

Even though MANUSHI played a leading role in bringing national attention to domestic violence and the role dowry has come to play in making women's lives vulnerable, after nearly 28 years of experience with these issues, I have come to the firm conclusion that the terms "dowry death" and "dowry violence" are misleading. They contribute towards making domestic violence in India appear as a unique, exotic phenomenon by giving the impression that Indian men are the only ones in the world to use violence based on astute and rational calculations. By this logic, it would appear that men in all other parts of the world are truly stupid because they beat and kill their wives without any benefit accruing to them, whereas Indian men attack their spouses in the expectation of extorting financial rewards from their in-laws.

Domestic violence is about using brute force to establish power relations in the family whereby women are taught and conditioned to accept a subservient status. Domestic violence is a way of trying to get women to believe that they can only live at men's mercy. It is often committed by men with low self-esteem who destroy a woman's sense of self worth because they feel inadequate to cope with a woman who thinks and acts as a free human being with a mind of her own. Like rape, wife battering points to the common predicament of women across nations, castes, classes, religions and regions.

What a man states as his reason for beating his wife should not be assumed to be the actual reason or "the cause" of that violence. For example, if a violent incident

Destined to Fail

Inherent Flaws in the Anti Dowry Legislation

○ Madhu Purnima Kishwar

is triggered off in a home in Germany by a man flying into a rage and battering a woman to death saying, 'you are a lousy cook' or 'you are fat and ugly', we don't call such crimes "Lousy Cooking Murders" or "Ugly Woman Murders". We recognize that the ostensible reasons given by men for their violent rages are mere excuses to destroy a woman's sense of self worth. They are not the real cause. The same logic applies to dowry related violence. I have not come across a single case where a man battered a woman solely because of

additional dowry demands and would begin to treat his wife well if his in-laws met with all his demands.

By contrast, I have come across numerous situations, where a woman suffers a lot of taunts and even violence because her husband's family feel she might start considering herself high and mighty for bringing in a huge dowry. Director Vijay Anand's film *Kora Kagaz* produced in 1970s provided a very sensitive and insightful portrayal of an otherwise happy "love marriage" suffering a break-up because the bride's mother

insists on showering her daughter and son-in-law with gifts to make up for the modest income of the latter, leading to a sense of inadequacy and humiliation in the son-in-law.

Even though I maintain that dowry *per se* is not the cause of domestic violence, there is no denying that dowry demands and sharp escalation in the amounts of money being spent by families in putting together dowries has contributed to viewing daughters as a burden and consequent devaluation of women's lives. (See article "To Ensure Happiness or to Disinherit Her", Issue 34, MANUSHI, 1986.)

The culture of dowry-giving is spreading even to communities, which had no such tradition a generation or two ago. This despite the fact



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that in the last two decades the anti dowry laws have been made very stringent and draconian. Many interpret the failure of these laws to lessen dowry giving as a sign of their poor implementation. However, these laws have so many inherent flaws that their honest implementation is well nigh impossible. In fact, these laws have created more problems than they have solved. You cannot combat a “crime” which is as ill defined as the anti dowry laws of India.

An Ill-Defined Crime

Definition of dowry: As per the Dowry Prohibition Act (originally passed in 1961 and amended twice in the 1980s), dowry is defined as “any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person at or before [or any other time after the marriage] in connection with the marriage of the said parties. As per this definition, gifts of jewelry, clothes and cash traditionally given by the groom’s family would also be covered by the anti-dowry law and hence declared illegal.

Cognizable offence: Two amendments enacted in 1984 and 1986 made dowry giving and receiving a cognizable offence. This means, a court can initiate proceedings upon its own knowledge or on the basis of a police report, even if the aggrieved person has lodged no such complaint.

Gifts allowed : As per this law “dowry” is forbidden but “gifts” are allowed. The anti-dowry law cannot be invoked against the giving of presents at the time of marriage to the bride without any demand having been made “provided that such presents are entered in a list maintained in accordance with the rules” as defined under the Anti-Dowry Act.

Presents to the groom allowed: Presents given to the groom are also exempted, provided no demand has been made and they are entered in a list and provided that “such presents are of a customary nature and the value thereof is not excessive” in relation to the “financial status of the person by whom, or on whose behalf, such presents are given.”

Prescribed punishment: A person found guilty of taking or abetting the giving or taking of dowry, invites imprisonment for a term not less than five years and with a fine which shall not be less than Rs 15000 or the amount of the value of such dowry, whichever is more.

