

THE increasing awareness of dowry deaths has led to a public controversy and certain changes in the civil and criminal laws. On December 17, 1983, the Criminal Law (Second Amendment) Act received the president's assent and became law. This act amends the Criminal Procedure Code, the Indian Penal Code and the Evidence Act.

One primary defect of the Indian Penal Code was that it defined cruelty as conduct which resulted in physical and bodily injury to a person. Thus a wife had to undergo medical examination and produce evidence of physical injury having been inflicted on her. The subjection of a wife to mental cruelty was considered a ground for her to seek divorce but not a ground for any penal action to be taken against the husband.

Further, though the demand for dowry was punishable under the Dowry Prohibition Act, 1961, the harassment inflicted by the husband and his family on a woman was not punishable under the Penal Code. These defects in the law left a harassed wife with no legal remedy.

The new Act has removed some of these defects by adding a new section 498A to the Penal Code. Under this section, cruelty to a wife is made a cognisable, nonbailable offence, punishable with imprisonment up to three years and a fine. Some cases have already been reported in the newspapers of men being arrested by the police on the complaint of their wives under this section.

Secondly, cruelty has been redefined to include :

1. any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health, whether mental or physical;

2. 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 on account of failure by her or any person related to her to meet such demand.

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Positive Potential

The recent amendment of the criminal laws can be useful to since it extends the definition of cruelty to include mental and psychological harassment of a wife, and also extends the definition of to suicide. Women's and human rights organisations need to give wide publicity to the changed laws, and also to monitor the cases filed under them, to see whether such cases result in more convictions or relatively more justice to women than before.

This is a step towards ensuring that the unlimited privileges of a husband in the 'sacrosanct' relationship of marriage are rendered justiciable by criminal courts when his inhuman behaviour jeopardises the mental or physical well being of his wife.

Another defect in the law was that when, as happened in many cases, a woman's body was hastily cremated by her in-laws, leading to the destruction of valuable evidence, no legal action could be taken against the police for having connived in such destruction of evidence. The existing laws merely prescribed vague and indefinite situations under which a police officer was obliged to send the body of a person for medical examination. There was no law explicitly related to the situation of a woman who dies in her in-laws' house.

Under the new Act, section 174 of the Criminal Procedure Code has been amended to provide that the police officer shall be obliged to forward the body of a woman for medical examination in the following five situations :

1. when the case is one of suicide by a woman within seven years of her marriage;
2. when the woman has died within

seven years of her marriage in circumstances which raise a reasonable suspicion that some other person committed an offence in relation to her;

3. when the case relates to the death of a woman within seven years of her marriage and any relative of the woman makes a request for medical examination;

4. when the police officer for any other reason considers it expedient;

5. when there is any doubt regarding the cause of death.

This amendment tries to ensure that evidence of an offence will be available for the woman's relatives to prosecute her in-laws and that the criminals will not be discharged, as has often happened in the past, due to the absence of supportive evidence.

Finally, a presumptive element has been incorporated into section 113 A of the Evidence Act, to enable the court to draw an inference of abetment of suicide. When the question is whether the commission of suicide by a woman was abetted by her husband or any relative, the complainant has been freed from the onus or liability to prove that the accused, had indeed abetted the suicide. □