

III Additional First Class Judicial Magistrate, Ongole, Prakasam District, Andhra Pradesh filed under section 498A IPC and sections 3 and 4 of DP Act. I submit that, the petitioners are aggrieved by the act of Police and Courts in not prosecuting the alleged dowry-givers in the case mentioned (supra) where as the DP Act itself directs to prosecute dowry-givers as per section 3(1) of Dowry Prohibition Act 1961. There is no protection given to dowry-givers since if such protection is given (even though there is no reason to give such protection), I wonder who will be prosecuted from the dowry-giving crime. It is submitted that, when I asked the same to investigation officer of our case, they have informed us that there is a protection under section 7(3) of D.P Act 1961. The FIR and the chargesheet filed by the Investigating officer are annexed as **ANNEXURE-P1 and ANNEXURE-P2**.

3. I submit that the petitioners filed a discharge petition to discharge all the 3 accused in the above mentioned C.C. No. 400220 of 2018 and it was dismissed by the Hon'ble Court of III Additional First Class Judicial Magistrate, Ongole, Prakasam. Both the documents and annexed as **ANNEXURE-P3 and ANNEXURE-P4**.
4. I submit that the petitioners filed the present writ petition questioning the misinterpretation of section 7(3) of Dowry Prohibition Act 1961 by the Police, in not registering the FIR against the alleged dowry-givers in above case.
5. I submit that in India, like in many other neighboring countries such as Bangladesh, there is a societal menace called as Dowry being perpetuate from many decades. There were (and are) many crimes happening around the central issue of Dowry in India. Dowry Demand, Dowry harassment, Dowry Death etc. Since such societal problems are to be dealt at the highest level, Legislature, jumped in and decided to outlaw/criminalize all aspects of and around Dowry in India and had brought in a Legislation in 1961 titled, "Dowry Prohibition Act, 1961" (hereinafter, 'DP Act'). Thus, came the Dowry Prohibition Act, 1961. Until the time of enactment of the statute, there is no provision in India to provide a remedy to the Menace of **Giving and Taking of Dowry**. Along came the Central Rules to support the Act styled as the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985. There were two amendments made to this Act, one in 1984 and another in 1986. The States and Union Territories have enacted State Rules u/s 10(1) of the Central Act. Despite making benevolent laws in 1961 and further amendments in 1984 and 1986, prohibiting certain acts related to Dowry, with proposed sanctions of punishment

and fine, Dowry Menace in India has not come down a bit. I am unaware of any periodic monitoring mechanism was put in place to check misuse of such social welfare law. I am also unaware if the Legislature has any plans to bring in amendments to the DP Act.

6. I submit that, the petitioners have sent representations to the Respondents 2 to 4 which are dt: 23-07-2021 and have not received any response till date. annexed the proof of acknowledgments received for the registered posts letters sent to Respondents 2 to 4, as **ANNEXURE-P5**.
7. I submit that, the petitioners are constrained to bring to the kind notice of this Hon'ble Court, about the misinterpretation of a legal provision and also challenge the validity of certain provisions, available under **Dowry Prohibition Act 1961** (hereinafter 'DP Act'), whereby *Dowry-givers are precluded/excluded from prosecution altogether under this DP Act, by the Police and Judiciary, without there being any legal basis and also against the Legislative intent*. This has been ongoing for many decades till now (from 1986) and it is surprising, no one raised this issue with proper grounds, in any temples of justice of India. I believe that this issue requires urgent consideration of Hon'ble Court, at the earliest instance, so that the petitioners may obtain the justice that the petitioners seek in this petition.
8. I submit that, this Hon'ble Court has territorial jurisdiction to consider and decide this issue, under **Article 226 and 227 of the Constitution of India**, since a part of the cause of action of this issue, arose within the territory of State of Andhra Pradesh, i.e., FIR. No. 33/2017 was registered on 07 April 2017 by Women Police Station, Ongole, Prakasam District, Andhra Pradesh, under the sections 498A IPC and 3 and 4 of DP Act, the exact provision which is being challenged in this instant Petition.
9. I rely upon the decision passed by a Division Bench of the Hon'ble Apex Court in *Nawal Kishore Sharma Vs Union of India and Ors disposed on 7 August 2014 [2014 AIR SC 3607], [2014 SCC 9 329]*, which was very recently cited by Hon'ble Allahabad High Court in *Manish Kumar Mishra vs Union Of India And 4 Ors. Disposed on 1 May, 2020 [WRIT A No. 2071 of 2017]*. The Apex Court judgment (*Nawal Kishore*) is annexed as **ANNEXURE-P6**.

