

Dowry System and Its Impact on Socio Legal Situation of Bangladesh

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ABSTRACT

Dowry, although not rooted in Islamic law, is a firmly established custom in Bangladesh. It consists of property such as clothing, money, jewelry, etc, which a bride's family is obligated to provide to a groom. Dowry theoretically belongs to the bride, however, it usually passes to the husband and his family upon marriage and, therefore, is often an important factor in marriages. In Indian subcontinent, dowry and lavish weddings have long been considered as serious social problems. Particularly in Bangladesh, dowry is a major cause of many criminal offenses against women, and despite the enactment of the Anti Dowry Law, 1980, violence perpetrated against women is still on the rise.

This paper, therefore, analyzes the socio-legal aspects of dowry and identifies dowry system as a social crime as well as a violation of human rights of women and argues that dowry problems persist partly because of the weak implementation of the relevant laws that demands immediate attention.

INTRODUCTION : In Bangladesh marriage is a central point to understand the social scenario. In Bangladesh at marriage, women move from their natal home and setting, where they are known and all is familiar, to a house-hold in which they have a very different role and expectations to fulfill. Among Muslims, marriages between close lineage are common, and this may mean that the sense of dislocation is much less severe. In general, however, marriage does represent a very significant break. Popular culture dramatizes the trauma for a girl of leaving her natal house and having to adjust to her new place amongst strangers. Marriage arrangements are typically surrounded by tension, with complex negotiations, both within the bride's family and between them and the groom's. This environment does not make it easy for a girl to intervene or to disagree when something is decided. She is also hindered by restricted mobility and ideals of female deference, heightened by convention which considers it indelicate for a girl to show any open interest in her own marriage.

As a new bride, also, women take a structurally weak position. While marriage marks the transition from childhood to womanhood, it also involves the loss of what she has known and rebirth into a new life. She becomes the house-hold's most junior member whose chief

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virtue is submission, learning how to do, what will please the family and proving her worth through obedience, hard work, good temper, and modest behavior. Most women in Bangladesh start their family in a joint house-hold structure. This means it is not just her husband that a woman has to please, but the whole family. She will spend most of her time with the other female members of the household and it is they who may be sharply critical.

Critically, then, marriage is about difference. It is the turning point in a woman's life, the major rite of passage, on which all of her fortunes depend. From this may follow other key moments : the birth of her children, the marriage of her children, and the end of her marriage through widowhood or divorce. At each of these points, a woman experiences radical change in her situation and options. Marriage also constructs difference between women : the division between married and unmarried. Beyond this, through marriage, new hierarchical relations are formed between women ; if the immediate result of her own marriage is a woman's subordination, the marriage of her sons typically gives a woman the strongest chance for an overt expression of power. Marriage also confirms communal difference since weddings are very much community events and choice of marriage partners is strictly confined within lines. Again, marriage is articulated with class as well as gender relations ; marriage is a key way in which the household gains access to valor and forms an alliance between families which may serve wider social and economic use (White, 1992, p. 98).

This study focuses on marriage transaction and the changes taking place in this transaction at present in Bangladesh. In the recent form of marriage, we see a noticeable change has taken place. We observe that a series of gift-giving are usually involved before, at, and after marriage. This gift giving is increasingly becoming less and less voluntary, rather a new element is added, that of demanding a valued item, to be given by the brides' side to the grooms' as a condition for the marriage to take place. This is commonly known as '*Jautuk*' (dowry) in Bangladesh. The practice of *Jautuk* has become common to all classes and religions in Bangladesh which is causing an alarmed concern for the society. Of course we cannot deny that this is a totally new phenomenon in Bangladesh. We can see that in 1948 (then East Pakistan) there was an attempt to control dowry by imposing a maximum limit of 2000 rupees on the dowry. In 1967, on the other hand, the 'West Pakistan Dowry Act' was implemented which provided that those exhibiting the dowry on purpose were made liable to one year imprisonment or a fine of 5000 rupees or both. The former act indicates clearly that the dowry problem existed in a very severe form in the West Pakistan and it was not that much in the former East Pakistan, now Bangladesh

Again if we look at the neighboring state of India, we can see the same dark picture of dowry system. The women are the victim of this evil system. In the Indian society, dowry is demanded and expected as a matter of right and, if not forthcoming, pressure is applied to

extract it and even extort it. Demand for dowry and its wretched consequences that follow when it is not fulfilled are the most common of such extraneous forces which are not only threatening the whole fabric of marriage and family in India, but also posing a serious threat to persons. The scholars of India assume that the demand for dowry in India is purely an economic exploitation of the socially advantageous situation which the grooms parents find themselves in. Those who demand dowry consider marriage as merely another way of making money and grooms as valuable commodities which can be bartered to obtain the social necessity of a wife, and a lot of money and material to enrich the treasury of the family. Cases of repeated marriages for dowry and shortly afterwards pushing the ill-fated wives out of the house are also not lacking. Different reports reveal, besides this, murdering wife for the dowry is also common in Indian society (Atray, 1988, p. 70).

Thus, this study also focuses on the laws which are related to the dowry system, how the legislature reacted to this social problem, and what steps have been taken to prevent the society from this contagious disease. At the end, this study compares the Bangladesh Dowry Prohibition Act, 1980 with the Indian Dowry Prohibition Act, 1961 and as well as the amendments of 1984 and 1986 and suggests that Bangladeshi Act 1980 be amended.

