

CONTENT ON "WOMEN AND LAW"

WOMEN AND THE CONSTITUTION

Constitution is the fundamental legal document in a democratic society. It lays down the principles for the governance of a country. The Indian Constitution, which came in force on 26th Jan. 1950, is no exception. It provides the framework for the governance of the country assigning roles to different institutions such as executive, legislature and judiciary. The social and economic aspects have been taken care of by the Preamble, which the State should endeavour to secure for its people. These ideals have been given concrete form by guaranteeing certain rights which the framers of the constitution considered fundamental.

Certain classes of persons, who, by themselves are not able to get the full benefit of the socio-economic change contemplated, have been given special protection.

While all provisions of the Constitution are applicable in equal measure to men and women, and can, therefore, be invoked by women for the assertion of their rights.

Part III and Part IV need special mention as they are the backbone on which protective legislation for women has been based. Part III of the Constitution recognises and confers fundamental rights to citizens. Of the various rights conferred in this part, there are two provisions which need to be mentioned as these are of special importance for women.

The first of these is the equality before law. Article 14 of the Constitution secures to every person equality before law and equal protection of law. Article 14 of the Constitution secure to every person equality before law and equal protection of law, this has been further elaborated that State shall not discriminate against any citizen on grounds of sex along with any other grounds.

However, the State has made special provisions for women under various laws like Factories Act, Mines Act, Plantation Labour Act, etc.

The other important provision, which is an extension of the principle of equality before law, is equality in the matter of employment or appointment under the State. Article 16(1) states that, "There shall be equality of opportunity for all citizens in matters of employment or appointment to any office under the State." Further, "No citizen shall, on grounds of religion, race, caste, sex, descent, place of birth, residence or any of

them be ineligible or discriminated against in respect of any employment or office under the State. [(Article 16 (2))].

The importance of these provisions is that a woman has the same rights in the matter of employment under the State as a man. The State can not practice any discrimination on this count.

Apart from the rights guaranteed in Part III of the Constitution which have a special bearing on women, Part IV of the Constitution has some special provisions for the welfare of the women and for the improvement in their social and economic status.

In Article 38 and 51 which contain the Directive Principles, the Social and economic goals have been set with a view to fulfill the basic needs of the common man. IN order to enable them to participate in the socio-economic development of the country, a climate has to be created for them to be equal partners in development with man, rather than being mere beneficiaries of developmental activities.

The Directive Principles which directly concern women are as follows :

- a) Article 39 (a) lays down that the citizens, men and women have the right to adequate means of livelihood.
- b) Equal pay for equal work for both men and women is a principle directly related with the status of women.

In order to realise the ideal enshrined in this principle, Equal Remuneration Act, 1976 was passed which secures equal wages for men and women for the same type of work.

- c) Article 39 (c) lays down that, "The health and strength of workers, men and women and the tender age of children are not abused".

A number of laws have been enacted to provide for the safety and welfare of female child workers. The employment of women and children in hazardous activity is completely banned.

- d) Article 42 provides that the, "State shall make provisions for securing just and humane conditions of work and maternity relief". Women employees in different types of employment have been secured maternity relief in the form of leave of absence with full wages after the passing of Maternity Benefit Act, 1961.

The sum and substance of the Constitutional provisions is that women stand on equal footing with men in all spheres of economic, social and political life of the country. Discrimination has been completely abolished on the ground of sex and women belonging to different religions and races have the same status in the eyes of law.

MARRIAGES

Marriage is a sacrament in Hinduism and other major religions, except Islam where it is a mere civil contract.

India has several religions and each of them has separate rules and traditions to govern family law, called the Personal Law of that community.

Hindus are governed by Hindu Marriage Act, 1955. A Hindu in this context includes Buddhists, Jains, Sikhs and their denominations.

Muslims, Christians, Parsis and Jews have separate laws of their own.

With more and more love marriages between intercaste and inter religion, those youths who do not want to be ruled by any of these religious traditions, can conduct a 'Civil' marriage under the Special Marriage Act, 1954.

