

THE PRACTICES OF DOWRY IN BANGLADESH: ISSUES AND CHALLENGES

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ABSTRACT

Bangladesh practices dowry as a traditional culture in few decades. Dowry in Bangladesh is well known as 'Joutuk'. Though dowry is not allowed in Sharī'ah, personal law or any other laws of the state, but it's now practised in Bangladesh as like mandatory obligation of the society. Despite of its prohibition by Dowry Prohibition Act, 1980 practicing of dowry is day by day increasing due to non-enforcement of the laws and in some cases, it is found that due to incapability of the bride family to pay dowry grooms tortured their wife. Hence, there is a common perception of the public that there will be no marriage without dowry. This paper is an effort to highlight the issues on dowry violence's which caused a huge number of women lives as well as their families in depressing situation in Bangladesh. Finally, this paper proposes a mechanism on how to practically address the issue. It is a qualitative research.

INTRODUCTION

Dowry means a payment in kind or cash given to the bridegroom from the family of bride. In this way, whatever the property a husband gains from his wife's family through marriage is a considerable dowry. The all-

inclusive importance of dowry incorporates anything traded considering marriage as per Bangladesh law identified with dowry. Although, Bangladesh is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and a worldwide settlement embraced in 1979 by the United Nations, the issue is being distinguished as a perilous issue of the nation. The national parliament of Bangladesh on 16th September 2018 passed the Dowry Prohibition Acts 2018 out of a corrected structure keeping an arrangement of most extreme five years' imprisonment and Taka-50,000.00 (Taka fifty thousand) as fines for requesting dowry. State Minister for Women and Children Affairs, Meher Afroz Chumki, submitted the bill in the national parliament, which was passed consistently by voice cast a ballot with Deputy Speaker, Fazley Rabbi Mia in the seat, steering the bill. The state minister said the proposed bill will replace the Dowry Prohibition Acts 1980 and correct the three consequent mandates proclaimed on 1982, 1984 and 1986 respectively. Simultaneously, the proposed bill has additionally joined an arrangement of 05 (five) years correctional facility and Taka-50,000.00 (Taka fifty thousand) as fines for filling false argument against the endowment as the new arrangement was excluded in the past demonstration. Though, the government of Bangladesh has amended the Dowry Prohibition Acts 2018, the practical situation of dowry is still prevalently practised in Bangladesh like a social cancer of the society.

BACK GROUND OF THE STUDY

Women's dignity as a core value of human rights law is deeply entrenched in numerous international instruments under which Bangladesh also assumes affirmative obligations to respect and ensure. Bangladesh is the 92nd largest sovereign state in the world, with an area of 147,570 square kilometers (56,980 square mile). It is also the world's 8th most populous country. This state is considered as an Islamic oriented country as Muslims represent the majority while the rest practise different religions such as Hinduism, Buddhism, Christianity and Ethnic group. 'Traditionally, Bangladesh has been run along the line of a patriarchal social system which, as elsewhere in the world, has promoted an unequal power relation, a rigid division of labour and gender-based roles. Understanding the rise in divorce in Bangladesh, an exclusive report by Nahela Nowshin, reporter of the Daily Prothom Alo newspapers, "A divorce takes place in every one hour in the Dhaka city. This is one of the startling findings in the report stating that in the last seven years, the divorce rate application has increased by a massive 34 percent throughout the country according to data compiled by the Bangladesh Bureau of Statistics (BBS). At least 50,000 divorce applications were filed in Dhaka North and South City Corporation in the past six years, which means on average one divorce application was filed in every one hour. In Chittagong City Corporation, 2,532 applications have been already filed during January-July of this year".

Consequently, the issue of dowry of a divorced woman in Bangladesh has received considerable critical attention. Bangladesh is one of the pioneer countries to be taken as a case study on this topic for discussion and in dealing with dowry during the conjugal periods of the couple. This study work concerns with legal connotations of the law than the social implications about dowry in Bangladesh will be highlighted. The laws of Dowry Prohibition Acts 1980n in Bangladesh have been developed both through legislative Acts as well as judicial decision. Muslim women in Bangladesh are always victimised by their husband's immediately after marriage or during their conjugal life. Dowry victimised women are mostly from poor families and the ratio is proportionally decrease to the mid-level and rich level families. The mid-level and rich level families some how manage to provide dowry for their daughters, where poorer are unable to provide the demand from the husband's family.