10. I researched the large section of motivated matrimonial litigations from 2019 onwards taking inputs from many Men's Rights Organizations in India, and applied sound problem-solving techniques such as 5Ys (Five Whys or Fish-bone analysis), and realized to our horror that Dowry is the common element in almost all of the matrimonial litigation (both civil and criminal) but, not a single person in India is booked/prosecuted/punished for *their alleged act of "Giving Dowry" which is actually a Crime u/s 3(1) of DP Act* under any of the laws where Dowry-allegations were made, such as those cases filed under 1) section 498A and other sections under I.P.C., 2) the DP Act, 3) Protection of Women from Domestic Violence Act (PWDV Act), 4) Maintenance under various provision like section 125 under Cr.P.C., section 24 under H.M. Act, section 18/25 under H.A.M. Act etc. Not just us, but thousands or elderly parents of husbands were implicated in false matrimonial litigation and traumatized to be facing legal troubles from their own family member.

11. I submit that the primary reason for non-registration of FIRs against alleged Dowry-givers is understood to be the outright refusal of Police to book a FIR on the alleged Dowry-givers, by citing *protection available to "the person aggrieved by the offence" u/s 7(3) of the DP Act*, despite being abundantly clear that such protection does not extend to such persons' parents, be it bride or groom, by plain reading of the above provision. This misinterpretation of the Section 7(3) of the DP Act is the root cause of the menace of false matrimonial cases in India, where even though the Dowry-related cases under DP Act are being filed incrementally, but the key element to note here is that, only the persons who are alleged, in the complaints by married women/brides, to have taken Dowry are booked in FIRs and prosecuted. It is painfully submitted that the alleged Dowry-givers, whose names are clearly mentioned in such complaints by married women/brides, are given a complete immunity. This also affects the cases of genuine dowry victims, as their cases are considered to be fake/false by society and due importance is not given to them by the concerned authorities.

12. I submit that the following are the statistics from "**Crime in India**" Annual reports, compiled and authored by "**National Crime Record Bureau**" (**hereinafter NCRB**) which speak volumes on the number of cases filed and persons arrested, only under DP Act 1961. The data pertains to years 2016, 2017, 2018 and 2019 (Data pertaining to 2020 was not released by the time of filing this petition). Due to voluminous nature of the reports, they are not being

annexed but the compiled data is sourced from Crime in India Reports on NCRB website <https://ncrb.gov.in/crime-in-india>.

SUMMARY STATISTICS						
(Source: NCRB data specific to Dowry Prohibition Act 1961 only; TABLES 1.3, 1A.5, 3A.9)						
Key Performance Metric	2016	2017	2018	2019	TOTAL	AVG/Year
Total Cases/Incidents registered	9,683	10,189	12,826	13,297	45,995	9,199
Total Victims	9,683	10,375	13,275	13,674	47,007	9,401
Total Persons Arrested	25,063	19,068	18,083	18,720	80,934	16,187
Total Persons Chargesheeted	20,400	17,789	23,210	24,860	86,259	17,252
Total Persons Convicted	1,199	3,376	3,245	1,410	9,230	1,846
Total Persons Acquitted	5,984	6,550	5,503	4,840	22,877	4,575
Total Persons Discharged	11	73	374	472	930	186

13.I submit that, the following table shows the mothers-in-law and sisters-in-law and other women that got arrested under DP Act. A steady decline in number of automatic arrests ought to be attributed to the landmark decision from the Hon'ble Apex Court in *Arnesh Kumar Vs State of Bihar*[2014 AIR SC 3930], [2014 SCC ONLINE SC 532]. This goes to show that the Judiciary always had to step-in to arrest misuse of laws to protect the victims of false litigation. herein this case, police were not issuing notice u/s 41A Cr.P.C. to accused in matrimonial litigation and proceeded to arrest husbands and their family members mechanically even though the provision 41A was introduced into the Statute book through of Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009) which came into effect on 09 January 2009.

Persons Arrested under SLL by Age and Sex												
(Source: NCRB data specific to Dowry Prohibition Act 1961 only; TABLE 19A.3)												
Age parameter/ Gender->	2016			2017			2018			2019		
	Male	Female	TOTAL									
Below 18 Years (Juveniles)	-	-	-	-	-	-	-	-	-	3	1	4
18 Years & Above – Below 30 Years	7,992	1,218	9,210	7,002	967	7,969	6,858	823	7,681	6,721	1,149	7,870
30 Years & Above – Below 45 Years	8,937	1,752	10,689	6,632	1,439	8,071	5,806	1,384	7,190	5,954	1,461	7,415
45 Years & Above – Below 60 Years	3,664	1,085	4,749	1,856	833	2,689	2,149	782	2,931	1,988	902	2,890
60 Years & Above	250	165	415	223	116	339	216	65	281	364	177	541
TOTAL arrested by Gender	20,843	4,220	25,063	15,713	3,355	19,068	15,029	3,054	18,083	15,030	3,690	18,720

The Statistics for the State of Andhra Pradesh are summarized in below table.