I

Before going to the study of dowry we must have a clear idea of marriage arrangement and system of Bangladesh. It is known that in Islam marriage is an obligation and a contract²⁾. The practical politics of marriage arrangement in Bangladesh, however, is reminiscent of any other form of transaction. The different parties manoeuvre and fight from their own corners, aiming to achieve the best bargain they can. There are many different levels in this process. Most clearly, there is a skillful dance of the bride's and grooms parties as they meet, fete each other, withdraw, discuss in lowered voices, dispute and finally agree. The ideal is for the groom's party to seek out the girl, but in practice the girls party may take a more active part as she gets older. Male relatives or friends of the groom and increasingly often the groom himself, come to 'view the bride' as part of this bargaining and decision making process. In and behind this is the work of the matchmaker who puts the parties in touch with each other and negotiates between them. The many interests involved in the making of a marriage undoubtedly color the evidence given. Mismatches thus occur not only through lack of information, but also through deliberate deception. It is a common phenomenon that in arranging of marriages, some lies have to be told. Questions can be raised by one who is named as matchmaker : weddings may be used to affirm exciting links as well as to make new ones. The person named matchmaker may thus be a prominent

person of the community, while many of the practical arrangements are managed less formally by others. Behind the set piece occasions of the negotiations process, there is thus involvement of other less formal action. Information is passed primarily among relatives, but social or business visits of neighbors also prove important channels. These do not necessarily follow communal lines ; it is quite common for a Hindu to be the matchmaker for a Muslim marriage and the vice versa. For other, sometimes common relatives, class-mates at schools or colleges may provide suitable contacts. While the ceremonial celebrates relations between men, in practice and in a *pardah*³⁾ society much of the exploration of possible matches relies heavily on women, and the activation of female network (White, 1992, p. 100).

After discussing the marriage arrangements of Bangladesh, it is now understood that the current ideal of an arranged marriage is to make a fully suitable match in terms of class, community, education, temperament and personality : the meddling of the individual and the household interest. One thing we have to keep in mind that marriage market is far from perfect, and choice is strictly limited. In particular in Bangladesh at present, rising demands for dowry payments weigh marriage negotiations very heavily against the bride's household. Within the compulsion of an appropriate match, therefore attention is often focused on the wealth of the household and the amount of dowry which is demanded or offered.

The practice of dowry significantly shifts the terms of exchange at marriage in favor of grooms party. According to White (1992), this reflects a change over the last two generations in Bangladesh and parts of North India, where bride price (payment by the grooms family) used to be the norm. Dowry was given predominantly between high caste Hindus. Amongst the Muslim dower or *mehr* was payable at marriage by the groom as a security for the wife. But now dowry is very common amongst almost all groups, and the amounts payable have risen dramatically. The earlier Hindu ideal saw dowry as 'gift' the most auspicious form of marriage in Hindu culture, *Kanya dan*⁴⁾ means literally gift of a virgin. The present practice of dowry is very far from this which is often called by the English term 'demand'. This fully reflects the way that dowries are perceived — a dowry is the demand of the groom to which the bride's family unwillingly accedes.

II

Let us here figure out what is dowry : The term dowry means the property that a wife brings to her husband on marriage. It is said that it has been an ancient custom in many parts of the world for a woman to bring a dowry, consisting of property or a sum of money to her husband⁵⁾. Shyamal Kumar Mukarjee argues that dowry was unknown in early Hindu society, women were treated as chattels, so the father of the bride could demand a payment

at the time of the marriage. He raises the point of Dr. A. S. Altekar to prove 'the bridegroom carried away the bride and deprived her family of her services. He could not have dreamt of demanding a further dowry or donation. Such a request if ever made, would have been summarily turned down as preposterously unreasonable.' In royal families gifts were given to the son-in-law at the time of marriage. Thus the *Atharavaveda*⁶⁾ mentions royal brides bringing a dowry of cows. *Draupadi*, *Subhardra*, and *Uttara*⁷⁾ also brought as presents horses, elephants, and jewels when they left the natal home after marriage. Many inscriptions refer to marriage presents given to the princes. Such presents cannot properly be called dowries. The practice was known as '*vardaksina*.'⁸⁾ It was a voluntary practice. But later the dowry spread to communities in which it was not a customary practice. (Mukarjee, 1995, p. 65)

Again, if we take dowry's historical connotation in the European society, it was different from Indian one. As the custom existed in Europe (and to some extent it is still practiced) the dowry represented a gift in money, goods or both made by the brides family towards the establishment of her household. As the husband was the head of the family and as it was considered unfitting that a woman should handle business affairs, the dowry usually becomes the property of the husband, with the understanding that it was to be used to the best advantage of both himself and his wife. It did not represent a payment for an agreement to marry, but simply a means of assisting a young man who can often be similarly assisted as well by his own family to begin the expensive business of establishing a home for his wife and the children to come. Like bride price, dowry united the families of the bride and groom in an endeavor to provide the best possible economic base for marriage and so to insure its permanence and success. This shows the 'classic' European connotation of dowry, namely a). that it is a gift made by the bride's family in order to help her set up a new household, b). although the husband manages it ; c). it does not represent a payment for an agreement to marry. It is important to note here in passing that this was the usual practice among the richer classes and provided the basis for matches to take place between the impoverished nobility and the newly wealthy commoners.