Hindu Marriage

A great deal of importance was attached to marriage in ancient Hindu religion.

The Hindu law of marriage originated from ancient books traditions and Acts passed by Government in modern times.

The Act applies to all States except J & K (which has a separate law) and covers all Hindus.

A child whose only one parent is Hindu and the child is brought up as a Hindu, it will be a Hindu (which includes Buddhists, Jains and Sikhs).

Converts and reconverts are also Hindu.

The Act sets forth four essential conditions for a valid Hindu marriage. They are -

- (1) Monogamy
- (2) Sound mind
- (3) Marriageable age
- (4) Parties should not be too closely related.

A Hindu marriage may be solemnised in accordance with Shastric rites or the ceremonies of either party.

The law does not prescribe any specific rite because there are too many customs in this large country.

Saptapadi is the most common rite among the Hindus and this had been considered to be essential by ancient law givers. A marriage becomes complete when the couple take the seventh step.

Monogamy

Any man marrying again while his wife is living will be punished with fine and imprisonment upto seven years.

Sound Mind

An idiot, lunatic man can not marry as he can not give valid consent.

Marriageable Age

The Bridegroom must be 21 years old and the bride 18 years.

Parties should not be closely related

The law prohibits marriage between close relatives unless the customs of both parties permit it.

Civil Marriage

In contrast to the religious marriage, the civil marriage requires no rites or customary ceremonies.

It costs only a few rupees. Civil marriages are governed by Special Marriage Act, 1954.

This Act is very progressed and therefore it is getting more popular.

Any boy and girl can marry each other if they satisfy the following conditions.

1. The boy must be of 21 years and girl of 18 years.
2. Bigamy is prohibited.
3. Each party should give consent to the marriage.
4. The boy and girl should not be close relatives. However, if the boy or the girl belongs to a community where customs permit marriage between them, this bar will not apply and they can conduct a civil marriage.

Procedure

If the couple want to get married under Civil Marriage Act, they should give notice to the marriage officer.

The marriage officer enters it in the Marriage Notice Book.

He publicises the intended marriage by affixing the notice prominently in his office.

This is an announcement as well as invitation for objections to the marriage, if any.

Any person may object to the marriage within 30 days of the notice alleging that the four conditions of a valid marriage described earlier are not fulfilled.

If there is no objection within 30 days, the marriage may be solemnised. He can overrule the objection if it is found baseless.

For a civil marriage, three witnesses are necessary. The couple and the three witnesses should sign a declaration of marriage before the marriage officer.

The marriage may be solemnised in the marriage office or in the neighbourhood.

It is compulsory under law for each to tell the other : "I take thee (name) to be my lawful wife/husband". This must be done in the presence of the three witnesses and the officer.

After the marriage, it is entered in the marriage Certificate Book in which the couple and the three witnesses will sign. This is complete proof that the marriage has taken place.

DIVORCE

There are some ground for seeking judicial separation and divorce common to Hindu marriage and civil marriage.

1. Unsound Mind

Either spouse can move the court for dissolving the marriage if the other spouse has been incurable of unsound mind or has been suffering continuously from mental disorder and the petitioner can not reasonably be expected to live with the other.

2. Leprosy

Leprosy as it is contagious and therefore the healthy spouse has good reason to seek divorce. The Indian Divorce Act and Parsi law do not recognise leprosy as ground for a separation or divorce.

3. Veneral Disease

Diseases which spread through sexual intercourse, is called veneral diseases. These V.D. diseases can be deadly also where as some may just cause discomfort.

According to doctors, V.D. can be contracted only through sexual contract. It cannot spread through toilet seats, water, drinking taps, spoons, etc. though a victim may use these excuses.

4. Presumption of Death

Marriages under the Hindu Laws and Civil Marriages can be dissolved if one party is missing for more than seven years.

If the spouse "has not been heard of as being alive for a period of 7 years who would naturally have heard of it, had the party been alive, it is presumed that the spouse is dead".

The law does not explain the situation when the missing person returns and finds the other spouse married again.

5. Separation for more than a year

If there was a decree for judicial separation, and neither party has resumed living together for one year or more, the marriage can be dissolved by either party.

