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Dowry and the Legal Protection of Women: Bangladesh Perspective

Md. Rafiqul Islam*

Abstract

The purpose of this article is to examine the existing dowry system in Bangladesh alongside with the legal protection in Bangladesh to explore the implications for socialization of women. The penal statutes and other laws relating to women have been amended under pressure from women's groups in order to prevent marital violence against women over 1929 to 2004. These changes seek to protect women against all forms of marital violence by enlarging the definition of cruelty, making penalties higher and relaxing evidentiary requirements. This paper also examines whether the legal issues are appropriate for the protection of the present dowry related hazards or not.

Introduction

Dowry refers to a gift or payment by a bride's family to the groom or his family at the time of marriage. As an archaic usage, dowry can also refer to dower, the immovable properties and other things which a woman brings to a marriage and retains some power over. The term 'dowry' has been defined by the 'Joutuk Nirodh Ain 1980' (the Dowry Prohibition Act) as "**property or valuable security given or agreed to be given as consideration for the marriage of the parties**" and it is generally offered by the wife's family to the husband before the marriage. Dowry has often been defined as the 'money, goods or estate that a woman brings to her husband at marriage'. It is also known as the 'property, which a woman brings to her husband at marriage'. The use of dowry is still tremendously common to the society and by which female adolescents (particularly those in rural areas) are made to suffer greatly. It continues in spite of the fact that adolescents (both male and female) and their parents are opposed to the process. It results in social humiliation and degradation of females and in many cases, results in divorce. Dowry is also a major cause of violence against women and suicide or homicide. All adolescents and gatekeepers participating in a group discussion in Bangladesh agreed that dowry was a social evil and a serious threat to life of female adolescents.¹ While the government of Bangladesh has promulgated an anti-dowry act for the prevention of the use of dowry, the custom

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¹ Sona S., A. Barkat, S.H. Khan, R. Ara, S. Jalil, and B. Sago. 2001. Focus group discussion conducted for preparation of proposal on ARH, for PPFC.

remains, as there is still a lack of awareness and empowerment of females. Dowry remains at the central part of marriage negotiations and a frequent bone of contention.

The social scenario in the Indian subcontinent, especially in Bangladesh, has remained largely motionless and static as well as the authorities continue to be engaged in legal exercises to prevent dowry-related cruelty to women. Religious and social embarrassments still act as barricade to women's higher education and deny them wider job opportunities for socio-economic self-determination. United with the high rise in population, very low Growth Domestic Product (GDP) growth would be once, and poor social security services, these factors decrease the possibility of dowry being eliminated from the society in the near or even the distant future.

Historical Background of Dowry

The term, "dowry" as a so-called offering in a marriage does not have its roots relevant solely to the Bangladeshi culture. It has been noted to be part of the customs, practiced in early 12th century in Europe and was often duplicated in European fairy tales and literature making such references to a woman's "dowry" as offerings of a "straw mattress", a "wooden stool" or "farm animals". The exchange and amount of "money" for a dowry depended on the relative status of a rich or poor woman. Monetary exchanges also had the function of preserving the aristocracy as a class and having marriages arranged as a means of cultural and economic determination. An interesting utilization of dowry, symbolizing both marriage as well as a union of aristocracy and colonial dominance was in 1662 when Charles II of England was given the Indian city of Bombay as a dowry for marrying Catherine of Braganza of Portugal while the Portuguese owned Bombay.

In ancient Hindu society there developed, in disregarding to the frown of the scriptures, the custom of paying dowry as bride price but in modern times, this has turned into dowry as groom price because of hyper-gamy or *kulinism*. The dowry system (payments from the bride's family to the groom or groom's family at the time of marriage) has a long history in Bangladesh and many other Asian societies. The modern Bangladeshi dowry system has its roots in the traditional upper-caste practices of *kanyadhan*², *varadakshina*³ and *stridhan*⁴. Dowry is the practice of giving money to the husband's family by the wife's family. It is widespread among all social classes, especially among rural people with lower education levels. The choice of a wife is too often determined by the husband's need for money. Obtaining

² Literal meaning of *kanyadhan* is the gift of the virgin bride.

³ *Varadakshina* means voluntary gifts given by the bride's father to the groom.

