

DOWRY PROBLEM IN BANGLADESH : LEGAL AND SOCIO-CULTURAL PERSPECTIVES

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Introduction : Concept and Problems :

Dowry and brideprice have received substantial attention in the anthropological literature. In fact, there is now a large volume of ethnographic and theoretical literature on dowry and bride-price.¹ Much of this literature concerns the problems of the wide-spread switch from bride-price to dowry as marriage prestations. In this article attempts will be made to view the dowry problem from different angles to assess its socio-cultural effects and examine the laws relating to it.

The modern phenomenon of dowry in South Asia is its abuse as an inducement for a man to marry a woman or, with the same effect, demands of dowry payments by a man or his family. The result is a tendency to regard it as a groom-price, which is distinguished from the traditional *kanyadan* (gift of the virgin) or bride-wealth.² This modern feature of dowry means the transmission of large sums of money, jewellery, cash, and other goods from the bride's family to the groom's family.³ The emergence

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1. See for example Srinivas, M.N.: Some reflections on dowry. Delhi 1984; Rajaraman, Indira: 'Economics of bride-price and dowry'. In Economic and Political Weekly. No.18, 1983, pp.275-279; Goody, Jack: 'Bridewealth and dowry in Africa and Eurasia'. In Goody, Jack and S.J. Tambiah (eds.): Bridewealth and dowry. Cambridge 1973, pp.1-58; Tambiah, S.J.: 'Dowry and bridewealth and the property right of women in South Asia'. In Goody, Jack and S.J. Tambiah (eds.): Bridewealth and dowry. Cambridge 1973, pp.59-169; Ahmed, Rahnuma and Shamsunnahar Milu: 'Changing marriage transactions and the rise of the demand system in Bangladesh'. In Journal of Social Studies. No.33, 1987, pp.71-107; Upadhyya, Carol Bayack: 'Dowry and women's property in coastal Andhra Pradesh'. In Contributions to Indian Sociology. Vol.24, No.1, 1990, pp.29-59; Kumari (1989), pp.1-87; Grover (1990).
 2. On this see Tambiah (1973), p.62.
 3. Srinivas (1982), pp.10-11.

of dowry and the switch from brideprice have been explained by some authors as the cause of the decline of the earning capabilities and productivity of women.⁴ According to this view the system of dowry is closely linked with women's role in productive activities. Where women are regarded as an unproductive burden, a dowry is given to the bridegroom's side to compensate them. However, the present spread of dowry cannot be explained only with variables like non-participation of women in economic activity. There are authors who refute this claim altogether, viewing the spread of dowry as parallel to developments elsewhere in the world identifying it with class formation under capitalist development.⁵ Moreover, it is evident that women in Bangladesh are becoming more active and economically independent and it is quite clear that dowry demands and payments are primarily linked to status acquisition.

The institution of dowry has been seen by Jamila Verghese in relation to the social attitudes in South Asia which give preferential treatment to sons, enhanced by statutory regulations.⁶ It is true that patriarchal society reserves special treatment for sons as they are expected to provide for their indigent parents. But according to more recent case-law in India under section 125 of the Criminal Procedure Code of 1973 daughters are equally liable for the maintenance of their aged parents.⁷ While the issue of dowry in an economic framework has instigated a lively debate, it is outside the periphery of this article.⁸

4. For example Rajaraman (1983); Srinivas (1984).

5. Upadhyaya (1990), p.34.

6. Verghese, Jamila: *Her gold and her body*. New Delhi 1980, pp.157-158.

7. See for details Carroll, Lucy: 'Anti-dowry legislation in Pakistan and Bangladesh'. In *Islamic and Comparative Law Quarterly*. Vol.iii, No.4, Dec. 1983, pp.249-260, at p.259. The leading case on this in India is *Dr. Mrs. Vijaya Manohar Arbat v Kashirao Rajaram Sawai* and another AIR 1987 SC 1100.