This ground for divorce accepts the break-down of marriage as a good reason to dissolve it, though one spouse may like to prolong it.

Sometimes, such divorce can be "engineered" by one party. Suppose the husband commits a matrimonial offence like adultery, on that ground the wife gets judicial separation. After one year, the husband seeks divorce because there was no cohabitation.

The principle is that no Court can mend a hopelessly broken marriage.

WOMEN AND THE LAW OF INHERITANCE THE HINDU LAW OF SUCCESSION

Meaning of terms :

Before we go further it is perhaps wise to clarify a few terms :

1. A Will constitutes written directions given by a person of what is to be done to or with his property after his death; also called "Testament."
2. Testamentary - according to one's will.
3. Intestate - without leaving a will.

A. INHERITANCE BY WOMEN

Old Hindu Law

Before 1956, women's rights of inheritance were determined by the old traditional Hindu Law. Women were subjected to many disabilities under this law. Thus, a woman could have no rights in joint family property. Even property inherited from her

husband was not totally within her disposal. The only property that was fully hers was what was known as "Stridhan".

Hindu Succession Act, 1956

This Act was a boldly reformative piece of legislation which has placed women on a par with men where inheritance is concerned. Broadly, any person may make a will directing to whom his property is to go after his death, and may, if he so chooses, leave his property to a woman. It is when no will exists and when a person dies intestate that the law must lay down who are the people entitled to inherit. It is here that the Hindu Succession Act broke new ground.

Absolute Owners

A Hindu woman can now inherit property in the capacity of a widow, daughter, mother, etc. as full and sole owner without any limitations on her power to do as she pleases with her property.

Where a person dies without making a will his property devolves on his/her relatives "of the first degree", and failing them, on other relatives. Out of the twelve relations of the first degree, eight are women, viz. widow, daughter, mother, widowed daughter-in-law and widowed grand-daughter-in-law, grand-daughter by a son who has died, and great-grand-daughter by a grandson who has died. If a son or daughter has died before the intestate, then the share of such son or daughter will devolve on their respective spouses and children.

RIGHTS OF FEMALE HEIRS

Widow

1. Under the Act, a widow inherits a share in her husband's property equally to that of a son.
2. A widow can even inherit her deceased husband's share in joint Hindu family property even though she is not considered a coparcener.
3. She inherits the property absolutely, i.e. there are no limitations on her powers over it and she can pass it on to her own heirs.
4. A woman staying away from her husband, either because of judicial separation or because he has forsaken her, is a legal heir and entitled to inherit as a widow.
5. Unlike under the old Hindu law, 'immorality' in a widow cannot operate so as to defeat her right to inherit.
6. Re-marriage by the widow, after inheriting does not divest her of the property inherited. In other words, she is not bound to return it.

Daughter

A daughter also inherits a share in her father's property equal to that of a son.

Mother

A man's mother is also in heir of the first degree and inherits a share equal to that of widow and/or children.

Right to demand partition

All female heirs of the first degree have a right to demand partition of the estate of the deceased.

B. SUCCESSION TO A WOMAN'S PROPERTY

Will

Every woman has the right to dispose of her property by will to whomsoever she pleases, without any restriction.

Intestate Succession

1. If a woman dies without making a will, her property will be inherited by her husband and children in equal shares.
2. If any child or children have pre-deceased her then the children of such child or children will inherit the share their parent would have got if he or she had survived the mother.
3. If a woman dies a widow and childless, the succession to her property is determined by the manner in which she acquired it :
 - (a) If the property, (or part of it), was inherited from her parents, it is inherited by her own relations, i.e. mother, father, brother, sister, and their children.
 - (b) If the property (or part of it) was inherited by her from her husband or his relatives (in-laws), her husband's relatives i.e. parents in law, brothers and sisters-in-law, are considered to be legal heirs.
 - (c) If the property is self-acquired, it will be inherited by the heirs as follows.

First, the heirs of her husband, if they fail then her parents, if they fail then her father's heirs, if they too fail, then her mother's heirs.