Legalising the illegal: After declaring that giving or taking of dowry is illegal, the Act adds a curious rider that “where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person will transfer the dowry to the woman within three months after the date of marriage or within three months after the date of receipt. Failure to transfer a woman’s dowry invites imprisonment for not less than six months and a fine of Rs.10,000. If the dowry was received when the woman was a minor, it should be transferred to her within three months after she has attained the age of 18 years.

Burden of proof on the accused : What makes this law especially draconian is that the burden of proof has been shifted onto the accused. In most other crimes, including murder, Indian jurisprudence puts the burden of proof on the complainant and the accused is considered innocent till proven guilty. However, in the case of dowry related offences, a husband and his family have to prove that they did not make dowry demands and what was given by the bride’s parents were voluntary gifts.

Dowry return : Section 406 prescribes imprisonment of up to three years for criminal breach of trust for not

returning a woman’s dowry, if a woman demands it after her marriage breaks down. Section 406 is one of the few clauses in the law that has proven useful for women with a genuine case because it helps in the retrieval of dowry where the husband or in-laws are unwilling to return the goods that came as dowry. If a person fails to comply with the court’s direction to transfer a woman’s dowry within the specified period, an amount equal to the value of the property may be recovered from him.

Draconian anti-cruelty law: In 1983, Section 498A of the IPC defined a new cognizable offence, namely, “cruelty by husband or relatives of husband”. This means that once such a complaint is registered by the victim or any of her relatives, the police have no option but to take action. It prescribes imprisonment for a term, which may extend to three years, and also includes a fine. The definition of cruelty is not just confined to causing grave injury, bodily harm, or danger to life, limb or physical health, but also includes harming mental health by harassment and emotional torture through verbal abuse. This law takes particular cognizance of harassment, where it occurs with a view to coercing the wife, or any person related to her, to meet any unlawful demand regarding any property or valuable security, or occurs on account of failure by her, or any person related to her, to meet such a demand.

Punishment for “dowry death”: Women’s organizations also pushed to get a new category of crime included on the statute book via an amendment to the Indian Penal Code. This crime – named “dowry murder” or “dowry death” is covered by Section 304B. This section states that if the death of a woman is caused by burns or bodily injury, or occurs under abnormal circumstances, within seven years of her marriage and it is shown that just prior to death she was subject to cruelty by her husband or

his relatives, in connection with demands for dowry, such a death would be called “dowry death” and the husband or relative would be deemed to have caused her death. The person held guilty of a “dowry death” shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Assumption of guilt: By inserting a new section 113B in the Indian Evidence Act, the lawmakers stipulated that in cases that are registered by the police as those of “dowry death”, the court shall presume that the accused is guilty unless he can prove otherwise.

Bail provisions for “dowry crimes”: Under section 304B, in the case of a “dowry death”, where allegations of demand of dowry or non-return of dowry are made, the accused are frequently denied anticipatory, or even regular bail. This is understandable in cases of death because the unnatural demise of a woman is in itself likely evidence that something was seriously wrong in the marriage. But it has also meant that in all cases of a married woman’s death, lawyers tend to advise the woman’s family that they must build a case of dowry demands even if the murder or suicide was due to other reasons.

Basic Flaws in the Laws

Many problems arise from this fuzzy definition of crime combined with draconian provisions for punishment:

- Who decides what is a “voluntary gift” and what is given under pressure of a demand? The very same family that often declares, at the time of marriage, that they only gave “voluntary gifts” to the groom’s family, does not hesitate to attribute all their “gift-giving” to extortionist demands, once the marriage turns sour and is headed for a breakdown. Thus, even when marital troubles may not be

connected to tussles over dowry, and the marital strain is due to mutual incompatibility rather than the husband’s violence or abuse, many women’s families tend to seek an advantage in registering cases using the draconian provisions of the anti-dowry law when the marriage heads towards a breakdown.

- How do you decide what is “excessive” in relation to income by way of gifts when in India no more than 2-3 percent people declare their incomes and those too are grossly under reported? How do you judge the paying status of a family if most of their wealth is in “black” money and property holdings held in bogus names to escape taxes?

- The bride’s parents rarely want to declare the true value of gifts given because the big dowry givers also put together their daughter’s dowry from black money and, therefore, don’t want it listed.

