

## Nominal Changes

*Like most laws, the Dowry Prohibition Act is likely to remain ineffective until it reflects community conviction against the offence, in this case, the giving and taking of dowry. Its self contradictoriness seems to reflect the mixed attitudes prevailing in our society today. By itself, a law, however well designed, is unlikely to effect concrete changes in the situation unless accompanied by far reaching political, social and economic changes in the status of women both inside and outside the family.*

THE Dowry Prohibition Act, has recently been amended with an intent to make it more effective in curbing the practice of giving and taking dowry, and the resultant harassment of women by their husbands and in-laws. A joint committee of both houses of parliament had made certain recommendations on the basis of which government framed and introduced a bill to amend Dowry Prohibition Act.

### Definition Of Dowry

One major defect of the Act was its definition of dowry as anything given "in consideration of marriage." This meant that things given after marriage could not be defined as dowry because they were not given to effect the marriage, the marriage having already been effected. Yet it is well known that dowry demands by no means end once the marriage takes place, escalate since the woman is then at the mercy of her husbands' in-laws who may torture her with the aim of extracting more dowry from her parents.

The new amendment replaces the words "in consideration of marriage" with the words "in connection with the marriage." Since this widens the definition of dowry it is an improvement but it is still not wide enough since one may not be able to prove that demands made a couple of years after marriage were "in connection with the marriage." In our society, dowry has in fact come to be anything given by the girl's family to the boy's family before,

during or at any time after the wedding. Therefore the definition in the Act does not adequately cover the situation.

Another major defect in definition of dowry under the Act is that gifts by the

bride's parents to her or her husband are not treated as dowry. This provides a most convenient way of escape for all parties leading to today's situation where everyone gives dowry but no one admits it since most people prefer to claim that "in our community" gifts are "voluntarily" given and "no demands" are made.

The Joint Committee had recommended that a ceiling be set on the value of such "gifts." However, unfortunately, the new amendment ignores this suggestion and merely adds that presents shall not be treated as dowry so long as "no demand has been made" for such presents. This merely provides a sanction for the widely prevalent hypocrisy and also makes a mockery of legal provisions since demands, usually being verbal are extremely difficult to prove. The husband and in-laws are



usually free to claim that all the dowry given was in the form of “gifts” which were “not demanded.”

The amendment adds that such “presents” should be of “a customary nature and the value thereof not excessive having regard to the financial status of the person by whom or on whose behalf such presents are given.” This definition is again so wide as to consist of almost nothing but loopholes. What is “of a customary nature ?” Among many communities, lavish weddings and dowries including expensive items may be said to be of a “customary nature” insofar as many examples can be cited within the community. Custom may differ from region to region and community to community.

Also, will the “custom” be that prevailing in the boy’s family or in the girl’s? It is common for demands to be cloaked under the form of custom, boy’s families saying: “*Hamare mein ye hota hai...*” (This is how it is amongst us). The new section seems to legalise this form of extortion, and also gives scope for endless debate. Its interpretation will depend entirely upon the individual judge hearing a particular case.

Similar is the question of what is “excessive.” What may appear excessive to the girl’s father is not likely to appear so to her husband. What may be excessive for a person who has five daughters may not seem so to a person who has only one.

The whole section amounts in effect to legalising any amount of dowry, and in case prosecution ensues, the decision will be made arbitrarily by each judge, leaving scope for individual bias and contradictory decisions. Such wide definitions are dangerous insofar as they amount to saying that the individual judge may decide as he or she thinks fit whether or not injustice was committed in a particular case. If so much is to be left to the judge why bother to define injustice at all in a written law ?

### **Who is Guilty?**

In accordance with the recommendations of the Committee, the amendment specifies a minimum

punishment of six months and a maximum of two years for the offence of demanding dowry, directly or indirectly, and also a fine up to Rs 10,000.

However, the next provision adds: “Provided that the court, may, for adequate



and special reasons to be mentioned in the judgement, impose a sentence of imprisonment of less than six months.” Thus, in the style so characteristic of the antidowry law, what is given with one hand is taken away with the other, since what are “adequate and special” reasons is of course left to the discretion of the individual judge.

The Committee had recommended that the giving of dowry not be treated as an offence under the Act since a girl’s parents felt inhibited from suing her in-laws, if they were liable to equal punishment as givers of dowry. However, the government has chosen to overlook this recommendation, with the explanation that it may “prove counterproductive”.

This Act must be one of the very few pieces of legislation under which both prosecutor and defendant are treated as equally guilty. On the one hand, the Act lays down that only parties directly affected, that is, the woman or her close relatives, can sue under this Act. Yet on the other hand, the Act makes givers and takers of dowry equally liable to punishment. In any case, a woman and her parents are generally reluctant to sue her in-laws for fear of reprobation. If the prosecution is likely to rebound on themselves, they will be even more chary of seeking legal redress.

The Committee had also recommended that the offence of taking dowry be made cognisable, that is, any citizen may report it to the police. The new amendment makes the offence cognisable only for certain limited purposes, and also bailable. The result is that the offence acquires a dubious status, neither criminal nor civil, and the court remains uncertain how to treat it.

However, “any recognised welfare institution or organisation” has been made complain of the offence, in addition to the woman and her relatives. This is a substantial improvement since women’s organisation, although only such as are “recognised” in this behalf by the central or state government, now have locus standi to complain on behalf of aggrieved

woman even if she and her relatives are not in a position to do so.

### **Getting The Dowry Back**

Significantly, the only provision appears to have been made definitely more stringent is that relating to the woman or her heirs getting the dowry back. FAILURE TO transfer the property to the woman or her heirs within a specified time limit has been made punishable with a minimum of six months' imprisonment, a maximum of two years', or a fine upto Rs 10,000 or both. It is also significant that in this case, unlike in the case of punishment for taking dowry, the court is not permitted to lower the minimum for "adequate and special reasons."