Your Rights in Criminal Law

Criminal law in our country is very elaborate and protects citizens in almost all circumstances. The Indian Penal Code lists crimes and specifies punishment for each of them.

F.I.R.

A criminal case starts with a citizen making a complaint to the Police. You can go to the Police and lodge First Information Report (F.I.R.). It need not be in writing. It is not necessary that you yourself should go to the Police, any one can lodge a complaint on behalf of another. When the complaint is made, the Police officer in charge will record it, read it over to you and give a free copy of it after you sign the statement.

If the officer in charge refuses to record your complaint, you may write your complaint and send it to the Superintendent of Police.

Cognisable Offence

When the arrest can be made without warrant for an offence it is known as cognisable offence.

Non-Cognisable Offence

When the offence is one in which arrest can be made only by warrant of a magistrate. The officer will record the complaint and refer it to the local magistrate. The Police starts investigation only if the magistrate orders.

Procedure of Investigation

After the complaint the Police officer visits the spot for investigation and if necessary arrests the offender. After the investigation a report will be made to the magistrate who will decide whether to proceed with the case or dismiss the complaint. The witness is bound to answer all questions. The witness need not sign the statement they make.

The Police officer can not threat or make promise to obtain "confession".

The Cr.P.C. grants special protection to women, some of which are as follows :

Section 51(2) and 100 say that - If a woman is to be searched in connection with a crime, "the search shall be made by another woman with strict regard to decency".

Section 160 protects women from unnecessary harassment at the hands of policemen who make enquiries in criminal cases.

A woman should not go to the Police station to give evidence. The concerned policemen must meet her in her house.

Only a lady doctor or some one under her supervision can examine a woman involved in crime.

Harassment Through Courts

Sometimes cases are filed just to harass some one, some petitions with spicy details are given to the press. The victim has to take leave from work and attend the Court and pay lawyers' fees. This type of harassment is called 'Vexatious litigation'. It takes several forms.

Some one files a defamation case against you for saying something about him in an interview or a case of indecency is filed for a role you played on the stage or screen. The charges are often petty and false.

Moreover, the same case can be filed in several Courts in distance places to harass you. In such cases, you can point out the circumstances to a magistrate and ask him to stop the harassment. You can also move the High Court through a writ petition to prevent the abuse of the process of the courts.

Some States have laws to prevent vexatious litigation.

Misdeeds by Police

If the police harasses you unnecessarily, you can complain against them also. Searching, your house or person without apparent reason, taking away your property, taking bribes, etc. you may complain to the local magistrate against the erring policemen and get them punished with imprisonment.

Apart from complaining you can move to the High Court through a writ. You can also complain to the Police Commissioner or make it a public issue through the press.

Rights of an Accused

The law has given the citizens safeguards against harassment. Those who do not know these are likely to suffer at crucial times. It must be remembered that the law presumes that a person is innocent until he or she is proved guilty. The important rights of an accused are given below :

1. When a person has reason to believe that he may be arrested, he can ask for anticipatory bail. Under Section 438 of Cr.P.C. the court may grant such bail directing that in the event of arrest he/she may be released.
2. A person arrested must be immediately told the reason for the arrest.
3. Every accused has a right to consult a lawyer of his or her choice at all stages. (Section 303 Cr.P.C.).
4. Any person arrested or detained shall be produced before a magistrate within 24 hours (Article 22 of the Constitution). This is to get his sanction to hold the accused for further time.

5. The accused has a right to get medically examined by a doctor to see whether he or she was injured or tortured by any one including the Police.
6. An accused cannot be cross-examined, the judge can ask for his explanation. An accused cannot be asked questions which incriminate him.
7. An accused has a right to fair and speedy trial and if he cannot afford a lawyer, the government must provide him a lawyer.
8. Hand cuffs can not be used unless the accused is a dangerous character. If hand cuffs are used, the Police must explain the reasons to magistrate.

Substantive Law

Every society has certain norms of behaviour and any deviation from the accepted norms attracts censure from those who are authorised to enforce these norms. When the behaviour is intentional and harms another person or property, it becomes an act punishable by law.