SUMMARY STATISTICS of STATE OF ANDHRA PRADESH						
(Source: NCRB data specific to Dowry Prohibition Act 1961 only; from TABLE 1A.B)						
Key Performance Metric	2016	2017	2018	2019	TOTAL	AVG/Year
Total Cases/Incidents registered	592	434	320	472	1,818	364
Total Victims	592	440	321	480	1,833	367

14.I submit that, none of the above arrested people, including the women, were Dowry-givers. All of them were *allegedly* either taking, abetting, demanding or advertising Dowry since Dowry-givers are not at all booked in FIR by Police,

for reasons best known to them. The response from NCRB to an RTI application filed by our son, Sandeep Pamarati, who is accused no.1 in the impugned case, is attached which says, “**NCRB does not collect info on Dowry-givers**”. There is no reason why dowry-givers information is not collected. This is the level of apathy from Government Reporting Agencies towards recording crime statistics of Dowry-givers. The same is annexed as **ANNEXURE-P7**.

15. The Section 7 on DP Act was originally enacted, as follows in 1961 (Act No. 28 of 1961) :

7. Notwithstanding anything contained in the Code of Criminal Procedure, 1898,—

(a) no Court inferior to that of a 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 within one year from the date of the offence.

There was absolutely no protection granted to any one from prosecution (much less, to the parents of married woman-complainant of dowry harassment) for the offences committed under DP Act which shows that in 1961 itself, the Dowry-givers were held as criminals only, who committed a crime of ‘Giving Dowry’ u/s 3(1). The Bill (No. 33 of 1959) along with Statement of Objects and Reasons is annexed as **ANNEXURE-P8**.

16. Later, the section 7 was amended in 1984 vide Dowry Prohibition (Amendment) Act, 1984 (Act No. 63 of 1984) as follows:

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 the offence** or a parent or other relative of such person, or by any recognised 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 an offence under this Act.

Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised 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.

(Emphasis supplied)

As emphasized above, the Parliament did not intend to protect the Dowry-givers in this amendment also. Since that is the fact position, section 7(3)

squarely attracts the **Doctrine of Manifest Arbitrariness** as it is liable to be struck down. The 1984 Amendment to Dowry Prohibition Act 1961 is annexed as **ANNEXURE-P9**.

17.I submit that the section 7 of the DP Act was further amended in 1986, vide Dowry Prohibition (Amendment) Act, 1986 (Act No. 43 of 1986) and the current impugned sub-section 3 was inserted into section 7.

*(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.*

(Emphasis supplied)

The 1986 amendment along with the statement of Objects and Reasons are annexed as **ANNEXURE-P10**.

18.I submit that, now finally, the attention of this Hon'ble Court is drawn to the provision u/s 7 of the DP Act **as it stands today**, (after the above two amendments, made to principal DP Act in 1984 and 1986) which is reproduced below, for the easy reference of this Hon'ble Court.

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 the offence** or a parent or other relative of such person, or by any recognised 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 an offence under this Act.

Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised 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.*

(Emphasis supplied)

As noted above, **Legislature did not intend to protect the Dowry-giving criminal in this amendment**. This is plainly read and understood by the fact that, Legislature clearly distinguished a **“person aggrieved by the offence”**, and **“a parent or relative”** of such aggrieved person, by a conjoint reading of

7(1)(b)(ii) and Sec 7(3). The latest version of DP Act is annexed as **ANNEXURE-P11**.

19. A single-judge bench of this august High Court of Andhra Pradesh, Hon'ble Sri Justice K.C. Bhanu in *Kudarathullah Khan Vs The State of Andhra Pradesh [Criminal Petition No.7352 of 2010]* decided on 21 March 2012, had held in Para 5, as follows:

*“5. Under Section 3 of the Act if any person, after the commencement of this Act gives or takes or abets the giving or taking of dowry, he shall be punishable. It does not contemplate a demand or coercion or threat made by one person to another for the purpose of giving or taking dowry. Therefore, this provision makes it clear that giving or taking of dowry by any person is an offence. But Section 7(3) of the Act reads that 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. Therefore, Section 3 of the Act is controlled by cl. (3) of Section 7 of the Act. Ordinarily, the person aggrieved by the offence is the person directly affected or injured. The person aggrieved by the offence is the accused in C.C.No.95 of 2010 on the file of the XIII Additional Chief Metropolitan Magistrate, Hyderabad, but not the complainant or the witnesses. **Therefore, statement made by a person aggrieved by the offence is any one of the accused, but not the complainant. Hence, Section 7 (3) of the Act has no application to the present facts of the case. In this view of the matter, the petition is liable to be dismissed.**”*

(Emphasis supplied)

By holding thus, this Hon'ble Court had denied the petitioner therein (father-in-law of the accused person) that case any protection from prosecution under this Act, who was actually the father of the woman who alleged in her information to Police that, her father had indeed given dowry. This judgment is annexed as **ANNEXURE-P12**.

