

UNIT II

Dowry and Sati Pratha

SYLLABUS	Dowry Prohibition Act, 1961 (Sec. 2-10), Prohibition of Civil Rights Act, 1955- Aim and Object, Offences, The Commission of Sati (Prevention) Act,1987 - Introduction
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<u>UNIT – II Dowry and Sati Pratha</u>	
Lecture – I	Dowry Prohibition Act, 1961 (Sec. 2-10)
Lecture – II	Prohibition of Civil Rights Act, 1955- Aim and Object, Offences
Lecture - III	The Commission of Sati (Prevention) Act,1987 - Introduction

LECTURE I

TOPIC: Dowry Prohibition Act, 1961 (Sec. 2-10)

PREVIOUS YEAR QUESTIONS

1. Write short note on dowry to be for the benefit of the wife or her heirs under Dowry Prohibition Act,1961 (2018, 2019)
2. What are the functions of Dowry Prohibition Officers (2019)
3. In view of definition of Dowry under the Dowry Prohibition Act,1961, “ Dowry should either be given or agreed to be given. The interpretation that conviction can only be there if there is agreement for dowry is misconceived.” Explain with help of cases. (2019)

NOTES

- The Dowry Prohibition Act, 1961 was enacted by the Parliament to abolish the customary practice of giving and taking of dowry.
- Dowry means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or 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 any time after the marriage.
- **Essential elements of Dowry (S.2 Dowry Prohibition Act, 1961):**
 - a) It includes any type of property as well as valuable security
 - b) such property or valuable security may be given or agreed to be given by either party
 - c) The giving of property or valuable security may be direct or indirect

d) The transaction must be in connection with marriage. It may be before, after or at the time of marriage.

Exceptions-

1. Giving gifts to the bride or bridegroom at the time of a marriage without any demand being made is permitted. Such gifts shall not be beyond the financial status of the person of the giver of the gifts.
 2. It does not include the Islamic concept of Dower or Mahr.
- **‘Property’** includes both moveable and immovable property. Valuable security as defined under Section 30 of IPC is any document that can create, alter or extinguish rights of individuals.
 - **Penalty for giving or taking dowry**— Section 3 provides If any person 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.
 - **Penalty for demanding dowry.**— Section 4 provides If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, any dowry, he shall be punishable with imprisonment for not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees.
 - The Supreme Court in *S. Gopal Reddy Vs State of A.P.* held that under section 4 of the Act of 1961, a **mere demand** of dowry is sufficient to bring home the offence to an accused. Marriage in this context would include a proposed marriage also.
 - The Supreme Court has held in *Pandurang Shivram Kawathkar v. State of Maharashtra* that the mere demand of dowry before marriage is an offence.
 - In *Bhoora Singh v. State of Uttar Pradesh*, the court held that the deceased had before being set on fire by her in-laws written a letter to her father that she was being ill-treated, harassed and threatened with dire consequences for non-satisfaction of demand of dowry. Thus an offence of demanding dowry under section 4 had been committed.
 - Section 5 provides that any agreement for the giving and taking of dowry shall be void.
 - **Dowry to be for the benefit of the wife or her heirs-** Where any dowry is received by any person other than the woman, that person shall transfer it to the woman—
 - (a) if the dowry was received before marriage, within three months after the date of marriage;
 - (b) if the dowry was received at the time of or after the marriage, within three months after the date of its receipt;

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

In case of death of woman- If woman dies before receiving the property, the heirs of the woman shall be entitled to claim it from the person holding it for the time being:

If **woman dies within seven years of her marriage** 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.]

- Section 8 provides that offences under this Act will be non-cognisable and non-compoundable.
- **Burden of proof (S.8A):** —Where any person is prosecuted for taking or abetting the taking of any dowry under section 3, or the demanding of dowry under section 4, the burden of proving that he had not committed an offence under those sections shall be on him.
- **Functions of Dowry Prohibition Officers (S.8B):** —(1) The State Government appoints Dowry Prohibition Officers. Every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely:—
 - (a) to see that the provisions of this Act are complied with;
 - (b) to prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry;
 - (c) to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act; and
 - (d) to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

ASSIGNMENT

Q. 1 Which of the following Act defines 'dowry'?

- a) Dowry Prohibition Act, 1961
- b) Indian Penal Code

Q. 2 Whether giving gifts to the bride or bridegroom at the time of a marriage without any demand being made is permitted ?

- a) True
- b) False

Q. 3 Whether the definition of dowry includes dower or Mahr?

- a) True
- b) False

Q.4 If woman dies within seven years of her marriage such property shall _____

- a) Be transferred to her parents or children
- b) Her husband

Q. 5 Valuable security as defined under Section _____ of IPC ?

- a) Section 30
- b) Section 40

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LECTURE II

TOPIC: Prohibition of Civil Rights Act, 1955- Aim and Object, Offences,

PREVIOUS YEAR QUESTIONS

1. Discuss the aims and objects of Protection of Civil Rights Act, 1955 (2018)
2. Explain the offences of enforcing social and religious disabilities under the Protection of Civil Rights Act, 1955 (2018)
3. Discuss the offences under the Protection of Civil Rights Act, 1955 (2019)