In the context of Indian subcontinent, M. N. Srinivas (1981) mentions that the recent dowry system in India is qualitatively different from their traditional idea of *Kanyadan* in which the *Brahmin*, the upper caste parents 'gifted' their daughter, along with a substantial cash gift to the groom. On the other hand, in the modern perspective, the amount of money given as dowry is substantial if not huge among the higher castes and its payment is demanded, directly or indirectly, by the groom's kin (Ahmed, 1986, p. 33).

In Bangladesh, the definition of dowry is : property or valuable security which the bride's side gives, or agrees to give, to the groom's side as the condition of marriage. This demand is the condition of marriage ; it is the new form of marriage under which the groom's side

demands, wants, or asks for some thing from the bride's side. And these items maybe anything : cash, job for the groom, expenses for going abroad, radio, TV, watch, bicycle, motorcycle, car, etc. If it is agreed to be given but not handed over at marriage or after, then the bride is subject to harassment, abuse, etc.

Demand may also arise after marriage and it is to be noted here that demand could be continuous. A series of demands are made one after the other and attempts are made by the bride's side to meet each according to the best of their capacity.

If a demand is not fulfilled then the threat of *talaq*⁹⁾ remains over the wife and her natal house. At the beginning, the wife may be subject to scolding, beating, mental torturing and finally, she may be sent back to her parents house having been told not to return until the demand is met. This is more so in the case of a new bride ; she may be refused permission to go to her natal house. During this period in order to pressurize the wife's parents affinal relations or mutual visits is also withheld which is a matter of shame for in-laws.

Bargaining over give-and-take was always an essential component of marriage, but the principle governing this seems to have been that transactions would be according to the capacity of each party and usually nothing considered as outside the reach of either party would be asked for : Usually on the day of final negotiations agreement would be reached on given items, such as dower. In the bride-wealth form, the gifts received by the bride were regarded as hers, although how much control she exercised over these goods is questionable.

In many societies, bride-wealth is deemed returnable in the case of the dissolution of marriage. Among the Muslims of Bangladesh, it is generally expected that the dower is payable only in the case of divorce although legally, in Islam it is payable for marriage and not for its dissolution. But it is generally seen that it is rarely paid at divorce, irrespective of who initiates the divorce. The Islamic legal stipulation is that if it is the wife who initiates the divorce then she foregoes her right to the dower. Also, in the case of divorce except for extremely rare cases, the wife never receives or brings back, or is in a position to retrieve the jewelry that she was given at marriage by the grooms' side. However, in the case of demand Ahmed and Nahar (1986) argue that whatever be the nature of the item, it is not regarded as returnable in case the marriage is broken. As it has already been stressed demand is the condition for the marriage to take place, and belated or intermittent demand is for the marriage to continue, either legally or socially. It is also true that this demand does not ensure that the marriage will continue for ever. Though, of course, the demand is fulfilled in the hope that the marriage and expected conjugal happiness will not be threatened or compromised. However, in cases where the marriage is broken off even though the demand was met the transactions which took place are not perceived as returnable.

III

This discussion raises the point as to why it happened. White (1992) notes that the most common theory relies on the idea of female status which is indexed by women's 'productive work'. Sharma (1984) brought the 'economic compensation theory' in this context. According to this view, bride price is given where women do 'productive work', to compensate the natal household for the loss of an economically active member, and the resources that have gone into raising her. Dowry, on the other hand arises in situations where women do no 'productive labor', and so represent a future 'cost' for which their husbands' households must be compensated. At present, however, rapid inflation of dowry is taking place alongside an expansion of extra household employment of women. Sharma (1984) further suggests another theory that changes in marriage payment may reflect shifts in the proportion of household income earned by male and female members. Shifts in marriage payments thus reflect relations of economic dependence between men and women rather than absolute amount of work performed or cash earned. Again, Bardhan (1986) reveals that the economic costs and benefits of women's work are not the main determinant of differences in actual marriage payments or the treatment of young wives. In fact, the theory's economic phrasing obscures its social content : ideas of work being 'productive' or of 'value' are social constructs, not a reflection of the real value of contributions different members make to the house-hold.

Another theory highlights women's social construction as dependent and their lack of alternatives to marriage. On this point, Kishwer (1988) observes that gifting from her parents constantly affirms the brides inferiority to her husband. She notes, 'Dowry is given, not for the daughter's happiness, as is often claimed, but to increase her dependency'. White (1992) argues on the phrasing of this statement in terms of purpose clearly makes it controversial. It does, however, help underline Kishwer's assertion that by giving more to a son-in-law who mistreats his bride, her parents only strengthen his power over her. She states that they should rather give her the means of an independent income. This is a much more satisfactory approach, setting dowry payments in the over all context of women's disadvantage through lack of access to material resources, the threat of violence and social criticism (White, 1992, p. 103).

Thus Van Schendel (1981) in his study expresses : 'A house hold with many daughters was sure to experience economic deterioration as a result of their marriages. As it was out of the question to leave a girl unmarried, girls were viewed as liabilities to parental households, while boys were viewed as assets'.

Once began dowry inflation sparks off a cycle of spiraling disadvantage for young women. They are open to mistreatment if their parents cannot pay the whole sum at once in full, and

new, or even recurrent, demands maybe made even several years after marriage. If the demand is not met, the common behavior is wife beating. In an extreme case, it brings dowry deaths, either women pushed to suicide or directly murdered by their husbands or in-laws. Even when the dowry is paid on time in full, it does not represent female property. The bride's subordinate position in her marital household means she may have no say in any matter how the dowry will be used. According to Sharma (1984), 'Contrary to the dominant ideology and the terminology of traditional Hindu law, dowry property is not women's wealth, but wealth that goes with women. Women are the vehicles by which it is transmitted rather than its owners'.