20. Another important aspect completely ignored is that, as per section 7(3) of DP Act, that person aggrieved by offence shall not be subjected to a prosecution under this Act, who had made a 'Statement'. Now the 'Statement' herein mentioned in the section is not defined in the Act so it may mean either the 'information' given to police [per sec 154(1) or sec 155(1) of Cr.P.C.] or 'complaint' given to Jurisdictional Magistrate [sec 2(d) of Cr.P.C.] or anything else is not clear. In almost all of the cases involving allegations of dowry except dowry death, the complainant is the married woman/bride but never her parents, relatives or guardians. In such fact situation, since the parents, relatives or guardians are not the persons given statement under this Act, they should not be entitled to any protection under section 7(3) of DP Act. This can be ascertained by a plain reading of the provision and making literal interpretation of the same.

21.I submit that, the copy of the English version of the Lok Sabha Debates (Sixth Session – Eighth Lok Sabha, Eight Series, Vol XX; No 24, Page 193 onwards) was procured from eLibrary of Parliament which gives details around the discussion on “Dowry Prohibition (Amendment) Act 1986” in Lok Sabha. The trimmed down version of same document is **annexed**, restricting to the Eighth Lok Sabha’s discussion relevant only to the ‘Dowry Prohibition (Amendment) Act 1986 Bill’.

(**Link:** https://eparlib.nic.in/handle/123456789/3764?view_type=search). The relevant portion of the debate is annexed as **ANNEXURE-P13**.

22.I submit that, on Page 196 of this document mentioned *supra*, Late Smt. Geeta Mukherjee, M.P. from Panskura, West Bengal drew attention of the House, and extremely objected to the cavalier fashion the Bill was brought in the House by the Minister of State, Smt. Margaret Alva. She (and couple other Hon’ble members) emphasized the fact that ***Loksabha got mere 2 hours to debate on the Amendment bill and did not discuss the Amendment being proposed to Section 7 of the DP Act.*** Smt. Geeta ji also held in categorical terms how the 1984 amendment was brought into House. The subsequent statement/observations by Smt. Geeta ji are to be noted by this Court to understand the gravity of the Dowry-giving prevalent even when Amendments are being made to the DP Act.

The following points clearly emerge from the reading of this discussion.

- a) Learned Legislators did not discuss the amendment made to section 7 in detail but in a general sense, couple of them appreciated the amendment on the whole, while others did not even raise this point.
- b) Nowhere in the entire discussion around the amendment made to section 7, the learned Legislators said that, parents of the aggrieved person are also to be protected from prosecution.

23.The statements of ‘Objects and Reasons’ of the Principal DP Act and both the amendments made in 1984 and 1986 are to this Petition is annexed as **ANNEXURE-P14**.

24.As can be seen from the statements of ‘***Objects and Reasons***’ referred in above paragraph, the intent of the Legislature is unambiguous that is, to punish the all the accused persons for all the offences listed in DP Act and therefore there is no scope for any judicial interpretation or misinterpretation by Police. Dowry-givers were never intended to be protected by Legislature.

25. For convenience sake, the persons/entities who can file a complaint under the DP Act are listed below.

- By the person aggrieved by the offence or
- By a parent or other relative of such person, or
- By any recognised welfare institution or organization

26. For convenience sake, all the offences under the DP Act are listed below.

- 3(1) - Giving Dowry
- 3(1) - Taking Dowry
- 3(1) - Abet to Give Dowry
- 3(1) - Abet to Take Dowry
- 4 - Demand for Dowry
- 4A - Advertising about Dowry
- 6(2) - Failing to Transfer Dowry

27. **The only person whose statement will not attract prosecution under this DP Act, is the person aggrieved by the offence as stated in section 7(3) and no one else.** A combined reading of these two sub-sections i.e., Sec 7(1)(b)(ii) and Sec 7(3) will clarify that **person aggrieved is different from “parents”** of person aggrieved. Bride/wife and her Family (parents generally) are NOT one and the same for the purposes of this Act, since it is nowhere defined such. **If the complainant is bride and in her complaint, if she says, her Parents gave Dowry, Bride need not be made accomplice to their crime. Sec 7(3) is not applicable to them as they are to be seen as Dowry-givers but not as innocent aggrieved persons.** Especially at FIR State in a Police Station.

28. The act of extending protection of section 7(3) to parents of complainant-woman is violative of **Article 14**, as there is no justification to exclude **one class of persons (i.e., Dowry-givers)** from prosecution and to only prosecute **another class of persons (i.e., Dowry Takers)** for the crime allegedly committed together, which is held as a Crime under same/single section [Section 3(1)] which itself does not differentiate among the criminals. This seems to be a kind of *Colourable interpretation*, whereby Respected Police and Hon’ble Judiciary have authority, to give any interpretation, only if there is any ambiguity, which may lead to contrary views between the provisions of DP Act in question. I submitted that, since there is no ambiguity, there arises no occasion for anyone to interpret any provision on any statute and hence plain meaning of each word, in relation to the whole provision/section is to be read. Necessity of interpretation arises only where there is an ambiguity and there are more than one possible or contrary views. No such occasion arises in the instant issue.

