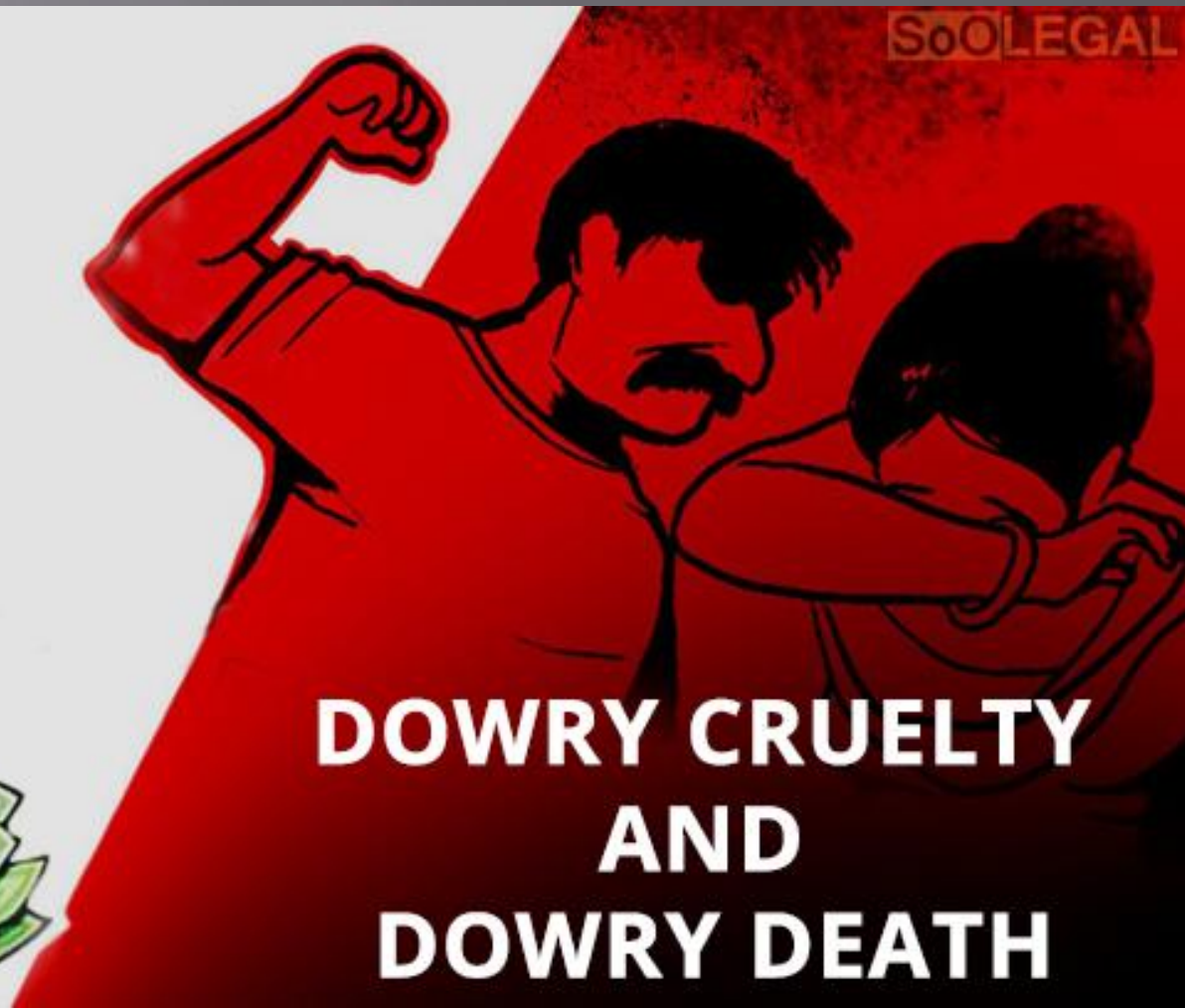
We must have seen people calling it a tradition or a custom to be followed in marriages taking place. In the name of tradition which has to be followed by the bride's family give valuables to the groom's family.

-> The groom's family ask for dowry:

The groom's family voluntarily ask for dowry by giving reasons that their son is placed in a good job and they have a lot of reputation etc.



# Dowry: Cruelty & Death



Dowry death is defined in Section 304B of the Indian Penal Code, 1860.

Also Section 113B of the Indian Evidence Act, 1872 states the presumption as to dowry death.



## Dowry Death

Section 304B of the Indian Penal Code states that if a woman dies within seven years of marriage by any burns or bodily injury or it was revealed that before her marriage she was exposed to cruelty or harassment by her husband or any other relative of the husband in connection to demand dowry then the death of the woman will be considered as a dowry death.

## Essential Ingredients:

->Death should be caused by burns or bodily injury or by any other circumstances.

->Death must occur within the seven years of marriage.

->It must be revealed that soon before her marriage she was exposed to cruelty or harassment by her husband or any other relative.

->The cruelty or harassment on her should be in connection with the demand for dowry.

## Punishment for dowry death:

Minimum sentence of imprisonment for seven years (7) or a maximum sentence of imprisonment for life.

Is Dowry death a bailable and a cognizable offence?



## Bailable Offences-

Offences in which the permission from the court to release the arrested person is not required. The arrested person by fulfilling the necessary requirements can be released and the police cannot refuse the person.

