

## Dowry Prohibition Laws in Bangladesh: Problems of Implementation

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### Abstract

The practice of dowry, which is neither supported by personal law nor State laws, has become an acute problem resulting in breakage of social malady and texture in Bangladesh in recent years. The dangerous aspect relating to it is the physical and mental torture on the wife due to inadequate or non-payment of dowry. Every year a number of women are tortured, killed and considerable numbers of women commit suicide for this existing evil custom. To deal with this social menace, the Parliament of Bangladesh enacted the Dowry Prohibition Act, 1980, which was subsequently amended in 1982, 1984 and 1986. In 2000, a more stringent law i.e. the 'Women and Children (Repression Prevention) Act, 2000' was passed by the Parliament to prevent cruelty against women including dowry-related violence. This Act was amended in 2003 to remove certain loopholes and to make it more severe. But all the efforts of the government ended in vain, as a good number of instances are being reported regarding torture and oppression of women every now and then due to dowry. Although specific laws have been formulated to deal with these matters, these laws are not effectively implemented to eradicate the practice of dowry from the society and to stop the violence against women relating to dowry due to various problems. Thus, based on detailed fieldwork, this paper is an attempt to identify the problems that hinder the effective enforcement of the dowry prohibition laws in Bangladesh.

### I. Introduction

Generally the term 'dowry' means the property both in cash and kind that a bride brings with her at the time of her marriage.<sup>1</sup> Nasrin defines 'dowry' as "cash money, goods, valuable items or property that the bride's family gives to the groom's family upon marriage."<sup>2</sup> According to Section 2 of the Dowry Prohibition Act, 1980:

Dowry means 'any property or valuable security given or agreed to be given at the time of marriage or at any time either directly or indirectly: a) by one party of the marriage to the other, or b) by the parents of bride or bridegroom or any other person to either party to the marriage.

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<sup>1</sup> Teays Wanda (1991) THE BURNING BRIDE The Dowry Problem in India, *Journal of Feminist Studies Religion*, 7(2), p.29.

<sup>2</sup> Nasrin Shahana (2012) *Crime or Custom? Dowry Practice in Rural Bangladesh*, Germany: Lambert Academic Publishing, p.7.

However, the Dowry Prohibition (Amendment) Ordinance, 1984 has extended the definition of dowry to ‘any property or valuable security given at the time of marriage or at any time’ by substituting the earlier words ‘at, before or after the marriage’.<sup>3</sup>

The practice of dowry is not recognised in Islam and, as such, it is not a part of Muslim marriage in Bangladesh.<sup>4</sup> Yet, the demand for, or the payment of, dowry at the time or after marriage has become widespread among rural than urban population where it is treated almost as an essential component of every marriage contract. The custom of the payment of dowry may be traced to the Hindu marriage as traditional Hindu law does not recognise the right of daughters to inherit<sup>5</sup> from the deceased parent’s property. Consequently the practice of the payment of dowry developed to compensate the daughters gradually infiltrated into the Muslim marriage in Bangladesh mainly in the 1970s.<sup>6</sup> The Bangladeshi Muslim society is greatly influenced by many Hindu customs since Bangladesh was a part of Indian Sub-Continent during the British regime. Thus, it seems relevant to the point to the influence of Hindu customs on marriage transactions from interaction and contact with Hindu society, leading to the adoption of many customs, dowry being one of those.<sup>7</sup> Although, in earlier Hindu period, dowry would be given for the benefit of the brides but, in Muslim marriages in Bangladesh, it has become an effective tool to accumulate money from the brides’ family by applying force and coercion where the brides actually get nothing.<sup>8</sup> Sometimes, women are subjected to torture, cruel or inhuman treatment and murder when their parents/guardians fail to make the dowry payment in time. Demand of dowry may take place even well after the marriage and in case of non-compliance, women may face the actual, or, threat of, abandonment, divorce and physical as well as mental torture.<sup>9</sup> Consequently, sometimes women prefer to commit suicide when they do not find any prospect of getting support from the parent or guardian.<sup>10</sup>

In response to the growing incidence of dowry violences in Bangladesh, the Parliament enacted the Dowry Prohibition Act in 1980.<sup>11</sup> This Act has described the conduct of demanding or taking and giving dowry as a criminal offence punishable with a maximum penalty of one year imprisonment or with a fine or with both. To prevent the increasing numbers of cases in dowry related cruelty, the Cruelty to Women (Deterrent

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<sup>3</sup> The words “at the time of marriage or at any time” were substituted for the words “at or” by Section 2 of the Dowry Prohibition (Amendment) Ordinance, 1984 (Ordinance No. LXIV of 1984).

<sup>4</sup> Huda Shahnaz (2006) Dowry in Bangladesh: Compromising Women’s Rights, *South Asia Research*, 26(3), p.249.

<sup>5</sup> According to the Muslim inheritance law, daughters get half whereas sons get full share in their deceased parents’ property. But, the custom of dowry is not definitely developed due to the provision of inheritance rather it is the greedy mentality of the grooms and their parents.

<sup>6</sup> Nasrin Shahana (2011) Crime or Custom? Motivations Behind Dowry Practice in Rural Bangladesh, *Indian Journal of Gender Studies*, 18(1), p.28.

<sup>7</sup> Ameen Nusrat (1997) Dowry in Bangladesh: How many more deaths to its end?, *The Dhaka University Studies*, Part- F, Vol. VIII (1), p.128.

<sup>8</sup> *Supra* 4, p.253.

<sup>9</sup> *Ibid.*, p.251.