⁴ *Stridhan* means voluntary gifts given by relatives and friends to the bride.

dowry money with little regard for the girl who will become the wife⁵. In Bengali it is known as *pan or joutuk*. In Hindi and Urdu it is called *dahej*.

Dowry Situation in Bangladesh

The practice of the dowry is a social curse to women which contributes directly to matrimonial tensions and divorce. It reflects women's economic dependence on men. In a number of cases the bride's party fails to pay the dowry demanded by the groom's party. In a community survey, 20 per cent of 126 married women and 35 per cent of 79 divorced women reported conflict within marriage due to non-fulfillment of the demand of dowry.⁶ Conjugal disagreement can lead to domestic violence, which may force the bride to escape from the husband's home and accept divorce. Divorce can, therefore, be seen as a marker of extreme mental insults, particularly to women in rural Bangladesh.

According to the UNFPA (the United Nations Population Fund) State of the World's Women Population Report, 47 percent of the women in Bangladesh testify to having ever been physically assaulted by a male partner. This report, and the fact that Bangladesh would thus rank second in a list of 12 countries for a high rate of violence against women (VAW), caused a great deal of media attention. A recent study revealed rank ordering of different types of violence against women VAW, with vocal abuse being the most widespread and alarming one; the second most widely occurring violence is battery, while dowry-related violence is the third.⁷

Many women are viciously disheartened or worried, while others present warning signs of post-traumatic stress disorder. In a community survey, homicide and suicide, which are often catalyzed by the stigma of rape, pregnancy outside marriage, beatings or dowry problems, accounted for 6 percent of 1,139 maternal deaths between 1976 and 1986.⁸ Much of the violence against women is related to disputes

⁵ Abul Barkat, *Adolescent and Youth Reproductive Health In Bangladesh: Status, Issues, Policies, and Programs*, Public Health Research, Human Development Research Center's POLICY Project, Dhaka, Bangladesh, January 2003.

⁶ Personal data collection on area of Tanor Upazila at Rajshahi Division.

⁷ A. Barkat and N. Ahmed, "Human Poverty and Deprivation in Bangladesh: Lack of Substantive Freedom and Eradication Possibilities", Presented at a Workshop, organized by DLB, Engelskirchen, Germany: September 1, 2001.

⁸ Ministry of Health and Family Welfare (MOHFW), "Adolescent's Health and Development: Issues and Strategies: Empowering Adolescent Girls for Sustainable Human Development", *Bangladesh Country Report*, South Asia Conference on Adolescents, UNFPA, Dehli, 21-23 July, 1998.

over dowries. According to a human rights group, there were 81 dowry-related killings during the year.⁹

Dowry-related violence is problematic Particularly in Bangladesh. A survey conducted by Naogaon Human Rights Development Associations (NHRDA) revealed that 84% percent of the cases it received in 2000 were dowry related wife battering cases. In 2001, 173 girls and women were killed due to dowry demand with 79 of these victims below the age of 18.¹⁰ The negative aspects of dowry i.e. the bitter negotiations, threats, extortion, and repercussions for unmet dowry demands are not generally obvious in middle and upper class families. It is the poor who really suffer economically and socially as a result of the practice of dowry. The economic consequences are that, the money of dowry is often raised by selling or mortgaging land at low prices. It also includes livestock, trees, household goods and family jewelry and as well as loans from NGOs and moneylenders at high rates of interest. Despite these economic consequences, payment of dowry is prevalent as got by a community survey, which found that 77% respondents gave dowry during their marriage and only 23% of marriages were held without dowry.¹¹

There are many severe consequences resulting from the payment of dowries.

First, failure to meet the dowry demands or the new demands often results in verbal and physical abuse of the wife. Physical abuse includes beating; burning with cigarettes, withholding food, sleep deprivation and denial of medical treatment. The abuse may be meted out by the husband or members of his family, especially his mother. Verbal abuse may include starting rumors about the character or behavior of the wife and often the girls feel unable to disclose the situation to her parents. If the physical abuse continues and worsens, this may lead to the wife committing suicide.

Additionally, a common result of unpaid dowry is sending the girl or woman back to her parent's house. When this happens everyone considers that it must be the fault of the girl or woman saying such things as: "*She could not adapt to her husband*" or "*She cannot look after her husband properly*". So, once again both the girl and her parents suffer from rumors and criticism. This also affects the reputation of the younger sisters.