8. See for details, Sambrani, Rita Bhandari and Sreekant Sambrani: 'Economics of brideprice and dowry-i'. In *Economic and Political Weekly*. 9th April 1983, pp.601-603; Aziz, Abdul: 'Economics of brideprice and dowry-ii'. In *Economic and Political Weekly*. 9th April 1983, pp.603-604.

Dowry is a new phenomenon for the Muslim communities in Bangladesh, with enlarged effects after independence. For the Hindu community also, its impact was not so widespread before liberation. It is significant to note that after independence a *nouveau riche* class who formerly belonged to the lower strata came into power.⁹ This spectrum of people willingly gave dowry to the prospective grooms from higher classes of the society to become a part of that class. Nevertheless, hypergamy was only one variable for the causation of the dowry system.¹⁰ This seems to be more prominent in the caste system of Hindu society as there is a tendency towards hypergamy.¹¹ However, the tendency of hypergamy by dowry has also spread to the Muslim community in Bangladesh.¹² Although there is supposed to be no class system in the Muslim society in Bangladesh, even in the supposedly homogenous peasant community significant distinctions of wealth, status and power exist.¹³

Some authors in Bangladesh are claiming that dowry has become an essential criterion for marriage in every community and is near universal in Bangladeshi society.¹⁴ The simple gesture of *jamai ador* or special affection shown to the bridegroom has been transformed to the shape of *daabi* or demand by the bridegrooms. Even poor men are taking this chance of exploiting the bride's

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9. Kirkpatrick, Joanna: 'Themes of consciousness among educated working women of Bangladesh'. In Park, L. Richard (ed.): *Patterns of change in modern Bengal*. Michigan 1979, pp. 127-147, at p. 127.
 10. For details of hypergamy and dowry in an Indian context see Van der Veen, Klaas W.: *I give thee my daughter: A study of marriage and hierarchy among the Anavil Brahmins of South Gujarat*. Assen 1972; Blunt, E.A.H.: *The caste system of Northern India with special reference to the united province of Agra and Audh*. Delhi 1934.
 11. Blunt (1934), p. 70.
 12. Rahman, Muhammed Motiur: 'Joutuk ain prosonghe'. In 41 DLR (1989) Journal 51-53.
 13. See for details Bertocci, Peter J.: 'Community structure and social rank in two villages in Bangladesh'. In *Contributions to Indian Sociology*. No. vi, Dec. 1972, pp. 28-51.
 14. Ahmed (1987), p. 71.

family to improve their fate from poverty and unemployment.¹⁵ This is making marriage a commercial transaction, giving more value to property and money than the bride herself.

The concept of dowry as a form of inheritance is observed here. The relationship of dowry with female inheritance concerns especially the Hindu law of *stridhanam* or women's property, which is outside the scope of this article.¹⁶ However, dowry in its modern perception in the context of Bangladesh is discussed here.

The dowry system is not recognised in the religion or the law of the Muslim societies but has spread into it.¹⁷ Conversely, Islamic law provides dower to enhance the status of women. Why should Muslim women, who are supposed to be protected by dower, become victims of dowry? While recent scholars have admitted the fact that dowry has spread to the Muslim communities, they have largely ignored the position of Muslim women within this discourse.

It is important to note that until now authors confuse dower with dowry.¹⁸ Perhaps the aspect of women's property or *stridhanam* in Hindu law and dower as the exclusive property of the wife are seen as synonymous. When dowry is regarded as *stridhanam* or pre-mortem inheritance for women, contradictions arise and the equation of dowry with *stridhanam* has been disputed by several

15. Ibid., p.101.

16. On *stridhanam* see Pathak, J.K. and B.K. Sharma: Law of *stridhanam*. Allahabad 1992.

17. Sivaramayya, B.: Inequalities and the law. New Delhi 1984, p.66; Latifi, Danial: 'Muslim personal law and Indian judiciary'. In Sharma, Ram Avtar (ed.) Justice and social order in India. New Delhi 1984, pp. 282-325, at p.283; Diwan, Paras: 'The dowry prohibition law'. In Journal of the Indian Law Institute. Vol.27, No.4, 1985, pp.564-571.

