

Jul-2014

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## Recommended Citation

Begum, Afroza (2014). Dowry in Bangladesh: A Search from an International Perspective for an Effective Legal Approach to Mitigate Women's Experiences. *Journal of International Women's Studies*, 15(2), 249-267.  
Available at: <http://vc.bridgew.edu/jiws/vol15/iss2/17>

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## **Dowry in Bangladesh: A Search from an International Perspective for an Effective Legal Approach to Mitigate Women's Experiences**

By Afroza Begum<sup>1</sup>

### **Abstract**

For some 40 years, Bangladesh has fought a losing battle against the existence of dowries and their associated abuse with no indication of even a minimal impact as dowry demands inflate and violence increases. In one year alone, dowry related violence claimed the lives of 325 women and contributed to 66.7 per cent of the violent incidents against women. This article aims to investigate the appropriateness and effectiveness of legal approaches to dowry and propose a different standard for redressing women's disadvantaged situation in the traditional culture of Bangladesh.

*Keywords:* Dowry, Bangladesh, legal approach, reconstruction

### **Introduction**

Hafeeza is just one of the thousands of dowry victims whose experiences symbolise the harsh reality for many women living in Bangladesh. She was attacked by her husband just days after her marriage. Angry, he beat her and dragged her by her hair along the roadway. The violence was ongoing.

Once my father-in-law became sick, I was three months pregnant. My husband said he needed money to treat his father, asked me to [fetch] ... my unpaid dowry. My family couldn't get any money to give him, so he beat me, again and again.... I was sick...[and] left my job. My husband became so angry. He said, 'Why did you leave the job without my permission? I don't want that child, I want money. Eat this medicine and let the child die, so you can go to work again' (Ariyathilaka 2009, 70-71).

Dowry has been one of the leading causes of torture of women in Bangladesh.<sup>2</sup> The *Dowry Prohibition Act 1980* (the Act) outlaws dowry with a maximum penalty of 5 years imprisonment, and safeguard from physical abuses is repeatedly affirmed in several pieces of legislation (*Constitution of the People's Republic of Bangladesh 1972*, art 35(5); *Penal Code 1860* ss 324–331). Women's dignity as core value of human rights law is deeply entrenched in numerous international instruments under which Bangladesh also assumes affirmative obligations to respect and ensure this right.<sup>3</sup> Despite this, dowry-related cruelty is endemic. In 2011 alone,

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<sup>2</sup> Dowry refers to money or valuable property, which are demanded by the husband or in-laws from a bride's family as a consideration of marriage.

<sup>3</sup> Bangladesh ratified numerous international human rights instruments, including the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979*.

dowry-related violence claimed 325 lives and resulted in 7,079 incidents of dowry-harassment (Haq 2012). This represents only a fraction of total dowry-victims since women are very reluctant to unearth their 'hidden wounds' publicly for several reasons, including loss of family honour and privacy, fear of in-law reprisals and poor access to inadequate and costly legal remedies (Begum 2005a, 228-229). Further, in a substantial number of cases, influential perpetrators act with impunity due to corruption and victims are left with virtually no legal recourse (Begum 2009, 178-179). The underlying cause of this rising trend of violence, notwithstanding the existence of a series of positive statutes, necessitates an exploration of factors affecting the origins and development of dowry and how it is addressed in Bangladesh.

I argue that law's failure to recognise a number of crucial aspects of dowry—including a range of serious flaws in the Act and the 'softness' of the current enforcement procedure—significantly contributes to the nourishment of dowry. This article explores dowry through an analysis of the Act with special reference to a number of legal provisions in India and the USA and recommends the reconceptualisation of laws to redress women's sufferings in abusive marital relationships. Before advancing with this discussion, it is, however, important to acknowledge that despite legislative changes and progressive attempts by the judiciary, dowry or other spousal abuses still persist in those jurisdictions. Nevertheless, it is evident that awareness of dowry/domestic abuses and for the need for legal sanctions to combat it has been raised higher than ever before and the law does have a significant contribution to achieve this end. Additionally, strengthening legal regime may not be a panacea for redressing dowry in Bangladesh, and some socio-economic factors may remain dominant perpetuating dowry. Yet, this should neither outweigh the necessity for legal changes nor is it practicable to address all socio-economic aspects of dowry in a single study.

This article is predominantly based on my doctoral research which drew on investigations that I undertook among NGOs and in different courts where I collected dowry-related cases, and on relevant materials from both primary and secondary legal resources. The discussion begins with a brief exploration of the socio-cultural context of the evolution of the concept of dowry and its broad acceptance in Bangladesh.

### **Socio-cultural and Legal Context in Bangladesh**

Traditionally, Bangladesh has been run along the line of a patriarchal social system<sup>4</sup> which, as elsewhere in the world, has promoted an unequal power relation, a rigid division of labour and gender roles (Begum 2012, 571-573). All social institutions ranging from the household to the state favour the promotion of males' careers as the future family bread winners. This reinforces women's exclusion from resources and power. Society's allegiance to those values combined with poverty, ignorance and lack of education have perpetuated women's subordination over the decades (Begum 2012).

Some important initiatives, however, have been undertaken since independence in 1971 to improve women's status. These include: a series of constitutional provisions guaranteeing equal opportunity in the public life; the right to freedom from torture and equal protection of law (*Constitution* arts 27–8, 9–10). Specific legislation such as the Act and the *Women and Children Repression (Special Provisions) Act 2000* (WCR Act) has also been enacted to address women's repression.

