

## THE DOWRY PROHIBITION ACT, 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: ?

**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 except the State of Jammu and Kashmir.

(3) It shall come into force on such date <sup>[1]</sup> as the Central Government may, by notification in the Official Gazette, appoint.

**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>[2]</sup> [or any time after the marriage] <sup>[3]</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.

<sup>iv</sup>[4] [ \* \* \* \* \* ]

*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 Section 2, the following sections 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 by whom the Muslim Personal Law (*Shariat*) applies.

?? *Explanation I.* ? For the removal of doubts, it is hereby declared that any person 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, 1860 (45 of 1860), ?

??? (ii)? `marriage expenses' shall include expenses incurred directly or indirectly at or before the marriage on ?

?(a) Thakka, Sagai, Tikka, Shagun and Milni ceremonies;

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

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

*Explanation III.* 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 the marriage either party to the marriage shall not be deemed to be marriage expenses.

[Haryana Act 38 of 1976]

#### Comments

'Dowry' means property or valuable security given or agreed to be given either directly or indirectly by one party to the other party to a marriage. Does not include 'Dowry' or 'Mahr'. *Gurmukh Singh & Anr. v. State of H.P.* 1997 Cr.R. 240 (H.P)

Dowry? Even if the demand is long after the marriage the same could constitute dowry, if other requirements of the Section are satisfied. *State of H.P. v. Nikku Ram.* 1995 Cri.L.J 4184 (SC).

Dowry? Land assigned as gift? Form part of dowry. *Vemuri Venkateswra Rao and another v. State of Andhra Pradesh.* 1992 Cri.L.J. 563 = 1992(1) Cri LC 576 = 1992 (1) Crimes 287 (A.P)

**3. Penalty for giving or taking dowry.** [5] [(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 [6] [with imprisonment for a term which shall not be less than [7] [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 [8] [five years].

[9] [(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 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 no 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, 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.?

[Bihar Act 4 of 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 thousands rupees;

??? (d)? display and gifts made at or before the marriage in the form of case, 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 he ground that dowry has not been given or the dowry given is insufficient.??

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?????????[Haryana Act 38 of 1976].

?Himachal Pradesh

?? In its application to the State of Himachal Pradesh, Section 3, shall be substituted as under: ?

?? ?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.?

?[H.P. Act 25 of 1976]

?Punjab

?? In Section 3, 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.

?[Punjab Act 26 of 1976]

?West Bengal

?? In Section 3, 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.

?[West Bengal Act 35 of 1975]

?? [State Amendments : See Under Section 4A]

Comments

? Dowry ? Mere allegation of giving cash without proving source ? Acceptance of dowry not proved. *Nilakantha Pati v. State of Orissa*. 1995 Cri.L.J 2472 = 1995 Cr.R. 663 (Ori.)

**\*[10] [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 be 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 term of less than six months.]

## Comments

? Dowry ? 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. *Sankar Prasad Shaw and others v. State and another*. 1991 Cri.L.J. 639 = 1990 Cal Cri LR 210 = 1990(2) Cal HN 184 = 1991(2) Rec Cri.R 165 (Cal.)

? Penalty for demanding dowry ? Dowry as quid pro quo is prohibited ? Appellant prospective candidate for matrimonial alliance ? Appellant not present at the time of negotiations ? His elder brother held negotiations for alliance ? Offer cancelled prior to ?Varapuja? ? Alleged? demand of dowry for purchase of scooter or car not established ? No direct demand? of dowry established ?? Conviction by trial Court made on emotions ? Held ? Conviction and sentence set aside. *S. Gopal Reddy v. State of Andhra Pradesh*. 1996 Cr.R. 788 (S.C)

<sup>xi</sup>[11] **4A. Ban on advertisement ?** ?If any person ?

(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 published 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 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.?

?[Bihar Act 4 of 1976]

?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 proceeding dropped under sub-section (2) shall review 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 wife.?

?[Haryana Act 38 of 1976]

?Himachal Pradesh

??? (i)? In its application to the State of Himachal Pradesh, Section 4 substituted as under: ?

?? 24. 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 and with fine which may extend to five thousand rupees.?

??? (ii)? In its application to the State of Himachal Pradesh, Section 4-A inserted as under: ?

?? **24-A. Bar of certain acts.**?? Any person who, ?

??? (i)? displays any presents made at the time of marriage in the form of cash, ornaments, cloths 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.?

??? (iii)? In its application to the State of Himachal Pradesh, Section 4-B inserted as under: ?

?? **24-B. Penalty for depriving any part 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 the other party of the rights and privileges of marriages 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.?

?[H.P. Act 25 of 1976]

?Punjab

?? (i) 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.

?? (ii) After Section 4, the following section shall be inserted, namely ?

?? **24-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 minor 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.?

?[Punjab Act 26 of 1976]

?West Bengal

?? In Section 4, ? (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 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.?