⁹ Bangladesh: Country Reports on Human Rights Practices (2000) Available at <<http://www.state.gov/g/drl/rls/hrrpt/2000/sa/692.htm>>

¹⁰ Library and Documentation Centre, Bangladesh National Women's Lawyers Association, 2002.

¹¹ A Baseline Survey on Grassroots Distress Women conducted by Naogaon Human Rights Development Association, 2000.5 UNICEF, statistics by country, available at http://www.unicef.org/infobycountry/bangladesh_statistics.html.

Apart from the social stigma attached to the girls who returned to live with her parents there are other problems. Her brothers and their wives may resent her presence, particularly if she has brought children with her. She is seen as a drain on the household resources and may be verbally, and even physically, abused by her own family.¹²

Legal Frameworks and policy issues related to Dowry/violence against Women

Legal issues are of major consequence with regard to Violence against women. Legal barriers and laws, the Constitution of Bangladesh guarantees equal rights for men and women irrespective of caste, creed, and color. All citizens are entitled to equal protection under the law. There exist, however, very limited laws, regulations, or ordinances that are specifically designed to protect adolescents (particularly female adolescents) from exploitation and violence. The current laws, rules, regulations, and ordinances, while inadequate in terms of both the protection and promotion of rights as well as in terms of enforcement, include the following:

- The Dowry Prohibition Act of 1980 declares the taking and giving of dowry an offence punishable by fine or imprisonment for up to five years or with both. The law was amended in 1983, 1995 and 2000 to provide for a sentence of death or life imprisonment and financial penalty to a husband or any of his relatives who causes or attempts to cause death or grievous injury to a wife on account of dowry.
- Any contract regarding giving and accepting dowry will be of any legal effect;
- Any dowry related crimes would be designated as Non-bailable and Cognizable;
- The Cruelty of Women Act (Deterrent Punishment Act of 1983) provides punishment by death or life imprisonment for the kidnapping or abduction of women for unlawful purposes, trafficking women, or causing death or attempting to cause death or grievous injuries to wives for dowry;
- The Child Marriage Restraint Act (1984 Amendment Ordinance) raised the age of marriage from 16 to 18 for women and from 18 to 21 for men;
- The Muslim Family Laws Ordinance, 1961 (Amended in 1985) regulates certain aspects of divorce, polygamy, and inheritance;
- The Penal Code (Second Amendment Ordinance) provides capital punishment for causing grievous injuries or acid throwing. Recently, the government has declared a death sentence for acid throwing;
- The Family Court Ordinance, 1985 deals with divorce, restitution of conjugal rights, maintenance, guardianship, and custody of children; and the Family Court

¹² Dowry – Poor People Perspective, a study conducted for UNDP by Prom PT, 1996.

Ordinance, (1985) establish family courts at district and sub-district levels to deal with cases related to marriage, restitution of conjugal rights, dowry and custody of children; provisions made for mediation and quick disposal of trials.

- The Repression against Women & Children's Act, 1995 provided punishment for grievous hurt of any woman of any age. In case of grievous hurt by the use of poisonous or corrosive substance which may cause of losses the eye sight, disfigure of head or appearance looses of hearing power. The person will be liable for at least 7 years but not more than 14 years rigorous imprisonment or fine or both. But if the husband of a woman, his father, mother, guardian, relatives or any other person on his side may cause death of the woman he/they will be sentenced to death or life imprisonment;
- The Anti-terrorism Ordinance of 1992 provides punishment for all types of terrorism including teasing through making mockery of women or abducting children and women;

While laws, rules, regulations, and ordinances for preventing dowry remain, implementation of the existing ones is very poor or faulty, causing a breach in security for women.

During the year, the Government acceded to the United Nations Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The Government also has enacted laws specifically prohibiting certain forms of discrimination against women, including the Anti-Dowry Prohibition Act of 1980, the Cruelty to Women Law of 1983, and the Women and Children Repression Prevention Act of 1995, which was replaced by the Women and Children Repression Prevention Act of 2000. However, enforcement of these laws is weak, especially in rural areas, and the Government seldom prosecutes those cases that are filed. Bangladesh Mahila Parishad provides legal assistance to women, has organized demonstrations around dowry cases, and has set up some battered women's shelters. The Government of Bangladesh's Women's Affairs Directorate has also established some hostels for battered and threatened women, and offers counseling services.