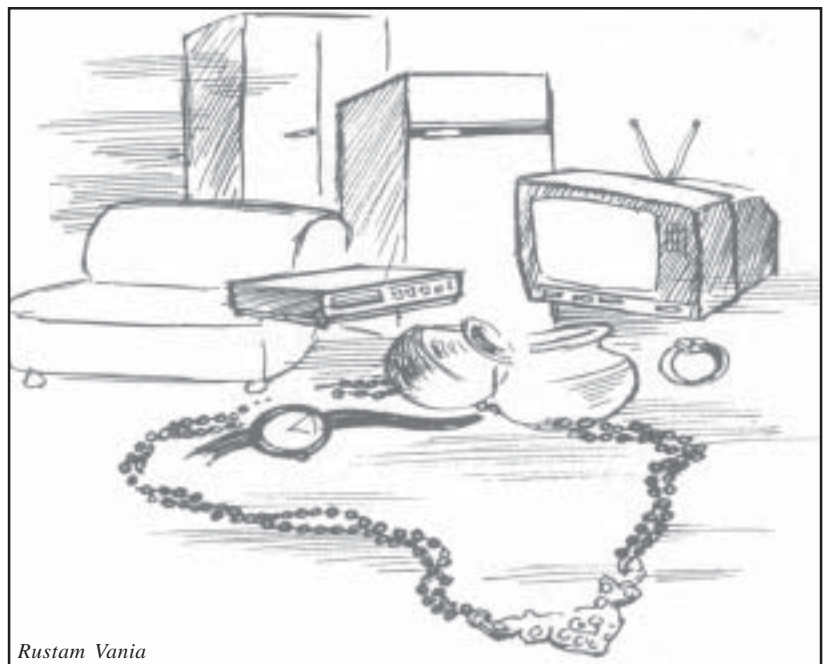
- When dowry giving is a crime, why would a groom or bride’s family put their signature on the list of gifts being given?

- Since a good part of modern dowries consist of expensive jewelry,

household goods and high priced clothes, how do you prove whether or not these things were transferred to the bride’s name within three months of marriage? For example, if a family has spent Rs.3-4 lakh on providing new furniture for their daughter’s home, does it mean that all that furniture must be kept in rooms meant for the exclusive use of the daughter?

- As per the law, even dowry giving is an offence, but there is hardly ever an instance of the bride’s family being prosecuted for giving dowry. The assumption is that only “takers” are guilty while “givers” are hapless creatures yielding to the greed and callous demands of the groom’s family.

- The campaigners against dowry make it appear as if escalating dowries are solely due to the greed of the groom’s family. However, as I have argued in several articles, the theory that growing greed is the cause of dowry increase would make sense only if our country had two distinct sets of families – those who only produced sons and those who produced only daughters. The “son-blessed” families would thus be



permanent gainers as dowry receivers while “daughter-cursed” families would be permanent victims of greed and be always at the mercy of extortionist demands. This is clearly not the case because a family, which gives on its daughter’s wedding, becomes a recipient when its sons get married.

- This law does not take into account the rapidly changing forms of marriage transactions and mixes up the tradition of *stridhan* with modern day marriage transactions. Even the anti-dowry campaigners attribute the problems of the modern day dowry system to the tradition of *stridhan*, both of which are projected as a hangover of “traditional” patriarchal norms. The present day custom of dowry giving may retain some ingredients of the tradition of giving *stridhan* (a woman’s own inalienable property) to daughters but the difference between modern day dowry and *stridhan* is as profound as that between a horse carriage and a motorized truck. Though both move on wheels the power that propels the two kinds of wheels is altogether different.

Dowry vs Stridhan

Stridhan, as per Hindu customary practice, is that portion of wealth, which is the exclusive property of women and passes from mother to daughter. It includes gifts of money, property, jewelry or a share in a family business given to a woman as a daughter, sister, wife or daughter-in-law. It also covers wealth generated through her own enterprise or any other wealth accruing to her due to her own effort or by inheritance. It includes, but is not limited to, gifts or wealth given to a daughter at the time of her marriage. It also includes gifts given to her by her in-laws. A key-defining characteristic of *stridhan* is that no one in the family can touch it, except if the woman concerned voluntarily gifts a portion to someone. In the natural course,

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stridhan passes from mother to daughter and if in a contingency a male member uses a part of a woman’s *stridhan*, he is expected to return it with interest.

The traditional *stridhan* given at the time of a daughter’s marriage was determined by predictable norms within each community and was more in the nature of pre-mortem inheritance for the daughter that usually included items such as gold, cows or even a piece of land, along with a few clothes and utensils. Up to my grandmothers’ generation, community norms decided the gifts given to a daughter. By my mother’s generation dowry had started emerging as a problem because marriage alliances began to be made on the basis of a groom’s potential income and status in the “modern” economy rather than traditional notions of *stridhan*.