The fact that dowry is not female property is reflected in the type of goods that are given. Personal gifts to the groom are very common, typically a watch, cycle, radio or even a motorbike. The interesting thing is to note that, this also clearly expresses the increasing penetration of the international market, and a preference for foreign goods. Lindenbaum (1981) noted that the new forms of marriage payments with growing urbanization and commercialization plus increasing dependence on foreign imports are being gradually visible. She points out that this is predominantly male centered while feminine ideals remain largely traditional.

Specifically, after the independence of Bangladesh, it has gone under severe turmoils, upheavals, and rapid change in many respects. One important element was the growth of the newly rich class. Ahmed and Nahar (1986) define this class as indenteres, contractors, blackmarketers, political merchants, officers of bureaucracy and army, they are somehow able to acquire abundant wealth in a short period of time. This class never invest their wealth in a productive sector, rather use it for conspicuous consumption and an extravagant life style. Ahmed and Nahar (1986) argue more that since marriage is the focal point in Bangladesh society and in the life cycle of individual households aside from births and deaths and compared to the expenditure at these two events, one can safely say that generally expenses at marriage are higher. This newly rich class had to spend their wealth somewhere and marriages become the occasion for spending money in order to show off wealth. Huge sums of money are involved in every occasions. Legal sanctions failed both in restricting the plunder of the economy, which is how they acquired the wealth and in restricting the orgiastic spending of wealth. This also gave birth to another notion 'desirable groom' who would either be wealthy, or in that kind of a service which could make wealth. Parents of daughters, enter in a competition through illegal means to marry off their daughters to them, so that the daughters could lead a life of leisure and comfort and the affinal relationship would create alliances. In these cases many parents willingly gifted things to the groom in order that the marriage should materialize.

Besides, slow pace of economic growth, rampant corruption in the government, unchecked economic policy and law and order gave birth to crime and invidiousness in the society. Unemployment rate increased to a greater extent. From mid seventies job markets increased in the Middle East, South East Asia, Europe and America which lured the young men of Bangladesh. These young men could not find money to cover air passage and other incidental cases to go to these countries. The only way of finding money to cover these was to get married to the girls of well to do families to get dowries. The parents of the groom adopted this tactics of extorting money from the bride side in total disregard of the capacity of the bride's family to pay such amount. Consequently the bride's parents succumbed to the pressure of the groom side and found money by selling or mortgaging lands or other valuables of the family.

Matches are also made in cases where the girl's side is urban and wealthy and the prospective groom from a rural background who had become educated and is holding a job after difficulties due to financial hardships. When the girl's parents showed interest or eagerness to make the match, the groom would agree subject to being given cash, land or other wealth since he himself has no assets or wealth except for his profession.

Demand takes place, as a condition of marriage both prior to and after marriage. If parents agree to the demand but are unable to meet it or delay in doing so, she is subjected to humiliation and suffering. And the groom's house makes sure that news of this should reach to the wife's parents and they renew efforts to meeting his demand. Since marriages are patrilocal and the husband acquires all rights over the girl after marriage, the husband and in-laws can treat or mistreat the daughter as they want.

The girls parents have no option but to put up with it as they do not want to go to the extreme of breaking off the marriage, which is after all no solution. If the marriage is broken off then the old problem remains, who will look after her ? If the girl is still young and attractive a second marriage may be arranged but a higher demand will have to be met or else a marriage of convenience may be arranged to a widower or to a polygamous man. If such a marriage cannot be arranged the other alternative is to live with her parents and, after their death, she will be an unwelcome member of her brothers house-hold. Besides this the other reasons for demand is the huge problem of unemployment. And it was also said that parents had to add something to the girl or fulfill the wishes of the groom's side if the girl was plain looking and this is regardless of the man's look.

Along with the demand there is another thing which comes at the wedding *abdar*,¹⁰ that is, both sides would agree that no demand would be made, but there are some expectations of the groom which have to be fulfilled. Ahmed and Nahar (1986) argues that this word is being used instead of the more open and direct word 'demand' may be because the present

stage is a transitional one from the bridewealth to the demand system and words such as *abdar* conveniently mask the exhortation or exploitation that is at work. Rather, it creates an impression of expensive and generous gift giving although the girls parents may be very hard put to meet the *abdar* and the grooms side is also well aware of that.

These trends in marriage payments are followed even by the poorer classes ; they have also begun demanding something at marriage. This trend is on the rise now as the rural youths look forward to a glamorous city life either in their own countries or abroad.

It can be pointed out that the ideological justification for these demands to be met were already existing in the society—'women are dependent', 'they need looking after, men provide for women and they are in turn dependent on men for security, protection and livelihood, women are liabilities and must be married off as early as possible since there exist no other options. Since the age range is also short, after a certain time, parents begin to look for a groom frantically and agree to one who makes the least demand. Given the escalation of poverty and the huge number of poor, unemployment and scarcity of resources among the general masses, where else can men turn to exploit and extract from, but from the parents of daughters who reluctantly agree since they too believe that a single woman cannot lead an honorable life. The family's honor is perceived to be at stake until she is wedded to a man. Ahmed and Nahar (1986) observes that, although the average age at a marriage is slowly increasing, some parents want to marry off their daughters early to avoid giving demand. Young brides are valued more as they are considered more innocent, moldable and pliable.¹¹⁾

Women's age range for marriage is much shorter than a man's and since the population structure of Bangladesh is such that more than fifty percent are children, and also because a woman is married to a man about 10—15 years older, prospective grooms for marriageable women are always few. Male children are looked upon as resources by their parents since it is expected that they will support and look after them in old age. On the other hand the daughter is something of a liability although she contributes her labor to the household but this labor is not valued socially and economically.