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<sup>4</sup> Patriarchy is a concept and a pervasive social structure, socially established via economic, political and sociocultural processes through which men gain control over women: see A Taslitz 1996, 393-395.

Nevertheless, the overall record of women's rights in Bangladesh is very disappointing and that often reflects disrespect for the rule of law. Women are frequently denied equal protection of law, and dowry remains 'one of the most intractable violations' of women's rights. Torturing women where dowry demand is unsatisfied contributes to 66.7 per cent of violent acts against women and 50 per cent of all murders of women in Bangladesh (Monsoor, 1999).

### **Meaning, Origins and Development of Dowry**

'Dowry' refers to property, cash or goods given to the bridegroom as a consideration of marriage. The Act defines dowry as any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage by another party at any time before or after the marriage as a consideration of marriage (The Act s 2). Originally, premised on the welfare of a daughter, dowry was a Hindu legal concept adopted to compensate women for the prohibition on women's inheritance of parental property (Jethmalani 1995).

The contemporary concept of dowry in no way resembles the original concept of dowry. Over time, what was voluntary has become obligatory—an essential part of marriage and recovered through coercion of brides (Chowdhury 2010, 202). Research in Bangladesh's Northern Districts revealed that about 80 per cent of marriages required dowries and more than 20,000 marriages were terminated within five years due to dowry conflict (Monsoor 1999). In numerous instances, the groom's dowry demand far exceeds the capacity of the bride's father to pay. One study claimed that dowry payments constitute 'more than 200 times the average daily wage' and have been 'one of major causes of chronic poverty in Bangladesh (IRIN 2009).

Dowry ensures parents a return on their investment in a son's education (JAGORI 2012). Ultimately, the groom's family holds the bargaining power, basing the dowry on his educational and occupational status (Nangia 1997, 644). This practice has led to increased economic dependence and powerlessness of women, rendering them an 'unproductive burden' on their family. A daughter may be resented in the parental home after she reaches marriageable age and unwelcome (for staying with them) after her marriage. Obtaining a spouse becomes increasingly difficult with age and tensions mount regarding preserving the daughter's 'virginity', without which a suitable groom will be impossible to find. Within this social construct, parents try to provide lucrative incentives to secure a suitable spouse to ensure their daughter's future.

Attention from both families promotes a strong sense of 'egoism' among grooms, and creates diverse avenues for 'earning' via dowry. Marriage has begun to lose its sanctity and become a means of making money, with more emphasis placed on property and cash than on the bride herself (Naved 2012, 830-835). On occasion, a ticket to the Middle East to find employment is demanded as dowry (Khan 2001, 124). This is how the socio-cultural and economic factors persuade the perpetuation of dowry in Bangladesh.

### **Dowry Prohibition Act 1980 ('The Act')**

The Act is the primary law dealing with dowry in Bangladesh. It makes dowry a criminal offence, originally punishable by a maximum penalty of one year's imprisonment or a fine of BDT500 (approximately USD 6.25) or both. The Act criminalises the taking and giving dowry, and governs associated investigation and trial proceedings. In attempts to redress deficiencies, it was amended on a number of occasions. For example, its 1986 amendment increased the penalty for claiming dowry and made dowry a non-cognisable and non-bailable offence (*Ordinance 36*

of 1986). Dowry-violence is also subject to other laws such as the WCR Act. Nevertheless, the evidence (below) demonstrates that legislative enactment has proved largely ineffective.

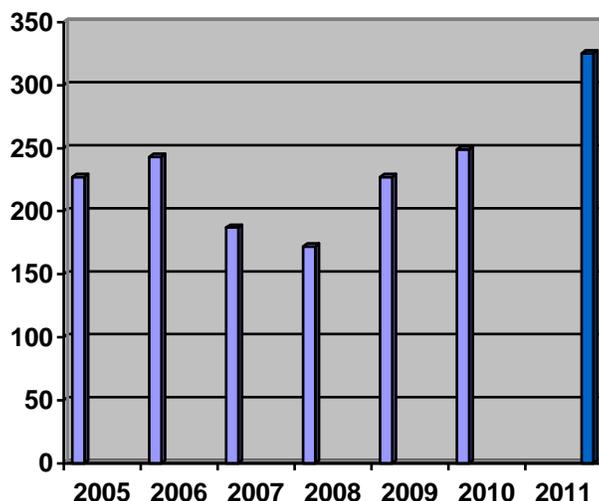
### *Legislative Impact on Dowry*

Despite being the subject matter of several pieces of legislation, dowry remains pervasive and a source of death and torture of women (Figure 1). Any earlier downward trend in deaths has reversed: in 2011, dowry resulted in 325 deaths of women, up from 249 in 2010 and 227 in 2009, and substantially up from the 169 reported in 2002 ‘Angry Brides’; Islam 2012).

There is also the question of dowry-related violence failing to proceed to trial. The Inter Press Service reported 5,331 cases of dowry in 2010 which jumped to 7,079 in 2011, and by the first nine months of 2012 the figure hit 4,563 (Haq 2012). The Asian Legal Resource Centre noted 119 cases of dowry-related violence, including 78 deaths in the first half of 2009, yet an Amnesty International report disclosed that from January to October 2009 police received at least 3,413 complaints of beating and other abuse of women over dowry disputes (Bangladesh - Amnesty International Report 2010). A further 172 dowry-related murder cases were recorded in 2008 and 187 in 2007 (IRIN Report) while in 2006 dowry-related violent incidents totalled 307, with 243 being killed and 64 tortured (‘Violence against Women in Bangladesh still high’ 2012) and 227 reported dowry-related killings in 2005 (‘Dowry Deaths’).