For our purpose we would confine ourselves to a discussion of only those offences, which are directed against woman or in which she is a victim. In the process, we would also touch upon various problems which a woman faces in her day to day existence - in home and outside and the relief that is available to her, in case she desires to initiate action.

Eve Teasing

Eve teasing by itself is not an offence under any law at present. But a close reading of Section 294 and 354 of the Indian Penal Code would indicate that the substance of the act of eve teasing would be covered by them.

Section 294 states that "Whoever to the annoyance of others

- (a) does any obscene act in any public place,
- (b) sings, recites or utters any obscene song or words in or near any public place"

is liable to be punished with imprisonment or with fine.

A girl or woman who feels annoyed by any obscene song or words can take recourse to the provisions of this Section and put up a complaint before a police station. The offence is cognizable i.e. a police officer can arrest the offender without a warrant - but bailable.

A graver form of eve teasing is accompanied by the use of gesture indicating threat of use of force. Section 352 of the Indian Penal Code which provides the punishment in such a case.

Thus, it would be abundantly clear that simple eve teasing as well as eve teasing accompanied with gesture to use force are punishable under the existing provisions of the Indian Penal Code.

Wife Beating

Wife beating is not new but it is receiving more and more attention in recent years. It has, however, assumed new dimensions particularly because of the attention it has been receiving from the press and public.

Wife beating has not been included as an offence per se either in the Indian Penal Code or any other law. One, therefore, has to look for remedies under the general Criminal Law.

Beating in any form would be covered by the definition of "hurt" as given under Section 319 of IPC.

"Hurt" - Causing bodily pain, disease or infirmity to any person.

Person who intentionally hurts the other person can be punished with imprisonment for a period of one year or fine which may extend to Rs.1,000 or both under Section 323 of the IPC.

The offence is non-cognizable and bailable. It means that though the information about such an offence can be received by an officer-in-charge but he can not take any action unless he obtains an order of the Magistrate.

Beating may be simple i.e. slapping or it may cause severe hurt in the form of permanent impairment of limbs or leading to hospitalization. Under Section 320 of IPC the following kind of hurts have been described as grievous.

1. Emasculation.
2. Permanent deprivation of the sight of either eye, ear.
3. Destruction, permanent disfiguration of the head, face, bone.
4. Any hurt which endangers life or which causes the sufferer to remain for twenty days in severe bodily pain or unable to follow his ordinary pursuit.

The punishment extends from seven years to ten years with fine depending upon the nature of instrument used for commission of offence.

The offence is cognisable but bailable.

Cruelty on Married Woman

Cruelty on married woman has been made a substantive offence by a newer Section 498-A in IPC by Criminal Law (Second Amendment) Act, 1983.

Cruelty means -

- (a) any willful conduct which would drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.
- (b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any lawful demand for any property or valuable security or any person related to her to meet such demand.

The husband of the woman and his relatives can be punished.

A sentence of imprisonment upto three years can be awarded for the commission of this offence.

An important change in the rules of evidence has been introduced by the insertion of a new Section 113 A in the Indian Evidence Act by the Criminal Law Act, 1989.

According to ordinary rules of evidence, a fact has to be proved by the person who alleges. But there is a presumption about the existence of certain facts as an exception.

Section 113 A lays down an important rule in this matter. It says that -

- (a) If a woman commits suicide within seven years of her marriage,
- (b) her husband and relatives have subjected her to cruelty.

The presumption would be that such husband or the relative has abetted the suicide. The insertion of this section would help many married women plight as direct evidence in such a case is generally lacking.

OFFENCES RELATING TO MARRIAGE

More than 120 years ago, the British law makers had listed offences relating to marriage in the Indian Penal Code, the two most important ones being BIGAMY and ADULTERY. Though society has changed a lot, these provisions in Chapter XX of the Indian Penal Code (IPC) have not been updated. The result is that these provisions assume that wives are the property of their respective husbands and they have no personality of their own.