LITERATURE REVIEW

Practising of dowry is an emerging issue in Bangladesh as well as the usage of relevant laws which is becoming a lacuna of act for the aggrieved party. Scholars have valued opinions on the practising of dowry which created a bad impact to the society. The author reviews a number of the literatures on dowry related issues and cases. "Islam and Women's Income: Dowry and Law in Bangladesh" by Farah Deeba Chowdhury is relevant to this study. It comprises six chapters. Most of the chapters discuss issues regarding women and Islam, family law, Islamic law, CEDAW, Dowry etc. Having reviewed the book, the author find discussion relating to dowry issue. The subject matter of this book can be taken as a resource material for the purpose of the study. "Women's Rights and Religious Law: Domestic and International Perspectives" by Fareda Banda, Lisa Fishbay Joffe contains three parts. The third part is about religious divorce in civil courts. Though this part discusses the impact of foreign laws barriers on the struggle for women's equality under Jewish law in the United States of America, it does provide to the researcher the basic issues of divorced women.

"Islamic Divorces in Europe: Bridging the Gap between European and Islamic Legal Order" is authored by Pauline Kruiniger. This book examines the issue of the recognition of Islamic divorces in European states. Repudiation-based divorces are particularly notorious for their presumed violation of fundamental rights of women and are consequently often not recognized. For this reason, the book scrutinises classical Islamic divorce law and the contemporary divorce laws and practices of Egypt, Iran, Morocco, and Pakistan, as well as the Dutch, English, and French recognition policies and relevant EU (case) law. However, the subject matter of this research is not covered in this book. "Muslim Women in Law and Society", by Ronak Husni and Daniel L. Newman, The authors duly state that, "It is a matter of right as the provisions of the primary sources of the Shari'ah's are clear about the status of financial rights of divorced wife, not only it is the duty of courts to establish their authority

when deciding such matters, but also the social and cultural aspects of the community should have influences on actual implementation on Sharī‘ah rulings. The society must have the role of helping women in vulnerable condition and grant them compensation, most importantly; the basic principle is that a woman must not lose her rights because of a man’s action without there being any consequence for the latter.”

Dowry Prohibition Laws of Bangladesh: Problems of Implementation, in this article authors sum up the problems of implementation of dowry prohibition laws in Bangladesh. They also focus on the role of the police officer who usually engaged in the investigation on dowry violation. Investigation officer often time propose bribe from the victim, if the victim not agreed with the proposal of the police officer, then the police officer submit an ineffective police report to the court which will be the mechanical device to suffer the victim. In some cases, it shows that when victim intend to file the FIR with the police station, duty officer instead of lodging the First Information Report (FIR) suggest the victim to go to the court and file a petition of complainant .

The book ‘Islam and Women Income Dower and Law Bangladesh’ is authored by Farah Deeba Chowdhury, In her book she discusses regarding the interrelationship between law, culture, patriarchy and religion in the context of contemporary Bangladesh. It explores the role of Islam in society and politics generally, and its influence on gender equality. The work focuses about married women.

WHAT IS DOWRY?

Currently in Bangladesh dowry is a common phenomenon like any other essential things. Dowry is the property may be cash, ornament, furniture, electronics goods or any other valuable items given to the grooms or his family by the bride or her family before, on or after marriage ceremony on the demand of the groom’s or by his parents. Though the Islamic principle or Muslim Family Laws Ordinances or any personal laws of Bangladesh do not allow any dowry. Though the Bangladesh is a Muslim majority population country but dowry practices starts from 1950s and was practices only urban wealthy families as gift. With the variation of times after 10 years in 1960s it spreads to the poorer families. As per the Hindu laws once a girl is married, she will lose her all property rights from her parents’ property, that’s why the Hindu’s culture is to gift the valuable property to the grooms on their marriage ceremony, and before the independent of Bangladesh it was mostly ruled by Hindu’s.

