

The Dowry Prohibition Act, 1961
(Act No. 28 of 1961)
with
(Maintenance of Lists of Presents to the Bride
and Bridegroom) Rules, 1985

1990

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 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 persons 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 any time after the marriages] [in connection with the marriage of said parties but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

[5***]

Explanation II.-The expression "valuable security" has the same meaning as in Sec. 30 of the Indian Penal Code (45 of 1860).

State Amendment

Haryana.-Substitution of Sec. 2 of Parliament Act 28 of 1961.-For Sec. 2 of the Dowry Prohibition Act, 1961, the following section 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 case of person to whom the Muslim Personal Law (Shariat) applies.

Explanation I.-For the removal of doubts it is hereby declared that any presents 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 the section, unless they are made as consideration for the marriage of the said parties.

Explanation II.-The expression "valuable securities" has the same meaning as in Sec. 30 of the Indian Penal Code (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, grand-parents and brothers of either party to a marriage, to either party to the marriage or the blood relations thereof.

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

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

Comments

Dowry-What amounts to.-It was contended, in the instant case, that the definition of the term "dowry" as given in Sec. 2 should include even a demand made by one party though the other party would not agree to pay that amount. It is impossible to think that such construction is possible. Section 2 has specifically defined the term "dowry" and that definition has to be borne in mind whenever the rest of the provisions of the Act are to be interpreted, particularly where those provisions contain the word "dowry". It is for this purpose that the Legislature has taken care to define the term "dowry". Thus it would not be ordinarily open to anybody to contend that the term "dowry" should be interpreted in a manner other than mentioned in Sec. 2.'

The furnishing of a list of ornaments and other household articles, such as, refrigerator, furniture, electric appliances, etc., at the time of the settlement of the marriage amounts to demand of dowry within the meaning of Sec. 2 of the Dowry Prohibition Act, 1961. That being so, the High Court ought to have considered the appeal on merits and decided as to whether the respondents were guilty of offences punishable under Sec. 406 of the Indian Penal Code, 1860, read with Secs. 4 and 6 and Dowry Prohibition Act, 1961, by the wrongful retention to the articles given as marriage gifts, while driving out the appellant from the matrimonial house. The High Court would also ensure that all the articles to the wife at the time of the marriage, including the valuable gold ornaments, are restored to her.

Meaning of dowry defined.-Articles received as presents and gifts at the time of marriage cannot be termed as dowry.

Amount paid to the prospective son-in-law for purchase of property on the joint names of daughter and the would-be son-in-law whether amounts to dowry.- In *Kunju Moideen v. Sayed Mohammed*, on a fair reading of the plaint, it is evident that the amount that was paid, was for purchase of property in the name of the plaintiff's daughter and the would-be son-in-law. It cannot be said that the amount was paid or agreed to be paid at or before or after the marriage as consideration for the marriage of the parties. On that short ground the amounts sought to be recovered by the plaintiff is not dowry and it will not come within the inhibition of Dowry Prohibition Act. The learned Subordinate Judge was in error in holding that it will come within the definition of the Act and in non-suiting the plaintiff.

Dowry Prohibition Act, whether bars the traditional giving of presents- The Dowry Prohibition Act does not, in any way, bar the traditional giving of present at or about the time of the wedding which may be willing and affection are gifts by parents and close relations of the bride to her. Such presents or dowry given by the parents is, therefore, not at all within the definition of the aforesaid statute. Indeed this traditional giving of presents at or about the time of wedding is an accepted practice which finds mention in the oldest of Hindu scriptures and is continued today with a greater zeal. Consequently, dowry as commonly understood is something different and alien to the peculiar definition thereof in the Dowry Prohibition Act. A voluntary and affectionate giving of dowry and traditional presents would thus be plainly out of the ambit of the particular definition under the Act and once that is so the rest of the provisions thereof would be equally inapplicable. Consequently the argument that the applicability of the special provisions of the Dowry Prohibition Act would exclude the general provisions of the Indian Penal Code would not even arise and in any case has no validity.

