RECOMMENDATIONS FOR REPEAL OF THE STATE AMENDMENTS IN THE DOWRY PROHIBITION ACT, 1961 (ACT XXVIII OF 1961) AS INCORPORATED BY THE STATE OF BIHAR THROUGH BIHAR ACT IV OF 1976.

The recommendations for repeal of the State amendments in the Dowry Prohibition Act, 1961 (Act XXVIII of 1961) (hereinafter referred to as "the Original Act") by the State of Bihar through Bihar Act IV of 1976 has become necessary in view of the subsequent amendments brought into the Original Act by the Central Government through Dowry Prohibition (Amendment) Act, 1984 (Act LXII of 1984) and the provisions of Article 254 of the Constitution of India.

The scourge and hypersensivity of the dowry system has been a matter of uncomfortably grave and serious concern. The subjugation of the female spouse to traumatic sufferings, cruelty and unwelcome harassment at the hands of the overzealously greedy and unscrupulous husband and /or the relatives of the husband primarily on account of non-fulfilment or insufficient payment of the unlawful demands of dowry, pre or post marriage, very often culminated in the irretrievable breakdown of marriage or suicide by the tormented female spouse and sometimes even in her murder. The virulent growth in cases of harassments and deaths gave rise to the urgent requirement for arresting or combating the social evil and ways and means were sought to ameliorate the sufferings of the hapless female spouse. The consequential result was the enactment of the Dowry Prohibition Act, 1961 (Act XXVIII of 1961), which in effect sought to control, if not eradicate, the pernicious social evil.

However, notwithstanding the Central enactment, the Government of Bihar considered it explicitly desirable and necessary to introduce State amendments to some of the provisions of the Central Act. In persuance thereof the Bihar Act IV of 1976 was enacted whereunder State amendments were substituted in Sections 3, 4, 7 and 8 of the Central Act and these amendments came into effect from 20-01-1976.

Apropos, it may be mentioned that in **Rajesh Kumar Kejriwal vs. State of Bihar** [(1997) 10 SCC 524] the Bihar amendment to

Section 4 of the Original Act providing for requirement of obtaining previous sanction of the State Government or such officer as the State Government may, by general or special order, specify in this behalf, fell for consideration before the Supreme Court. The Apex Court held that the prosecution having been launched in absence of previous sanction was not permissible and thereby quashed the cognizance taken.

It transpires that on a general review of the beneficial impact of the Central Act including the numerous amendments introduced therein by several of the States, it was noticed that the mischief of the dowry system had registered an ascending trend. Accordingly, several amendments were introduced in the Original Act through the Dowry Prohibition (Amendment) Act, 1984 (Act LXII of 1984) to make the provisions more stringent. The salient features of the amendments in an effort to make the offence of giving or taking of dowry more stringent, were to do away with the requirement of obtaining prior sanction (Section 4) and making the offence under the Act cognizable and non-compoundable (Section 8).

From what has been narrated in the paragraphs hereinabove regarding the State amendments of 1976 and the subsequent amendments made by Parliament in the Central Act in 1984, specially in context of Section 4 of the Act, it would transpire that whereas the State Government remains committed to the *condition precedent* of the requirement of previous sanction before taking of cognizance of an offence under the Act, the Parliament, in effect, through the 1984 amendments has explicitly done away with the requirement of obtaining prior sanction.

In this prevalent scenario a piquent situation involving a contentious issue of great legal significance, specially in respect of Sections 3 and 4 of the Act has surfaced - whether, due regard being had to the provisions of Article 254 of the Constitution of India, the Bihar amendments would still prevail over the subsequent amendments by Parliament in the Central Act ?

The contentious issue is, however, no longer *res integra* and remains settled by the Division Bench decision of the Patna High Court in **Deo Narayan Lall Das vs. State of Bihar** [1992 (2) PLJR 560] and

that of a Division Bench of Jharkhand High Court in **Vivek Rai vs. State of Jharkhand** (2009 Cr. L.J. 57). Taking recourse to the provisions of Article 254 of the Constitution of India, both these decisions, in no uncertain terms, held that the said amendments of 1976 was void to the extent of repugnancy in view of the subsequent 1986 amendment of the Central Act by Parliament which would prevail.