18. El Alami, Dawoud Sudqi: The marriage contract in Islamic law: In the Shariah and the personal status laws of Egypt and Morocco. London, Dordrecht and Boston 1992, p.107; Awasthi, S.K. and U.S. Lal: The law relating to dowry prohibition. Allahabad 1992, p.13.

authors.¹⁹ They argue that the situation is absolutely reverse, as dowry is not a gift to the wife or her exclusive property but the property of her in-laws. The anti-dowry law stated that property given as dowry belongs to the wife but later on amended the law. However, the misconceptions still lingers on that she has been paid dowry than why should she be a part and parcel of the succession?

There is considerable debate what constitutes dowry in its various forms. The confusion is more acute as in the societal context dowry is differently defined than in anti-dowry law. In a patriarchally dominated social context dowry refers to property given to the bridegroom and his family but the anti-dowry law regards it as the exclusive property of the bride. The modern phenomenon of dowry, property given or agreed to be given to the bridegroom or his relatives, does not tally with the earlier concepts of bride-price and with the customary concepts of giving property to the bride herself.

Thus, the recent emergence of dowry among Bangladeshi Muslims is more due to simple greed and commercialisation of marriage than the impact of traditional culture, the urge of hypergamy and the undermining of the women's productive role. To one author, the present dimensions of the dowry evil are the result of increasing industrial culture and the fascination for material prosperity, i.e. to get rich overnight, to possess the latest gadgets of comfort and luxury and the display of wealth.²⁰ The impact of men coming into contact with a wider cash economy by going abroad has also been shown to be a significant variable for their raised expectations in marriage.²¹ The effect of dowry is so strong that even in England,

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19. For example Herseman, Paul: *Punjabi kinship and marriage*. Delhi 1981, pp.242-247; Madan, T.N.: 'Structural implications of marriages in North India: Wife givers and wife takers among pandits of Kashmir'. In *Contributions to Indian Sociology*. Vol.9, No.2, pp.218-243.
 20. Raijada, K.K.: 'Dowry deaths, suicides and bride burning'. In *Indian Socio-Legal Journal*. Vol.xv, No.1 and 2, 1989, pp.87-98.
 21. For details see Ahmed, Rafiuddin: 'Migrations from Bangladesh to the Middle East: Social and economic costs to the rural people'. In Israel, Milton and N.K. Wagle (ed.): *Ethnicity, identity, migration: The South Asian context*. Toronto 1993, pp.105-122; Kabeer, Naila: 'Subordination and struggle: Women in Bangladesh'. In *New Left Review*. No.168, 1988, pp.95-121, at p.104.

where many of the immigrants are from South Asia, the same dowry problems occurs.²² It was reported in a Bengali weekly in London that there was a warrant issued from Bangladesh against the First Secretary of the Bangladesh High Commission for physical and mental cruelty to his wife as dowry demands were not met by his father-in-law.²³

Dowry deaths are a common phenomenon in South Asia. These deaths of women are usually caused by the same persons who are legally and socially enjoined to protect them, i.e. their husband or in-laws. It has been rightly pointed out that dowry deaths are gruesome reminder of the authoritativeness of patriarchy.²⁴ In one study, dowry demands have been identified as one of the major causes of murder of women in Bangladesh.²⁵ The authors have established their finding by a table gathered from different media sources, showing that almost 50% of all murders of women in Bangladesh in the years 1983-1984 were for dowry causes.

Dowry and the Law

This part of the article has three major aims. First, to identify the problem of dowry in law and in society; then to discuss whether the new legislation introduced to curb these social evils was successful or not and finally to examine, through reported and unreported cases, to what extent the legislation has effected actual practice in Bangladesh.