Offences under the Dowry Prohibition Act and under Sec. 406, I.P.C., whether can stand together on the same set of facts.- A plain reading of the definition of dowry would show that it means any property given directly as a consideration for the marriage of the parties. Now once that is so, dowry of this kind is in fact a quid pro quo for the marriage itself. Inevitably it would follow that whatsoever is given consideration for the marriage itself cannot possibly be deemed in the eye of law as an entrustment or passing of dominion over property. To recall the familiar analogy of the law of contract, the consideration is the price for the promise and therefore, such property cannot be deemed even remotely to have been entrusted or dominion passed over it to the other. The necessary result, therefore, is that the same set of facts allegedly constituting an offence under the Dowry Prohibition Act cannot possibly come within the ambit of Sec. 406, I.P.C. This would be plainly a consideration in terms. One offence is tested on property forming the consideration for the marriage as such, whilst, the other visualises the entrustment and passing of dominion over property individually owned. The

offences under the Dowry Prohibition Act cannot under Sec. 406, I.P.C., thus cannot stand together on the same set of facts.

Interpretation of section.-The Court can merely interpret the section - it cannot re-write, re-cast or re-design the section.

3. Penalty for giving or taking dowry.- [(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 [with imprisonment for a term which shall not be less than [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 [five years].

[(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 been made in that behalf): Provided that such presents are entered in list maintained in accordance with rule made under this Act ;

(b) presents which are given at the time of 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 not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.]

State Amendments

Bihar.-*Substitution of new section for Sec. 3 of Act 28 of 1961.*-For Sec. 3 of the Dowry Prohibition Act, 1961 (Act 28 of 1961), 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 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.

Haryana.-*Substitution of Sec. 3 of Parliament Act 28 of 1961.*-For Sec. 3 of the principal Act, the following section shall be substituted

"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 thousand rupees;
- (d) display any gifts made at or before the marriage in the form of cash, 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 right to his wife on the ground that dowry has not been given or the dowry given is insufficient."

Himachal Pradesh.-*Substitution of Sec. 3.*-For Sec. 3 of the Dowry Prohibition Act, 1961, in its application to the State of Himachal Pradesh the following section shall be substituted, namely :

"3. Penalty for giving or taking of dowry.-If any person gives 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 ruppes.

Punjab.-*Amendment of Sec. 33 of Central Act 28 of 1961.*-In Sec. 3 of the Dowry Prohibition Act, 1961, in its application to the State of Punjab (hereinafter referred to as the principal Act), 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.

West Bengal.-*Amendment of Sec. 3 of Act 28 of 1961.*-In Sec. 3 of the said Act, for the words "which may extend, to five thousand rupees, the words "shall not be less than two thousand rupees, but may extend to ten thousand rupees" shall be substituted.

Comments

Proviso.-A proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

Shall.-"Shall" cannot be interpreted as "may".

[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, he 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 a term of less than six months.")

State Amendments

Bihar.-*Substitution of new section for Sec. 4 of Act 28 of 1961.*-For Sec. .4 of 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 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 order, specify in this behalf."

Haryana.-*Substitution of Sec. 4 of Parliament Act 28 of 1961.*-For Sec. 4 of the principal Act, the following section shall be substituted :

"4. Penalty--(1) If any person contravenes any of the provisions of Sec. 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 Cl. (f) of Sec. 3 relating to conjugal right 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 proceedings dropped under sub-section (2) shall revive 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 entered if it is made after the expiry of a period of three years from the date on which proceedings were dropped.

(4) The Court may direct that the fine, if any, imposed for the contravention of Cl. (f) of Sec. 3 or such portion thereof, as the Court may deem proper, shall be paid to the wife."

Himachal Pradesh.-*Substitution of Sec. 4.*-For Sec. 4 of the principal Act, the following section shall be substituted, namely :

"4. 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."

Insertion of Secs. 4-A and 4-B.-After Sec. 4 of the principal Act, the following sections shall be inserted, namely :

"4-A. Bar of certain acts.-Any person who-

- (i) displays any presents made at the time of marriage in the form of cash, ornaments, clothes or other articles, or
- (ii) gives in the form of shagun at the time of thakka betrothal or tika 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 many 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.

4-B. Penalty for depriving any party of any 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 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 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.

Punjab.-Amendment of Sec. 4 of Central Act 28 of 1961.-In Sec. 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.

Insertion of new Secs. 4-A and 4-B in Central Act 28 of 1961.-After Sec. 4 of the principal Act, the following sections shall be inserted namely :

"4-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 minors and the members of the band ; or
- (iii) gives in the form of shogun 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 many 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' mean 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."