29. I submit that it is unfair for us (in our sunset days and suffering from medical ailments associated with ages of 60+ years) to be implicated in a litigation for alleged offence of Dowry Taking under Sec 3 of DP Act but the alleged Dowry-givers under same Sec 3 of DP Act, who may also be in similar age and health situations as us, are not even booked in the FIR, despite their own daughter categorically mentioning them in her complaint to Women PS, Ongole. I do not understand, with what authority are the police and subordinate judiciary singling us out for traversing through the humiliating litigation.

30. That there is no other way to look at it or interpret, in the guise of harmonious or liberal interpretation as it will lead to perversity and contrary to the legislative intent and goes against the Fundamental Right under *Article 15(3)* of the Constitution. More so, because DP Act is a Penal enactment and its provisions have to be construed strictly and narrowly, if the Judiciary is intent on contributing to eradication of the Dowry menace. It is against principles of natural justice to dole out advantage to one class of same gender (complainant married woman's mother) at the cost of another class of women (complainant married woman's mother-in-law).

31. The *Article 20(3)* says, "No person accused of any offence shall be compelled to be a witness against himself." Since the Dowry Giver is an accused person but not an innocent aggrieved person, at the time of giving a dowry report/complaint to police/magistrate, such persons, whosoever be it parents, guardians or relatives of such complainant, cannot be arrayed under the list of witnesses. The current convoluted practice of arraying the parents and relatives of the complainant married woman as witnesses has to stop and such dowry-givers must be saddled in the FIR under accused list only.

32. This thereby violates the rights of persons under *Article 21*, who are biasedly being prosecuted for allegedly taking dowry, but the **people who are giving dowry are protected even from registration of FIR** which has to be seen a perversity that needs to end immediately.

33. Even the argument that Dowry-givers were demanded, threatened, intimidated or forced, are mere allegations made in a complaint to Police or Court, which are yet to be substantiated with evidence, at the time of trial but not at the time of registering a FIR and such statements of allegations cannot be construed as gospel truth. All such allegations are statutory crimes under Section 4 of DP Act,

and various sections of I.P.C. that are yet to be proven beyond reasonable doubt, in a criminal trial by a Competent Court.

34. Hence, in whichever way it is seen, there is no basis at all, for precluding criminals who had committed the crime of Giving dowry and letting them escape prosecution. It is even more unfair and arbitrary to categorize such persons committing a crime under section 3 of DP Act, as innocent victims. It is an undisputed fact that in 2021, awareness of the Dowry Offences in our Indian society has increased manifold, over the past 60 long years, vis-a-vis the horrible circumstances prevailing in 1961.

Despite knowing that giving and taking of Dowry is a crime, it is humbly submitted that the Dowry-givers are still engaging in Dowry dealings to this date and are perpetuating offences under the DP Act. It is beyond my understanding how will Dowry menace ever leave India! Most criminal thing to note here is that, the Dowry-givers keep quiet while giving dowry before/during/after marriage, but plead victimhood and innocence, only when the relationship between the married couple is allegedly broken down beyond salvage. Such persons cannot be given any leniency under the support of Article 20(3) of Constitution or any other legal provision.

35. For a simplistic comparison, the term 'the person aggrieved by the offence' is used in the provisions of Cr.P.C. as well u/s 198, 198A, 199, 469.

469. Commencement of the period of limitation.—(1) *The period of limitation, in relation to an offender, shall commence,—*

(a) on the date of the offence; or

*(b) where the commission of the offence was not known to **the person aggrieved by the offence or to any police officer**, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or*

*(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to **the person aggrieved by the offence or to the police officer** making investigation into the offence, whichever is earlier.*

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

36. Interestingly, there is no misinterpretation ever done in interpreting the provision in CrPC, by either Police or Judiciary in regards to these sections, such that '**the person aggrieved by the offence**' means & includes the '**parents of the person aggrieved by the offence**', like it is done only in respect of sec 7(3) of DP Act. Such benevolence was done only under DP Act, involving parents of women which is not correct and does not get any help from Article 15(3) of Constitution.

This leaves the provisions sections 3(1) and 7(3) of the DP Act, inconsistent with one another and therefore, promptly attracts the '*Doctrine of Severability/ Separability*' enshrined in Article 13 of Constitution.

37. That, complicating the already entangled situation, the following are a few judicial decisions which held that, statement made by 'the person aggrieved by the offence' shall not subject **parents** of such 'aggrieved person' also to prosecution under DP Act, which is in gross violation of the Legislative Intent to punish Dowry-givers and this anomaly has to be rectified urgently. If such perversity is allowed to continue, the pertinent question arising is, who should be punished, if at all under the Act, for the crime of Giving Dowry.

38. Some case laws listed below emerging out of research:

- a. *Malreddy Ramachandra Reddy Vs C. Vanaja Reddy and Ors* disposed on 16 April 2003 by **High Court of Andhra Pradesh** [2004 DMC 2 49], [2003 ALD 2 91], [2003 ALT CRI 2 253] is annexed as **ANNEXURE-P15**.