Difference between modern day dowry and *stridhan* is as profound as that between a horse carriage and a motorized truck. Though both move on wheels, the power that propels the two kinds of wheels is altogether different.

Traditional *stridhan* gives women stronger and inalienable rights to a portion of wealth in both parental and marital families. By contrast, dowry is a device for disinheriting daughters from parental property, as discussed in my articles, “To Ensure Her Happiness or to Disinherit Her” and “Dowry Calculations.” (See MANUSHI No. 34, 1986 and No. 78, 1993. This theme is also dealt in my film: *Dahej : Zaroorat ya Majboori?* Available on CD from MANUSHI.). Modern inheritance laws also fall short of *stridhan* because they allow daughters and wives to be disinherited at will. As I have previously discussed, the provision of “free will” was included in the Hindu Succession Act of 1956 specifically with a view to giving the power to fathers to disinherit their daughter. (For a detailed analysis see, “Myth Vs Reality: The Hindu Code Bill”, *Economic Political Weekly*, Vol. XXIX, No. 33, August 13, 1994).

Therefore, misplaced hostility to traditional cultural norms, including those like *stridhan* that gave women strong rights, results in ill-conceived campaigns that cause further harm to women. Punishment for such a poorly defined and conceptualized law is heavy and draconian; the anti dowry law is being widely misused by unscrupulous families, policemen and lawyers.

From Dowry to Groom Price

Unlike *stridhan*, which was the exclusive property of the woman, the present day dowry includes gifts and wealth given at a daughter’s wedding, not just to her but to her husband, in-laws and his relatives as well as household goods required for setting up the house. These vary from simple gifts of clothing and small items of jewelry for the woman, to exorbitant sums in cash or expensive pieces of property to the groom and his parents.

The amount of dowry commanded by a groom has more to do with his social status, income potential and social-familial connections than with the perceived share of a daughter in her parental property. Thus that part of wealth, which is given to the groom and his family, has acquired the form of groom price because it is an offering for seeking an alliance with a family with lucrative potential. Not surprisingly, men in those government jobs such as the Indian Administrative Service (IAS) and the Indian Police Service (IPS), which command the highest bribes and unlimited avenues for looting the public as well as robbing from the public exchequer and appropriating resources such as land allotments and business contracts command the highest dowries. If in a family one son is an IAS officer, his dowry will be substantially higher than that of his brother who may have managed to get nothing more than a schoolteacher's job.

Contemporary dowry is more like an investment by the bride's family in the hope of plugging into powerful connections and money-making opportunities. Marrying a daughter to such a man may mean upward mobility for her entire natal family, especially brothers, because they may secure huge benefits through this connection.

The component of dowry that still retains some resemblance to the traditional *stridhan* involves the bride's trousseau, gold jewelry, household goods and any property that her parents might put in her name. But even this does not always remain in her control, leading to bitter tussles. It is not uncommon for a groom's family to keep a part of this dowry for their own daughter's wedding or treat the household goods as offerings made to the family, rather than being reserved for the bride.

Recompense for Disinheritance

Denial of inheritance rights to daughters is justified on the ground



that they inherit in their marital homes. However, the share women acquire in their marital family's property is not made in their own right, but comes to them through their husbands. Women inherit more often as widows than as daughters or wives. Because as widows they become claimants to their husband's share of property, dowry given at the time of a daughter's wedding has come to be seen as an offering to her in-laws, rather than her exclusive personal property.

Since in most cases only sons inherit parental property and family businesses, and it is only in the form of *dahej* that daughters get a share – albeit an unequal one – in parental property, most women consider dowry as their legitimate due. After marriage, even the parental home comes to be their brothers' and *bhabhis'* home. Most women feel that a dowryless wedding does not work in their interest because it only means their brothers end up with an even bigger share of family resources.

How People Justify Dowry

Some of the commonly expressed justifications for dowry run as follows:

When a young woman enters a new family, she feels diffident to ask for

basic things she needs for her daily use. If she goes to her marital home without anything to call her own, her dependence on her in-laws and husband increases, unless she has a reasonable income of her own, which most women do not have. Therefore, all the household goods and clothes parents provide their daughters are supposed to help them feel that they have something to call their own in their new home.

Since daughters in most cases are disinherited by their parents after marriage, their main security lies in strengthening their economic rights in their husband's family. However, if they go "empty-handed" to their husband's home, how can they expect that they will be treated as equal partners? The dowry is, therefore, in part an "investment" made by parents to secure a share for their daughter in her husband's family property.