West Bengal.-*Amendment of Sec. 4.- In Sec. 4 of the said Act,-*

(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 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 ;

(c) for the proviso, the following provisions shall be substituted, namely

"Provided that no Court shall take cognizance of any offence under this section except on a complaint made by the 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 organization 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."

Insertion of new Sec. 4-A.- After Sec. 4 of the said Act, 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 guardian 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 extended to five thousand rupees, or with both.

(2) The provisions of this section 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 forces.

Comments

There must be a demand of dowry.--it is clear that the bringing a case under Sec. 4, there must be a demand of dowry and dowry means any property agreed to be given. consequently, the demand must be of a property agreed to be given as consideration for the marriage of the parties. Thus reading Sec.4 with the help of the definition of the term "dowry" in Sect.2 would, therefore, show that a demand so as to bring the case under sec. 4 must be a property agreed to be given as consideration for the marriage. In the present case, the complainant does not allege that respondent No.1 has agreed to pay any amount and that the petitioners demanded that agreed amount. The learned Magistrate has committed an error in issuing a process against the petitioners.

Whether Sec. 498-A, I.P.C., is distinguishable from Sec. 4, Dowry Prohibition Act,- Section 498-A, I.P.C. does not create any situation for double jeopardy. That provision is distinguishable from Sec.4, Dowry Prohibition Act, because in the latter mere demand of dowry is punishable and existence of element of cruelty is not necessary. Section 498-A, I.P.C. deals with aggravated form of the offence. It inter alia, punishes such demands of property of valuable security from the wife or her relative as are coupled with cruelty, to her. Hence, a person can be prosecuted in respect of both the offences punishable under Sec. 4 of the Dowry Prohibition Act, and Sec.498-A, I.P.C.

Prima facie case.-Section 4 of the Act pertains only to dowry demands directly or indirectly from the parents or guardian of the bride or bridegroom whereas Sec. 2 defines dowry as property or valuable security given or agreed to be given by persons mentioned therein as consideration for the marriage. Though, there does appear to be some inconsistency between the provision of Sect. 2 and 4 of the Act, in the facts of the present case it does not appear to be relevant, as the complaint clearly indicates that property or valuable security was demanded by the petitioners and father of the bride did comply partially with these demands. As stated in the complaint demands were made by the petitioner with regard to money and clothes on 25th January, 1980. A list setting out the details was made over. Father of the bride supplied the clothes, etc. as also, a part of the money on the date of the engagement, i.e. 26th January, 1980. Subsequently, on 27th January, 1980, further demands were made for television, refrigerator, double-bed sofa, tv., two-in-one, utensils, clothes, etc. to be given in consideration for the marriage. Bride's father also tried to meet these demands, so obviously, there was some agreement in the matter. But, as the dowry demanded has been only partially provided, the petitioners continued to make demands, even subsequent to the marriage, on 4th March, 1980. In the circumstances, it cannot be said that no prima facie case is made out.

Meanings of dowry defined--Articles received as presents and gifts at the time of marriage cannot be termed as dowry.

Dowry demand amounts to cruelty.--The demand for dowry is prohibited enough. That, amounts to cruelty entitling the wife to get a decree for dissolution of marriage.

[4-A, 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 publishes or circulates any advertisement referred to Cl. (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 a sentence of imprisonment for a term of less than six months.

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 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) if the dowry was received before marriage, within [three months] after the date of marriage ; or

(b) if the dowry was received at the time of or after the marriage within [three months] after the date of its receipt ; or

(c) if the dowry was received when the woman was a minor, with [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.

[(2)] If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor [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 two 'years or with fine [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 :

[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.]

[(3-A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section(1) [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, [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, (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, as the case may be, [her heirs, parents or children].

(4) Nothing contained in this section shall affect provisions of Sec.3 or Sec.4

State Amendments

Haryana.-*Amendment of Sec. 6 of Parliament Act'28 of 1961.*-In sub- section (2) of Sec. 6 of the principal Act, for the words "or with fine which may extend to five thousand

rupees, or with both", the words "and with fine which may extend to five thousand rupees" shall be substituted.