It will not be out of place to mention here that the correctness of the decision in **Deo Narayan Lall Das** (supra) was doubted in the light of the decision of the Apex Court in **Rajesh Kumar Kejriwal's** case (supra). On reference, another Division Bench of the Patna High Court in **Jai Prakash vs. State of Bihar** [2005 (4) PLJR 264] affirmed the decision in **Deo Narayan Lall Das's** case (supra) and for cogent reasons assigned therein distinguished the Apex Court decision in **Rajesh Kumar Kejriwal's** case (supra). It would be gainful to reproduce the reasons assigned in **Jai Prakash's** case (supra) which reads thus:

> "11. Power of the State Legislature and the Parliament to make laws under Article 246 of the Constitution of India is regulated by Seventh Schedule of the Constitution of India. Parliament has exclusive power to make laws with regard to the matters enumerated in List 1 of Seventh Schedule and the Legislature of the State has exclusive power to make laws with respect to any matters enumerated in List II of the Seventh Schedule. With regard to the Concurrent List Parliament and the State Legislature have power to make laws with respect to any of the matters with regard to the said List.
>
> x x x x x x x x
>
> 13. Thus, it is clear that in case any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by

Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State will be declared void. The question of repugnancy arises with regard to the matters enumerated in Concurrent List (List III of the Seventh Schedule) as with regard to the same matter both the Parliament and the State Legislature have power to legislate. however, if the law made by the Legislature of the State with regard to one of the matters enumerated in the Concurrent List is found to be repugnant to the law made by the Parliament, then the law made by the Legislature of the State will prevail provided the law made by the Legislature of the State has been reserved for consideration of the President and has received his assent. However, the Parliament has power at any time to add, amend, vary or repeal the law so made by the Legislature of the State.

14. The Parliament and the State Legislature both have power to make law with regard to Dowry as it is under Entry No. III. The Parliament had enacted the law and provided for prior sanction before taking cognizance and to the same effect was the amendment in the Bihar Act. Later on, provision was amended by the Central Act. According to the Central Act, no sanction is required before taking cognizance whereas according to the State Act sanction of the competent authority is required before taking cognizance. Both are contrary to each other. In other words, the law made by the Legislature of State is repugnant and as such to that extent it is void Admittedly, the State Amendment has neither been reserved for consideration of the President nor has received his assent and as such the same cannot be saved under Article 254 (2) of the Constitution of India. According to the proviso, Parliament is

competent to amend, vary or repeal the law so made by the Legislature of State. In view of the subsequent amendment of the Central Act the provision of Bihar Act requiring sanction by the competent authority is repugnant and to that extent it is void. In terms of proviso to Article 254 of the Constitution of India the Parliament has power to add, amend, vary or repeal the State law also at any time but such question does not arise in this case. The Parliament has subsequently amended the Central Act and after going through both the provisions it is clear that there is direct conflict between the two provisions as one cannot be obeyed without disobeying the other. Section 4 of the Central Act says that no sanction is required before taking cognizance whereas the State law says that sanction is required before taking cognizance and as such there is direct conflict between the aforesaid provisions and the law made by the Parliament will prevail.

15. So far Judgment of the Supreme Court in the case of **Rajesh Kumar Kejriwal** (supra) is concerned, in the aforesaid case Bihar Amendment by Act 4 of 1976 requiring prior sanction before taking cognizance was noticed but the question as to whether the said Amendment is still valid in view of the subsequent amendment of the Central Act in 1984 dispensing with the requirement of previous sanction before taking cognizance was not gone into at all. In that case, their Lordships only went to the provision of Bihar Act and held that according to the same sanction is required before taking cognizance. The said case, in my view, is not an authority on the point that in spite of the amendment of the Central Act doing away with the requirement of previous sanction before taking cognizance under section 4 of the Act, the State Act is a valid piece of legislation and will prevail in the State of Bihar. I fully agree with the view laid down by the Division Bench in the

case of **Deo Narayan Lall Das** (supra). Accordingly, it is held the cognizance taken against the petitioners under sections 3 and 4 of the Act is valid in the eye of law and no prior sanction of the competent authority for taking cognizance is required as the amendment in Bihar Act 4 of 1976 is repugnant to the Central Act and is held to be void.

In view of the authoritative decisions of the Division Benches of the Patna and the Jharkhand High Courts, referred to hereinabove, it is now well settled beyond any cavil that the State amendments in Sections 3 and 4 of 1976 in view of the subsequent amendment by Parliament in the Central Act are no longer good law.

On the same analogy, the State amendments made in the other Sections are also no longer good law and the amendments introduced by the Parliament in 1986 shall prevail.

Unfortunately, the State amendments of 1976 still continue in the statute book. Time is now ripe for the State Government to repeal the State amendments of 1976 to bring the law in confirmity with the Central Act.

It is accordingly, recommended that in view of the discussions made hereinabove and the settled principles of law, the State Government may perhaps be inclined to repeal the amendments introduced by Bihar Act IV of 1976.

(Justice Abhijit Sinha)
Chairman
Bihar State Law Commission

(Dr. K.N. Poddar)	**(Dr. Uma Shankar Prasad)**	**(Dr. Anshuman)**
Member	**Member**	**Member**
Bihar State Law Commission	**Bihar State Law Commission**	**Bihar State Law Commission**