These actions completely violate women’s dignity and any marital or familial relationship.

**Figure 1: Dowry Deaths 2005–2011**



Source: As detailed above.

Thus the current legal approach appears to have failed to protect women against dowry and associated violence. Instead, dowry has created multi-faceted social problems to which the law is also inept in responding.

Despite the gradual increase in female empowerment, an early marriage is still perceived as the best strategy to provide a ‘safe shelter’ for a young girl, regardless of her parent’s socio-economic status. Therefore, most women lack even basic educational opportunities, a prerequisite for economic power. After marriage, aside from love and concern for the children

and husband, a number of crucial factors pressure a woman to preserve her marriage, even at the expense of her physical or emotional safety. Foremost is her economic dependence on the husband for her survival which increases with parenthood. There is no governmental support for women who leave, or are thrown out of, their marital homes; the alternative is to return to their parental home (if they survive the abuse). This is not merely a financial burden on parents, who have already expended substantial amounts in relation to her marriage, but a matter of shame for her parents and the wider family. If parents are deceased, she may rely on her relatives (again most unlikely due to socio-economic constraints) or become 'destitute', forced to beg to maintain herself. All these concerns put women at a great risk, having no viable options to continuing the marriage. Grooms' families are well aware of the social stigma attached to unmarried and divorced women and use this to extort dowry. Current dowry legislation fails to recognise this experience of women in Bangladesh, and the Act itself suffers from some fundamental shortcomings which need to be addressed.

### *Major Flaws in the Act*

#### *Penalty for Taking Dowry*

Despite the introduction of strict penalty for taking dowry in the 1986 amendment, the practice continues to increase. One reason may be the degree of emphasis on court discretion regarding penalties. Section 3 provides that the penalty for any person giving or taking dowry shall be imprisonment from 1 to 5 years, or a fine or both. Consequently, the court can reduce the sentence; and imprisonment is equated with a fine—however, a fine is not fixed or properly clarified. Thus, sanctions appear vulnerable to judicial bias and any higher socio-economic status of the husband. Given the alarming increase of dowry incidents, this discretionary power must be removed. Additionally, the penalty specified should be increased when the taking of dowry exceeds the financial capacity of the bride's father.

#### *Similar Liability for Giving and Taking Dowry*

The Act fails to recognise the gravity of the crime and the immorality involved in 'taking dowry' by placing dowry giver and dowry taker on an equal plane (s 3). It fails to take into account the unequal power balance in operation. Dowry-takers are more blameworthy as they are motivated by greed and utilise the groom's superior bargaining position. By contrast, the deeply embedded socio-cultural values attached to a 'marriageable daughter' force parents to offer dowry. Their concerns include providing for her future via marriage and reduced marriage prospects as she ages. In numerous instances, parents incur huge financial liabilities to satisfy the in-law's demands. This does not reflect their free will. The reality of Bangladesh therefore compels parents to offer dowry.

Several factors discourage women or their parents from going to the court, such as unusual delay in disposing of suits, financial incapability, damage to family prestige, threats from the in-laws and a lack of cooperation from law enforcement agencies. Together with these, the 'giving dowry' offence essentially discourages women from seeking justice and reporting, making potential prosecution and investigation impossible (Shaha 2004, 216). To make the Act of greater benefit and utility to women, section 3 should be amended to penalise only the takers or abettors of dowry.

### *Voluntary Transfer of property to the Bride*

Section 3 of India's *Dowry Prohibition Act 1961* considers all voluntary presents of a marriage the exclusive property of the bride, and requires those presents to be listed. The Bangladesh legislation does not contain such a provision; instead, section 6 which dealt with the same issue was repealed. To avoid list manipulation and conflicting claims before the court, in India it is also suggested that such a list should be registered with the court (Diwan 1995, 461-462). To ensure women's exclusive control over the property, it is further recommended that the listed property not be able to be transferred to, or disposed of, within five years of marriage without the permission of the Family Court on an application of the bride (Diwan 1995, 462).

Even though it is difficult to decide what is and what is not a voluntary gift and the fact that the listing requirement is still susceptible to abuse by in-laws, because a bride's failure to let them use such properties may yet result in undesirable incidents; nevertheless, the formal listing and registration requirements help women establish legal control over the property and make it more difficult for the in-laws to extort that property. This provision should be incorporated in section 3 of the Act to strengthen women's position in the home.

### *Penalty for Demanding Dowry*

Section 4 of the Act makes 'direct and indirect' demands for dowry an offence. Making a merely 'demand' an offence is appropriate recognition of the magnitude of dowry. 'Indirect demand', however, has not been defined by the Act; neither have any guidelines been developed in this regard. This omission may advance undue expectations of the in-laws under the pretext of 'voluntary gifts' (instead indirect demand) and perpetuate physical/emotional abuse of the bride which, oftentimes, remains invisible (*State of Punjab v. Singh* [1991], 1537). Therefore, certain categories of actions and inactions, especially linked with the treatment by and behaviour of in-laws towards a bride should be categorised under the 'indirect demand'.

### *Voluntary Gifts to be for the Benefit of the Wife*

The *Dowry Prohibition (Amendment) Ordinance 1984* deleted section 6 of the Act, which had forbidden the transfer of bridal dowry properties within a year of marriage. Contravention had been punishable by a year's imprisonment or a fine of BDT500 (USD 6.25) or both. The current forms of marital-disputes in Bangladesh do not suggest that dowry disappears due to the enactment of the Act but rather confirm the opposite. Thus the law fails to combat the problem, while it took away an important right. Facing similar problems, India did not repeal its equivalent, notwithstanding a number of amendments made to its Dowry Act.