Orissa.-*Amendment of Sec. 6 of Parliament Act 28 of 1961.*-In its application to the State of Orissa, Secs. 6-A and 6-B have been inserted as under :

"6-A. Penalty for denial of conjugal right 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 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 Sec. 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 had 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 derived from such property, or from the wife's own earnings or from any other source ; and
 - (d) the amount of compensation awarded under Sec. 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
- (4) Where a complaint has been filed by the wife for an offence under Sec. 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 Sec. 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".

Comments

Wife-Expression interpreted.-The expression "wife" should be interpreted to mean only a legally wedded wife. The expression must be given the meaning in which it is understood in law applicable to the parties:

Hasty disposal of case not approved.-The appellant filed a complaint petition against the respondents for having committed offences under Secs. 4 and 6-A of the Act. After enquiry under Sec. 202 of the Code of Criminal Procedure, the learned Judicial Magistrate took cognizance of an offence under- Sec. 6-A of the Act against the respondents and directed issuance of summons. After appearance of the respondents on the date fixed and the particulars of charge under Sec. 6-A of the Act having been explained to them the case was posted to for hearing. On that day the respondents were represented but the appellant was not present in Court. Hazira of witnesses was also not filed. The learned Judicial Magistrate, therefore' recorded an order of acquittal under Sec. 256, Cr. P.C. When the complainant is absent at the stage of Sec.256, Cr. P.C., the Court can proceed in either of the three ways : (i) it may acquit the accused or (ii) adjourn the case, or (iii) proceed to hear the case under the proviso if the complainant is represented by an advocate of the complainant conducting the prosecution or if the personal attendance of the complainant is not considered necessary. In order to decide whether the presence of the complainant is necessary, the Court should act judicially and not capriciously. A duty has been cast on the Court to consider whether the personal attendance of the complainant is or is not necessary. In view of the discretionary power vested in the Court, heavy responsibility rests on it in deciding as to whether to adjourn the case or to record an order of acquittal. The discretion vested in the Court should be exercised carefully and not hastily. An order of acquittal under Sec. 256 of the Code would bar a fresh trial and therefore, such an order is of immense significance. The order should show that the wide discretion vested in the Court had properly been exercised.

[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 a 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 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 on 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.]

[(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.-Substitution of new section for Sec. 7 of Act 28 of 1961.-For Sec. 7 of the said Act, the following section 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."

Haryana.-*Substitution of Sec. 7 of Parliament Act 28 of 1961.*-For Sec. 7 of the principal Act, 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 except 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.

Himachal Pradesh.-*Substitution of Sec. 7.*-For Sec. 7 of the principal Act, the following section shall be substituted :

7. *Trial of offences.*-3[** *] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no Court inferior to that of a Judicial Magistrate of the first class shall try offence under this Act.

3[***] No Court shall take cognizance of any offence under this Act, except that of offence under Sec. 4-B, except on a police report or complaint made within one year of the marriage.

Amendment of Sec. 7.-In Sec. 7 of the Dowry Prohibition Act, 1961 (28 of 1961) (hereinafter referred to as the principal Act), the brackets and figure "(1)" at the beginning of sub-section (1) and also sub-section (2) shall be omitted.

Punjab.-*Substitution of Sec. 7 of Central Act 28 of 1961.*-For Sec. 7 of the principal Act, 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 Secs. 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's or sister ; and

(3) every offence under Sec. 4-A shall be cognizable

Provided that no police officer below that rank of a Deputy Superintendent of Police shall investigate any offence punishable under this Act or make any arrest therefore.

West Bengal., -*Amendment of Sec. 7.*-In Sec. 7 of the said Act,-

(a) for the words and figures "Code of Criminal Procedure, 1898 (5 of 1898), the words and figures "Code of Criminal Procedure, 1973" 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 Cl. (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.

Comments

Question of limitation.-Since the Act is silent, with regard to exclusion of the time spent in obtaining sanction, the provisions of the Criminal Procedure Code came into play. In the instant case, sanction was applied for on 24th November, 1980, and granted on 8th January, 1981. It took 45 days in processing. As such in the absence of any provision on this aspect in the Act, the time spent in obtaining sanction, must be excluded in terms of Secs. 470 (3) of the Criminal Procedure Code. It would, therefore, appear that the position of the petitioners, that the legislative intent of Sec. 7 (2) of the Act provides for an absolute period of limitation permitting any exclusion of time for

the period spent in obtaining sanction, is without force. As there is no dispute, that if this time is excluded, the complaint is within time.

