

Guidelines on dealing with the complaints related to dowry demands, marital disputes and investigation thereof.



Object of SPUW&C

The evil of dowry system has been a matter of serious concern to everyone in view of its ever increasing and disturbing proportion due to which a large number of families have been ruined. In order to save the intuitions of marriage the Govt. of India has made several laws time to time but legislation cannot by itself normally solve deep-rooted social problem. One has to approach them in other ways too so that it may give that push & have the educative factor. The demand for dowry is a social crime.

The definition of "Dowry" is defined in section 2 of the Dowry Prohibition Act, 1961 whereas the definition of cruelty is defined as under:-

"(a) any willful conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health (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 her 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".

The Crime against Women Cell has been functioning in each Distt. of GNCT of Delhi since 1983 with the object to help women facing cruelty and dowry harassment. This experiment has yielded fruitful results. In order to make it more meaningful, the following guidelines have been formulated.

The enquiry /investigating officers of this unit will adhere to these guidelines.

Process of filing complaint:-

The fresh complaint(s) pertaining to marital discord shall be received at the Reception of this unit functioning in left side of the main gate of this office. An officer of Inspector rank is deputed as "Inspector/ fresh complaints". An upper subordinate police officer assists him there. After making necessary entries of the complaint in the registers at reception, Inspector/Fresh complaint shall go through the complaint, hear the complainant patiently and produce her before concerned ACP/Counseling. ACP/Counseling, after hearing the complainant, shall depute a complaint handler (Henceforth, enquiry officer shall be designated as complaint handler) not below the rank of Sub-Inspector only for those complaints, which discloses the commission of cognizable offence (marital dispute) in the jurisdiction of territory of Delhi. If the complaint discloses jurisdiction of offence out of territory of Delhi, Inspector/Fresh complaint rather than accepting complaint shall inform the complainant that she may give her complaint to concerned authority for legal action and if she is keen to resolve her marital dispute by way of counseling by the professional counselors, appointed by National Commission for Women (NCW), Delhi or mediator appointed by DLSA, to give such request in writing. If she does so, its entry shall be made in the separate register at the reception and it will be forwarded to the Counselor through the concerned ACP/Counseling. On receipt of such request, the Counselor shall call both parties for counseling if they so desire. In case effort of the counselor fails, she will pursue her complaint for legal action in concerned State. Jurisdiction of the criminal cases in enquiries & trial has been prescribed in chapter XIII of Cr.P.C from section 177 to 189 (both inclusive).

If this unit receives any complaint pertaining to marital discord by post or other sources, it will be submitted to the concerned ACP/Counseling. He/She will depute a complaint handler with the direction to call the complainant in order to ascertain whether she has actually filed/sent this complaint or otherwise. If she ratifies so and intends to resolve her marital dispute, this unit shall give her a platform accordingly.

Guidelines for ACSP-Counseling/Complaint Handlers/Counselors/Mediators:-

a) On receipt of a complaint, Complaint Handler shall maintain order-sheet of each complaint by mentioning the gist of day-to-day proceedings and put her/his signature under each noting. ACP/Counseling shall also counter sign such noting on daily basis. If some directions given by DCP/Addl. DCP, are reduced to writing in such noting, it must be shown to the concerned officer.

b) If complainant has not provided a list of her "Istridhan", marriage proof etc. alongwith her complaint, Complaint handler shall ask for the same from the complainant on first hearing.

c) As soon as complaint handler gets list of "Istridhan", he/she shall serve a copy of list of "Istridhan" to the respondent or his parents, as the case may be, and ask him/them to submit an admitted list. As soon as Complaint handler gets admitted list, give a copy of the same to the complainant for her knowledge and record. Complaint handler shall brief them regarding Counseling, Mediation and persuade them for counseling. He/She shall not compel any party for reconciliation. After counseling, if both parties agreed to reconcile, Complaint handler shall obtain a report from counselor and put up report to concerned ACP/Counseling accordingly who shall close the complaint and consign the same to record. However, both parties will be called twice intermittently for follow up.

d) If counseling by the counselor of National Women Commission (NCW) fails, the complaint handler shall refer them to mediation center if both parties so desire. If the mediator succeeds in persuading both parties to settle their dispute amicably as full & final against some consideration, Mediator of DLSA shall prepare a Memorandum of Understanding (MOU) in vernacular language accordingly and obtain the signatures of both parties on it. At least one person from each side will also sign the MOU as witness. Mediator shall give a copy of MOU to each party and the Complaint handler. The case handler shall ensure delivery of Istridhan according to admit list to the complainant if so mentioned in the MOU.