Given the traditional economic dependence and powerlessness of Bangladeshi women, section 6 should be restored as gifts worth BDT500 are still allowed under the Act. Section 6, however, will not deal with the 'dowry property' as it would be contrary to the spirit and objectives of the Act. A provision concerning 'voluntary gifts' (paralleling India's legislation) should be there inserted to provide greater economic security for women in the matrimonial home. Under this provision, all gifts given at marriage must be registered in the name of the bride and in the event of the dissolution of marriage revert to her. This will foster women's economic power and independence.

The penalty for non-compliance (under section 6) is nominal in terms of the amount of property delivered in a modern marriage. Given that it is relatively simple for in-laws to exploit properties and pay the fine of BDT500 (USD 6.25), the penalty must be increased in order to act as a genuine deterrent.

Some procedural factors further limit women legal remedies. The following discussion examines issues of arrest and prosecution policies, presumption of innocence and burden of proof.

### **Arrest Policy**

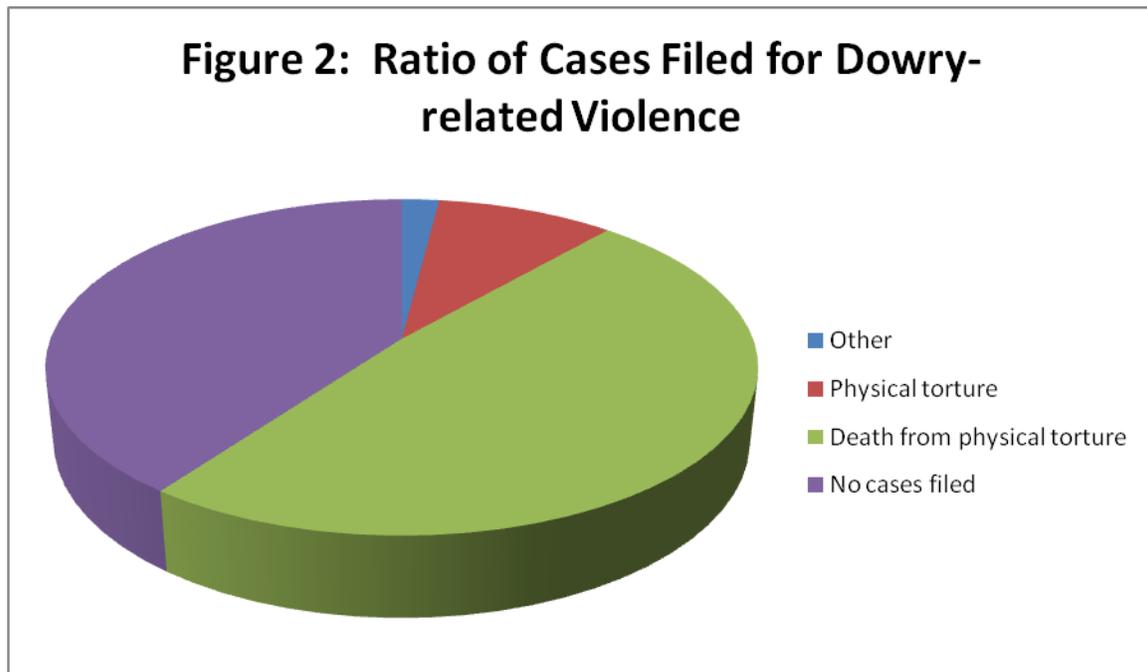
Most dowry violence is committed in the privacy of the in-laws' house, leaving hardly independent corroborative witnesses or direct evidence to prove the crime (*Prakash v. State of Punjab* [1992], SCC 212). Consequently, the fate of such cases depends on the honesty and objectivity of the investigating police (Buzawa 1992, 67). The 1986 Amendment allows police to arrest the person accused of dowry violence without a warrant but provides little guidance regarding enforcement. Police reportedly seldom enforce arrests and recognise dowry as a crime. In numerous instances, police—believing that the victim provoked the violent incident—refuse to register a case brought by a woman ((Buzawa 1992, 67). Police insensitivity and systematic corruption facing complainants attempting to file suit is aptly illustrated by the following testimony:

“The duty officer was not willing at first to take up our case. My daughter and I were pleading since 2 pm to convince them of the brutality of the situation and finally at 8.30 pm the *Munshi* [officer?] agreed to write up the FIR [first information report]. However, before doing this he asked for a ‘service charge’. Then another police officer came with a sheet of paper and said, ‘Tell the truth. I believe you have ... hurt yourself ...’. Before finalising the FIR, he asked for money. I gave him the money... after a month, I went to the police station ... they told us that there was no evidence of any case filed by me.... Frustrated and in despair, I came to know my boundaries. There is no hope for a woman like me in the outside world” (Matin 2000, 22).

Equally, manipulation of the investigatory process and police failure to investigate or take proper action helps many offenders to go legally unchallenged. On some occasions, no action is taken even after years, ‘until evidence disappears’ (Begum 2005a, 263), while the state places arrest powers exclusively on police. Absence of legal compulsion to arrest promotes corruption and inappropriate police practice (Blanchet 1996, 188-189); the abuser’s economic and political power often impedes objective investigation. The existing approach ignores not only the ‘vulnerable position’ of dowry victims in an unequal abusive relation but also evidences serious flaws in the country’s criminal law. There is also hardly any precedent in Bangladesh where police have been held responsible for failure to perform their legal duties (Begum 2005b, 88). In collecting and producing evidence and dealing with dowry-violence victims, police also lack proper training, sensitivity and expertise.

