NOTES AND COMMENTS

THE DOWRY PROHIBITION LAW

1 Introduction

AN APPROVED marriage among Hindus has always been considered a *kanyadan*, be it a *Brahma*, *Daiva*, *Arsha* or *Prajapatya* marrige. The *Dharmashastra* also laid down that the meritorious act of *kanyadan* is not complete till the bridegroom was given a *dakshina*. The twin aspects of this great meritorious act of *kanyadan* were that the father after decking his daughter with costly garments and honouring her by presents of jewels[1] gifted her to a bridegroom (who should be a suitable person, and the *Dharmashastra* went into details as to the qualifications and quality of the bridegroom) whom he also gave a present in cash or kind known as *vardakshina*. There can be no two opinions as to the fact that whatever presents or gifts were given to the daughter constituted her *stridhan* or separate property. Since *vardakshina* included ornaments, and clothes and cash, one opinion was that these also constituted the property of the bride. But this is an unnecessary twist—*vardakshina* was a present made to the bridegroom and obviously it constituted his property. We need not doubt that then the *vardakshina* was given out of love and affection and its quantum varied in accordance with the financial position of the bride. It was given voluntarily. It also appears to be clear that ornaments, clothes, cash and other properties given to the bride were also given voluntarily and constituted her separate property. They were given to her as a sort of security and provided her financial protection in adverse circumstances. These two aspects of the Hindu marriage, gifts to the bride as also to the bridegroom, got entangled and later on assumed the frightening name of dowry, for obtaining of which coercion and, occasionally, force began to be used, and ultimately most Hindu marriages became a bargain.

In the course of time dowry became a widespread social evil, and has now assumed menacing proportions. Surprisingly, it has spread to other communities which traditionally were not taking dowry. Cases have come to public notice where brides, on account of their failure to bring the promised or expected dowry, have been beaten up, starved for days together, locked up in dingy rooms, tortured physically and mentally, strangulated or burnt alive or led to commit suicide. What is most surprising is that the spread of education has not helped in curbing the social evil of dowry, rather the educated youth has become more demanding as he, along with his parents wants to recover every *paisa* spent on his edu-

1. *Manusmriti* III, 27.

cation—some even demand expenditure for sending him abroad for higher education. With a view to eradicating the rampant social evil of dowry from the Indian society, Parliament, in 1961, passed the Dowry Prohibition Act which applies not only to Hindus but also to all other communities.

The Act however did not prove effective and the evil of dowry continued to reign supreme. Several Indian states amended the Act of 1961 with a view to giving it teeth,[2] though this also did not succeed to curb, much less eradicate, the dowry menace.

The Joint Parliamentary Committee[3] opined that the failure of the dowry prohibition law was due to two reasons, *viz.*, *first*, the Act[4] excluded all presents (whether given in cash or kind) from the definition of dowry, unless given *in consideration* of marriage. It is almost impossible to prove that gifts or presents given at, before or after the marriage were in consideration of marriage. This is so because no giver of the present will ever come forward to say that it was in consideration of marriage, as giving of dowry is as much an offence as taking it; and *second*, the Act had no effective enforcement instrumentality. No court can take cognisance of a dowry offence except on a complaint made by a person within one year of the date of its commission. It was unrealistic to expect the bride, her parents or other relations to lodge a complaint. The parents are usually the victims of dowry. They are unwilling (and certainly reluctant) to come forward because of their apprehension that it may lead to victimisation of their daughter.

The Joint Committee made some recommendations with a view to giving teeth to the law. Parliament accepted some of the recommendations which were incorporated in the Dowry Prohibition (Amendment) Act 1984. This paper attempts to examine the provisions of the Act including the amendment to find out its effectiveness.

II Definition of dowry

Section 2 of the Act now defines "Dowry" as :

> [A]ny 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

2. For instance see, Dowry Prohibition (Bihar Amendment) Act 1975; Dowry Prohibition (West Bengal Amendment) Act 1975; Dowry Prohibition (Orissa Amendment) Act 1976; Dowry Prohibition (Haryana Amendment) Act 1976; Dowry Prohibition (Himachal Pradesh Amendment) Act 1976; Dowry Prohibition (Punjab Amendment) Act 1976. Most of these statutes provide for enhanced punishment for dowry offences, *viz.*, one or two years imprisonment or fine of Rs. 5,000.