?? (d) After Section 4, 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 Action 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.?

?[West Bengal Act 35 of 1975]

**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)? (b)? (c) if the dowry was received before marriage, within <sup>xii</sup>[12] [three months] after the date of marriage; or if the dowry was received at the time of or after the marriage, within <sup>xiii</sup>[13] [three months] after the date of its receipt; or if the dowry was received when the woman was a minor, within <sup>xiv</sup>[14] [three months] 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>xv</sup>[15] [(2) if any person fails to transfer any property as required by sub-section (1) within the time specified therefor <sup>xvi</sup>[16] [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>xvii</sup>[17] [which shall not be less than five thousand rupees, but which may extend to ten thousand rupees] or with both.]

(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>xviii</sup>[18] [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>xix</sup>[19] [3(A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) <sup>xx</sup>[20] [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>xxi</sup>[21] [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>xxii</sup>[22] [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>xxiii</sup>[23] [her heirs, parent or children].]

#### STATE AMENDMENTS

?Haryana

?? In sub-section (2) of Section 6, for the words ?or with fine which may extend to five thousand rupees, or with both?, the words ?and with five thousand rupees? shall be substituted.

?[Haryana Act 38 of 1976]

?Orissa

?? In its application to the State of Orissa, Sections 6-A and 6-B inserted as under:

?? **26-A. Penalty for denial of conjugal rights 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:

?? 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 held 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 deprived from such property, or from the wife's own earnings 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, so far as may be, apply to the recovery of the maintenance allowance ordered under this section.

?? (7) Nothing contained in this section shall effect the provisions of Section 3 or Section.?

?[Orissa Act 1 of 1976]

## Comments

? Complaint ? Limitation ? Dowry given before marriage i.e. 16.8.84 ? Complaint could be filed by 15.8.86 ? Complaint filed on 15.4.87 ? Amendment of section enlarging scope of limitation ? Complaint within time. *Atimala Jayaram v. State of Andhra Pradesh and another*. 1992 Cri.L.J. 2217 = 1992 East CR C 736 = 1992(2) Recent CR 453 = (1992) 1 CCR 154 (A.P.)

<sup>xxiv</sup>[24] [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 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 recognized 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 or any person convicted of any offence under this Act.

*Explanation.* ? For the purposes of this sub-section, ?recognized welfare institution or organisation? means a social welfare institution or organisation recognized 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>xxx</sup>[25] [(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, the following 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.?

[Bihar Act 4 of 1976]

Haryana

?? For Section 7, 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 exempt on a complaint made by any party to the marriage or her father, mother or brother or a Gazetted Officer specially authorised 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 got made 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.?? [Haryana Act 38 of 1976]

?Himachal Pradesh

?? In its application to the State of Himachal Pradesh, Section 7, substituted as under: ?

?? **?? 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 Judicial Magistrate of this first class shall try any offence under its Act.

?? (2) No Court shall take cognizance of any offence under this Act, except that of offence under Section 4-B, except on a police report or complaint made within one year of the marriage.?

[Himachal Pradesh Act 25 of 1976 and 39 of 1978]

?Punjab

?? For Section 7, the following section shall be substituted, namely, ?

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

??? (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 a 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.?

[Punjab Act 26 of 1976]

?West Bengal

?? In Section 7, ? (a) for the words and figures ?Code of Criminal Procedure, 1985 (5 of 1989), 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.

[West Bengal Act 35 of 1975]

<sup>xxvi</sup>[26] **[8. Offences to be cognizable for certain purposes and to be 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) matter 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>xxvii</sup>[27] [non-bailable] and non-compoundable.]

**State Amendments : See under Section 8B.**

<sup>xxviii</sup>[28] **[8A. 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.

**8B. 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 the 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 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 on 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)]

**STATE AMENDMENTS**

?Bihar

?? For Section 8, the following section shall be substituted, namely, ?

?? **78. Offences to be cognizable, non-bailable and non-compoundable.** ? Every offence under this Act shall be cognizable, non-bailable and non-compoundable.?

?[Bihar Act 4 of 1976]

?Himachal Pradesh

?? (1) In its application to the State of Himachal Pradesh, Section 8 substituted, as under: ?

?? **78. Offences to be cognizable, bailable and non-compoundable.** ? Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act shall be cognizable, bailable and non-compoundable.?

?[Himachal Pradesh Act 25 of 1976]

?? (ii) After Section 8 for following shall be inserted namely: ?

?? **78-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 offence as the State Government may, by special or general order, appoint in this behalf?.

[Himachal Pradesh Act 39 of 1978]

Punjab

(i) 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.?

(ii) After Section 8, the following Section 8-A shall be inserted namely:

**8-A. Cognizance of offence.** ? 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.?

[Punjab Act 26 of 1976]

Orissa

In its application to the State of Orissa, in Section 8, for the words "Every offence", the words "save as otherwise provided, every offence" substituted.