No accurate official statistics exist to provide a full account of registered dowry cases. Those available, however, suggest that a total of 2,761 cases of dowry-violence were registered with the country’s courts (Baseline Report), far below the actual incidence of such violence. ASK estimates that only 10.5 per cent of possible cases were filed against the perpetrator (ASK 2002, 147). The record of the Women’s Affairs Division confirms that only 5 to 10 per cent of the reported cases of violence or death in custody could be taken to court (Begum 2005b, 264).

Figure 2 reveals that of reported dowry violence, nearly 40 per cent of cases were not lodged (ASK 2002, 83).



Apart from the issue of corruption involved in arrests in Bangladesh, in other jurisdictions the rate of arrest may be as low as three per cent where the decision is left to police discretion (Suarez 1994, 459).

Numerous countries have attempted to change their response to domestic abuse through legislative changes and special measures. Most—including the USA, Australia, Canada and India—enacted Domestic Violence Acts, which represent a comprehensive response designed to address and redress various dynamics of domestic abuse (*Violence Against Women Act 1993* (US), *Protection from Domestic Violence Act 1997* (India)). Arrest policies and police training also received significant attention to improve the response to domestic violence cases.<sup>5</sup>

Several US states, for example, enacted mandatory arrest legislation, requiring police to arrest the abuser if there is a ‘probable cause’ of domestic violence (42 USCS 46). Failure to comply with this legislation results in legal action against the police (*Donaldson v. City of Seattle* [1992] Wash App LEXIS 201, 202), and an affirmative obligation on the state (*Hynson v. City of Chester* [1990] US Dist LEXIS 2557). These liabilities are justified to achieve the objectives of the mandatory arrest statute and due protection clause (Schuerman 1992, 373). Case law has narrowed police immunity and placed emphasis on early intervention in domestic abuse cases (*Rev Code Wash (ARCW) § 10.99.070*).

An empirical field experiment found that the national arrest rate, most of which are domestic, rose by 70 per cent within four years from the introduction of the mandatory legislation (Begum 2005b, 266–67). Nevertheless, a number of experiments with mandatory arrest produced conflicting findings. Research concentrated on three cities found evidence of a deterrent effect on mandatory arrest, while in three other cities the experiment produced evidence

<sup>5</sup> E.g. in India, police are mandated to investigate every death of women under suspicious circumstances that occurs within seven years of marriage. See, Department of Women and Child Development, 2000.

of increased violence (Sherman 1992, 25). Nevertheless, mandatory arrest is found to be the most effective deterrent to repeat incidents of domestic abuse in the US (Lindgren 2010).

Bangladesh Parliament enacted the *Domestic Violence (Prevention and Protection) Act 2010* which obligates a police officer to make the victim aware of possible redress, however, it does not provide for mandatory arrest and is not yet in force.

Recognising the systematic reluctance of police in regards to 'private affairs' and the police's corrupt practices, this paper proposes mandatory arrest provision for dowry offences in Bangladesh so as to ensure police execute of their duty. The greatest advantages of mandatory arrest are: (i) immediate protection provided to the victim; (ii) in-laws being cautioned about their violent or indecent behaviour; and (iii) making reluctant police officials work more carefully and sensitively.

The present Police Reforms Program in place in Bangladesh aims to improve the efficiency and professionalism of police, and address their own lack of sensitivity in dealing with vulnerable women victims (Police Reform Programme 2009). This is a positive development, and it is hoped that this initiative includes a compulsory training which: (i) must reflect international standards; (ii) specify how to approach victims and conduct dowry trial investigations; and (iii) include consequences for police for inadequate and inappropriate responses to dowry victims. More importantly, a minimum standard must be maintained by the government in ensuring dowry remedies since it undertook obligations to remove, *inter alia*, negative social practices that damage women's dignity and to restructure the criminal justice system (CEDAW, arts 4–5).

Combating domestic abuse, especially dowry should be a priority and resourced accordingly, since such abuse can produce severe consequences for not only the immediate victims but the family's children and the entire community. Children who witness domestic violence suffer from various emotional and developmental difficulties (*L v. V* [2000] 4 All ER 609; *Re-R* [2002] 1 FLR 621).

### **Dowry Prosecution Policy**

In Bangladesh, dowry prosecution entirely depends on the victims' decision; prosecutors are under no obligation to complete a prosecution (*Code of Criminal Procedure 1898*, s 494). Even after filing a case, prosecutors can do nothing when the victim refuses to testify against the offender or decides to drop the case (Monsoor 1999, 238). Current practice ignores the victim's vulnerability to intimidation, and undermines any idea that a 'prosecutor's duties are not only to convict but to seek justice' (Wanless 1996, 567) and facilitates case manipulation at the offenders' behest. In Bangladesh, there are instances of a bride not being taken to the bridal chamber due to her father's failure to satisfy dowry demands. After being physically tortured, one bride was 'forced to sign on a blank stamp paper, pledging not to take the matter to court or arbitration' then allowed to return home ('Victims of dowry hits back').