3. See Report of the Joint Committee of the Houses to Examine the Question of the Working of the Dowry Prohibition Act, 1961, *Gazette of India*, Extraordinary, pt. II, s. 2, no. 42, p. 1, dt. 11 Aug. 1982 (hereafter referred to as *Report*).

4. Section 2, Explanation.

(*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 in connection with the marriage of the said parties.

The Act we may note, uses the word "dowry" not merely in the sense of what the bride's parents give to the bridegroom or their daughter's in-laws but also the other way around. The words "as consideration for marriage", have been substituted by the words "in connection with the marriage". The new definition certainly meets the objection of the Joint Committee and also widens the definition, but then it is hardly a definition. This comes into clear relief when one notes that wedding presents, whatever be their value, are excluded from the purview of dowry. It would have been better to say, "whatever does not constitute wedding presents constitutes dowry." We have wasted too many words without being able to convey much. It is true, seemingly, that two safeguards against the abuse of "presents" are laid down, *viz.*:

(*a*) all psesents made to the bride or bridegroom at the time of marriage (but not those given before or after marriage) are to be entered in a list; and

(*b*) such presents should be commensurate with the financial status of the giver.[5]

One can be reasonably sceptical about the efficacy of the rigmarole language of this provision which claims to define dowry

Mahr or dower which a Muslim husband is required to settle on his wife as an integral part of marriage continues to be excluded from the definition of dowry.

III Dowry offenders

Taking or giving of dowry or its abetment remain offences even after the amendment (section 3). Similarly, demanding of dowry by any person, directly or indirectly, from parents or guardian of the bride or bridegroom, is still an offence (section 4). Under the original Act the punishment for these offences was mild, the maximum being six months imprisonment or a fine which could not be beyond a sum of Rs. 5,000 or both. But it has now been enhanced and a minimum and maximum limit laid down. The minimum punishment for all these offences is six months and the maximum is two years imprisonment along with a fine extending to Rs .10,000 or to an amount equivalent to the dowry given, taken or demanded,[6] whichever is more, is to be awarded.[7]

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5. S. 3 (2).
6. Ss. 3 (1) (*a*) and 4.
7. S. 3 (1) (*a*).

If these provisions are considered to have teeth, then they are blunted by another one which confers a discretion on the court to reduce the minimum punishment of six months,[8] though in doing so the court is required to record in writing adequate and special reasons.[9]

The Joint Committee opined that the giver of the dowry should not be treated as an offender as he is more a victim than an offender, and, further, when the giver is considered to be as much an offender as the taker, the prosecution of both taker or demander of dowry becomes difficult. In the words of the committee:

> The parents do not give dowry out of their free will but are compelled to do so. Further, when both the giver and taker are punishable, no giver can be expected to come forward to make a complaint.[10]

There is much substance in the observation. It is a unique law which considers the committer of the act as well as the person against whom the act is committed as offenders; how can the punishment of the offender succeed if along with him the victim is also to be punished?

IV Transfer of dowry to the bride

It may be that dowry has actually been received but its receiver is not the bride, but someone else. In such a case section 6 lays down that the dowry has to be transferred to the bride. When any person has received dowry at, before or after the marriage, he must transfer the same to the bride within three months of its receipt.[11] If dowry was received when the bride was a minor then it must be transferred to her within three months of her attaining majority.[12] Pending such transfer, he would hold the dowry as a trustee for the benefit of the bride.[13] The failure to transfer the dowry to the bride within the stipulated period constitutes a dowry offence, for which the offender is liable to be awarded the same punishment as the taker of dowry, and in his case the court has no discretion to reduce it below the minimum prescribed punishment under any circumstances whatever.[14] This punishment is in addition to the one which may be awarded to him as taker of dowry, since both are separate offences. If the bride dies before the transfer of dowry is effected, her heirs will be entitled to it.[15] Probably the awarding of punishment to the offender