When women go as new brides, their in-laws are also expected to provide them with expensive new clothes and jewelry. How can gift giving be one-way? Why should women's parents not give gifts to their husband's relatives as a goodwill gesture when the bride is expected to

become a claimant in the husband's income and property?

When one raises the issue of marital violence and abuse due to dowry demands many have responded with the counter question: "Are you suggesting that women get beaten, abused and murdered only in India, and that too only among communities that give dowry? Don't women in America, Europe, Australia, the Philippines, and Africa also get beaten and killed, even though in these countries dowry giving is not an issue?" Most women are in favour of a reasonable amount of dowry being given provided the groom's family does not put undue pressure on her natal family with additional extortionate demands.

Reasons for Dowry Increase

Those who make a case for a stringent anti-dowry law on the ground that dowry amounts are rising exponentially forget that among many families in the dowry practicing groups, standards of living have also risen dramatically. Up to my grandmother's time, dowry consisted of clothes for the bride, gold or silver jewelry, several sets of bedding, cows, buffaloes and bedsteads, cots or *peedhas* and perhaps a wooden closet. Some communities also gifted a portion of land – a tradition still common in regions like Andhra. By the time of my mother's wedding, sofa sets and dressing tables had become mandatory and dinner sets and tea sets were included along with kitchen utensils. Watches, wall clocks and radio sets also became common because by then all these items had become customary parts of middle class life. Today, refrigerators, air conditioners, automobiles and a whole range of gadgetry are an integral part of upper class and upper middle class dowries because these families use many of these conveniences in their daily lives.

However, there is no escaping the fact that ugly tussles are becoming

commonplace over dowry payments. An important reason for growing cash demands and expensive gifts for the groom's family is that parents see this as their main, if not the only chance, to be compensated for the big bonanza they are offering the bride in the form of an earning son. They feel they should be recompensed for their investment in his education and upbringing since after marriage his wife may influence him not to support his own parents. As long as joint families were the norm and most parents could count on their sons to support them in old age and treat their income as belonging to a common pool, dowry demands were not as much of an issue. However, with increasing breakdown of joint families and reluctance of many women to stay with in-laws, the insecurity of parents in many families takes the form of trying to extract what they can from the bride's family at the time of their son's marriage.

The rapid upward mobility made possible due to opening of new opportunities for urban educated middle and upper class men, whose earning potential has increased exponentially, has meant that such grooms are avidly sought after. For most women upward mobility comes through the man they marry rather than their own employment. Most families try getting higher status grooms in the belief that their daughters will find it easier to adjust in such families than if they were to marry below their status, apart from the benefits accruing in the long run to the girl's family by forging an alliance with a well-connected kinship network; the demand for such upwardly mobile men is far in excess of supply.

An important reason for the increase in domestic conflicts, rising dowry demands and the transformation of dowry from *stridhan* to groom price is that *our legal enactments, administrative*

interventions and state policies are forcing the nuclearization of families without due attention to the fact that the only or main old age security for the vast majority of people in India are their children, especially their sons. Parents invest all they can in their son's education and career building in the hope and expectation that sons will get jobs or other forms of earning opportunities bringing about upward mobility for the whole family. Sons are expected to contribute to the education and marriage costs of younger siblings as well as take care of parents in their old age. In societies where there is near total absence of any other form of social or old age security, this is an understandable expectation.

However, too many parents find this expectation belied after their sons get married, especially if their sons take up well paying jobs or succeed in an independent enterprise separate from the joint family economy. Not just in metropolitan cities, but even in small towns and villages of India, young wives are increasingly prone to insist on moving away from the joint family and set up their own independent establishment, even when the in-laws are not abusive.

A man continuing to financially support his parents or younger siblings even after nuclearization of the family often finds stiff resistance from his wife. Many even stop doing so. Sometimes parents themselves withdraw from receiving such support in order to avoid friction in the marital life of their sons.

Without doubt, in some cases daughters-in-law willingly endorse their husbands' efforts to support their natal families. But the over all trend is more in the direction of moving away from taking responsibility for the in-laws.