Question before the Court was:

"7. A plain reading of the above provision would go to show that giving or taking of dowry as well as abetment of giving or taking of dowry is an offence punishable under the Act. On the basis of the statements made before the Court by P.Ws. 1 to 3 admitting that they gave dowry, can they be tried as accused in the same trial, is the question."

This was answered in following terms:

"10. If P.Ws. 1 to 4, who were examined as witnesses, are added as accused and arrayed in the list, of the accused persons, the proceedings in respect of them shall have to be commenced afresh and the witnesses reheard. It means they have to give evidence against themselves, which is not permissible under law. Clause (3) of Article 20 of the Constitution provides that no person accused of any offence shall be compelled to be a witness against himself. This protection is available to the person accused of an offence not merely with respect to the evidence to be given in the Court-room in the course of trial but is also available to him at the previous stages, if an accusation has been made against him which might, in the normal course, result in his prosecution. It follows that the protection is available to a person against whom the formal accusation has been made though the actual trial may not have commenced as yet and if such an accusation relates to the commission of an offence which in the normal course may result in prosecution. In view of the above provisions, the witnesses cannot be compelled to give evidence against themselves. Therefore, P.Ws. 1 to 4, cannot be arrayed as accused along with petitioner and others in the same proceedings. If the Court wants to proceed against the persons of giving dowry, then it has to resort to the provision under Section 7 of the Act. Section 7(1)(b) of the Act provides that no Court shall take cognizance of an offence under this Act except upon its own knowledge, or a police report of the facts which constitute such offence, or a complaint by the person aggrieved by the offence or

other relative of such person or by any recognized welfare institution or organization.

Further Section 7(3) of the Act provides that 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.”

(Emphasis supplied)

The observation from Para 11 is as follows,

*“11. "Statements" may be given to a lawful authority. Such statements do not become "evidence". If such "statements" are to be read as evidence, they must be made before the Court under oath or affirmation. Only then, the "statements" become "evidence". When such is the position, the word "statement" as referred to in Section 7 of the Act means and includes statement of a witness given in a Court of law under oath or affirmation. As a corollary, the word "statement" includes evidence of a witness in a Court of law. Section 7(3) of the Act protects a witness from being prosecuted in the same trial for a statement made by him. No doubt, the words "statement" and "evidence" are not synonymous. But, in my considered view, a "statement" becomes "evidence" when a witness gave the statement made by him. **No doubt, the words "statement" and "evidence" are not synonymous. But, in my considered view, a "statement" becomes "evidence" when a witness gave the statement in a Court of law on oath or affirmation. Therefore, the statement of a person aggrieved by the offence or the statement made by a witness in a Court of law about giving of dowry shall not subject such person to a prosecution under, the Act.**”*

(Emphasis supplied)

- b. *Ram Gopal Sah Vs State of Jharkhand* disposed on 03 December 2008 by **High Court of Jharkhand** [2008 SCC ONLINE JHAR 385] is annexed as **ANNEXURE-P16**.

*“10. The petitioner has sought prosecution on the basis of the statement of giving dowry by the father of the **complainant**. From perusal of the statement made in the complaint, I find no such incriminating statement of voluntarily giving dowry for marriage. The statement regarding giving presents ‘UPHAR’ does not come within the ambit of definition of dowry. **Moreover, the father of the complainant is an aggrieved person from whom dowry was being demanded. Such aggrieved person is protected under Section 7(3) from prosecution under the Act.**”*

(Emphasis supplied)

- c. *Ajita David Vs State* disposed on 29 June, 2009 by of **Madras High Court** [2009 MLJ CRI 3 728] is annexed as **ANNEXURE-P17**.

“9. In order to provide more clarity to the provision under Section 7(1)(b)(ii), the legislature has thought it fit to clarify that a parent or other relative of such a person also is entitled to lodge a complaint apart from the person aggrieved by the offence. Firstly, it is found that Dowry Prohibition Act, 1961 does not define the person aggrieved by the offence. The aforesaid provision made to provide more clarity cannot be

interpreted that the word 'parent' does not fall within the category of an aggrieved person by the offence provided under the Dowry Prohibition Act, 1961. The parent of the victim girl is definitely a person aggrieved by the offence. By no stretch of imagination, the legislature would have thought of excluding the parent from the purview of the person aggrieved by the offence while drafting section 7(3) of the Act to exempt from prosecution the person aggrieved by the offence for the statement made by him. At any rate, the phrase "person aggrieved by the offence" employed in sub-section 3 of section 7 of the Dowry Prohibition Act, 1961 cannot be construed that it only refers to the victim girl who was deprived of the marital bliss on account of the harassment meted out to her demanding dowry. In the considered opinion of this court, parents and other relatives of the victim girl can safely be classified as person aggrieved by the offence as contemplated under Section 7(3) of the Dowry Prohibition Act."