NOTES

- Civil rights generally refer to personal liberties that belong to an individual, owing to his or her status as a citizen or resident of a particular country or community.
- Section 2 (a) defines **Civil rights** as a means any right accruing to a person by reason of the abolition of “untouchability” by article 17 of the Constitution.
- **Article 17** of Indian Constitution aims to abolish Untouchability by stating “Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.”
- Untouchability Offences Act of 1955 was enacted to implement provisions of Article 17. The Act was amended and renamed in 1976 as the Protection of Civil Rights Act in 1976.
- Article 46 directs the State to “promote with special care, the educational and economic interests of weaker sections of the people and in particular of Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.” In 1989 the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was enacted.
- **Aim and objectives** of The Protection of Civil Rights Act of 1955 is to prescribe “punishment for the preaching and practice of Untouchability and for the enforcement of any disability arising there from”.
- **Punishment for enforcing religious disabilities:** Section 3 of the Act criminalises the following acts if committed on the “ground of untouchability” –
 - (a) from entering any place of public worship which is open to other persons professing the same religion or section as such person;
 - (b) from worshipping or offering prayers or performing any religious service in any place of public worship, or bathing in, well, river or lake or bathing at any ghat of such tank, water-course, river or lake in the same manner and to the same extent as is permissible to the other persons professing the same religion or any section as such person.

The above acts are subjected to imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

- **Punishment for enforcing social disabilities:** Section 4 of the Act criminalises the following acts if committed on the “ground of untouchability” –
 - (i) access to any shop, public restaurant, hotel or place of public entertainment
 - (ii) the use of any utensils, and other articles kept in any public restaurant, hotel
 - (iii) the practice any profession or the carrying on of any occupation, trade or business or employment in any job
 - (iv) the use of, or access to, any river, stream, spring, well
 - (v) the use of, or access to, any place used for a charitable or a public purpose
 - (vi) the use of, or access to, any public conveyance
 - (vii) the construction, acquisition, or occupation of any residential premises in any locality, whatsoever

The above acts are subjected to imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

- The rights guaranteed are only enforceable against public property and not private. In the case of *Benudhas Sahu v. State* the court ruled out the application of Section 4(iv) to private wells.
- **Presumption by Courts(S.12)** - It provides for presumption based liability. Where any act constituting an offence under this Act is committed in relation to a member of a Scheduled Caste the Court shall presume, unless the contrary is proved, that such act was committed on the ground of “untouchability”.

ASSIGNMENT

Q. 1 Which Article of Indian Constitution aims to abolish Untouchability?

Q. 2 Which section gives power to court to presume that act was committed on ground of untouchability?

Q. 3 Whether rights guaranteed under Prohibition of Civil Rights Act, 1955 are enforceable against private property?

Q.4 Which act was enacted to implement provisions of Article 17?

Q. 5 Section 4 provides _____ for enforcing social disabilities.

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LECTURE III

TOPIC: The Commission of Sati (Prevention) Act, 1987 - Introduction

PREVIOUS YEAR QUESTIONS

1. Write short note on 'abetment of Sati' under the commission of Sati (Prevention Act, 1987) (2018)
2. Define 'glorification' in relation to 'Sati' under the commission of Sati Prevention Act, 1987. (2019)

NOTES

- Sati is a practice where the widow burns herself in the funeral pyre of her husband.
- Section 2(b) defines "**glorification**" as
 - (i) the observance of any ceremony or the taking out of a procession in connection with the commission of sati;
 - (ii) the supporting, justifying or propagating the practice of sati in any manner;
 - (iii) the arranging of any function to eulogise the person who has committed sati;
 - (iv) the creation of a trust, or the collection of funds, or the construction of a temple or other structure or the carrying on of any form of worship or the performance of any ceremony thereat, with a view to perpetuate the honour of, or to preserve the memory of, a person who has committed sati.

Punishment for glorification of sati (S. 5)—Whoever does any act for the glorification of sati shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees.

- Section 2(c) defines "**sati**" means the act of burning or burying alive of—
 - (i) any widow along with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative;
 - (ii) any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the woman or otherwise.
- **Punishment for Attempt to commit sati (S. 3)**— Whoever attempts to commit sati and does any act towards such commission shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

- **Punishment for Abetment of sati (S. 4)**— If any person commits sati, whoever abets the commission of such sati, either directly or indirectly, shall be punishable with death or imprisonment for life and shall also be liable to fine.

If any person attempts to commit sati, whoever abets such attempt, either directly or indirectly, shall be punishable with imprisonment for life and shall also be liable to fine.

Following acts shall be deemed to be an abetment:—

(a) any inducement to a widow or woman to get her burnt or buried alive along with the body of her deceased husband or with any other relative or with any article, object or thing associated with the husband or such relative, irrespective of whether she is in a fit state of mind or is labouring under a state of intoxication or stupefaction or other cause impeding the exercise of her free will;

(b) making a widow or woman believe that the commission of sati would result in some spiritual benefit to her or her deceased husband or relative or the general well being of the family;

(c) encouraging a widow or woman to remain fixed in her resolve to commit sati and thus instigating her to commit sati;

(d) participating in any procession in connection with the commission of sati or aiding the widow or woman in her decision to commit sati by taking her along with body of her deceased husband or relation to the cremation or burial ground;

(e) being present at the place where sati is committed as an active participant to such commission or to any ceremony connected with it;

(f) preventing or obstructing the widow or woman from saving herself from being burnt or buried alive;

(g) obstructing, or interfering with, the police in the discharge of its duties of taking any steps to prevent the commission of sati.

ASSIGNMENT

Q. 1 _____ is a practice where the widow burns herself.

Q. 2 Punishment for Abetment of sati is defined under _____

Q. 3 Whether glorification of Sati is punishable ?

- a) True
- b) False

Q.4 Section 2(c) of the Act defines _____

Q. 5 Whether the construction of a temple with a view to perpetuate the honour a person who has committed sati is permitted ?

- a) True
- b) False