

The Dowry Prohibition Act Needs Teeth

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Dowry has been a widespread social evil among the Hindus. Now it has spread to other communities also such as Muslims and Christians as well. The Parliament passed the Dowry Prohibition Act 1961 with a view of eradicate the rampant evil. The Act has been amended twice by the Amendment Acts of 1984 and 1986. Section 2 of the Act defines dowry as any property or valuable security given or agreed to be given directly or indirectly, (a) by one party to the marriage to the other party to the marriage; or (b) by parents of either party to the marriage or by any other person to either party to the marriage or to any person at or before or at any time after the marriage in connection with the marriage of the said parties. The Amendment Act of 1984 has amended the definition by substituting the words "in connection with the marriage of the said parties" for the words "as consideration for the marriage of the said parties". The Amendment Act of the 1986 has further amended Section 2 by substituting the words "or any time after the marriage" for the words "or after the marriage".

The Act does not prohibit the traditional giving of wedding presents to the bride or bridegroom at the time of marriage. However, the value of the presents should not be excessive having regard to the financial status of the person by whom such presents are given. All presents made to the bride or bridegroom are to be entered in a list maintained in accordance with the rules made under the Act, if any person gives or abets the giving of dowry, he shall be punishable with imprisonment for a term which shall be less than five years and with fine which shall be less than fifteen thousand rupees or the amount of the value of such dowry, which is more. Section 6 protects the interest of the wife by providing that any person who receives dowry is under obligation to transfer it to the bride. If the bride dies before receiving it, her heirs are entitled to claim it from the person holding it. The offences under the Act are cognizable, non-bailable and non-compoundable.

Demand of Dowry

Under Section 4 of the Act demand for dowry is also punishable. If any person demands any dowry, directly or indirectly, from the parents or other relatives or guardian of the bride or bridegroom, he shall be punishable with imprisonment

for a term which shall be less than six months, but which may be extended to two years and with fine which may be extended to ten thousands rupees.

Judicial interpretation of Section 4 is of significance to the legislative efforts to eradicate the menace. In *Inder Sain vs. State* (1981 CrLJ 1116) and *Kashiprasad vs. State of Bihar* (1980 BBCJ612) the Delhi and Patna High Courts held that the demand for dowry would not constitute an offence under Section 4, unless it was established that the other party consented to pay it. Reliance was placed on the definition of dowry contained in Section 2 and the courts imported the entire definition of dowry contained in Section 2 into Section 4. However in *Daulat Man Singh vs. C.R. Bansi* (1980 CrLJ 1171) the Bombay High Court took the view that mere demand for dowry constituted the offence under Section 4, whether the other party accepted it or not, in *L.V. Jadhav vs. Sankar Rao*, (AIR 1983 SC 1219) the Supreme Court expressed the view that it was not necessary to import the entire definition of dowry given in Section 2 into Section 4. The court observed that in view of the dominant object of the Act, a liberal construction has to be given to the word 'dowry' used in Section 4. The object of Section 4 is to discourage the very demand for property or valuable security. There is no warrant for taking the view that initial demand for dowry would not constitute an offence and that an offence took place only when the demand was made again to the party which agreed to comply with it. After the decision of the Supreme Court, and in any case after the modification of the definition of dowry by the Amendment Act of 1984, mere demand for dowry would constitute an offence irrespective of the fact whether it was accepted or not.

However, even after the decision of the Supreme Court and the amendment of the definition of dowry, the Calcutta High Court in *Sankarprasad & Ors. Vs. State* [(1992) 1 DMC 30] took a different view. S.P. Rajkhowa, judge of the court held that a demand for money or valuable security by a party to the marriage per se is not an offence under Section 4 of the Act in view of the definition of dowry contained in Section 2. The learned judge observed that demand for dowry under the Act and in the legal sense will mean the demand for dowry only when it refers to property or valuable security given or agreed to be given at or before or after the marriage. The learned judge laid emphasis on the words "given" and "agreed to be given" contained in Section 4. It is very unfortunate that the learned judge based his decision on technical grounds without taking into consideration the wider objects of the Act.

Often the men complain of law being as ass when a just claim is thrown out under some legal technicality or the other or where judicial logic is incomprehensible to lay mind so as to convince them that justice has been done.

Frequent recurrence of such decisions shakes the confidence of the common man in the judicial system itself. Insistence by courts on technicalities even though it may satisfy judicial mind, would be the very antithesis of the concept of justice.

It is submitted that Section 4 should be interpreted in the light of its object. The dominant object of Section 4 is to stamp out the practice of demanding dowry in any shape or form either before or after the marriage. In view of this it is not necessary to import the entire definition of dowry given in Section 2 into Section 4. The natural or popular meaning of the words, "demands any dowry" should be given. If construed valuable security by a part to the marriage per se in an offence under Section 4.

It is true that the Act has not proved to be successful. Dowry is a deep rooted social evil and legislation alone can not eradicate it. Pt. Jawahar Lal Nehru has rightly said:

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

References

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3. Paras Diwan, "Law of Marriage and Divorce, 1991.
4. B.N. Sampath, "Hindu Law" in Annual Survey of Indian Law 1982.