To give some empirical evidence, to the above discussion about the incidents of different extortions we can show that in 1981-82 in the district of Pabna, (The Daily Ittefaq, 1982, 26th December) there were cases of suicides of 204 females, 182 of them were caused due to domestic quarrels or non-payment of dowry. The Daily Observer (12, February, 1996) reported that in the district of Narail, at least 50,000 young girls could not be given in marriage because their parents are not in a position to fulfill the dowry demands of the bridegrooms. The Daily Observer reported also (3, May, 1996) that in the district of Meijdee Court at least 500 girls were divorced and at least 30,000 young girls could not be given in marriage because their parents were unable to fulfill the demands. The Daily Observer also

reported that most of the divorced girl belonged to the poor families who failed to keep their commitments. The Daily Sangbad (19, September, 1996) reported that in the district of Gafargoan, 3000 divorced women were leading a miserable life. They were divorced due to non-payment of dowry. A woman called Raushan lost her eyes due to the non-payment of dowry. Her parents could not meet the dowry so her in-laws used to torture her and one day in the moment of torture her husband pulled off her eyes. These are only few facts, the truth is that evidences and data are always weak in these issues. For too many women life is shadowed by the threat of *Jautuk*.

IV

From the empirical evidence we can clearly understand that the incidents of such extor-tions increased manifold resulting in many cases where the brides family failed to pay money at the time of marriage but promised to pay in the immediate future. The newly wedded wives faced the pressure of getting dowry quickly. In most of the cases the brides family failed to meet the demands. In many cases these failures resulted either in divorce of the wife or killing the wife. The evil of dowries increased so enormously that it necessitated the passing of certain prohibitory laws. To check the menace of dowry and under public pressure, the government of Bangladesh promulgated the Dowry prohibition Act in 1980. This act is very concise in form having only 9 sections enacted for a particular purpose. It is prohibitory in nature the contravention's of the provisions of which have been made punishable under sections 3 and 4 of the Act. This Act deals with the offense of giving, taking or abetment thereof or demanding dowry in marriage by either parties at or before or after the marriage as consideration for such marriage. This law has been promulgated by the Parliament with a view to check and prohibit the system of taking or giving of dowry hitherto in practice in Bangladeshi society which of late, assumed alarming shape and posed a serious menace to the up keeping of social equilibrium in the context of the socio economic life affecting a vast majority of Bangladeshi population. This law applies to all citizens of Bangladesh irrespective of religion, caste and creed.

It should be pointed out that the term dowry have to be distinguished from dower or *mehr*¹²⁾ which is one of the essential requirements of Muslim marriage. The giving or taking or demand of *mehr* in the marriage for the Muslim wife to whom the Muslim personal laws applies, in other words the application of *Shariat*¹³⁾ laws apply shall not be an offense under this Act. This law has been framed in such a fashion that it has both the characteristics of substantive and procedural law. The time of limitation and how and by whom cognizance of the offense are to be taken and the trial thereof are to be held, have been dealt with under

section 7 of the Act. It has also a supplementary provision incorporated in section 9 with powers given to the Government to make rules and publish in the official Gazette subject to the ratification of the Parliament for carrying out of the purposes of the Act. From the provision of section 9 it appears that the Parliament considered this Act to be not exhaustive and kept the scope open for making rules to supplement the Act with a view to bringing the same into a sound functional process. In the absence of any defined rules and sufficient discussions and decisions of the Superior Courts on this subject, the members of the legal profession and the presiding judges of the courts are often faced with difficulties in the matters of decision towards successfully carrying out the purpose and scheme of the law. In such a situation the commentaries, legal decisions and expository interpretations of the Act will largely contribute to the field for sound application of the law (Chowdhury, 1992, p. 143).

On the other hand if we look at India, we will find that to cope with the dowry menace India enacted Dowry Prohibition Act in 1961. The Dowry Prohibition Act 1961 contains the same provisions as Bangladesh Act. However, this Indian Act was amended in 1984 and 1986. The Act was passed by Indian Parliament as a result of numerous 'dowry deaths' of brides reported almost every day in the newspapers which were attributed to the demands of money and gift from the brides family.

In this part there will be an examination of different provisions of the Bangladesh Act to understand its efficacy, and in the latter part a comparison will be made between Bangladesh Act and Indian Act to understand the difference between these two Acts.

DEFINITION OF DOWRY :

The most important provision of this Act is Section 2 which provides the definition of the dowry.

The act reads unless there is anything repugnant in the subject or context, "dowry" means 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, by any other person to either party ; at the time of marriage or at any time before or after the marriage as consideration for the marriage of the parties, but it does not include dower or *Mehr* in the case of persons to whom the Muslim personal law applies.

No difficulty arises if the accused after the marriage demands dowry which had already been agreed upon before the marriage or at the time of marriage but which had not been given or which had only been partly given. The demand of dowry in such cases will immediately attract the definition of dowry in Section 2. Thus in a case where the dowry agreed upon before the marriage had only been partly paid and the demand was made for the non-paid portion subsequent to the marriage.