India was first in South Asia to make an attempt to control the dowry problem by passing the *Dowry Prohibition Act* of 1961. Subsequently, Pakistan made relevant legislative enactments, which significantly were only applicable for the Western wing of the country.²⁶ After independence in Bangladesh the problems of

22. Menski, W.F.: 'English family law and ethnic laws in Britain'. In Kerala Law Times. Journal 1988 (1), pp.556-566, at p.566.

23. Notun Din. London 11th-17th February 1994, p.24.

24. Singh and Singh (1990), pp. 311-312.

25. Akanda, Latifa and Ishrat Shamim : *Women and Violence*. Dhaka 1984, p. 5.

26. The Relevant Acts of West Pakistan are, the *West Pakistan Dowry (Prohibition Display) Act, of 1967*, the *North West Frontier Province Dowry, Act of 1972* and the *Dowry and Bridal Gifts (Restriction) Act of 1976*.

dowry became so horrendous that activist women and some enlightened males were demanding legislation to stamp out this social evil. It was not considered right to treat women as a commodity to be transferred in marriage for consideration of property and money when the religious and official family laws did not regard women as chattels. Moreover, the Constitution of Bangladesh apparently provides sexual equality. The commodisation of women was seen as neo-patriarchy, which should not be tolerated any longer. Under such pressure, the government passed the *Dowry Prohibition Act* of 1980.²⁷

I have argued before that the real need of women in Bangladesh is to be protected from violence and economic deprivation.²⁸ Dowry problems involve both aspects of the need, i.e. freedom from economic deprivation and violence. Demands for reforms to control these problems were already made earlier and the *Dowry Prohibition Act*, 1980 and the *Cruelty to Women (Deterrent Punishment) Ordinance*, 1983 were enacted in response to growing evidence of cruelty against women. Recently a more comprehensive enactment (the *Repression Against Women and Children (Special Enactment) Act* xviii of 1995 has repealed the *Cruelty to Women (Deterrent Punishment) Ordinance*, 1983 and enhanced the punishment. More recently The *Repression against Women and Children (Special Enactment) Act* 2000 exaggerated punishments in most cases upto death penalty for crime against women and children. We need to assess whether these legislation has been beneficial to women and seek to find out whether women are actually able to use the legal remedies available under these new statutes.

The Dowry Prohibition Act, 1980

There are no published Parliamentary debates or report of a Commission to evaluate why the *Dowry Prohibition Act*, 1980 was introduced. However, this is the case for all Acts and Ordinances passed in Bangladesh. Perhaps that is why such

27. Published in the Bangladesh Extraordinary Gazette, dated 26th Dec. 1980.

28. Monsoor, Taslima: Gender Equity : Family Law and its impact on women in Bangladesh, Dhaka, 1999.

legislation is regarded as 'cost free legislation'.²⁹ The author reports that legislation was not difficult to make as in the four years from 1980-84 there were about 273 Acts and Ordinances promulgated by the executive.³⁰ Nevertheless, the question of Parliamentary debates or appointing a Commission does not arise, as the Act in question is almost identical with the *Dowry Prohibition Act, 1961* of India. One small difference between these two Acts is that in the Indian Act the punishment of imprisonment for the offence is for a maximum period of 6 months, whereas in the Bangladeshi *Dowry Prohibition Act, 1980* there is a maximum of 1 year.³¹ However, subsequently in India the *Dowry Prohibition (Amendment) Ordinance, 1986* the penalty has been increased to a maximum of 5 years and a fine which shall not be less than 1,500 rupees or the amount of the value of dowry whichever is more.³² In Bangladesh the penalty has also been increased and now extends up to a maximum of 5 years and not less than 1 year under the *Dowry Prohibition (Amendment) Ordinance, 1986* (see below).