WHAT ARE THE ISSUES ON DOWRY?

The study finds several issues on dowry practice in Bangladesh which are as follows:

1. Practicing of dowry is contradictory to Islamic Principle.
2. Practicing of dowry is contradictory to present laws of the country and non-implication of the Dowry Prohibition Act, 1980 (as amended 2018).
3. Practicing of dowry and its social impact.

PRACTICING OF DOWRY IS CONTRADICTORY TO ISLAMIC PRINCIPLE

In Islamic principle there is no guide lines to provide dowry or ‘Joutuk’ rather, mostly Quran and Hadith have several discussions to provide the wife mahr (dower) which need to pay the wife by their husbands. Hence below few of them highlights; In Islam the mahr (dower) is one of the rights of the wife, which is hers to take in total and is lawful for her, in contrast to the widespread practice in some countries, where the wife is given no mahr (dower). Evidence that the wife must be given her mahr (dower) is found in many places, for example the aayah (interpretation of the meaning): “And give to the women (whom you marry) their mahr (obligatory bridal money given by the husband to his wife at the time of marriage) with a good heart...” [al-Nisaa’ 4:4] Ibn ‘Abbaas said: “This refers to the mahr (dower).”

Ibn Katheer, may Allah have mercy on him, said, summarizing the comments of the measurement on this aayah: “The man must definitely pay the dowry to the woman, and he should not resent it.” Allah says (interpretation of the meaning): “But if you intend to replace a wife by another and you have given one of them a cantar (of gold, i.e., a great amount) as mahr, take not the least bit of it back; would you take it wrongfully without a right and (with) a manifest sin? And how could you take it (back) when you have gone in unto each other, and they have taken from you a firm and strong covenant?” [al-Nisaa’ 4:20-21]. bn Katheer, may Allah have mercy on him, said: “This means: if any one of you wants to divorce his wife and replace her with another, you should not take anything from what you have already given the first wife, even if it was a huge amount of wealth. The mahr is given in exchange for the right to enjoy marital relations. For this reason, Allah says (interpretation of the meaning): “And how could you take it (back) when you have gone in unto each other...?” The “firm and strong covenant” is the marriage contract.

Anas ibn Maalik, may Allah be pleased with him, reported that ‘Abd al-Rahmaan ibn ‘Awf came to the Messenger of Allah (peace and blessings of Allah be upon him), and there were traces of yellow (perfume) on him. The Messenger of Allah (peace and blessings of Allah be upon him) asked him about it, and he told him that he had just married a woman of the Ansaar. The Prophet (peace and blessings of Allah be upon him) asked him, “How much did you give her?” He said: “Gold equal to the weight of one date stone.” The Messenger of Allah (peace and blessings of Allah be upon him) said: “Give a waleemah (wedding feast) even if only with one sheep.”(Reported by al-Bukhaari, 4756).

The mahr is the right of the wife, and it is not permitted for her father or anyone else to take it except with her approval. Abu Saalih said: “When a man married off his daughter, he would take her mahr away from her, but Allah forbade them to do that, and gave women the right to the mahr they received.” (Tafseer Ibn Katheer). Similarly, if the wife foregoes any part

of the mahr, the husband is permitted to take it, as Allah says (interpretation of the meaning): "... but if they, of their own good pleasure, remit any part of it, take it, and enjoy it without fear of any harm (as Allah has made it lawful)." [al-Nisaa' 4:4]

It is the husband's duty to provide their wives shelter, food, cloth, treatment and protection in all respect. According to Quran, Hadith, Islamic principles, Muslim Family Laws ordinances enforced in Bangladesh that, men are responsible to support women financially and psychologically as well. It is crystal clear that, there is no provision of dowry in the Islamic principle or any Hadith support that, wife should pay any amount to his husband either before or on or after marriage ceremony. Though the Bangladesh has some Islamic culture as a Muslim majority country but in case of dowry it become a traditional culture to fix the dowry amount before marriage ceremony. Moreover, a portion of the said amount need to pay to groom by the bride family before the ceremony as by using that cash they can expense for the marriage ceremony.