Complaint-What amounts to.-If a restraint is placed with regard to the person who can lodge the complaint then the statute so specifically provides, as has been done in Secs. 195 to 199 of the Criminal Procedure Code. It is, therefore, clear that in the facts and circumstances of the present case the complaint by the Investigation Officer can be a complaint within the terms of Sec. 7 (b) of the Act.

[8. Offences to be cognizable for certain purposes and to be 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 purpose of investigation of such offences; and

(b) for the purpose of matters other than-

(i) matters referred to in Sec. 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 [non-bailable and non-compoundable.]

State Amendments

Bihar.-*Substitution of new section for Sec. 8 of Act 28 of 1961.*-For Sec. 8 of the said Act, the following section shall be substituted, namely -.

"8. Offences to be cognizable, non-bailable and non-compoundable. Every offence under this Act shall be cognizable, non-bailable and non-compoundable.

Himachal Pradesh.-Substitution of Sec. 8.-For Sec. 8 of the principal Act, the following section shall be substituted, namely :

"8. Offences to be-cognizable, non-bailable and non-compoundable.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), every offence under this Act shall be cognizable, bailable and non- compoundable.

Substitution of Sec. 8-A.-For Sec. 8-A of the principal Act, the following Sec. 8-A shall be substituted namely :

"8-A. *Cognizance of offence.*-No Court shall take cognizance of any offence under this Act except on a police report under Sec. 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."

Orissa.-Amendment-of Sec. 8 of Parliament Act 28 of 1961.-In Sec. 8 for the words "every offence", the words "save as otherwise provided, every offence" shall be substituted.

Punjab.-Substitution of Sec. 8 of Central Act 28 of 1961.-For Sec. 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.

After Sec. 8 of the principal Act the following section shall be inserted, namely:

"8-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 officer as the State Government may by special or general order appoint in this behalf."

[8-A. Burden of proof in certain cases.-Where any person is prosecuted for taking or abetting the taking of any dowry under Sec. 3, or the demanding of dowry under Sec. 4, the burden of proving that he had not committed an offence under those sections shall be on him].

Comments

Court-Duty of.-The approach of a court has to be an objective approach taking into account all the relevant circumstances and considerations in order to strike of balance between the need to preserve the community on the one hand and the need to preserve the liberty of a citizen.

Summoning order-When illegal.-Summoning order is obviously illegal because the complainant had not produced before the learned Trial Court any sanction from the District Magistrate in terms of Sec. 8-A of the Dowry Prohibition Act, 1976.

8-B. 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, of 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, the Dowry Prohibition

Officer who shall exercise such powers subject to such limitation 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 an advisory board consisting of not more than five social welfare worker (out of whom at least two shall be women) from the area in respect of which the Dowry Prohibition Officer exercises jurisdiction under-sub-section (1).]

Comments

The newly inserted Sec. 8-B, makes provision for appointment of Dowry Prohibition Officers, and prescribe duties in order to ensure that the provisions of the Act are compiled with.

Amendment.-Amendment is, in fact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If amendment of an existing law is small, the Act professes to amend, if it, is extensive, it repeals a law and reenacts it. An amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred.

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.

[(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 subsection (2) of Sec. 3 shall be maintained and all other matters connected therewith ; and

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

[(3) Every rules 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 [in-two or more successive sessions, and if,

before the expiry of the session immediately following the session or the successive sessions 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 Amendment

Himachal Pradesh.-Amendment of Sec. 9.--In Sec. 9 of the principal, Act,-

(a) after the words 'The Central Government', occurring in sub-section(1), the words "or the State Government with the prior approval of the the 'Central Government' shall be inserted ;

(b) in sub-section (2) after the words 'every rule made' and before the woords "under this section", the words 'by The Central Government', shall be inserted ;

(c) after sub-section (2), the following subsection (3) shall be added, namely

"(3) Every rule made by the State Government under this section shall be laid, as soon as may be, after it is made, before 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 expriy of the - session in which it is so laid or the session Immediately following, the Legislature request 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."

Punjab.-Amendment of Sec. 9 of the Central Act 28 of 1961.-In Sec. 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) Every rule made under this section by the State Government shall be laid as soon as may be after, it is made before' the 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 rule."