The other difference is with regard to the limitation of the value of gifts given by any person other than a party to the marriage to either party to the marriage not in consideration of the marriage. The Bangladesh Act limits the value of such gifts to five hundred taka, while the Indian Act does not give any limit except prescribing that such gifts should not be given in consideration of the marriage.³³ Originally the Indian Bill before passing through Parliament, had

29. Sobhan, Salma: 'Cost-Free Legislation? An Evaluation of Recent Legislative Trends in Bangladesh Relating to Women'. In *Lawasia*. Vol. 4, 1985, pp. 153-161.

30. *Ibid.*, pp. 158-159.

31. Carroll (1983), p. 256.

32. See for details, Jain, Kiran B : 'The Dowry Prohibition (Amendment) Act, 1984: A Brief Historical and Comparative Study'. In *Islamic and Comparative Law (Quarterly)* Vol. vi. No. 2-3, 1986, pp. 1801-189; Jain, Kiran B : 'The Dowry Prohibition (Amendment) Act, 1986'. In *Islamic and Comparative Law Quarterly*, Vol. vi, No. 4, 1986, pp. 263-270; Saswat, P.S. and Nishtha Jaswal : 'Anti-Dowry Legislation in India : An Appraisal'. In *Journal of the Indian Law Institute*. Vol. 30, NO. 1, January-March 1988, pp. 78-87, at pp. 80-81.

33. Under explanation 1 of Section 2 of both Acts.

restriction of 250 rupees as a limit on the value of gifts; this was not adopted in the Act.³⁴ But now, in India, there are rules regulating the presents.³⁵

Section 2 of the *Dowry Prohibition Act* of 1980 of Bangladesh prohibits the giving or taking or demanding of dowry at or before or after the marriage as consideration of the marriage.³⁶ Any contravention of these provisions under Section 3 and 4 will be an offence punishable with imprisonment for a maximum term of one year, or a fine of a maximum of 500 taka or both.³⁷ Section 4 also provides that no court shall take cognisance of any offence except with the previous sanction of an officer authorised by the government. The *Dowry Prohibition (Amendment) Ordinance* of 1982 allowed a person to proceed with a complaint without the prior sanction of a government officer (see below).

Dowry as defined under Section 2 of the Act includes any property which is given, or which is agreed to be given, whether directly or indirectly, by one party to the marriage to the other party, or by the parents of one of the parties, or by any other person, to the other party to the marriage. This clearly shows an attempt to create a tight definition of 'dowry'. The explanation to Section 2 declares that the presents made at the time of marriage to either party to the marriage in the form of any articles whose value does not exceed 500 taka shall not be regarded as dowry unless they are made in consideration for the marriage. This presumes that gifts whose value does not exceed 500 taka are not deemed to be dowry unless made in consideration for the marriage.³⁸ This also contemplates that if the value of the gift exceeds 500 taka, it must have been

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34. Achar, M.R. and Tr. Venkanna : *Dowry Prohibition Act*. (2nd ed) Allahabad 1986, p. 23.
 35. See the *Maintenance of List of Presents to the Bride and Bridegroom Rules*, 1985.
 36. This has been amended to at the time of marriage or at any time by the *Dowry Prohibition (Amendment) Ordinance of 1984* (see p. 230).
 37. The *Dowry Prohibition (Amendment) Ordinance* of 1986 extended the penalty to imprisonment from a maximum of one year to a maximum of five years, and not less than one year (see p. 231).
 38. Carroll (1983), pp. 256-257.

given as consideration for the marriage.