Difficulty arises when dowry is demanded afresh and for the first time after the marriage is solemnized. In such cases, no dowry is agreed to be given at the time of or before the marriage as a consideration for the marriage. In the case of *Mihir Lal Shaha Poddar Vs. Zhunu Rani Shaha* (37 D. L. R. 1985, p. 227 Dhaka Bench), we can find this : a couple was married in 1980 according to Hindu religious rites and a female child was born to them in 1982. The accused-petitioners, son and father took in cash and kind about Taka 1, 29, 100 as a dowry. After that Mihir demanded a further sum of Taka 50,000 as '*jautuk*' from his father-in-law. He started threatening her with divorce if the money was not paid. The High Court division after the examination of the case held that there is no case that the demand was made as a consideration for the marriage. The facts may constitute an offense of an attempt for extortion, but it is plainly difficult to conceive that there was demand for dowry. Neither any money nor property can be said to be dowry unless they satisfy the definition of dowry as under the Act and the proceedings were quashed.

A different view was taken by the Barisal Bench of High Court in the case of *Rezaul Karim Vs. Mosammat Taslima Begum* (D. L. R. 40, 1988, pp. 360-362). Taslima was married to Rezaul under the Muslim Shariat Act on 85. 2. 10. She lived in her father's house after the marriage. He used to come to her father's house and they lived there as husband and wife. She gave birth to a female child. Her brother then requested Rezaul to take her to his house. At that Rezaul demanded Taka 10,000 in return. On refusal to pay the money Rezaul left his father-in-law's house threatening never to take her back. He neither thereafter came back nor paid her maintenance.

High Court held that the expression dowry as it appears in Section 2 of the Act means as consideration for the marriage of the parties. Again the expression marriage means and includes not only the ceremony of marriage, but also the newly created legal status of the husband and the wife, to be continued, asserted and recognized to be available in every day life. A husband or a wife has a right to claim and assert that status with all its corresponding rights and duties during the continuation of their marriage and can demand it as of right and it calls for no consideration in terms of money or valuable security except those that are embodied in the contract of marriage or *Kabinnama*.¹⁴⁾ Therefore, demanding money or other valuable security from the wife or her relations by the husband after she is married for giving her the status of a wife, then maintaining, protecting, and giving shelter would amount to demanding money in consideration for the marriage is unnecessary. The expression 'in consideration for the marriage' as it appears in Section 2 has to be given an extending meaning otherwise the scheme of the Act which prohibits demand of dowry by the husband would be frustrated. That being so Rezaul having demanded money after marriage as a consideration for taking her home, it can be said at this stage that it disclosed an offense

under the Act.

As to what constitutes the demand of dowry under this act, the decision of these two Benches of the High Court Division of Bangladesh Supreme Court stand in conflict with each other. In the decision reported in 37 D. L. R the subsequent demand of money by the husband from the wife of her guardian after the marriage, has been characterized as an offense of extortion within the meaning of section 383 of the Penal Code¹⁵⁾ while in the decision reported in 40 D. L. R. any such subsequent demand of money has been held to be the offense amounting to demand of dowry under the Dowry Prohibition Act. 1980. The application of the principles as enunciated in the case reported in 37 D. L. R on the subject in the cases of subsequent demand of money by the husband from the wife or her guardian after the marriage will run the chance of avoiding the law which might tantamount to frustrate the purpose of the legislation. The law has been enacted for the purpose of removing the stigma caused by the menace of dowry from the society. The interpretation of the statute needs to be made in such a way so that it can best harmonize with the intention of the Legislature. If however, the words of provision are sufficiently flexible, it can be construed in the sense which, if less correct grammatically, is more in harmony with the intention of the Legislature; and to arrive at the real meaning, it may be necessary to get an exact conception of the aim, scope and object of the whole act.¹⁶⁾

DEMANDING DOWRY AND PUNISHMENT FOR DOWRY

It can be easily assumed that demanding dowry is the most objectionable element of the dowry system. When such demands made before or after the marriage place woman in a severely vulnerable situation. To protect her in this situation, Section 3 and Section 4 have been adopted. Section 3 and 4 are equally important because Section 3 provides punishment and Section 4 prohibits and penalizes demand for dowry. Both these two sections 3 and 4 originally prescribed the extent and nature of the punishment in the same form. The primary purpose of these Sections are preventive.

Section 3 of the Act stands for the penalty for giving or taking dowry. No doubt, this provision is very comprehensive and this provision which provides punishment would act as a deterrent.

Section 4 of this act stands for the penalty of demanding dowry. It applies equally to both the sides of bride and bridegroom of the marriage. In the society of Bangladesh the evils of dowry taken or demanded by the side of the bridegroom from the side of the bride are predominantly voluminous. To save the bride side from overwhelming threat of demand for dowry this provision is no wonder a preventive act. To understand the importance of demand as an offense it should be mentioned here that the legislature has taken care to see that not