PRACTISING OF DOWRY IS CONTRADICTORY TO PRESENT LAWS OF THE COUNTRY AND NON-IMPLICATION OF THE DOWRY PROHIBITION ACT, 1980 (AS AMENDED 2018)

Another noticeable finding is that due to the absence of founding provisions mandating a distinct court premise with certain number of judges and other necessary legal and executive staff, women's deprivation of their matrimonial rights pertaining to dowry have been worsened, the details of which are provided in the following lines. One of the core procedural drawbacks which is hindering the smooth flow of the proceeding of the trial courts. In the section 2 of the Dowry Prohibition Act 1980 cited as-

Section 2 "In this act, 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".

2 (a) by one party to a marriage to the other party to the marriage or

2 (b) by the parents of either party to a marriage or by any other person to the either party to the marriage or to any other person .

Hence, the Dowry prohibition Act, 1980 itself failed to understand the clear definition of dowry as dowry is the valuable property may be cash, ornament, furniture or any households' items provided to the groom by the bride's family. Though the law having provision to imposed punishment who committing this offence. In most of the cases it is found that the loopholes of loose drafting on laws and non-implementation of the judgement and order of the court's still a vast practising of dowry is going on. Moreover, the practices of dowry in Bangladesh is now as a social culture and tradition, which is somehow contradictory to the existing laws of the country.

PRACTICING OF DOWRY AND ITS SOCIAL IMPACT

The evil culture of practicing dowry in Bangladesh since ancient period. This phenomenon comes from the Hindu custom and culture. As in the past before independence of Bangladesh, Indian subcontinent was mostly determined by the non-Muslim ruler and in that culture and custom practicing dowry was allowed widely. Later, after independence of the country in year 1971 till present all the rulers from Muslim religion and try to be practicing Shari'ah in family matters but due to some anomalies yet to practice Shari'ah in the same field. Now dowry is spread out in all class of family and whole part of the country. Parents of the girl cannot even imagine arranging their daughter's Marry without dowry as it works as prime issue for marriage ceremony. Often time, it shows that people sold their valuable property to fulfill the demand of bridegrooms and eventually they become poor. Especially when a baby girl come in a poor family girl's parents start thinking how they will manage money for the marriage ceremony of the daughter.

When the parents of the bride failed to fulfill the demand of the bridegrooms, then man starts torture upon his wife, and it became violence. Violence on dowry demand is alarming in Bangladesh and due to violence tortured woman some time injured and compelled to leave their husband's house and move their parents' home. In some cases, it shows when a woman gave birth baby girl one after another then, either husband or his family member all together starts to torture the woman. Few cases, woman get divorced by their husband as they are only mother of daughters. In practical the scenario of the country regards to dowry will be clear if we consider the three different death cases with regard to dowry in Bangladesh. A housewife after succumbing to her injuries caused by her husband's torture allegedly for dowry, set fire on herself. Jasmine Akhter, 38, passed away at Dhaka Medical College Hospital burn unit around 8:30 am. She experienced 65 percent burn wounds, as indicated by her family and emergency clinic sources. She set herself aflame with lamp fuel before her relatives at Salamat of Munshiganj's Srinagar upazila on June 7, brother of victim revealed that, Jasmine was regularly beaten by her husband Sirajul Islam on demanding dowry for last 18 years. Victim have two children and one of them is mentally challenged. She could not leave her husband's house thinking of her daughters. Therefore, they tried to solve the problem through local mediators, but nothing changed. After the incident, "a case has been filed against the victim's husband and accordingly and police investigating the case and try to arrest the accused". In another report, it appears that a man was accused of killing his wife for dowry. Police accordingly arrested the accused person for purportedly killing his wife for the dowry at Chittagong's Satkania upazila. The accused Parvez and his relatives killed the victim Rokeya Begum, 21. A third story reveals that a house wife has been torched for dowry-A housewife namely Nadira Akter was set on fire over dowry allegedly by her in-laws in Kishoreganj's Hossainpur upazila. The 19-year-old victim, Nadira Akter, daughter of farmer Shamsul Islam in Dighirpur village in Gafargaon upazila, Mymensingh who was married last year November to

Rukun Mia, 25, of Saheber Char village in Hossainpur upazila of Kishorgonj District.