Bigamy

If a person conducts a second marriage, while the first marriage is still subsisting he or she would be guilty of bigamy under Section 494. The second marriage must also be conducted with ceremonies required by law or customs to make it bigamy. Just asserting that they were married would not be enough; both the first and second marriage should go through the essential ceremonies. The second marriage would be void, apart from being bigamy. The law of bigamy applies equally men and women.

A man who commits bigamy, very often pleads that the first marriage was not valid, so that he can get rid of his first wife. In civil marriages, it is difficult for him to prove that the first marriage was invalid because it is registered. But religious marriages which are not always registered create problems of proof of the first marriage.

In many cases the first marriage cannot be proved legal and therefore, the first wife is thrown on the street. Scared of such plight, many women do not go to the Court at all and live miserably with their bigamous husbands. Compulsory registration of all marriages will solve this problem.

The punishment for bigamy is fine and jail upto seven years. If the person conceals the first marriage and induces another to marry him or her it will be more severe form of bigamy. The concealment aggravates the crime. So the punishment will be jail upto ten years and fine.

Adultery

In law, adultery is sexual intercourse with a married woman without her husband's consent or connivance. Therefore, sex with an unmarried woman, widow or even a married woman with her husband's consent is not adultery.

Section 497 says : "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man without the consent or connivance of that man, such sexual intercourse (not amounting to the offence of rape) is guilty of adultery".

The husband's consent must be clear, though not necessarily in writing.

the husband's consent or connivance must be clear, though not necessarily in writing. It is difficult to get direct evidence of adultery. Adultery is an offence against the husband of the woman, and not against woman herself. For instance, Mr. Singh has sex with Mrs. Agarmal without Mr. Agarmal's consent. In this case Mr. Agarmal can complain against Mr. Singh. That only a husband can prosecute his wife's lover.

Though Mrs. Singh can not prosecute anyone, she can seek divorce from her husband on the ground of adultery.

Punishment

The punishment for the crime is fine and jail upto five years. The man is not ordinarily arrested by the police.

The Criminal Procedure Code names those who can complain of offences relating to marriage. The general rule is that the Court will not take notice of an offence unless the complaint is made by some person aggrieved by the offence. But it is not always necessary that the offended woman herself should lodge the complaint.

If the husband commits bigamy, the following persons can lodge a complaint : the wife, her father, mother, brother, sister or with the permission of the Court any other person related to her by blood, marriage or adoption, son or daughter or by her uncle or aunt.

Rape

Most women are not aware of the laws relating to rape and other sexual offences and the legal means available to them to punish the guilty.

Their ignorance is also exploited by police, lawyers and their opponents.

What constitutes the crime of rape?

Section 375 of the Indian Penal Code defines rape. According to this definition 'rape is committed when a man has sexual intercourse with a woman :

1. against her will,
2. without her consent, or,
- 3 with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death, or of hurt; or,
4. with her consent, when he by deception, make her believe that he is her unsoundness of mind or intoxication, when she is incapable of understanding the consequences of her consent,
5. with or without her consent when she is under 16 years of age.

What constitutes sexual intercourse?

Some penetration, however slight, sufficient to constitute the sexual intercourse. The degree of penetration is immaterial.

Note: Consent should be taken before the intercourse and not after.

Sleeping woman, woman with unsound mind, intoxicated woman and girl below 16 is not considered to give valid consent.

When does sexual intercourse by a man with his own wife considered rape?

According to Section 375 of IPC sexual intercourse by a man with his wife below 15 years of age is considered rape. This will protect the children of immature age against sexual intercourse.

What must be proved by the prosecution in a case of rape?

The prosecution must prove that -

1. The accused had sexual intercourse with the woman.
2. The act of sexual intercourse was done without her consent or the consent obtained by threat, fraud, deception, intoxication, etc.
3. The accused was below the age of 16 years.
4. There was penetration.

What must you do, if you are victim of rape?