e) It is pertinent to mention that if the main accused and his family members or complainant is abroad, a representative or an advocate duly authorized by the complainant/respondent, as the case may be, can participate in the mediation proceeding on their behalf. Such representative shall have to produce an authority letter to the mediator but the mediator shall not entertain such representative until the complainant/respondent as the case may be, allows them in black and white.

f) In case mediation fails, the mediator shall send a report to this effect to the concerned Complaint handler who shall ask the complainant in writing whether she wants legal action on her complaint or otherwise. If complainant solicits legal action, both parties will be produced before ACP/Counseling for doing the needful. The Complaint handler will act in accordance with the written directions of the ACP/Counseling.

g) Complaint handler shall submit a detailed final report to the ACP/counseling with his/her specific recommendation. If recommendation is about the registration of case, the sections of law shall be applied in accordance with the contents of the complaint. Complaint handler shall mention his/her full name, Range and PIS numbers under her/his signature on final report. In turn, ACP/counseling shall examine the matter and put down her/his remarks after considering all facts. No recommendation for registration of FIR ought to be made in routine manner. Complaint handler shall submit final report to the DCP/Addl. DCP/SPUWC/Nanakpura, New Delhi for his/her approval for registration of FIR.

h) If court has given any direction to the case handler or given any sort of relief to the respondents, case handler shall take down it in his final report; such order in original shall be placed on file.

i) After obtaining the written approval of DCP/Addl. DCP/SPUWC, the Complaint handler shall send all relevant documents such as original complaint, list of "Istridhan", marriage proof etc. including above said approval to the SHO/PS CWC for registration of FIR and pursuant action.

Directions for ACP-PS/SHO/ I.Os :-

a) As soon as FIR is registered, SHO/CWC shall prepare a guard file of the case for monitoring investigation by senior officers. SHO/CWC shall give appropriate directions in writing to the IO on guard file for conducting investigation in professional manner. IO shall submit progress report to the SHO on every fortnight. In turn, SHO/ACP-PS shall put up the same to the undersigned with their remarks.

b) The I.O is supposed to understand the meaning of "Dowry" described in section 2 of the Dowry Prohibition Act, 1961. The gift items given to the husband, in-laws and his other relatives by the parents of the complainant before or at the time of marriage or after the marriage shall be segregated from the list of "Istridhan" and the complainant shall be informed about this legal aspect. He shall direct the respondent to produce the "Istridhan" as per the admit list and hand over the same to the complainant by making an inventory. He shall obtain the signature of both parties on the inventory and hand over a copy of such inventory to both parties.

c) He shall collect evidence related to the cruelty, harassment linked with the demand of dowry, in shape of reports made by the complainant with concerned Police Station and medical reports with regard to physical/mental torture, bills of "Istridhan" etc. to incriminate the accused persons.

d) He/She shall record statement of witnesses in support of the allegation u/s 161 Cr.P.C diligently. Provided no male person under the age of 15 years or a woman witness shall be called through notice u/s 160 Cr.PC to join investigation at any place other than the place where such person or woman resides. However, there is no bar to send a notice u/s 160 Cr.PC to a female accused as per the judgement of the Supreme Court of India delivered in 2010. The dignity of females shall be respected by all means. I.O. shall probe role of all accused persons mentioned in the FIR prudently and fairly. IO shall conduct local enquiry before arriving at any conclusion in order to avoid a miscarriage to justice.