(Emphasis supplied)

- d. In another case law *Pooja Saxena vs State and Anr* disposed on 20 October 2010 by **Delhi High Court** reported in [2011 CRIMES 1 378], [2010 JCC 4 2780], [2011 AD DEL 1 359], [2010 SCC ONLINE DEL 3652], which was a Quash petition u/s 482 Cr.P.C, it was categorically held that,

"11. The above observation of this Court obviously is an obiter and does not constitute a binding precedent for the reason that the provisions of the Dowry Prohibition Act 1961 were not the subject-matter of the dispute before the court in the petition under Section 482 Cr.P.C. in Neera Singh's case. Moreover, in the aforesaid judgment, the Court has not taken into account the protection given to a victim of offence of dowry demand as provided under Section 7(3) of the Dowry Prohibition Act 1961. Thus, in my view the above referred judgment is of no avail to respondent No.2. Further, on perusal of FIR No.232/2009, it transpires that as per the allegations in the complaint made by the petitioner, the demand for dowry was made by the father of respondent No.2 at the time of engagement ceremony of the petitioner when he allegedly asked the father of the petitioner to concede to his demand for dowry, failing which he would call off the marriage. From the aforesaid facts, it is obvious that the petitioner and her parents were confronted with the unenviable situation either to concede to the demand or face the loss of honour of their family in the society, and if under that fear, the petitioner and her parents conceded to the demand for dowry, they cannot be faulted as they were victims of the circumstances. Given the aforesaid facts, Section 7(3) comes to the rescue of the petitioner and in terms of the aforesaid provision, she cannot be subjected to prosecution for the offence under Section 3 of the Dowry Prohibition Act, 1961."

(Emphasis supplied)

This judgment is annexed as **ANNEXURE-P18**.

39. I submit that the decision *Viral Dhulia Vs Virag Dhulia* disposed on 25 July 2013 by **Karnataka High Court** [2013 KCCR 4 3137], [2013 AKR 4 454], [2014 ILR KAR 199], [2013 SCC ONLINE KAR 5387], [2013 AIR KANT R 4 45] is also incorrect which is annexed as **ANNEXURE-P19**.

40. I submit that the decision *Chitranjan Dev Goel and Ors Vs State (NCT of Delhi) and Ors* on 21 March 2016 by **Delhi High Court** [2016 SCC ONLINE DEL 2130], [2016 DLT CN B 229 30] is also incorrect which is annexed as **ANNEXURE-P20**.

41. That, if such misinterpretation of unambiguous provisions of DP Act is to be allowed perpetually, then it is contended that section 3(1) be suitably struck down/altered/amended by this Hon'ble Court, to hold that, **only Taking and abetting to take are only crimes** under this section, but **giving and abetting to giving dowry are not crimes**, as none were prosecuted till date in India nor anyone will ever be prosecuted, resulting in inconsistency.

42. As a Constitutional Court, this Hon'ble Court has been clothed with the power and duty to make such striking down of any inconsistent provision in a statute, in a like manner to what Hon'ble Supreme Court did in *Hiral P Harsora and Ors Vs Kusum Narottamas Harsora and Ors* disposed on October 6, 2016 [2016 SCC OnLine SC 1118] or [(2016) 10 SCC 165] by striking down two words 'Adult Male' from section 2(q) of PWDV Act 2005. There is no dearth of legal precedent to support such power to the High Courts.

43. I submit that, if the Dowry-givers are not going to be prosecuted ever in India, then section 3(1) of DP Act become inconsistent with section 7(3) and so section 3(1) of DP Act may be suitably interpreted by this Hon'ble Court, by striking down the terms, '**giving of dowry**' and '**abetting to give dowry**' thereby making all aspects of giving dowry be decriminalized. **Only taking of dowry be prosecuted**. Although this may remove the inconsistency currently prevailing between section 7(3) and section 3(1) under the DP Act but this may fly in the face of Legislative Intent and ought not be desirable.

44. I perused the below thoroughly researched reports of **Law Commission of India** but could not find any prescription that Dowry-givers should not be prosecuted.

- a. 83rd Report on The Guardians and wards act, 1890 and certain provisions of the Hindu Minority and Guardianship Act, 1956
- b. 91st Report on Dowry deaths and law reform amending the Hindu Marriage Act, 1955
- c. 141st Report on Need for amending the law as regards power of courts to restore criminal revisional applications and criminal cases dismissed for default in appearance.

- d. 202nd Report on Proposal to amend Section 304B of the Indian Penal Code
- e. 205th Report on Proposal to amend the prohibition of Child marriage Act, 2006 and other allied laws
- f. 234th Report on Legal Reforms to Combat Road Accidents
- g. 237th Report on Compounding of (IPC) Offences
- h. 243rd Report on Section 498A IPC
- i. 262nd Report on The Death Penalty
- j. 270th Report on Compulsory Registration of Marriages

45. I submit to this Hon'ble Court that the petitioners have not researched into any non-governmental reports from any private think-tanks, research and advocacy groups, Women's Right groups other than Law Commission of India reports.