Insecurity of Groom's Family

In recent years I have heard any number of parents tell me that marriage no more means "*kanya daan*" (gift of

a daughter) but “*putr samarpan*” (handing over of son to the daughter-in-law). They say that they have to be prepared for the eventuality that even occasional visits to the son’s house may be resented and blocked by his wife, if she succeeds in winning him over to her side. That is why one finds many parents try to marry off their daughters before they arrange their sons’ marriages because of the fear that they may not be allowed to contribute to the expenses after their sons get married. This is also the reason why dowry is increasingly taking the form of “groom price”, with parents expecting that a certain sum of money will be given to them almost as “recompense” for their handing over the income and assets of their son to the woman who becomes his wife.

This increasing insecurity and uncertainty is at the heart of family tussles between the bride, her natal family and her-in-laws. While some gracefully resign themselves to this fate and even encourage sons to set up a separate house after marriage, many fight a grim battle to keep their sons under their influence, which often means using even vicious methods to prevent the couple from enjoying a close conjugal relationship. The young bride has a formidable weapon in her armoury — her youth and sex. The old parents exploit the emotional appeal of blood bonds. This bond is easier to sever where the parents are dependent on the sons for old age support. The few families who are very wealthy may succeed in using their property as a glue to keep their married sons close to them. This anxiety and uncertainty about their fate *vis a vis* their sons is in large part responsible for strengthening the culture of “dowry demands”.

The fierce battles between daughters-in-law and parents-in-law are also largely due to the fact that



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women in most communities are conditioned to believe that their rights lie in their husband’s families. Therefore, they feel extremely insecure and resentful about the claims of other members of their husband’s families. Part of the solution to this dilemma, therefore, lies in giving women inalienable rights in their parental property so that they enter their marital homes with a sense of self confidence in the knowledge that they don’t have to keep the marriage going “at all costs” and don’t have to carve out a niche for themselves by curbing the rights of their in-laws.

Draconian Yet Ineffective

The anti-dowry agitationists do not take these new dynamics into account. They have relied mainly on pious outrage combined with emotive outbursts demanding that the law be made more and more stringent in their attempt to abolish this “social evil”. However, such laws work only if people perceive their own interest in the proposed measure of reform. If a woman believes in taking a portion of her parental wealth at the time of her marriage and if her parents believe this is a necessary investment for her future happiness, how can any law stop such giving and taking? The only effect of the anti-dowry law and

campaign has been that the giving and taking has become more surreptitious. Earlier, families ensured that proper lists and accounts were prepared and the groom’s family was made to sign the list of things they received while the dowry itself was put on display for all the relatives to take note of so there were numerous witnesses to the transaction. Today, no lists are signed and most of the giving and receiving is shrouded in secrecy and made known only through whisper networks within the kinship social circle. Though there is a helpful provision in the anti-dowry law making it a criminal offence if the girl’s dowry is not returned to her on demand, in case of breakdown of marriage, the battles over return of dowry have become more difficult and complicated because in order to secure the return of her dowry, a woman has to first establish what was given. If there is no clear proof of what the transactions were at the time of marriage, there is ample scope for false claims and fraudulent denials.

In the first decade of MANUSHI’S existence, most of those who came to us for legal aid were women who alleged abuse in their marital home. In the last few years, a good proportion of the cases coming to us involve

complaints by mothers-in-law and husbands about the misuse and abuse of laws, especially section 498A. Such cases are brought to my notice not only by aggrieved families and their friends, but more often by members of women's organisations themselves. (See my article "Under Use & Abuse of Laws against Domestic Violence" MANUSHI No. 120, 2000).

Even the most active proponents and defenders of the anti-dowry law cannot claim that the law has been a success. Instead of fine-tuning their campaign to the realities on the ground, the anti-dowry agitationists have continued to demand that the law be made still more stringent.

Even though in recent years a good number of Indian feminists have evolved far more nuanced positions on this subject, in recent year, the Dowry Prohibitionists continue to get a lot of support from some international networks that help them remain politically fashionable. Since the wide gap between precept and practice, between what they say and what they do, has never bothered these rhetorically militant feminists, not surprisingly, the heroines produced by such a "high-on-emotion, low-on-common-sense" anti dowry campaign have been as phony as the Dowry Prohibition Act.

Phony Laws, Phony Heroines

On May 12, 2004, most national papers and TV channels splashed the story of the "heroism and courage" of 21 year old Nisha Sharma for having called the police to arrest her groom and his parents on her wedding day, alleging that they had suddenly demanded an additional 12 lakh as dowry from her father. Several women's organizations, including the National Commission for Women, vied with each other to give trophies and awards to Nisha Sharma, who overnight became a national icon held up as a role model for young women.