In spite of the legal prohibition, the practice of paying a dowry has not been stopped or diminished in Bangladesh, neither in rural nor in urban areas. Repression of women for their inability to bring adequate or repeated installments of dowry from their poor parents and resultant deaths or grievous injuries is rather disquietingly frequent.

Recommendations/Suggestions

Considering the high enhancing of dowry-related fact, the dreadful situation of the female, and the socio-cultural conservatism that prevails in the country, the following recommendations/suggestions:

- Gatekeepers, formal and informal community leaders, and religious leaders at all levels need to be motivated on disgraceful to dowry and gender issues;
- An adolescent family life education curriculum needs to be developed (introducing dowry related chapter) for male and female;
- Increased networking between all relevant government organizations and NGOs working with formal and informal community leaders, and religious leaders at all levels should be encouraged to ensure the proper implementation of dowry related laws;
- Counseling services need to be arranged for the women who are in problem of dowry;
- Innovative strategies should be developed and implemented to deal with culturally sensitive dowry issues that require winning the confidence and desensitization of cultural gatekeepers (e.g., mothers and sisters-in-laws, parents, grandparents, village and community leaders, council chiefs, and religious/opinion leaders).
- Improved monitoring of complaints, prosecutions, convictions and sentences related to Dowry offenses (to identify enforcement patterns/gaps)
- Further simplification and improvement of investigative and court procedures to make them more gender-sensitive.
- Continued training and sensitization of police, magistrates, prosecutors and judges;
- Capacity building of local government officials, especially elected women, to promote community awareness and monitoring;
- Support to NGOs working on legal literacy/ empowerment of women, including paralegal training;
- Establishment of workable birth and marriage registration systems;
- To create public awareness so as to highlight the harmful effects of these systems;
- To launch anti-dowry campaigns through education and publicity with the involvement of voluntary organizations;
- To take action on the representations received from the victims of dowry disputes and other atrocities on women in the State;
- Counseling services and legal assistance is provided;
- To mobilize public opinion against all forms of violence against women and girls;

- To encourage people, especially men to take action to "STOP" violence against women and girls;
- More importantly a cultural rethinking on the status of women is needed which can occur only through education.

Conclusion

Social laws are required where culture has failed to institutionally stop injustices of dowry deaths, the killing and abandoning of female infants, the banishment of women who fail to produce sons and family breakdown due to dowry harassment. The problem is compounded by the fact that 63 percent of the female population in Bangladesh is illiterate. Perhaps a good starting point is population control and compulsory education for boys and girls alike. Notwithstanding the Bangladeshi government banning practices of dowry harassment, extortion and demands through its provisions of the Dowry Prohibition Act, as a preventive means to abolish dowry deaths, the social evil of dowry deaths continues. The legal system has the task of weeding out legitimate allegations from those that appear to abuse the law by filing false dowry claims as a possible counter mechanism to blackmail and extortion via matrimony. In Bangladesh not only was there an apparent increase of dowry-related deaths from kitchen fires but also from this weed other covert forms of related oppression sprouted. Some of these led to psychological torture, suicides and murder of married women, desertion by their husbands, rampant abortion of female fetuses, and poor families resorting to female infanticide for fear of not being able to provide dowry.

The steady rise of the gruesome scenario of dowry related violence or deaths in Bangladesh brought with it a sense of hopelessness in light of the lack of legal provisions and avenues made available to families who lost their daughters in the expansive and intricate dowry-wedding web. In 1980 with the Dowry Prohibition Act, dowry was officially outlawed but in reality eradication was far from accomplished. In 1986 harsher legal amendments to the 1980 Dowry Act such as Section 174 Criminal Procedure Code enforced investigations of suspicious bridal deaths and punishment of seven years to life in imprisonment and possibly death for those found guilty and convicted of bride burning. In spite of these legal breakthroughs, shocking statistics on dowry deaths continued to show up in Bangladeshi newspapers. The 90's showed a steady yearly increase in bridal death tolls with many more violence unreported. Like clockwork every 06 hours a dowry related violence claimed to have taken the harassment of over 20,000 women across Bangladesh between 1990 and 2003.¹³

¹³ Bangladesh: Country Reports on Human Rights Practices (2004) Available at <<http://www.state.gov/g/drl/rls/hrrpt/2004/sa/692.htm>>