[Orissa Act 1 of 1976]

**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>xxx</sup>[29] [(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 there with; and

(b) the better co-ordination of policy and action with respect to the administration of this Act.

<sup>xxx</sup>[30] [(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 <sup>xxx</sup>[31] [in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid] 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 its application to the State of Himachal Pradesh, in Section 9, ? (a) after the words "Central Government" in Section 9 (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; and

?? (c) Sub-section (3) inserted as under:

?? (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.

[Himachal Pradesh Act 25 of 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 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 without prejudice to the validity of anything previously done under that rule.

[Punjab Act 2 of 1976]

<sup>xxxii</sup>[32] **[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 Officer may exercise his functions under sub-section (3) of Section 8B.

(b) limitations and conditions subject to which a Dowry Prohibition Officer may exercise his functions under sub-section (3) of Section 8B.

(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.]

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i[1] 1st July, 1961 vide Notification No. S.O. 1410 dated 20-6-1961, Gazette of India, Extraordinary, Part II, Section 3(ii) Page 1005.

ii[2] Subs. for the words ?or after the marriage? by Act No. 43 of 1986, (w.e.f. 19-11-1986).

iii[3] Subs. for the words ?as consideration for the marriage of the said parties, but does not include? by Act No. 63 of 1984, (w.e.f. 2-10-1985).

iv[4] ?Explanation I? omitted by Act No.63 of 1984,? (w.e.f. 2-10-1985).

v[5] Section 3 renumbered as sub-section (1) thereof by Act No. 63 of 1984, (w.e.f. 2-10-1985).

vi[6] Subs. for the words, ?with imprisonment which may extend to six months or with fine which may extend to five thousand rupees, or with both? by Act No. 63 of 1984, (w.e.f. 2-10-1985).

vii[7] Subs. for the words ?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? by Act No. 43 of 1986, (w.e.f. 19-11-1986).

viii[8] Subs. for the words ?six months? by Act No. 43 of 1986, (w.e.f. 19-11-1986).

ix[9] Ins. by Act No. 63 of 1984, (w.e.f. 2-10-1985).

x[10] Subs. for Section 4 by Act No. 63 of 1984, (w.e.f. 2-10-1985).

xi[11] Ins. by Act. No 43 of 1986, Sec. 4 (w.e.f. 19-11-1986).

xii[12] Subs. for the words ?one year? by Act. No. 63 of 1984, (w.e.f. 2-10-1985).

xiii[13] Subs. for the words ?one year? by Act. No. 63 of 1984, (w.e.f. 2-10-1985).

xiv[14] Subs. for the words ?one year? by Act. No. 63 of 1984, (w.e.f. 2-10-1985).

xv[15] Subs. for ?sub section (2) ?by Act no 63 of 1984, (w.e.f. 2-10-1985).

xvi[16] Ins. by Act. No. 43 of 1986,? ( w.e.f. 19-11-1986).

xvii[17] Subs for the words ?which may extend to ten thousand rupees? by Act No. 43 of 1986, (w.e.f. 19-11-1986).

xviii[18] Ins. by Act. No. 43 of 1986, ( w.e.f. 19-11-1985)

xix[19] Ins. by Act. No. 63 of 1984 (w.e.f. 2-10-1985).

xx[20] Ins. by Act No. 43 of 1986, (w.e.f. 19-11-1986).

xxi[21] Subs. for the words ?her heirs? by Act No. 43 of 1986, (w.e.f. 19-11-1986).

xxii[22] Subs. for the words "her heirs" by Act No. 43 of 1986, (w.e.f.19-11-1986).

xxiii[23] Subs. for the words "her heirs" by Act No. 43 of 1986, (w.e.f.19-11-1986).

xxiv[24] Subs. for ?Section 7? by Act No. 63 of 1984, (w.e.f. 2-10-1985).

xxv[25] *Ins by Act No. 43 of 1986, (w.e.f. 19-11-1986).*

xxvi[26] Subs. for ?Section 8? by Act. No. 63 of 1984, (w.e.f. 2-10-1985).

xxvii[27] Subs. for the word ?bailable? by Act No. 43 of 1986,? (w.e.f. 19-11-1986).

xxviii[28] Ins. by Act No. 43 of 1986 (w.e.f. 19-11-1986).

xxix[29] Ins. by Act. No. 63 of 1984, (w.e.f. 2-10-1985).

xxx[30] ?Sub-section (2)? renumbered as sub-section (3) by Act No. 63 of 1984, (w.e.f. 2-10-1985).

xxxii[31] Subs. for the words "in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following" by Act No. 20 of 1983. (w.e.f. 15-3-1984).

xxxii[32] Subs. for "Section 10" by Act No. 43 of 1986, (w.e.f. 19-11-1986).