To address problems associated with prosecution, many countries, including the US adopted a pro-prosecution policy, which placed the onus of prosecution of domestic abuse cases on the prosecutor. This circumvents a victim's withdrawing a complaint after filing it and entitles the prosecutor to proceed with the case (without the victim's cooperation) using police reports and other indirect evidence. With this prosecution policy, San Diego experienced 'greater success in obtaining convictions' (Gwinn 1999, 311). Many states require state attorneys to develop special training units and specialist prosecutors for domestic abuse prosecutions (eg,

*Florida Annotated Statute* § 2901 (2002). One obligates the court ‘not to dismiss any charge’ of domestic violence, and make both victim and accused understand that prosecution of the case will be ‘determined by the prosecutor and not by the victim’ (*General Laws of Rhode Island* s 12-29-4 (b) (1)(2002).

Yet, the pro-prosecution policy is criticised for having potential to re-victimise the victim, as it considers the victim a hostile witness when she refuses to testify. Nevertheless, a number of states recognised the benefits of pro-prosecution policy and enacted legislation to implement this policy (Suarez 1994, p. 462).

Given the violent nature of dowry-practice and the acquittal rate in Bangladesh for dowry-related violence, legislators should place the full responsibility for prosecution on the prosecutor. Families must come to realise that their undue dowry demands will be taken up by the prosecutors themselves and relieve victims of any offender attempts to influence their decision. Alternatively, prosecutors should be legally accountable to consider dowry cases more seriously. As prosecutors are already engaged in dowry trials in Bangladesh, the introduction of a pro-prosecution policy will take little effort.

### **Presumption of Innocence**

Bangladesh follows the Common Law approach to the presumption of innocence which holds that the accused should be presumed innocent until the court finds her or him guilty beyond any reasonable doubt. A rigid application of this principle has often failed to provide remedies for dowry victims in Bangladesh (Agarwal 1988, 220). In *Begum v Haque*, for example, the wife obtained judgment for a dowry demand against her husband. The Sessions Court on appeal acquitted the husband on grounds of the benefit of slightest doubt (Agarwal 1988, 220).

Legislative and judicial initiatives in foreign jurisdictions have striven to address difficulties in proving violent cases, including dowry. India, for example, inserted sections 113-A and 113-B in the *Indian Evidence Act 1872* under amendments to the *Dowry Prohibition Act*. Section 113-A creates an opposite presumption, stating that if a woman commits suicide within seven years from her marriage and if it is shown that her husband or in-laws subjected her to cruelty or harassment, the court may presume that the husband or in-laws has abetted the suicide. Section 113-B makes the presumption of dowry death mandatory, which provides that if it is shown that the accused subjected the deceased woman to cruelty in respect of any demand for dowry, ‘the court shall presume that such person had caused the dowry death.’ Even though men argued that this provision prompts abusive practices by educated women and may work unfairly to the disadvantage of men, there is no authoritative evidence to support this view (‘Dowry law in India’).

The Supreme Court (SC) of India, in a series of decisions, set aside the acquittal order of the trial court and refused to place considerable weight on the benefit of slightest doubt (Begum 2005a, 233–7). In *Uttar Pradesh v Srivastava*, the court held that every hypothesis of innocence is capable of being negated on evidence,

[But] this is not to say that the prosecution must meet any and every hypothesis of innocence ... [nor] does it mean that prosecution evidence must be rejected on the *slightest doubt* because the law permits rejection *if the doubt is reasonable and not otherwise* (1992) AIR SC 840, 846-847).

Given significant difficulties in proving dowry claims in Bangladesh, similar provision of presumption should be legislated to address those instances where there is evidence of cruelty or grievous hurt to women in connection with dowry. This will make it easier for women to seek criminal remedies for various degree of severity not just where a fatality resulted. Experiencing repeated cruelty is sensibly more severe and devastating than a single shot or attempt to death.

It is, however, important to acknowledge here that the accused should not be deprived of the right to the benefit of the doubt, even if that doubt is 'slight', as it is a fundamental principle of national and international law that every person should be entitled to a fair trial (e.g. *Constitution*, art 35; *International Covenant on Civil and Political Rights 1966*, art 14(2)). Attempting therefore to redress dowry using presumption may not be totally desirable; yet given the vital need that exists, and the fact that evidentiary difficulties that often frustrate women's judicial remedies in Bangladesh, the concept of 'the benefit of slightest doubt'— but not the benefit of doubt itself — should be reviewed. This review is necessary not to limit the accused's right to 'the benefit of slightest doubt' but to limit the way this is used against dowry victims in Bangladesh. Similarly, the scope of this benefit should not be extended to such 'fanciful and remote possibilities that deflect the course of justice' (*Srivastava 1992*, 845-6). Judicial precedents in India and other jurisdictions could be relevant references to support this review (eg for India, *Srivastava*, 1992; for the UK, *L v. DPP* [2002] 2 All ER 854). In *State v Coetzee*, the Constitutional Court of South Africa addressed '...a paradox at the heart of all criminal procedure, ... the more serious the crime and the greater the public interest in securing convictions of the guilty....' ([1997] 2 LRC 593).

Thus, the principle of presumption of innocence should serve not only to protect a particular individual on trial, but to maintain public confidence in ensuring the integrity and security of the legal system.

### **The Burden of Proof**

Dowry-violence due to its private nature generally lacks independent witnesses as mentioned. Legal evidentiary requirements which place the burden of proof on the victim exacerbate the situation. 'Benefit of doubt' and a lack of evidence mean that dowry victims often fail to prove their case, resulting in the accused's eventual acquittal (*Akbar v. State 1999*) 51 DLR 264).