This Section can be of use to a woman who manages to escape from her husband's house and needs to have her property back so as to start life anew. In

cases where a woman is murdered or driven to suicide, the Act is likely to be more helpful to her relatives in getting the dowry back than in getting the in-laws punished. Read in conjunction with the new Criminal Law Amendment Act, however, this amendment can be usefully applied, the prosecution seeking to punish the offenders under the criminal law and to get the dowry back under this Act.

However, the effect of this section is considerably diminished by the fact that givers of dowry are also treated as offenders. This section throughout refers to the "transfer of dowry" and at the end inserts one line which seriously damages its total effect: "Nothing contained in this section shall affect the provisions of section 3 or section 4." Section 3 is the section which makes giving or taking of dowry or abetment of giving or taking of

dowry a punishable offence. This means that if a woman sues for return of dowry, she will have to prove that dowry was given, and call the givers of dowry, her parents or relatives, as witnesses, thus exposing them to the risk of punishment. If however, she does not refer to the items given by her parents as "dowry" but as "gifts" then her claim will not stand under this section since it explicitly refers to "dowry" and makes no provision for return of "gifts" to the giver. By arguing that the items were gifts, not dowry, the husband can claim and get custody of them, as has happened in a recent judgment discussed elsewhere in this issue. (see pages 33-35)

Therefore, the Act is even more replete with self contradictions than are most laws relating to women. It is a double edged sword which is quite likely to hurt anyone who picks it up.

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## **Bitter Feelings, Sweet Voices**

### **—A Letter From A Reader**

TELEPHONE exchanges are among the major organisations in big cities which are completely staffed by women. In the first week of July, operators of New Delhi trunk exchange went on a snap strike because they were not being allowed a lunch break. Operators in Bangalore went on a snap strike for five hours on March 9, in protest against harassment by the divisional engineer.

I interviewed some operators in Bombay and Bangalore. I found that the general feeling among them was that they were getting raw deal. They are trapped between repressive authorities, technically faulty equipment and dissatisfied subscribers who blame for all the technical faults. There is a very quick turnover among operating staff because the women resign their jobs, even surrendering their

seniority, whenever they can get alternative jobs. They prefer clerical jobs where they feel they have more dignity.

One young operator who had just taken up the job seemed to be an exception: "I am quite happy with my work. I can make as many local calls as I like, and even trunk calls with permission. I always do morning duty so that I am free in the evenings." But another woman who has worked 10 years in the same department had a different story to tell: "While working, we have to face both the supervisors and the subscribers. On the one hand, the supervisors are like watchdogs, and we have to take permission even to drink water. On the other hand, the subscribers on the line frequently use abusive language when service is delayed though this is not at all our fault. Sometimes the lines are in a very

bad condition, or the distant station operator is not able to connect a number, sometimes we cannot contact a number due to a technical fault. For all these disorders, it is the operator alone who is blamed. Even if the subscriber uses bad language we are supposed to be polite to him because it is he who pays revenue to the department. 'Service before self' is supposed to be the motto of our department. And what do we get? A meagre pay packet. We work hard day and night, and bring in huge revenue to the department. But we are paid very little as compared to employees in public sector undertakings and banks. We are not given financial incentives for doing night duty, as are the staff of the railways."

A supervisor, who had put in a lengthy service before she was promoted, says: "When we are young we have to sit fixed to the switchboard. When we become old we have to be on our feet, doing supervisory duty. When people become older they prefer to sit and work at one place, but in our office the process is

contrary to the human tendency. We are given strict instructions to extract more work from the operators. Otherwise, our superiors blame us for the low out-turn of the staff. So we have to be strict with the operators who hate us in return. What to do? We have to obey our superiors.” She smiled weakly.

But the senior supervisors claim that the department does a great deal for the staff: “They have a comfortable dormitory, ayahs, an electric stove to prepare coffee, a good canteen and a dining room. What more do they want?”

The operators are even more irked by the attitude of the public towards them. People cherish a misconception that operators do not work but simply sit and chat in the exchange. The subscribers get this idea because they have no idea about how the exchange functions. When a subscriber rings up a special service like directory enquiry or delay enquiry, he or she is placed in a queue of others who are ringing up the same number. When the queue is full the subscriber who is outside the queue hears an engaged sound. The one who stands last in the queue hears this sound for a longer time. Subscribers

who hear the ringing sound think that the phone is ringing but the operator is not picking it up. The picture of the lazy operator which exists in the subscribers’ minds is completely falsified by reality because if you enter the exchange you see



the operators busy as bees —hands, voice, eyes, all racing to keep pace with the inflow of trunk calls booked by subscribers. When a call cannot be made effective despite repeated efforts the operator feels utterly demoralised. In

addition, she has to put up with the equally harassed distant operator, the bullying supervisor and the abusive subscriber.

Another reason why operators do not like to remain in the department for long is that people look askance at them when they go for night duty. Night duty is compulsory for all operators, irrespective of seniority. There is no exemption for those who have returned from maternity leave. “Our health suffers and we can’t look after our small infants. The baby has to go without breastfeeding at night. The government should consider this aspect because babies born today are the nation’s asset tomorrow”, said one young woman, with emotion.

“People stare at us suspiciously, when we leave home for night duty. That really irks us”, commented another. There have been cases of operators being accused of being call girls and of spending the night at hotels on the pretext of doing night duty.

Women’s organisations should consider the possibility of working amongst telephone operators, because they suffer from the peculiar disabilities imposed on women who work in an all women work sector.

—An operator, name withheld