Comment

The general power of framing rules for effectuating the purposes of the Act would plainly authorize and sanctify the framing of such rule.

Sub-section (3) makes provisions for laying the rule before the Houses of Parliament for approval.

[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 Officers under sub-section (2) of Sec., 8-B;

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

(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.]

Comment

This section empowers the State Government to make rules for carrying out the purposes of this Act. Sub-section (3) makes provisions for laying the rule before the State Legislature.

THE DOWRY PROHIBITION (MAINTENANCE OF LISTS OF PRESENTS TO THE BRIDE AND BRIDEGROOM) RULES, 1985

G.S.R. 664 (E), dated 19th August, 1985.-In exercise of the powers conferred by Sec. 9 of the Dowry Prohibition Act, 1961 (28 of 1961), the Central Government hereby makes the following rules, namely:

1. Short title and commencement.-(1) These rules may be called the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985.

(2) They shall come into force on the 2nd day of October, 1985 being the date appointed for the coming into force of the Dowry Prohibition (Amendment) Act, 1984 (63 of 1984).

Comment

It is well settled in law that every subordinate law-making authority has a power to frame subordinate legislation only provided it is reasonable and within the limits of the rule making power of the body.

2. Rules in accordance with which lists of presents are to be maintained.-(1) The list of presents which are given at the time of the marriage to the bride shall be maintained by the bride.

(2) The list of presents which are given at the time of the marriage to the bridegroom shall be maintained by the bridegroom.

(3) Every list of presents referred to in sub-rule (1) or sub-rule (2),-

(a) shall be prepared at the time of the marriage or as soon as possible after the marriage;

(b) shall be in writing

(c) shall contain,-

(i) a brief description of each present;

(ii) the approximate value of the present;

(iii) the name of the person who has given the present ; and

(iv) where the person giving the present is related to the bride or bridegroom, a description of such relationship;

(c) shall be signed by both the bride and the bridegroom.

Explanation. 1.-Where the bride is unable to sign, she may affix her thumb- impression in lieu of her signature after having the list read out to her and obtaining the signature on the list, of the person who has so read out the particulars contained in the list.

Explanation. 2.-Where the bridegroom is unable to sign, he may affix his thumb- impression in lieu of his signature after having the list read out to him and obtaining the signature on the list of the person who has so read out the particulars contained in the list.

(4) The bride or the bridegroom may, if she or he so-desires, obtain on either or both of the lists referred to in sub-rule (1) or sub-rule (2) the signature or signatures of any relations of the bride or the bridegroom or of any other person or persons present at the time of the marriage.

Comment

Rule 2 provides that the list of presents which are, given at the time of marriage to the bride or bridegroom shall be maintained by either party in writing containing brief description and approximate value of each present. The name and relationship of the person giving the present shall be recorded and the signature or thumb-impression of either party is necessary.

APPENDIX I
RELEVANT EXTRACTS FROM THE INDIAN PENAL CODE
(45 of 1860)

[304-B. Dowry death.--(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purposes of sub-section, "dowry" shall have the same meaning as in Sec. 2 of the Dowry Prohibition Act, 1961.(28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

Comment

Bride burning.—The recovery of the stove with its lid removed and burnt match sticks from the kitchen of the appellant's house clearly goes to show that the kerosene in the stove had been poured over the deceased and then lighted match sticks had been applied to her. It cannot be a case of accidental fire and likewise there was no reason for the lady to have attempted to commit suicide. The dying declaration clearly sets out that the appellant was in the habit of ill-treating her and that on the morning in question he had abused her and beat her and on top of everything he had also poured kerosene over her and set fire to her. The evidence on record conclusively establishes the guilt of the appellant, and that he has been rightly convicted under Sec. 302, I.P.C.

[CHAPTER XX-A]
Of Cruelty by husband or relatives of husband

498-A. Husband or relative of husband of a woman subjecting her to cruelty.—

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purposes of this section, "cruelty" means-

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or death (whether mental or physical) of the woman ; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

Comments

Section 498-A provides for the punishment to husband or relative of husband of a woman subjecting her to cruelty.