Every newspaper and TV channel carried long reports of the glorious saga of Nisha Sharma. She became an instant heroine of the international media. A *New York Times* correspondent specially flew down to India to interview Nisha Sharma. However, to the allegations by the groom's family that the fracas on the wedding day was not created by them over dowry but instead was created by a former boyfriend of Nisha who came with his friends to stop the marriage by creating a scene, were given short shrift without proper investigation. Nisha's family did not deny that her boy friend Navneet had threatened to obstruct the marriage but insisted that the fight with the groom's family was over additional dowry demands.

An unusual aspect of this conflict over dowry was that certain items like a home theatre system, refrigerator, air-conditioner and washing machine had been purchased in duplicate – one set for Nisha and her husband and a second set for the groom's elder brother and wife. The justification given for this second dowry was that the groom's mother had demanded these additional items so that the standard of living of the two brothers would not vary too much. Apparently the first brother's wife comes from a family of modest means. Therefore, Nisha's father was expected to bridge the gap in the standard of living of the two brothers. Whatever the truth of the matter on that front, neither Nisha nor her father hid the fact that the family had already spent Rs. 18 lakh on buying all these goods. Thus, even as per Nisha's version, the fight was over the alleged additional demand of Rs.12 lakh, not over the giving of dowry *per se*. Nisha's father is reported to have told the press that they had even tape-recorded earlier phone conversations with the groom's family after they had begun making more and more demands for dowry.

Both Nisha and her father repeatedly justified the Rs. 18 lakh expenditure on dowry by saying they were not against "voluntary giving" but were opposed to "dowry demands". Nobody bothered to ask them by what stretch of imagination they could describe a whole range of expensive gadgets for the elder brother's family as "voluntary gifts" for Nisha?

So elated were the anti-dowry campaigners within the media as well as among NGOs that even before the start of court proceedings to prove the allegations leveled by Nisha against Munish Dalal and his mother, even before anyone bothered to investigate the authenticity or otherwise of Munish Dalal's counter allegations against Nisha regarding her boyfriend's role in disrupting the marriage, a chapter on her as an emulation-worthy role model for young women was included in the school textbooks of the Delhi Secondary Board curriculum.

Thus, for the public at large, Munish Dalal's family had been permanently condemned as guilty and their alleged crime turned into a moral lesson for generations to come on the basis of half-baked media reports even before the lowest court in the land pronounced its verdict. The Sharma family, by contrast, has been lionized as though they performed a great heroic deed despite the provision of the anti-dowry law that clearly states that both the giver and taker of dowry are liable for prosecution. No one wondered why they were not arrested for having offered Rs. 18 lakh dowry as inducement to Munish Dalal's family. A few months later, media persons lost interest in her story as they allegedly discovered more and more holes in the version of the dispute Nisha and her family offered.

Consensus against Extortion

The bottom line is that Nisha, like millions of other people, believes that the voluntary giving of gifts and wealth – whatever be the amount – is perfectly legitimate, while anything demanded by the groom's family ought to be treated as an offence against the law if it exceeds the paying capacity of the bride's family or goes beyond their willingness to comply. If that is the social and legal consensus, if that is how law is actually enforced, if the dowry prohibition law comes into play not when dowry is being given or taken but only when the bride's family levels charges of coercion and blackmail, then logic demands that we scrap the anti-dowry law since extortion is in anyway a criminal offence under the Indian Penal Code (IPC).

All cases of dowry related harassment can easily then be tried under relevant provisions of the IPC as cases of extortion. Since there is a broad-based consensus that extortionist demands are both wrong and illegal, enforcing such a law will result in greater clarity and better implementation of its scope and ambit.

Today, most women end up using the anti-dowry law to book husbands for maltreatment even if dowry is not the cause of marital breakdown. Thus anti-dowry law has not curbed the giving and taking of dowry. It has only provided a strong weapon for revenge in the hands of wives against their husbands and in-laws, whether or not their conflict is over dowry.

Lawyers and even police routinely advise families to list "dowry demands" as the primary cause of marital violence, even if in actual fact this is not at all the case, or is only a relatively minor factor in marital conflict. We have found that when we probed deeper, women narrate far more complex stories of conflict than come out in their simplistic statements to the police and



law courts about dowry being the cause of all their woes.

Harmful Emphasis

It has become politically fashionable to attribute all forms of violence and discrimination against women, including female infanticide and female foeticide to the economic burden of dowry that a daughter is said to represent.