In relation to prosecution, India has advanced a number of positive measures to address difficulties experienced by courts in dealing with dowry. These include a 1986 amendment of its Dowry Act that shifted the burden of proof to the person alleged to have taken or abetted the taking of dowry (Dowry Act (India) s 8A), and dowry death was defined to make it clearer for the court to apply the provision (Indian Penal Code s 304B). Furthermore, another amendment to India's *Criminal Procedure Code 1973* made 'post-mortem' examination mandatory in cases involving suicide by a woman within seven years of her marriage and compulsorily required a magistrate to inquire into such cases (ss 174(3) & 176). These amendments empowered the court to initiate proceedings on its own knowledge or on the basis of a police report, even in the absence of a report lodged by an aggrieved person (JAGORI).

Since similar dowry-violence-death and difficulties associated with proving such deaths also prevail in Bangladesh, it is submitted that the Act needs to be amended to incorporate the above provisions. The existing evidentiary burden from the victim's perspective should be

abolished in Bangladesh for two main reasons: (i) in recognition of the vulnerable situation of victims in unequal power relations in a tradition-bound society; and (ii) to remove difficulties in regard to proving allegations under an adversarial court system. Where death is involved, this approach conquers difficulties in regard to victims' families failing to initiate cases or seek post mortems to supply valuable evidence, or police reluctance to proceed (both perhaps due to the accused's influence). In regards to non-fatal dowry-related violence and allegations of dowry demand, the shifting of the burden of proof will again prove of assistance. The court would have clear guidelines and the provisions would help remedy the suffering of women in 'private affairs', where current trial proceedings fall short (*State v. Pramanik* [1999] 43 DLR (AD) 64, 76). This should also send a strong message to in-laws tempted to press their demands.

It is, however, logical to acknowledge here again that such a shift may unjustifiably limit the accused's right to a fair trial. There are strong academic arguments on issues as to whether a reverse onus infringes the accused's right to be presumed innocent until proved guilty according to law. Yet, a reasonable limit to this right has been recognised globally in a range of laws and judicial decisions. Express statutory exceptions to this rule are found in numerous laws (eg s 101 of the *Magistrates' Courts Act 1980* (UK); Dowry Act 1961 (India) s 8A). Lord Griffiths in *R v Hunt* observed:

I have little doubt that the occasions on which a statute will be construed as imposing a burden of proof on [the accused] which do not fall within this formulation are likely to be exceedingly rare. But ... I would prefer to adopt the formula as an excellent guide to construction rather than as an exception to a rule ([1987] 1 All ER, 111).

Accordingly, a limited qualification to the benefit of innocence may be recognised in dealing with the specific circumstances of dowry victims in Bangladesh. This is necessary not only to accommodate the rights of the parties but to 'serve as a deterrent for the commission of like offences by others' (*Karnataka v. Krishnappa* (2000) AIR SC 1470, 1474).

Given law's failure to combat dowry, one significant consideration may be who and what deserve to have greater emphasis: 'the criminal or society; the law violator or the abider' (*Basu v. West Bengal* (1997) AIR SC 610, 618). The Indian SC held that with dowry where a serious threat to the victim's honour and life existed, the court in addressing a dowry case must show utmost sensitivity so that (i) the guilty should not escape punishment; and (ii) the victim of the crime can be satisfied that 'ultimately the Majesty of law has prevailed' (*Krishnappa* 2000, 1475). Frequent acquittals due to faulty investigations and lack of evidence have wider implications for the society as a whole as victims would be discouraged from reporting and crimes rewarded (*Punjab v. Gurmit Singh* (1996) 2 SCC 1393, 1394). In a leading judgment Lord Woolf applauds flexibility.

In order to maintain the balance between the individual and the society as a whole, rigid and inflexible standards should not be imposed ... to resolve the difficult and intransigent problems with which society is faced when seeking to deal with serious crime (*Attorney-General of Hong Kong v. Lo Chak-man* [1993] 3 All ER 939).

Flaws in other relevant legal provisions of dowry in Bangladesh further facilitate marital abuses.

## **Inadequate Legal Response to Polygamy and Marriage Documentation: Their Impact on Dowry**

One of the most damaging but overlooked consequences of dowry is that dowry-related disputes lead to divorce or polygamous marriage with little or no redress for women. Dowry incentives encourage a husband to abuse and abandon a wife to acquire another dowry by marrying another. Empirical research on 50 divorced women in Borguna District, reveals that 40 were divorced ‘because their families could not pay dowry money to their husbands’ (Montu 2003). A Muslim husband enjoys an unfettered power to divorce his wife at any time without showing any reason.<sup>6</sup>

Husband-initiated divorce, however, results in some legal rights such as dower<sup>7</sup> and spousal maintenance. Nevertheless, in the early 1990s it was claimed that in Bangladesh, ‘[there] has been no case of the dower debt being paid on divorce nor of any wife receiving any maintenance for the *iddat*<sup>8</sup> period’ (Sobhan 1982-83, 256). New family courts and processes have brought some changes (and increased recovery rates for funds) – but these are still patently insufficient with many women continuing to experience difficulties. Additionally, non-registration of marriage in a significant number of cases leads to the refusal of dower and maintenance for wives by the court (Khan 1999). Whilst registration is compulsory, it is frequently ignored in rural areas since the penalty can easily be afforded, being only three months jail or a BDT500 (approximately USD 6.25) fine.