8. Provise to s.3 (1) and s.4.
9. *Ibid.*
10. *Report* at 25, para 3. 11.
11. S.6 (1).
12. S. 6 (1) (*c*).
13. *Ibid.*
14. S. 6 (2).
15. S. 6 (3).

may meet the ends of justice so far as the individual offender is concerned but it may not provide any remedy to the bride. Further, the offender should not be entitled to keep the fruit of his offence. To meet this situation, the Act provides that the court will make an order directing the offender to transfer the dowry to the bride or her heirs, as the case may be, within the time specified in the order.[16] If the offender still fails to comply with the order, the court is required to pass an order directing that an amount equal to the value of dowry should be recovered from the offender as if it were a fine imposed by the court and should be paid to the bride or her heirs, as the case may be.[17]

V Cognizibility of dowry offences

There has been a strong public opinion in favour of making dowry offences cognizible. The Joint Parliamentary Committee observed :

> The Committee feel that although they are in favour of the offences under the Act being made cognizible, there is an apprehension that it may lead to some harassment, particularly at the time of solemnization of marriage as the police have powers to make arrests without warrant in such cases. The Committee are, therefore, of the opinion that in order to ensure that no harassment is caused to the parties involved, the offences under the Act should be made cognizible subject to the condition that no arrest shall be made by the police officers without a warrant or an order of the Magistrate.[18]

The committee was in favour of making the offence compoundable. Neither the original Act nor the amendment made the dowry offences cognizible, but nonetheless, the amendment makes them so for the purpose of investigation.[19] This is a welcome provision, since in the case of non-cognizible offences the police makes an investigation only when a complaint is lodged. Now the police has the freedom to initiate an investigation, and if it comes to the conclusion that an offence has been committed it can approach the court. The Act lays down that no person accused of a dowry offence can be arrested without a warrant or an order of the first class magistrate.[20]

The dowry offences are non-compoundable. This means once a case goes to the court, the parties are not free to compromise.[21] The offences

16. S. 6 (3A)
17. *Ibid.*
18. *Report* at 29, para 3. 30.
19. S.8 (1).
20. S.8 (1) (*ii*).
21. S.8 (2).

relating to dowry are bailable.[22] An agreement for giving or taking dowry is declared void under section 5; it cannot be enforced in a court of law.

VI Trial of dowry offences

The Joint Committee was of the view that dowry offences being of a delicate nature should be tried by the family court. This recommendation, too, has not been accepted, and neither the amending Act nor the Family Court Act 1984 confer jurisdiction of any matter relating to dowry on the family court.

The Act confers jurisdiction to try dowry offences only on a metropolitan magistrate or a magistrate of the first class.[23] No other court is competent to try these offences. Cognizance of dowry offences can be taken by the magistrate himself, or on the basis of a police report of the facts which constitute such an offence, or on a complaint lodged by a parent, or other relation of such persons, and a recognised welfare institution or organisation.[24] The provision that the court can now be moved on the complaint of a social organisation or institution is a welcome one. The fact of the matter is that practically no prosecution of any offender could take place under the original Act as neither the aggrieved party nor his parents or relations would come forward to lodge a complaint to the magistrate or to the police, so as to avoid any complications, particularly as the welfare of the bride was involved. They apprehended that regardless of whether the offender was brought to book or not, the victimisation of the bride would begin. This is the relevancy of conferring a power of lodging complaint on welfare organisations. However, with a view to preventing abuse of the provision—may be any Tom, Dick or Harry might rush to lodge a complaint on the slightest suspicion or prejudice that a dowry offence has been committed—the power to lodge the complaint has been conferred only on recognised welfare organisations or institutions.