The *Dowry Prohibition Act* of 1980, under section 6, provided for the transfer to the bride of any dowry received. If the dowry was not transferred to the bride within the stipulated period as provided under Section 6(1), the person who had appropriated it was to be punished with imprisonment for a maximum period of one year or penalised by fine for a maximum of 5,000 taka or by both [under Section 6(2)]. It was also specifically provided by Section 6(2) that such punishment should not relieve the person from the obligation to transfer the property taken as dowry to the bride. This expressly indicated that if any property was given as dowry it was the exclusive property of the bride. Under section 6(3) of the Act if the woman entitled to the property of the dowry died before receiving it, the heirs of such woman were entitled to claim it from the person holding it. This anti-dowry law regards dowry as women's property but, as we indicated above society counts it as the property of the bridegroom and his family (for details on the confusions over dowry, see above).

Bangladesh has recently seen many amendments in the dowry law. These were initiated for filling certain gaps in the *Dowry Prohibition Act* of 1980 and to make it more effective. However, the amendments in 1984 have also taken away an important right of property of the women in Bangladesh, so it is doubtful whether the legislative amendments actually operate towards the protection of women.

By the *Dowry Prohibition (Amendment) Ordinance* of 1982 the proviso of Section 4 was omitted, thus allowing a person to proceed with a complaint for offence of dowry without the prior sanction of a government officer. This measure helped to gain access to the protective legal mechanisms.

The *Dowry Prohibition (Amendment) Ordinance* of 1984 extended the definition of dowry to any property or valuable security given at the time of marriage or at any time, which substituted the earlier at, before or after marriage for the purpose of ensuring that loopholes were closed.

But the amendment of 1984 deleted Section 6 of the Dowry

Prohibition Act, 1980 which had provided that any dowry given for the benefit of the wife or her heirs and received by any person, was to be transferred by such person to the woman within a specified period of time. Although this section was rarely invoked, it did confer an important right on a woman whose family had provided a dowry. As a result of the deletion of Section 6, there is now not only a lacuna in Bangladeshi law on the issue of dowry, but the amendment has also taken away an important right of women to acquire property.³⁹ This looks like another step to subjugate women. What happens now to any dowry which is in fact given? After 1984 the law appears to be completely silent about this question. The *Dowry Prohibition (Amendment) Ordinance* of 1986 did not fill the gap created by deletion of Section 6 of the Act. However, it made the penalty for giving or taking dowry tougher by extending the punishment of imprisonment from a maximum. The offence of dowry had been cognisable, bailable and non-compoundable under Section 8 of the Dowry Prohibition Act of 1980. By the Dowry Prohibition (Amendment) Ordinance of 1980 the offence has been made non-cognisable, non-bailable and compoundable by substituting the previous section 8, which enlarges the effectiveness of the Act.

These Amendments as analysed and commented upon above show the attempt of the legislature to enhance the effective implementation of the Act. However, the amendments have also taken away an important right of the women to own property, thus depriving women economically. We have argued that the primary need of women in Bangladesh is to be protected from economic deprivation and violence. Thus, Section 6 of the *Dowry Prohibition Act* of 1980 should be re-introduced to protect women from economic deprivation. The effects and application of the Act are analysed below through cases to consider how far the Act is effective.

39. Carroll Lucy : 'Recent Bangladeshi Legislation Affecting Women : Child Marriage, Dowry, Cruelty to Women'. In *Islamic and Comparative Law Quarterly*. Vol. v. No. 3-4, Sept.-Dec. 1985, pp. 255-264, at p. 260.

Cases on dowry

Some years ago, it was reported by a weekly Bengali magazine that there were nearly 22,000 dowry cases pending in Bangladeshi courts.⁴⁰ It has also been reported that many women in Bangladesh are filing divorce petitions to escape torture at the hands of in-laws for failing to meet the expectations of dowry.⁴¹ The validity of these reports is not beyond doubt; there are a huge number of cases of dowry. It is difficult to give a full survey of cases on dowry from the whole of Bangladesh, as there are not many reported cases from the higher courts. The unreported cases contain a large volume of cases of different Magistrates Courts, as each administrative area has such a court. However, it is possible to give an overview of the problem through reported and some unreported cases to reflect the application of the provisions of the *Dowry Prohibition Act* of 1980.