46. A single-bench judge of High Court of Allahabad in *Yogesh Chhibbar Vs State of U.P. [Cri. Misc. Application. No. 1740 of 1996]* decided on 6 Dec 1999 held that,

"9. The power to file complaint, therefore, cannot be inferred from the analogy of the powers of Dowry Prohibition Officer enumerated in Section 8B. Anything which is not in the Act cannot be inserted by Courts. The Court does not possess law-making power. The Courts may interpret the law contained in the Act and not insert any fresh provision, which has deliberately not been incorporated by the Legislature. Therefore, the above observation of the learned Additional Sessions Judge that Dowry Prohibition Officer has got power to file the complaint is against the provisions of law."

10. The learned Additional Sessions Judge has further observed that Section 7(1)(b)(ii) and the Explanation to said section says that Court shall take cognizance of a complaint filed by a recognised welfare institution or organisation. The Harijan Welfare Department of the State of U.P. is a welfare institution and if its officer has filed complaint under the provisions of Dowry Prohibition Act, the Magistrate will take cognizance over it under Section 7(1)(b)(ii). This observation of the learned Additional Sessions Judge is also against the provisions of law. The complaint was not filed by Harijan Welfare Department allegedly a recognised welfare institution, but by Dowry Prohibition Officer. If the law requires that complaint should be filed by an institution, then it must be filed by institution and not by other Authority. It may be true that Dowry Prohibition Officer was appointed by Harijan Welfare Department, but that officer did not become the Department itself and no action has been taken by the Department, as there is no such indication in the complaint that it was filed by Harijan Welfare Department through Dowry Prohibition Officer. Therefore, above observations of the learned Additional Sessions Judge are against the provisions of law and cannot be accepted."

The Judgment from two sources is annexed as **ANNEXURE-P21**.

47. In the circumstances stated above, the petitioner has no efficacious alternative remedy, except to seek the redressal before this Hon'ble Court seeking the indulgence of this Hon'ble Court to exercise the extraordinary original

jurisdiction vested in this Hon'ble Court by virtue of Article 226 of the Constitution of India.

48. The petitioner has not filed any writ petition, suit or other proceedings for the relief or relieves sought herein.

PRAYERS

It is therefore prayed that this Hon'ble Court may be pleased to issue an order or direction more particularly in the nature of mandamus calling the action of respondents in not registering the dowry-givers in the impugned FIR leading to CC No. 400220 of 2018 on the file of the Hon'ble Court of III Additional First Class Judicial Magistrate, Ongole, Prakasam District; eCourts CNR: APPR0A0033552017) as illegal and arbitrary and

(a) declare that dowry-givers are equally liable for prosecution as much as dowry-takers

(b) Declare that Dowry Givers, whosoever it be such as the parents or relatives or guardians of the bride/married woman, as defined u/s 3(1) of DP Act, do not have any protection from prosecution as defined u/s 7(3) of DP Act, since Dowry Giving is still a Crime in India as long as the words 'give', 'abet to give' remain present in the section 3(1) of DP Act

(c) Pass direction to Principal Secretary Home Department, Government of Andhra Pradesh, Director General of Police and S.H.O of Women Police Station (CC No. 400220/2018, on the file of the Hon'ble Court of III Additional First Class Judicial Magistrate, Ongole, Prakasam District; eCourts CNR: APPR0A0033552017), Ongole, Prakasam District, Andhra Pradesh to take steps in their official capacity, to ensure to book the alleged dowry givers, i.e., the parents of the complainant, also as additional accused in my case (*supra*), and submit a supplementary Charge sheet against them

(d) Declaring the action of respondents herein in our case (supra), as is illegal and violation of Articles 14, 21 of the Constitution of India and to pass such other further order or orders in favor of the senior citizen petitioners and against the respondents and to pass such other orders and directions as prayed for in the affidavit and as this Hon'ble Court deems fit and proper, in the facts and circumstances of this instant case.

It is further prayed that this Hon'ble Court may be pleased to stay all further proceedings in CC No. 400220 of 2018, on the file of the Hon'ble Court of III Additional First Class Judicial Magistrate, Ongole, Prakasam District; eCourts CNR: APPR0A0033552017, as an interim relief, pending disposal of the instant Writ petition and to pass such other or further orders and this Hon'ble Court deems fit and proper in the circumstance and facts of the case.

Deponent

Solemnly and sincerely affirm this
the day of 14-09-2021
and signed his name in my presence.

BEFORE ME

ADVOCATE :: Amaravati

VERIFICATION STATEMENT

I, Veerabhadra Rao Pamarathi, D.No.11-968, Aravinda Nagar, Anantapur, AP, 515001, Cell: 9686942855, being the petitioner/ person acquainted with the facts do hereby verify and state that the contents of the above paras of the Affidavit are true and correct to the best of my knowledge. The above contents are typed under my instructions and same are read over and explained to me in vernacular language. Hence verified at Amaravati on this the day of 14-09-2021

Advocate

Deponent