Does Sec. 498-A create any situation for double jeopardy.-Section 498-A, I.P.C., deals with aggravated form of offence. It, inter alia, punishes such demands of property of valueable security from the wife of her relatives -.as are coupled with cruelty, to her. Under Sec. 4 of the Dowry Prohibition Act mere demand of dowry is punishable and existence of element of cruelty is not necessary. Section 498-A, I.P.C., does not create any situation for double jeopardy. A person can be prosecuted,, in respect of both the offence punishable under Sec. 4 of the Dowry Prohibition Act and Sec. 498-A, I.P.C

Cruelty.-In spite of cash and ornaments worth Rs. 47,000 given by way of dowry by the parents of a wife, the husband was constantly nagging her for scooter, fridge and television and a pressure was being put upon her in multifarious ways to obtain the same from her parents she was being physically and mentally tortured and cruelly treated.

Conviction for harassment for dowry.-A reading of Sec. 498-A of the Indian Penal Code shows that whoever, being the husband or relative of the husband of a woman, subject such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Clause (b) of the Explanation

to that section shows that the harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for property or valuable security or is on account of the failure by her or any person related to- her to meet such demand would amount to cruelty for the purposes of Sec. 498-A.

APPENDIX II

RELEVANT EXTRACTS FROM THE CODE OF CRIMINAL PROCEDURE, 1973 (2 of 1974)

174. Police to enquire and report on suicide, etc.--(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, any stating in what manner, or by what weapon or instrument (if any) such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or Sub-divisional Magistrate.

(3) When-

(i) the case involves suicide by woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such

woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do], he shall, subject to such rules as the State Government may prescribe in this behalf forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

Comments

Object of the section.—The object of the section is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of his death.

Inquest report.—It is not necessary to mention details in the inquest report.

176. Inquiry by Magistrate Into cause of death.—(1) [When any person dies while in the custody of the police or when the case is of the nature referred to in Cl. (i) or Cl. (ii) of sub-section (3) of Sec. 174), the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of Sec. 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so; he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(2) The Magistrate holding such inquiry shall record the evidence taken by him in, connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section', the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and address are known, and shall allow them to remain present at the inquiry.

Explanation.-In this section, the expression "relative" means parents, children, brothers, sisters and spouse.

[198-A. Prosecution of offences under Sec. 498-A of the Indian Penal Code.-No Court shall take cognizance of an offence punishable under Sec. 498-A of the Indian Penal Code (45 of 1860) except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.]

Comment

Res judicata-Principle of-Applicable in criminal proceedings.-The general principles of res judicata are applicable to criminal proceedings.

APPENDIX III THE FIRST SCHEDULE

1. Offences under the Indian Penal Code

Section (1)	Offence (2)	Punishment (3)	Cognizable or non-cognizable (4)	Bailable or non-bailable (5)	By what court Tribal (6)
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[304-B	Dowry Death Imprisonment of not less than seven years but which may extend to imprisonment for life	Cognizable	Non-bailable Court Session]	of
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**[Chapter XX-A
Of Cruelty by Husband or Relatives of Husband**

498-A	Punishment for subjecting a married woman to cruelty	Imprisonment for three years and fine	Cognizable if information relating to the commission of the offence is given to an officer in charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative by any public servant belonging to such class or category, as may be, notified by the State Government in this behalf]	Non-bailable	Magistrate of the first class]
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**RELEVANT EXTRACTS -FROM THE INDIAN EVIDENCE ACT, 1872
(1 of 1872)**

[113-A. Presumption as to abatement of suicide by a married woman.- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.-For the purpose of this section, 'cruelty' shall have the same meaning as in Sec. 498-A of the Indian Penal Code (45 of 1860)]

Comments

This section provides that where a woman had been subjected to cruelty or harassment for, or in connection with, any demand for dowry soon before her death, the Court shall presume that such person had caused the dowry death.

Relief cannot be denied for unintentional cruelty..-The word 'Cruelty' has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the

other. The cruelty may be mental or physical, intentional or unintentional. The absence of intention should not make any difference the case, if by ordinary sense in human affairs, that act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.

[113-B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a women and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

*Explanation.-*For the purpose of this section, "dowry death" shall have the same meaning as in Sec. 304-B of the Indian Penal Code (45 of 1860).

Comment

Court-Definition of.-"Court" is defined in the Evidence Act to include all Judges and Magistrate and all persons except arbitrators legally authorized to take evidence.