1. Immediately rush to the nearest doctor and get yourself examined.
2. File an F.I.R. in the nearest Police Station as early as possible. Ask for a copy of the statement recorded. (You have a legal right to get a copy of the F.I.R. recorded free of cost).
3. You can have a lawyer of your choice to consult your case.
4. Demand that the person who has raped be medically examined.
5. Do not change clothes or take a bath till the completion of the medical examination.
6. Keep the articles (clothes, slippers, spectacles, etc.) obtained from the accused in the custody of the police.

7. Go to the Police station accompanied by a male relative or friend.

NOTE:

1. Delay in reporting the offence to the Police officer would cast doubt on the story of the victim.
2. Delay may lead to disappearance of medical evidence.
3. The F.I.R. can be lodged by anyone who has the knowledge of the offence.

Punishment for Rape

Normal punishment for rape is minimum 7 to 10 years imprisonment and maximum life imprisonment and fine.

Can the woman kill the rapist?

Section 100 (iii) of the IPC gives authority to a woman to kill her assailant, if he assaults her with the intention of committing rape.

Dowry

Dowry is a common phenomenon all over India. It may be given in cash or in kind or both. To curb this menace, the Dowry Prohibition Act was passed in 1961. In the three decades of its existence there have been few convictions under the Act.

The Act has come up for widespread criticism in recent years.

What is Dowry under the Act ?

According to Section 2 of the Dowry Prohibition Act, 1961, '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.
- (b) by the parents of either party to a marriage or by any other person to other party to the marriage or to any other person.

It may be given before marriage or at the time of marriage or after marriage by the parties "as consideration for the marriage". The Act has been amended in 1984 and the word "consideration" has been replaced with "in connection with marriage".

Dower or mehr as applicable to the Muslims under their Personal Law has been excluded from the definition of dowry.

However, according to Section 3(2) which has been added by the amending Act, following cases are excluded from the purview of dowry -

- (1) Presents which are given at the time of a marriage to the bride or bridegroom (without any demand having been made in that behalf). These presents should be entered in a list maintained in accordance with the rules made under the Act.
- (2) Presents made by on behalf of the bride or any person related to the bride should be of customary nature. The value of such presents should not be excessive having regard to the financial status of the person by whom such presents are given.

Section 4 of the Act provides that the taking, giving or demanding of dowry have been made substantive offence under the Act, and have been made punishable with imprisonment and fine. Minimum imprisonment of 2 years and fine of Rs.10,000/-.

Return of Dowry to Woman

Section 6 of the Act further provides that if the dowry is taken by any person other than the woman in connection with whose marriage it is given,. In case it was given at the time of marriage or afterwards it has to be returned to the woman within three months of the date of its receipt.

A new Section 3A has been inserted in the Act by an amendment made in 1984. The Court can order the recovery of an amount equal to the value of the property. The amount can be paid to the woman or her heirs. These provisions can help in the speedy recovery of the property due to a woman.

Cognizance of Dowry Offence by Police

The Dowry Act now provides that the Code of Criminal Procedure, 1973 would apply as if the offences were cognizable:

The investigation consists of the following steps -

1. Proceeding to the spot.
2. Ascertainment of the facts.
3. Collection of evidence relating to the offence.
4. Discovery and arrest of the offender, with the order of the Magistrate.

The offence committed under the Act are to be treated as non-compoundable and bailable.

Cognizance of Dowry Offence by Court

The cognizance of the offence by the Court, according to Section 7 of the Act, can only be taken -

- (a) on the basis of its own knowledge or a police report of the facts which constitute the offence.
- (b) Upon a complaint by the person aggrieved by the offence or a parent or other relative of such person or by a recognised welfare institution.

One welcome change is that any recognised welfare institution can complain on behalf of the victim. Earlier only a victim could complain.

When some States found that the law was being violated in hundreds of ways, they introduced amendments to make it more stringent in their respective areas. For instance, the States of Haryana, Punjab and Himachal Pradesh prohibit "display of gifts made at or before the marriage in form of cash, ornaments or articles". The Punjab law is more stringent : any person who serves to the marriage party more than two principal meals (lunch or dinner) shall be punished with six months in jail and/or fine upto Rs.5,000/-.

To what extent these amendments will be able to give relief to dowry victims and to eradicate the evil only time will be able to tell.