- e) I.O shall give a notice u/s 91 Cr.PC directing the complainant or her parents to produce receipt/bills with regard to "Istridhan". In absence of documentary proof, I.O. shall endeavor to collect secondary evidences. IO shall take down the efforts put in by him in the case diary. He shall verify the bills/receipt pertaining to "Istridhan" properly. He shall also explore the source of money with regard to "Istridhan" from complainant party for establishing the genuineness of accusation.
- f) IO shall conduct search of the house of the alleged persons for the purpose of recovery of "Istridhan" under the provisions laid in section 93,100, 165 & 166 Cr.P.C. IO shall prepare an inventory of the recovered items in the presence of two local witnesses, complainant and respondent. Complainant, respondent, two local witnesses and the I.O. shall sign the inventory. IO shall provide a copy of inventory to both parties and will place acknowledgement on case file. IO shall not cite such two local witnesses as prosecution witnesses in the charge sheet of the case. g) Instances have come to notice when the parties related to the marriage have put question mark on the integrity of the I.O with regard to search for the recovery of "Istridhan". In order to surmount such serious allegations, the entire process of the house search will be video-graphed by the I.O in each case. The expenses incurred will be borne by the department for which I.O. shall submit a bill to the competent authority for its reimbursement.
- h) If any of the accused persons is Non-Resident Indian (NRI), the I.O shall obtain a Photostat copy of his passport and his E-mail address, if any. I.O. shall send an E-mail message to him for joining investigation. If he/she ignores, I.O. shall adopt the procedure laid in section 105 (b) Cr.P.C etc. to compel the accused to join investigation. I.O will also get LOC & Red Corner Notice opened/issued against him/them with the prior written approval of the DCP/Addl. DCP/SPUWC/Nanakpura & shall follow other directions of Govt. of India meticulously on the subject.
- i) If sufficient evidence have been adduced against any of the accused persons and he/she deliberately avoids his/her arrest, the proceeding u/s 82 & 83 Cr.P.C. will be initiated against him/her by the I.O. in order to compel him/her to join investigation.
- j) No I.O. shall conduct local enquiry overtly or covertly in the locality of the complainant without the written approval of the DCP/Addl.DCP/SPUW&C.
- k) In view of section 7(3) of The Dowry Prohibition Act, 1961 the complainant or her parents or her relatives shall not be prosecuted under section 3 of The Dowry Prohibition Act, 1961 by any I.O.
- l) If court has given any direction at any point of time during investigation, that will be followed meticulously by the I.O and SHO.

Guidelines for arrest :-

- a) The Hon'ble Supreme Court of India in the matter of D.K. Basu v/s Union of India and High Court of West Bengal & ors, and in the matter of Joginder Kumar v/s State of U.P in CrI. Writ No. 9/94 had made certain observations with regard to arrest of a person. These guidelines have been inserted in sections 41 to 41-D of Cr.P.C. All IOs while arresting a person will follow these guidelines meticulously.

b) Hon'ble Mr. Justice Kailash Chhiber, High Court of Delhi in bail application No. 1627/08 titled Chander Bhan and another v/s State passed the following guidelines to be strictly followed by the Police Authority:-

i) Arrest of main accused shall be made only after thorough investigation and with prior approval of the ACP/DCP..

ii) IO shall arrest the collateral accused such as father-in-law, mother-in law, brother-in-law, sister-in-law etc. only after prior approval of DCP/Addl. DCP. For obtaining such approval, a detailed report having references of the evidences adduced on file will be mentioned in the guard file of the case by the I.O and it will be sent to the competent officer through SHO/CWC and ACP/PS alongwith their specific remarks.

c) As per section 60-A Cr.PC all arrest shall be made in accordance with Cr.PC. If a woman accused is to be arrested in any case, the provisions made in sections 46(4), 51(2), 53(2) and 54(1) shall be followed by the IOs meticulously.

d) IO shall initially prepare draft charge sheet against only those accused persons against whom sufficient evidence have been adduced on file. The charge sheet will be prepared in comprehensive & conspicuous manner i.e. who had committed what offence (s) & what sorts of evidences are adduced against him to prove his illegal acts during investigation. If there is insufficient evidence against any of the accused persons, his/her name shall be mentioned in specific column No.12 of the charge sheet. SHO/CWC, being the chief investigative officer, shall ensure that the charge sheet has been prepared by the I.O. on the basis of evidences adduced on file.

e) The draft charge sheet alongwith case file will be sent to prosecution branch for scrutiny. If the Public Prosecutor points out any flaw in investigation, the same shall be removed by the IO and record a case diary to this effect. Thereafter, a fair charge sheet shall be prepared by the IO and it shall be counter signed by the SHO and ACP/PS. The ACP/PS shall forward the charge sheet to court for judicial verdict within stipulated period. ACP/PS, CWC rather than forwarding the charge sheet to court in routine manner shall follow the procedure laid in section 158 Cr.P.C.

f) The charge-sheet can also be filed in the court without arrest but there must be a rational explanation for doing so i.e. it should be in accordance with the provision of section 41-A Cr.P.C.

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