only the taking or giving of dowry or abetment thereof before or at the time of marriage is made an offense, but also the demand thereof after the marriage. This was settled in the case of *Abul Bashir Howlader Vs. The State* (D. L. R. 46, 1994, pp. 169-172). The prosecution story in brief is that Mosammat Feroja Begum, on 90. 2. 6 got married to Abul Basher Howlader by registered *kabinnama*. At the time of marriage the parents of Feroja gave ornaments and other house-hold articles worth Taka 16, 8000.00 to her husband. Some time after the marriage, Basher put pressure upon her and her parents for releasing certain land which was mortgaged to the father of Feroja. On 90. 8. 4 Basher also demanded from his wife Taka 10,000.00 for establishing a shop at the market place. Feroja refused to accept the demand whereupon Basher abused her and when she protested Basher, he and his family beat her with fists and drove her away from the conjugal house keeping all her ornaments with them. After the examination of the case, the Supreme Court held that if a fresh demand for dowry is made after solemnization of marriage about which there was no prior agreement and which demand does not fall strictly within the definition of dowry in Section 2, then the word 'dowry' in section 4 is repugnant in the subject or context to the definition itself. 'Dowry' in section 4 has therefore to be understood in its ordinary meaning, namely property brought by woman to her husband at marriage or vice versa. Basher demanded Taka 10000.00 from his wife has been proved by evidence that it is an offense and the conviction and sentence imposed upon him under Section 4 of the Act is lawfully right.

COGNIZANCE AND THE TRIAL OF THE DOWRY OFFENCES

Section 7 deals with the cognizance of offenses. It provides that no court inferior to that of a magistrate of first class shall try any offense under this Act. Limitation period of lodging an offenses has been also prescribed. The court cannot take any cognizance other than on a complaint. Every offense under Section 8 is non-cognizable, non-bailable and compoundable.

These are the main legal aspects of the Dowry Prohibition Act. 1980. This Act was promulgated to check the social evil of dowry. Its policy is to protect and to improve the socio-economic condition of married women by removing the evils associated with the dowry system. A daughter should not be regarded as an economic burden on her family. But in practice we see that there exists lots of weaknesses which have made the Act to some extent a dead letter. In the latter part while comparing this Act with the Indian Dowry prohibition Act, we will clearly understand what the weaknesses of the Act of Bangladesh are. Despite its weakness, however, the law alone cannot undertake traditional curse like dowry. The efficacy of the law will improve with greater social understanding of the condition of women.

V

In this part an attempt has been made to compare the Indian Dowry Prohibition Act, 1961, as well as the amendments of 1984 and 1986 with Bangladesh Dowry Prohibition Act, 1980. It can be easily seen that though these two Acts contain almost same provisions, in the case of the Bangladesh Act there are several loopholes in the provisions which can be amended in the Indian line. To make the Bangladesh Act more effective the author suggests the following :

- a. The definition of the dowry be changed.
- b. It be clearly mentioned in the provision who could be a complainant.
- c. The provision of a dowry prohibition officer be included.

It can be noted here that both in the Indian and Bangladesh Act, the definitions of dowry were almost the same. The Indian Act, by the 1984 amendment, removed the phrase 'as consideration for the marriage'. It was replaced by 'in connection with the marriage of the said parties'. The scope of the Section has thus been enlarged so as to include the amount or the property given in connection with the marriage even though these may not be in consideration of marriage. But in the Bangladesh Act, consideration is understood as given in the Contract Act, it may be that only those articles are 'dowry' which are given or agreed to be given as the reward or reason or motive for the solemnization of marriage. Anything given after the marriage may be because of concealed demands from the husband or his family, may be a consideration for the continuation of the marriage or to promote a good matrimonial relationship or to save the marriage, or to keep the family well disposed towards the wife and save her from harassment, or humiliation. This perhaps is in contradiction with the purpose of the Bangladesh Dowry Prohibition Act, 1980. The definition of dowry in the Bangladesh Act should also be made in the line, made in the amendments in India in 1984.

The Dowry prohibition Act is no doubt a weapon against the dowry system, but it has not prevented giving and taking gifts and presents provided that a list is made. The permitted value leaves room for avoiding the provisions of the Act. Another defect in the Act is that the giver and the taker are equally liable for the offense under Section 3. In most cases the parents of the bride give dowry under compulsion and, hence, may in the interest of the bride attempt to conceal the offense.

The question certainly remains whether the parents or the guardians of the bride who are the givers would in the interest of the bride say whatever were given or taken by the parties to the marriage 'at any time before or after the marriage' were considered for the marriage of the said parties. If the giver does not admit then it will be difficult to prove it.

Section 7 of the Bangladesh Act 1980 does not clearly say who can be a complainant,

whereas the Indian Act provides that, the Magistrate can suo-moto on a police report or on a complaint by any aggrieved person or a parent or any relatives of such person, or by any recognized welfare institution or organization.

It has indeed widened the scope for proper and legal redress of the affected persons. The most important point is that the NGOs are also accepted as a complainant. This has also increased the scope of public interest litigation. Bangladesh should amend this point and it should give legal status to social welfare workers to detect, file complaints and assist the courts in the trial of the offenses relating to dowry, a social malady for the poverty stricken and custom dominated people of the country like Bangladesh. No doubt, this will bring about a change, because it is very easy to understand that the members of the dowry affected family may not always suo-moto or go to courts for various unavoidable reasons. An external help may go a long way to mitigate the grievances of the silent sufferers of the scourges of dowry.

One of the main reasons for the failure of the Bangladesh Act is the lack of a proper and effective enforcement machinery which could intervene, whenever necessary, in averting dowry tragedies by helping the dowry victims. The Indian Act in Section 8B provides the provision for the appointment of a dowry prohibition officer. The functions which are discharged by such officers, namely monitoring compliance of the act, preventing offenses under Section 3 and 4, and collecting evidence. Bangladesh Act should insert this kind of provision. If it is done, it expected that this change would provide teeth to the Act, because no law can be effective unless it is supported by an effective enforcement agency.