The reported cases concerning the issue of dowry have primarily struggled with the definition of dowry, whether what is claimed as dowry constitutes dowry under the *Dowry Prohibition Act* of 1980 or whether such demands were made as a consideration for the marriage to fulfil the condition of the Act. This shows that the cases were more concerned with technicalities in the application of the Act rather than the protection of women.

The first published case in Bangladesh is that of *Mihirlal Poddar v. Zhunu Rani Shah*.⁴² where the High Court in Dhaka held that the demand for dowry was not a consideration for the marriage and hence it was not a demand for dowry. However, the High Court in Barisal, on almost identical facts, preferred the opposite conclusion three years later in the case of *Rezaul Karim v. Mosammat Taslima Begum*.⁴³ It has been suggested that these conflicting decisions on dowry need to be resolved by the Supreme

40. *Khaborer Kagaj*. March Dhaka 1990, p. 18.

41. Ghosh, K.S. : *Indian Women through the Ages*. New Delhi 1989, pp. 46-47.

42. 37 DLR (1985) 227.

43. 40 DLR (1988) 360; BLD 1989 35.

Court of the country.⁴⁴ In *Rezaul Karim v. Mosammat Taslima Begum*, the court defined the meaning of dowry and interpreted that dowry as it appears under Section 2 of the *Dowry Prohibition Act, 1980* is defined to mean any property or valuable security given or agreed to be given at or before or after the marriage as consideration for the marriage.⁴⁵ Thus dowry contemplates transfer of property or valuable security at the time of marriage or even before the marriage was solemnised.⁴⁶

The court also reasoned in *Rezaul Karim v. Mosammat Taslima Begum* that the expression “in consideration for the marriage” should be given an extended meaning, since otherwise the whole scheme of the Act prohibiting demand of dowry by the husband would be frustrated and will become redundant.⁴⁷ Thus as the court reasoned,

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 namely, maintaining her as a wife, protecting her as a wife and giving her a shelter would amount to demanding money in consideration of the marriage.⁴⁸

The court also gave an extended meaning of “marriage” as defined in Section 2 of the *Dowry Prohibition Act, 1980*. Marriage, as the court elucidates, means and includes,

not only the ceremony of marriage but also the newly created legal status for both husband and the wife, to be continued, asserted and recognised to be available always in everyday life, till death separates one from the other or till the marriage subsists.⁴⁹

44. See for details, Malik, Shahdeen : ‘Conflict of Decisions Need Resolution’. 42 DLR (1990)

45. 40 DLR (1988) 360, at p. 362; BLD 1989 35, at p. 36.

46. Id.

47. 40 DLR (1988) 360, at pp. 362-363; BLD 1989 35.

48. Ibid., p. 362.

49. Ib.

Marriage is not only a ceremony, as the court opines but the creator of a status which continues during the marriage and does not create any consideration in terms of money or property except that which is expressed in the *kabinnama*.

Thus, the popular interpretation of the definition of dowry has been obtained in a judicial decision. It is argued here that the wording under Section 2 of the *Dowry Prohibition Act, 1980* “in consideration of the marriage” should be amended to “in connection with marriage” as amended in India in 1984. This will help resolving the confusion over whether a particular dowry is demanded in consideration for the marriage and conclusively determine it to be dowry if it is in connection with the marriage, thus covering the present loopholes of the Act. It has been mentioned earlier that the Amendment of the Act in Bangladesh in 1984 has already made a significant improvement by extending the meaning of dowry demanded or given or agreed to be given at any time before or after the marriage.