Dowry requirements are used as another excuse for considering daughters a burden. The anti-dowry movement, by limiting itself to the constant repetition of "dowry abolition" as a panacea for women's empowerment and as the primary strategy for ending their oppression, has only helped give further legitimacy to the conventional belief that daughters are an economic liability.

There is little mention of exorbitant dowries causing the ruin of families in the literature of pre-British India. Ruin due to exorbitant dowry payments became a major theme in nineteenth century literature because this period witnessed an unprecedented erosion of women's economic importance and inheritance rights due to the manner in which the colonial rulers carried out land settlement operations in India.

In conformity with Victorian norms that they were familiar with in their home country, land entitlements were given to "male heads of the family", bypassing our customary laws that allowed various categories of entitlements to women. This concentrated property in the hands of men in an unprecedented way and paved the way for the disinheritation of women. In addition, the rapacious land revenue demands drained large amounts of the economic surplus from the rural economy. It made the peasants extremely cash poor. The destruction of traditional crafts pushed large sections of impoverished artisan groups to fall back on their small landholdings and the consequent increasing pressure on land made land ownership bestow special power and status.

However, with rural society and artisan groups becoming extremely cash poor, the tradition of *stridhan* seems to have become burdensome. The traditional view of daughters as *paraya dhan* got a new and deadlier meaning. The term *paraya dhan* had the connotation of viewing women as wealth. This is an apt description in a society in which women carried their *stridhan* with them, that is, property that is theirs by right. Traditionally, the entry of a bride into her new family would be referred to as the coming of Lakshmi (*Lakshmi aayi hai*). Even today vestiges of that tradition remain in most communities. A young bride enters her marital home with *haldi* (turmeric) soaked feet, leaving auspicious marks on the floor, marks associated with Lakshmi, goddess of wealth.

As women were increasingly disinherited, daughters began to appear as liabilities. *Kanyadan*, the gift of a daughter, became not so much a matter of earning *dharmic* merit (the merit of doing one's religious duty) so much as getting rid of an unwanted

burden. It is in this context of devaluation of women's lives and marginalisation of their economic rights that dowry payments began to assume the form of offerings to a groom's family so that they would take a burden from the bride's family.

Thus, our modern inheritance laws have increasingly moved in favour of men and against the interests of women. All those communities that practiced matrilineal inheritance, such as the Nairs in Kerala, have also been forced through legislation to move towards patrilineal inheritance. Systems that provided reasonable or adequate protection of women's economic rights have been steamrollered out of existence.

The Way Forward

The present day dowry system in India symbolizes the disinheritation of women and the desperation of parents to push their daughters out of their homes after marrying them off, no matter how this affects their well-being. Failure to do so is considered a severe stigma on the family's *izzat* (reputation). Since the woman is being sent as a disinherited dependent, the receiving family has to be compensated.

Once women become equal inheritors, parents will not have to depend only on sons and daughters-in-law for old age security because

We need to combat the culture of disinheritation if we wish to effectively combat the growing hold of dowry culture.



Prem Singh

daughters too will be empowered to take care of their parents. This will make families less male-centric and therefore, less prone to violent tussles. We need to combat the culture of disinheritation if we wish to effectively combat the growing hold of dowry

Karnataka and Tamil Nadu have already done.

➔ Amend the Hindu Succession Act to make it illegal to routinely disinherit through their wills unless they can provide strong extenuating circumstances for doing so. □

culture. For this the following steps are likely to work better than anti-dowry laws:

➔ Encourage parents through widespread, high profile campaigns, to gift mainly income-generating forms of property to their daughters (land, house or business shares) depending on the economic status of the family.

➔ Encourage those parents who can afford it to ensure that their daughter has a house, room or even a *jhuggi* in her own name so that she is never rendered homeless, can never be "thrown out of the house".

➔ Amend the Hindu Succession Act to give coparcenary rights to daughters at par with sons as the states of Andhra Pradesh,

In issue 147 we had announced that the next issue (No.148) would carry a follow up report on the outcome of the legal case filed in the Delhi High Court against MANUSHI's pilot project to create a Model Market for Street Vendors in Sewa Nagar. The High Court had refused to grant a blanket stay order to those opposing the project which will usher in a liberalised licensing regime for street vendors and make their livelihoods secure. Even though Justice Ravindra Bhatt conducted the hearings of the case with speed, the High Court was not able to deliver its judgement before it closed for summer vacation on May 30th. Therefore, we are unable to provide our readers the promised follow up report in this issue. We hope to update you with more details on the progress of the pilot project in the next issue since the judgement is expected to be delivered soon after the Court reopens in July.