The victim's mother statement, during the marriage, they gave Taka-50,000.00 (Fifty thousand) as dowry money demanded by Rukun's family, but Rukun and his family members used to torture Nadira, demanding Taka-1,00,000.00 (one lac) more. As they failed to give the victim's in-laws the money, the torture on Nadira increased. On the night of April 22, Nadira and her husband were locked in an altercation over the matter and then Nadira was beaten senseless by her husband and in-laws, she alleged. At one stage, they set Nadira on fire in her room and closed the door from outside. Later, neighbors rescued Nadira and took her to her parents' house, after that, victim was struggling for life at Mymensingh Medical College Hospital (MMCH). A doctor of the hospital said Nadira sustained 13 percent burns to her chest, face and belly. Terming her condition stable, the doctor said the victim would be shifted to the hospital's burn and plastic surgery unit tomorrow. Unfortunately, no case has been lodged by the victim yet.

The above survey clearly shows that instead of ensuring dowry to the wife there is a constant practice of giving and taking dowry between the families which is seen to be sharply growing. It is therefore argued that lack of functioning administrative activism is responsible for such despicable social epidemic to spread across the society.

LACK OF ISLAMIC KNOWLEDGE OF THE CITIZEN

Bangladesh is well off at least in terms of getting primary education. In one survey of UNESCO, it is shown that an adult literacy rate among the citizens of Bangladesh is 72.89%, out of which the male literacy rate is 75.7%, and for females it reaches up to the rate of 70.09%. The literacy rate has increased in recent years. Though the literacy rate looks high in Bangladesh, it is very poor with regards to Islamic knowledge. As the dowry is not a principle of Islamic perception, common people of Bangladesh are not aware of the purpose of the dowry which is an obligatory responsibility of Muslim men to their wives. Furthermore, in the general education system of Bangladesh, Islamic studies are seriously marginalized which defectively continues only up to the intermediate level. However, there is another type of education system that offers a purely Islamic traditional knowledge which in the context of Bangladesh called madrasah education system. Again, due to their restricted access to the public life, students graduating from these institutions prove of little use to the demand of the society. All these together contributed to the development of a set of ill social practices such as early marriage, acknowledging dowry, depriving the women of their due inheritance rights and so on.

In such a situation, there is a dire need to promote education more objectively. Islamic education should be generalised both subjectively and objectively so that optimum productivity would be realized. In order to create social awareness among the guardians and the immediate

stakeholders, such quality education would be quite conducive. Students graduating from madrasah should be affiliated with social institutions because they have the conceptual tools to create sense of responsibility among the different layers of the society.

The study contends that nurturing a true quality education and applying the practical aspects of the education to the respective fields would be instrumental in working out social awareness and responsiveness.

ROLE OF GOVERNMENT TO STOP DOWRY PRACTICE

After wide spread of dowry in all level of families and all over the country the government of the Peoples Republic of Bangladesh enactment the Dowry Prohibition Act 1980 to stop the dowry practice in Bangladesh with punishment of imprisonment which extend five years and not less then one year or fine or both. The Act also amended in the year 1984 and lastly in the year 2018 it amended as increasing of fine amount 50,000.00 (taka fifty thousand). Tough, the government of Bangladesh try to stop the dowry practice but due to some bureaucratic difficulties, practicing of dowry day by day increasing and there is no sign of recent stop tendency. On the other hand, loopholes of substantive laws, ordinance silences, procedural drawback and overlapping nature of the courts is hindering the smooth flow of proceeding of trail of the cases. These overlapping nature in terms of its jurisdiction is very crucial factor which may contributing to the prolong of trial. Victims women and their family members usually not interested to file a case against their husbands as the trail takes longer period to conclude the cases.