The most evil aspect of the dowry system is bride killing. A killing in such circumstances is called a 'dowry death'. The Indian penal Code now contains 304B which was introduced to deal with 'dowry death'. In the case of Bangladesh we see that the Government has not taken any action to prevent 'dowry death' which has noticeably increased both in urban and rural areas. Only we see, Section 6 of Cruelty to Women (deterrent punishment) Ordinance, 1983 provides penalty for causing death for dowry.¹⁷⁾

CONCLUSION : As a summation we can say that dowry, indeed, has become a social evil. It is not only creating social problems, but also hampering the progress of the society. In a society like Bangladesh, where marriage is universal and for women is a must, no other option is seen as a viable option. Women are considered as weak and vulnerable and there is a constant need of male patronage and protection. The older a girl grows, the more difficult it is to arrange a marriage for her. Parents of daughters always face the difficult task of selecting groom and meeting all the demands of that groom. This social attitude is a proof of backwardness and stagnation. As we can see from the reports of the newspapers of tortures or deaths arising out of the failure to give dowry are increasing. It seems that unless and until the social attitude is changed the social evils like *Jautuk* cannot be removed.

Adequate social awareness and education together with the determination to back all measures designed to check such evils are also necessary.

Of course, the prohibitory laws have been enacted so that it can work as a weapon against the dowry system. But if the attitude is not changed and the people do not become conscious, law cannot flow into its own way to support and protect the sufferers. Again, in the context of the Bangladeshi Act and in the face of the increasing instances of torture or murder of wives for the failure to bring dowry demanded by the husband or his family, it is necessary that the Act of 1980 should be amended as soon as possible.

NOTES

- 1) Muslim marriage in most cases takes place in close lineage group it means that parents want to marry off their son or daughter into their own lineage like close cousin.
- 2) Muslim marriage is a contract not a sacrament. It is an obligation means marriage is the focal point to the growth and stability of the basic unit of society and important safeguard for chastity. See Ali, A. The Principles of Mohammedan Law. Lahore : 1967. pp. 342-357. For more detailed reading see, Bailie, N. A. A Digest of Mohammedan Law. London : 1957. pp. 392-400.
- 3) Purdah literally means veil but when it comes to the society it means segregation. Segregation of man and woman in the society.
- 4) See Sarkar S. C., Pauranik Avidhan, Calcutta : 1979. pp. 39-58.
- 5) See Islam, S. History of Ancient India. Dhaka : 1987. pp. 92-182. For more detailed reading see, Chowdhury, M. History of Bangladesh. Dhaka : 1980. pp. 152-153. Altekar, A. S. The Position of Women in Hindu Civilization. Delhi : pp. 69-70.
- 6) See, Sarkar, S. C., Pauranik Avidhan, Calcutta : 1979. pp. 14-15.
- 7) See, Sarkar, S. C., Pauranik Avidhan, Calcutta : 1979, pp. 46-47.
- 8) See, Sarkar, S. C., Pauranik Avidhan Calcutta : 1979. pp. 48-49.
- 9) Talaq is a Arabic word which means divorce in Islamic law. For more detailed reading see, Ali, A. The Principles of Mohameddan Law. Lahore : 1967. pp. 349-351.
- 10) Abdar is a Bangla word which literally means to prefer a fanciful claim to the affection of. In Bangladeshi society it is commonly used to understand about those claims which have to be fulfill without any return.
- 11) See, Ahmed and Nahar, Changing marriage transactions and rise of demand system in Bangladesh. Journal of Social Studies. Vol. 33. pp. 35-37.
- 12) Although the two terms dower and dowry appear to be synonymous, these are different from each other. Dower means Mehr which is paid by a Muslim husband to his wife at the time of marriage as consideration of the marriage which is given as a token of respect for the wife. It is not the consideration within the meaning as used under the Contract Act. Dower of a Muslim marriage is also not understood as the purchase value of the wife. Dower is recognized as one of the essential element of Muslim marriage. It should be borne in mind that the term dowry is totally different. Dowry may be in the form of some

- money, property or valuable security. See Hirschon H. Dowry in North India. 1984. London : pp. 213-239.
- 13) Shariat law is the Islamic scripture of Law. For more detailed reading see, Ali, A. Principals of Mohammedan Law. Lahore : 1967. pp. 10-25, Rahim, Mohammedan Jurisprudence. London : 1962, pp. 11-12.
 - 14) Kabinnama is the marriage contract for the Muslims. Under the Islamic law the terms and Conditions of the marriage are written in the kabinnama.
 - 15) SECTION 383. EXTORTION. Who ever intentionally puts any person in fear of any injury to that person, to that person, or to any other and thereby dishonestly induces the person so put in fear to give donation or subscription of any kind or to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits 'extortion'. The 'valuable security' has been defined in section 30 of the Penal Code in the following words : The words 'valuable security' denote a document which is, or purports to be, a document whereby any legal right is created extended transferred restricted, extinguished or released or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.
 - 16) The definition of dowry in Indian Act was amended in 1984. After the amendment it reads any property or valuable security given or agreed to given either directly or indirectly. . . in connection with the marriage.
 - 17) The Cruelty to Women (Deterrent Punishment) Ordinance 1983, is a Special law. This Special law provides that if the husband or his parent or guardian or any relation causes death or attempts to cause death or grievous hurt to the wife for dowry in consideration for her marriage, is liable to punished under this section.

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