We could not find any cases challenging the deletion of Section 6 of the *Dowry Prohibition Act of 1980*, by the *Dowry Prohibition (Amendment) Ordinance* in 1984. This has deprived women of the possibility of acquiring property by dowry. Perhaps there are no cases as it is well-known to women that dowry is not a right under Islamic law. However, anti-dowry law is effective otherwise, as there is some evidence of punishment for demanding and taking dowry.⁵⁰ In *Abul Basher Howlader vs. The State*⁵¹ the Appellate Division (criminal) of the Supreme Court of Bangladesh held that if a fresh demand for dowry is made after the solemnisation of the marriage it is not necessary to give an extended meaning of the word marriage as has been done in the case of *Rezaul Karim v. Mosammat Taslima Begum*⁵² nor is it necessary to give an extended

50. See for details, *Rezaul Karim v. Mosammat Taslima Begum* 40 DLR (1988) 360; BLD 1989 35.

51. 46 DLR (AD) (1994) 169.

52. 40 DLR (1988) 360. at pp. 362-363; BLD 1989 35.

meaning to the word dowry in Section 4 as has been done by the Supreme Court of India in the case of *LV Jadhav v. Sangkar Roy Abashahed Pawar*.⁵³ The Highest Judiciary reasoned :

We will say that if a fresh demand for dowry is made after solemnisation 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. It must be held therefore that in the Bangladesh Act 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 offence but also the demand thereof after the marriage.⁵⁴

The appellate court sustained the conviction and directed the appellant to serve out the remainder of the sentence.

Padma Seth has comprehensively dealt with the major issues of dowry related problems in India.⁵⁵ She analysed the recent Indian legal developments. There were interesting developments in Indian dowry law, which can be taken as an example to other South Asian countries as dowry prohibition officers and Paribarik Lok Adalots organised by the NGOs in collaboration with legal Aid Boards . But the effectiveness of them is still under question. She highlights the different manifestations of the dowry problem from the Vedic period showing that dowry in any form was not sanctioned by the ancient Hindu religious scriptures.

Conclusion

The dowry system is not recognised in the religion or the law of the Muslim societies but has spread into it. Thus, the recent

53. AIR 1983 (SC) 1219.

54. 46 DLR (AD) (1994) 173.

55. Seth, Padma: "Dowry situation in India: Legal and Socio-cultural Perspectives Interventions by Government & NGO's, 30-31 January 2002 -A reassessment of Indian Dowry Law" In South Asian Conference on Dowry-Realities & Strategies for Intervention held in Dhaka- Bangladesh organised by Women for Women and the British Council.

emergence of dowry among Bangladeshi Muslims is more due to simple greed and commercialisation of marriage than the impact of traditional culture, the urge of hypergamy and the undermining of the women's productive role. To one author, the present dimensions of the dowry evil are the result of increasing industrial culture and the fascination for material prosperity, i.e. to get rich overnight, to possess the latest gadgets of comfort and luxury and the display of wealth. The impact of men coming into contact with a wider cash economy by going abroad has also been shown to be a significant variable for their raised expectations in marriage. Thus, dowry should not only be seen in socio-cultural perspectives but also in socio-economic perspectives.

Dowry deaths are a common phenomenon in South Asia. These deaths of women are caused by the same persons who are legally and socially enjoined to protect them, i.e. their husbands or in-laws. It has been rightly pointed out that the dowry deaths are a gruesome reminder of the authoritativeness of patriarchy. Legislation and other NGO intervention cannot stamp out this social evil unless there is a shift in the attitude of the people of South Asia.

As the roots of the problem of dowry appear to be social, remedies can only be achieved by changes of attitude in society; this can be attempted by legislation, but will need to be supported by education and legal awareness. The parents of a bride should understand that by giving dowry they may not be giving their daughter any happiness; it has been claimed that it is only increasing her misfortune.⁵⁶ The parents of the bride are not in fact giving the dowry to their daughter but to their son-in-law and his family; this increases greed for more dowry. Parents should rather safeguard their daughters from economic deprivation and violence by educating them about their rights within marriage.

56. Kishwar, M.: 'Dowry : To Ensure Her Happiness, or to Disinherit Her.' In Mamushi. No. 34. 1986, p. 9.