ROLE OF LEGAL NON-GOVERNMENT ORGANISATIONS (NGO)

The study finds a set of non-government organizations (NGO's) which work in expediting the speedy delivery of justice. These NGO's are believed to be contributing to the development of Bangladeshi judicial activism and the proper actualisation of the rule of law. As the family matters being an important concern of their attention, almost all the NGO's are working alongside the Public legal institutions in order to ensure the due remedy to the victim. Some leading NGO's may be listed as follows: Bangladesh Legal Aid and Services Trust (BLAST), Ain O Shalish Kendro (the Centre for Law and Arbitration) (ASK), Transparency International Bangladesh (TIB), Bangladesh Islamic Law and Legal Aid Centre (BILLAC). In this regard, their efforts for working out the fundamental objectives of the family courts in many cases are left bias and preoccupying secular value oriented. Eventually in the guise of reformative activities, they often try to distort the real position of Islamic Law over the given topic. It is worth mentioning here that though all these NGO's have been working for decades in the legal field, with the only

exception of BILLAC, no single Sharī'ah expert has ever been reported to be working with them in order to facilitate better result of the disputes.

FINDINGS

Firstly, no clear guidelines have been given in the laws, neither in parent laws nor in other substantive statutory documents in terms of dowry. Secondly, in many cases, dowry matters are seen to remain, if not completely vitiated, of course, partly non-realised and or faded away in the darkness of lengthy trial process. Thirdly, where dowry is protected, it involves a lot of agonies and bureaucratic complexities either in the part of Courts' procedure or part of husband's lack of cooperation. Fourthly, instead of mahr, an open practice of dowry is currently ruling upon the marriage domain in Bangladesh and some poor parents have to suffer just to manage the dowry of their daughter. The fact is that dowry is not in line with the Islamic Principle to practice standards. Fifthly, there is no distinct dowry matters related Court, and hence there is a huge shortage of judges and other necessary legal stuff in the courts. Sixthly, unreasonably lengthy trial proceedings are seen to be repeatedly appearing across the adjudication history of Family Courts. Seventhly, insecure legal climate is seen to prevail inside and outside the court premises that sometimes victim is also harassed on the way to court. Eighthly, false fear of social stigmatization is found to be prevalent among the mass people of the society which deters the victim from filing suit on dowry. Ninthly-Overlapping and overriding nature of the laws sometimes mislead the judges in interpreting the laws and trying the cases. Tenthly-Lack of the enough legal and Sharī'ah knowledge is seen to be functioning negatively during trying the dowry matters. Eleventh-Bias practice of local non-government organizations is somehow responsible for creating such complexities to the trial process of the Family Courts. These are some basic findings that the study views to be contributing to the causation on dowry. Therefore, based on the above findings, a number of recommendations are proposed.

RECOMMENDATIONS

The study intends to recommend that the government should take the following three different steps which may help address the complexities and challenges as summarized in the above as follows:

Firstly, existing ruling regarding the protection from dowry is seen to have been separated from religious values. This separation is probably serving as a factor from protecting the women families on dowry. It therefore, must be changed and made Sharī'ah-compliant.

Secondly, the government should introduce an Act in the name of Women's Protection Dowry Acts. The Act should contain the following provisions:

- i) Provisions relating to substantive laws.
- ii) Provisions relating to procedural laws.
- iii) Provisions relating to good governance which should mandate the introduction of public institutions on social level.

CONCLUSION

The study after giving an investigative review of the issues and wordings of the Laws will conclude the following points: the law has been loosely drafted, Jurisdiction of the Court is seriously restricted. Due to these factors, a third problem, that is lengthy trial proceedings, has been intrinsically generated. So, the victim often travels back and forth from one court to another. A sizable portion of the woman section being still away from the quality education also intensifies the problem. Lack of comprehensive knowledge of law and interpretation also contribute to the deterioration of the complexity. The lack of any Shari'ah expert in the mechanism of the family matters would be a key reason for such complexities to appear in the Courts.

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