## Cognizable Offences-

Offence in which the police have the authority to arrest any person without any warrant and also has the authority to start an investigation with or without any permission of the magistrate by filing FIR.

**Dowry death is a non-bailable  
and cognizable offence**

Arnesh Kumar V State Of  
Bihar (2014) 8 SCC 273

The Supreme Court Of India  
Judges: Justice Chandramauli  
KR. Prasad And Justice Pinaki  
Chandra Ghose.

Date Of Judgement:  
2nd July 2014



Section 498-A of the Indian Penal Code was added by Criminal Law 2nd Amendment Act which states, Husband or relatives of husband of a woman subjecting her to cruelty- Whoever being the husband or relative of husband of a woman, subject such women to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

The essential ingredient which can be deduced from Section 498-A of the Indian Penal Code are:

Woman must be married.

Woman is subjected to cruelty or harassment.

Such cruelty and harassment must have been inflicted either by Husband or relatives of husband.

Section 498-A of the Indian Penal Code has been brought into existence for defending women right and protect woman from cruelty. But in the recent times Section 498-A has been subjected to the episode of misuse of power on the part of woman and there is a need to check the tendency of women to rope in all family members related to the crime of demanding dowry.



## Judgement:

The Supreme Court by way of its judgement has granted provision bail to the petitioner on certain grounds. In this landmark judgment the Court not only granted bail, but also discussed and touched upon those aspects which were not dealt earlier i.e. misuse of Section 498-A of the Indian Penal Code. The court ended up with its judgment by giving 8 golden principles/ directions for arresting person under Section 498-A of the Indian Penal Code.



The Supreme Court of India under Para 13 of the judgement in order to ensure that police officer do not arrest the accused unnecessarily and magistrate do not authorize detention, the Court giving the following directions:

-> All the State Government should instruct its police officers not to automatically arrest a person when an offence under section 498-A of the Indian Penal Code is registered. The necessity of arrest arises when the case falls under the parameter of section 41 of the Code of Criminal Procedure.

-> All police officers be provided with the check list containing specified clauses under Section 41 (1) (b) (ii).

-> The police officer shall forward the check list duly filed and furnished with the reason and material necessitated the arrest while producing accused before the magistrate for further detention.

-> The magistrate while authorizing the order of further detention shall rely upon the report furnished by the police officer and only after recording the reason duly furnished on Police report and on the satisfaction, the Magistrate will authorize further detention.

-> The decision not to arrest an accused be forwarded to Magistrate within two weeks from the date of institution of the case with a copy of Magistrate which may extended by the Superintendent of police of the district for the reason to be recorded in writing.

-> Notice of Appearance in terms of Section 41-A of the Code of Criminal Procedure be served upon the accused within two weeks from the date of institution of case which may be extended by the Superintendent of Police after recording the reason in writing.

-> Failure to comply with the directions mentioned above shall rendered the police officer liable to be punished for contempt of court before High Court having jurisdiction.

-> Authorizing detention by the Judicial Magistrate without recording the reason, the concerned Judicial Magistrate shall be liable for Departmental Proceedings by the High Court.




## Conclusion:

The landmark judgement of the Supreme Court headed by the bench of Justice Chandramauli Kr. Prasad and Justice Pinaki Chandra Ghose has beautifully carved out the issue of misuse of Section 498-A of the Indian Penal Code where the court not only granted bail but also give directions to the state government and police officers how to deal with arrest when a complaint or FIR is registered under Section 498-A of the Indian Penal Code.

Thus the core issue of criminal jurisprudence and enforcement agencies power of arrest has been discussed by the Supreme Court in the light of Section 41 of the Code of Criminal Procedure. The directions issued by the Supreme Court in the ruling reprieve the casual approach of the authorities in making arrest which earlier was based upon the mere allegations or insignificant claims of commission of offence.



  
**GOVERNMENT OF TELANGANA  
POLICE DEPARTMENT**

Police Station House,  
Yacharam, Rachakonda  
Dated: 16.02.2022.

No.283/Cr/YCM/2021.

**NOTICE U/SEC. 41(A) Cr.P.C**

To

No.2/2021.

been able cable comr

- 1) Please take notice that a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that you have committed a cognizable offence U/Sec 498-A, 323, r/w 34 & Sec. 3 & 4 DP act Ipc in Cr.No. 283/2021 of Yacharam PS punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, against you and that the Police Officer is satisfied that such immediate arrest of you is not necessary, you are hereby given this notice on the following conditions.
- 2) That you shall,
- 3) Not to commit any other offence or,
- 4) Cause the evidence of the offence to disappear or tamper with such evidence in any matter or
- 5) Not to make any inducement that or promise to any person acquainted with the facts to the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer or
- 6) That you shall appear before the Police and the Hon'ble Court as and when directed to do so,
- 7) Comply with such directions as may be directed by the Police Officers or the Hon'ble Court.

Where you are at any time fail to comply with the terms of the notice, it shall be lawful for the Police Officer to arrest you for the offence mentioned in the notice.

Accused:

Thank  
you



**PAVAN KUMAR SHARMA**

MSIT, LL.M, Advocate



M/s. Pavan Kumar Sharma & Associates, Advocates,

☎ 9440391554

✉ [advocates.pks@gmail.com](mailto:advocates.pks@gmail.com)

📍 Plot No. 12, Srinivasapuram Colony,  
Vanasthalipuram, Hyderabad, T.s. - 500 070.