In regards to polygamy, the *Muslim Family Laws Ordinance 1961* imposes some restrictions. Section 6, for example, requires a husband to obtain a prior permission from the Arbitration Council<sup>9</sup> to contract another marriage during an existing marriage. Penalties for contravention are imprisonment of up to one year or a fine of up to BDT10000 (USD125) or both (*the Ordinance 1961* s 6(5)b). Yet, unsanctioned polygamy remains rampant. With the penalties for minimal, husbands generally ‘do not feel the necessity to seek permission from the council and even if they do so they threaten the existing wife with consequences like divorce’ (Khan 1999), further evidence of her vulnerability. Being required to produce a copy of the ‘Nikhanama’ of the second marriage, a first wife is unlikely to successfully seek remedy for a husband’s noncompliance.<sup>10</sup>

The only meaningful way to eliminate dowry is to recognise its hidden aspects and to reconstruct laws to address those. To restrict polygamy, the requirement to produce ‘Nikanama’ before the court to prove a husband’s second marriage must be removed. Instead, witness statements should be accepted as a proof. Sanctions for failure to comply with legal provisions regarding polygamy and maintenance must be increased. The legal consequences will sensibly

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<sup>6</sup> Bangladesh is predominantly a Muslim (88%) country.

<sup>7</sup> Dower is part of a Muslim marriage. Underlying the prestige of a marriage contract and as a mark of honour to the wife, Muslim law obligates a husband to pay the dower. See the *Holy Qu’rān*, s 4 v 4; s. 2 v. 236.

<sup>8</sup> Iddat is a period of waiting during which a woman whose marriage has been dissolved is prohibited from marrying another person. The objective is to determine the paternity and legitimacy of any child.

<sup>9</sup> The Arbitration Council comprises a Chairman and representatives from both parties (husband and existing wife) which considers, *inter alia*, whether he obtained the existing wife’s permission for his second marriage: see the Ordinance 1961 ss 2(a), 6(2).

<sup>10</sup> In *Begum v Sarkar*, the High Court of Bangladesh held that the *Nikhanama* is essential to prove a marriage. ‘No amount of oral evidence can cure the deficiency and no amount of oral evidence is sufficient to prove marriage when the plaintiff fails to prove the [*Nikhanama*] according to law’: [1998] 50 DLR 181, 183.

restrict husbands from polygamous marriages or from dowry demands when they understand that their 'implied strategies' are not 'cost-effective'.

A more severe penalty for the failure to accurately register a marriage should also be imposed on the registrar and the grooms' families to encourage them to regard this as a serious offence.

### **Policy Recommendations**

Despite legislative and administrative initiatives, dowry remains widespread in Bangladesh and women's legal remedies are frustrated by a series of powerful factors that must be addressed. The following policy recommendations might be supportive of redressing the situation.

1. Significant flaws in the Act, enforcement measures and in the liability provision for taking dowry (identified above) must be resolved. The court's discretionary power regarding penalty for dowry (under section 3 of the Act) should be removed.
2. Given the practical-disadvantageous position of the bride's parents in a marriage, section 3 must be amended to penalise only the taker or abettors of dowry not the giver.
3. Section 3 should incorporate a provision which requires all voluntary presents given in the event of marriage to be listed and registered with the court.
4. The term 'indirect demand' under section 4 needs to be specifically clarified so that no demand can escape punishment due to the vagueness of the term.
5. Section 6 should be restored to provide women with economic security in their matrimonial homes.
6. Mandatory arrest and pro-prosecution policies must be introduced to combat the dowry-related violence. Police and prosecutors are likely to be more sensitive and active in handling dowry cases if the law imposes a mandatory obligation to arrest and prosecute the offenders. Such a policy would reduce threats to victims by perpetrators who otherwise try to make them withdraw their application.
7. Compulsory training should be introduced which must focus on progressive, multi-faceted strategies embodying international best practices and aiming to sensitise all officials, especially police, involved in dowry prosecution and to raise their consciousness of the law and core values of human life.
8. The government should issue appropriate directives supported by an authoritative enforcement method to investigate, correct, and stop such police treatment that denies women's remedies.
9. In dowry prosecution, the burden of proof should be shifted onto the accused in some respects such as proving that he/she did not commit dowry offence.
10. A provision for presumption of cruelty and beating to obtain dowry, or the suicide of a woman within seven years of her marriage should be incorporated in the Act. Also, similar provision of presumption as in India could be legislated in instances where there is evidence of cruelty or grievous hurt to women in connection with dowry.
11. More stringent punishment, ie, five years imprisonment or BDT50,000 (USD500) fine in cases of polygamous marriage and double that for the husband's failure to provide dower should be introduced. The increased penalty should work as a deterrent.

12. The traditional mentality of the in-laws has to be changed—a mass social awareness campaign program by government and activist organisations can change mind-set and educate in-laws and the institutional players involved in the dowry menace.

### **Conclusion**

Law is bound to be meaningless if it is structured and enforced in ways that ignore the reality of a particular society. This is similarly true if the proper enforcement machinery does not accompany it. International human rights law sets a basic standard for prohibiting domestic abuse. The recognition of the issue at the domestic level warrants that due regard must be provided to the overt and covert aspects of dowry as well as to the restructuring of the legal system so that it becomes more effective in dealing with the reality. Likewise, the proliferation of progressive laws in a comparative perspective provides ample evidence of exploiting the positive experience to lessen the sufferings of traditionally disadvantaged women in Bangladesh. Drawing on this insight, the paper recommends the reconstruction of the legal approach that relates to dowry in Bangladesh to accommodate women's unique experiences in the conservative culture.

### **Acknowledgement:**

I would like to acknowledge and thank Elaine Newby, editorial assistant of the *Australasian Journal of Natural Resources Law and Policy*, University of Wollongong, for her painstaking editorial work and thoughtful comments on the manuscript.

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