Under the original Act, no cognizance of the offence could be taken by a magistrate in the event of the complaint being made one year after commission of the offence. Probably, the framers of the Act did not realise that offences relating to dowry are of a totally different nature; they are not like ordinary offences of theft, extortion or dacoity. The fact of the matter is that no one is likely to come forward to lodge a complaint immediately after the commission of the offence. Such offences are brought to light after a long period of marriage, when continual harassment and torture of the bride compel her to take into confidence her parents, relatives or a friend and expose her husband and in-laws. The amending Act has removed this limitation. Now a complaint can be made at any time after commission of the offence. But, of course, if it is lodged after consi-

22. *Ibid.*
23. S.7 (1) (*a*).
24 S.7 (1) (*b*)

derable delay amounting to laches, the court may not entertain the complaint unless reasonable explanation is forthcoming explaining the delay.

VII Punishment of husband for cessation of cohabitation

It happens more often than not that a husband, who feels that his wife has not brought the promised or expected dowry, with a view to exerting pressure on her or his in-laws or to punishing her, ceases to have cohabitation with her and ultimately snaps all relations with her. It is now a notorious fact that a bride who fails to bring the desired dowry is subjected to physical and mental torture or suspension of marital rights, ultimately leading to bride-burning or bride-suicide. In such a case, the Joint Committee suggested that a husband who suspends or ceases to have marital relations with his wife should be punished with imprisonment which may extend upto one year along with a fine which may extend upto Rs.10,000. Parliament has, in our submission, rightly rejected this suggestion. It would virtually amount to trying to have restitution of conjugal rights by the arrest of the husband—obviously a very crude and brutal method. No country in the world which recognises the matrimonial remedy of restitution of conjugal rights provides for the execution of the decree by arrest of the defaulting spouse. The fact of the matter is that most countries have abrogated the remedy of restitution of conjugal rights, as it is now fully realised that it is hardly a method of bringing together erring spouses. This anachronistic remedy has been rightly called the worst tyranny and worst form of slavery. It is inhuman and barbaric to compel a human being to cohabit with another against his will. The Andhra Pradesh High Court has held it to be violative of the fundamental right to personal liberty.[25] It is a different matter that the Supreme Court has rejected this view.[26]

VIII Dowry prohibition officers

It is now accepted that one of the reasons for the failure of the Dowry Prohibition Act has been the absence of any proper and effective enforcement agency. The committee also noted this fact and suggested that there should be some machinery which can intervene whenever necessary and help in averting dowry tragedies by helping the dowry victims, as well as to help otherwise in enforcement of the provisions of the Act. It suggested the appointment of dowry prohibition officers in different areas of each state whose responsibility would be to take appropriate steps for enforcing the provisions of the Act, including prevention of contravention of the

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25. *T. Sareetha* v. *T Venkata Subbaiah*, A. I. R. 1983 A.P. 356.

26. *Saroj Rani* v. *Sudarshan Kumar*, A. I. R. 1984 S. C. 1562. See also *Harvinder Kaur* v. *Harmander Singh*, A.I.R. 1984 Delhi 66.

provisions of the Act. In cases where contravention of the Act has taken place they should collect evidence for the effective prosecution of the offenders. These officers would also render all possible aid and advice to persons subjected to the demand of dowry or to those who are tortured or otherwise harassed for not bringing proper dowry. The committee suggested, that with such officers, there should be associated a non-official advisory body of five social workers of the area. This suggestion was also rejected by the Government of India as it felt that it thus would entail considerable expenditure. In our submission, the dowry matters should be entrusted to the proposed family court, the auxiliary service of which will look after all these matters connected with dowry.

IX Conclusion

In developing countries it is a unique paradox that social progress lags behind the law. Dowry is a deep-rooted evil and legislation alone cannot eradicate it. Legislation can only help the social movement for the eradication of dowry.

We may here recall the words of Jawahar Lal Nehru:

> Legislation cannot by itself normally solve 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 factor as well as the legal sanctions behind it which help public opinion which is being formed to be give a certain shape.[27]

It is unfortunate that most of our social legislations are no more than half-hearted efforts. Such legislation should not merely bark, but should be able to bite. It does not appear that the dowry prohibition law is a biting law.

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27 Speaking from the floor of Parliament in the joint sitting of both Houses on Dowry Prohibition Bill 1961; see *Joint Sitting of Houses of Parliamentary Debates*, vol. 1, p. 48, 6 May 1961.

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