

Dowry Prohibition and Law in India

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Unfair Practices in Family Relations in India

- Child marriages
- Dowry system
- Dowry deaths and harassment
- Commission and glorification of Sati
- Offences against marriage
- Female Foeticide; and
- Domestic violence etc

Consideration of Marriage & Dowry Prohibition

- Evil of giving and taking dowry & prevalence in all communities of India
- Educated youth - grossly insensitive to the evil & and unashamedly contributes to its perpetuation
- Dowry – commercial aspect of a marriage & constituted *stridhan* in good old days
- Dowry system was something originally honorable in intention and provided for the independent wealth of the bride in a time when she was unlikely to work outside of the home
- Initial attempts in India to treat this problem as a social one and to equal property rights to women under the HSA, 1956
- “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...”-Nehru

The Dowry Prohibition Act, 1961

- DPA,1961- not a complete code
- Dowry-Any property/valuable security given, agreed to be given either directly/indirectly, by one party to marriage to other or by parents of one to other, either at/before/anytime after marriage, in connection with marriage (as consideration for the marriage-omitted in 1984)-Sec.2
- No application to certain gifts
- Dower given under Muslim law-not dowry
- Penalty for demanding dowry-imprisonment up to 2 years and fine
Penalty for taking dowry-imprisonment up to 5 years and fine up to rs.15,000/-
- Demand for dowry-amounts to cruelty Shobha Rani v. Madhukar Reddy 1988,SC
- Time for demanding dowry-at, before or after marriage [S.Gopal Reddy v. State of AP(1996,SC)]
- Ban on advertisements-attracts imprisonment between 6 months and 5 years

Consideration of Marriage & Dowry Prohibition

- Mere advt. punishable [S.4-A]
- Dowry agreements –void [S.5]
- Civil consequences of taking dowry-to transfer it to woman-dowry taker is only a trustee-failure to transfer-punishable (S.6)
- Burden of proof of innocence - ON accused [S.8-A]
- Offences under DPA- non- bailable and non compoundable & Cognizable for certain purposes like investigation (S.8)

Dowry deaths and Dowry suicides

- Criminal Amendment, 1983-Consequential amendments of IPC, 1860
- Dowry Death- Essential Conditions-S.304-B - Punishment not < 7 years/fine
- Abetment of Suicide-S.306-up to 10 years/fine
- Dowry Death-not rarest of rare cases

Cruelty by Husband / Relatives of Husband

- S.498-A,IPC-punishable with imprisonment up to 3 years/fine
- Cruelty- a) any wilful conduct likely to drive woman to commit suicide/cause grave injury/danger to life,limb or health(mental/physical); b) harassment of w/m with a view to compel her to meet any unlawful demand for any property/valuable security.
- Mere demand for dowry - an offence
- misuse of provision- compoundability of offence in certain States
- **Sushil Kumar Sharma V.Union of India** [JT 2005 (6) SC 266 per Arijit Pasayat & H.K.Sema,JJ]- by misuse of the provision a new legal terrorism can be unleashed]
- **Saritha v.R.ramachandra** [APHC-BSA Swamy&G.Yethirajulu,JJ-9-7-2002 2002 (6)ALD 319:2002(4) ALT 592:I(2003)DMC 37]-It is for the Law Commission &Parliament either to continue the provision(Sec.498-A) in the same form or to make the offence a non-cognizable &bailable one so that ill educated women of this country and their parents do not misuse the provision..

Presumptions of Dowry death

- As to abetment of suicide by married woman within seven years of her marriage- [S.113 A , IEA,1872](#)
- As to abetment of dowry death
[-S.113 B ,IEA,1872](#)

Mahr (Dower) under Islamic Law – Use and Misuse

- **Mahr** - amount to be paid by groom to bride, at marriage (Nikah) - a gift money which she can expend as per her wish
- A must condition of Marriage (Nikah), without which Nikah is incomplete
- Can be cash or kind - beginning of financial empowerment of a newlywed Muslim bride which gives her a sense of security and respect
- Should be given according to the social status of the bride & considerable to groom's financial condition
- Mahr has nothing to do with Talaq-It is a gift, not a penalty.

Mahr (Dower) under Islamic Law – Use and Misuse

- In the Qur'an it is called *sadaq*, [a token of friendship], *nihlah* [a nice gift or present] .It also signifies a husband's commitment to take care of his wife's financial needs (*nafaqah*).
- Concerning the *mahr* (dower), Allah says, “And give women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer” (An-Nisaa': 4); “Those among them (i.e., your wives) whom you enjoy give them their dowers as determined. But there is no blame on you, if after a dower is determined, you mutually agree to vary it” (An-Nisaa': 24); “If you divorce them before consummation and you have fixed a dower for them then half of the dower is due to them, unless they forgive it or it is forgiven by him in whose hand is the marriage tie” (Al Baqarah: 237).

[Read more: <http://www.islamonline.net>]

Kinds of Dower

- **Proper Dower:** If the amount of dower is not fixed, the wife is entitled to "proper" dower (mahr-i-misl). In determining what "proper" dower is, regard is to be had to the amount of dower settled upon other female members of the bride's father's family such as her father's sisters. Status is to be considered in fixing dower where dower was not fixed at the time of marriage.
- **"Prompt" and "Deferred" Dower:** The amount of dower is usually divided into two parts, one called "prompt" which is payable on demand, and the other called "deferred" which is payable on dissolution of marriage by death or divorce. Wife may refuse to live with the husband if prompt dower is not paid. **The Prompt portion of the dower may be realized by the wife at any time before or after consummation.** Dower which is not paid at once described as the deferred dower, but if it is postponed until demanded by the wife, it is in law prompt dower. But "deferred" dower does not become "prompt" merely because the wife demands it.

Conclusion

- Thank You