<sup>10</sup> Rozario Shanti (2009) Dowry in Rural Bangladesh: An intractable problem? In T. Bradely et.al. (Ed.), *Dowry Bridging the Gap between Theory and Practice*, London: Zed Books, p.48.

<sup>11</sup> Act No. XXXV of 1980. The Act was amended in 1982, 1984 and 1986 to fulfill certain gaps and to make the Act more effective.

Punishment) Ordinance of 1983 was enacted, but was then repealed and substituted by the Repression against Women and Children (Special Provision) Act of 1995. This Act provided severe punishment for crimes of dowry violence against women. In 2000, a new law namely, 'the Women and Children (Repression Prevention) Act, 2000' was passed by the Parliament which was subsequently modified in 2003 to combat violence against women and children including dowry-related cruelty. This Act has repealed the Act of 1995. Thus, now, to prevent and punish dowry-related offences, two laws i.e. the Dowry Prohibition Act, 1980 ('Act of 1980') and the Women and Children (Repression Prevention) Act, 2000 ('Act of 2000') are in force in Bangladesh. The offences under the Act of 1980 are triable in Magistrate Court whereas the offences under the Act of 2000 are triable by the Special Tribunals known as *Nari-O- Shishu Nirjatan Daman* Tribunal.

Despite these stiff legal strategies, the practice of dowry has been continuing and violence relating to dowry is increasing, and is partaking in ingenious forms beyond one's usual imagination.<sup>12</sup> A cursory view of the national daily newspapers' reports will show that the current year has witnessed a number of gruesome dowry-related violence against women which indicate that the dowry prohibition laws are not successful in deterring the violence.<sup>13</sup> According to the report of the Police Headquarters, it is seen that from 2001 to 2011, a total of 48,511<sup>14</sup> cases on dowry related violence were filed in the country. This statistic, however, does not portray the actual number of cases involving dowry-related violence as many occurrences go unreported. Additionally, the police do not maintain any data as to disposal of cases relating to dowry violence in a year nor they do have statistics as to the number of filing and dissolving of complaints under the Dowry Prohibition Act, 1980, for dowry demand. But, after studying fifteen unreported cases of the Magistrate Court on dowry demand and fifteen unreported cases of Tribunals on dowry violence, it is found that most of the cases (around 77%) resulted in acquittal and around 23% were in conviction. The highest rate of acquittal indicates that the existing laws are not enforced properly to deter dowry related offences. The questions then may be raised: why are the laws not successful in preventing the dowry violence? What are the problems of enforcement of the dowry prohibition laws? This paper addresses these questions based on primary and secondary sources. Primary data were obtained from a research project entitled 'Enforcement of the Dowry Prohibition Laws in Bangladesh: A Legal Study.' The secondary sources comprise books, journal articles, research reports, dissertation and newspaper reports.

In this qualitative study, the main method of data collection was the face-to-face informal interview based on a particular questionnaire. Interviews with 50 married women who paid the dowry and faced torture due to the inadequate payment or non - payment of dowry in time were conducted in *Pirgacha Upazilla of Rangpur*; a northern district of Bangladesh. The women were from Muslim community and their age limit was from 20-30 years old. Field work was conducted from August to October 2012 through the technique of purposive sampling method. Assistance was obtained from one gatekeeper

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<sup>12</sup> Haque Ridwanul (2012) *Training Manual for Judges and Public Prosecutors on Violence against Women*, Dhaka: Judicial Administration Training Institute, p.20.

<sup>13</sup> Odhikar (2013), Human Rights Monitoring Report, 1-31 July.

<sup>14</sup> Unpublished statistics have been collected from the Police Headquarters, Dhaka in December 2012.

from that locality and the local office of BRAC<sup>15</sup> for selecting the respondents easily and conducting the fieldwork smoothly. Additionally, the persons who are directly involved in law enforcement such as judges, magistrates, police officials and the lawyers were interviewed to understand the problems of enforcement of the dowry prohibition laws more emphatically. Thus, the following discussion will begin with the analysis of the major flaws of the Dowry Prohibition Act, 1980, and the Women and Children (Repression Prevention) Act of 2000. The discussion will then illustrate the other problems - the role of police and the judiciary, problems of establishing the case before the court, structural problems and social attitudes or attitude of the victims and the community as regards the legal mechanism. Finally, the article wraps up the analysis by providing new suggestions towards the effective implementation of the dowry prohibition laws in Bangladesh.

## II. Major Flaws of Dowry Prohibition Laws

### A. *The Dowry Prohibition Act, 1980*

Section 2 of the Act of 1980 prohibits dowry which is given as a consideration of marriage. It implies that a close link between dowry and consideration of marriage is essential to establish an offence under this section. Therefore, a post-marriage gift does not appear to be regarded as dowry unless it is made as a consideration of marriage.<sup>16</sup> This creates scope for both the families of husband and wife to label dowry as a gift and to escape punishment as provided in the law. For example, a rigid application of this provision in *Poddar vs. Saha*<sup>17</sup> failed to provide a legal recognition of taking dowry. In this case, the High Court Division considers two prime issues: (i) what constitutes dowry and (ii) whether dowry was taken as consideration of marriage. The Court reasoned that any money or property must satisfy the definition of dowry as under the Act of 1980 in order to call it a dowry. It maintained that what stands out prominently [from the definition] is that the property or valuable security is to be given as consideration for the marriage of the parties which then becomes a dowry. Finally, the Court held that the demanded dowry in this case was not a consideration of marriage and thus it did not constitute dowry.

Again, the explanation to section 2 of the Dowry Prohibition Act, 1980, declares that the gifts which are made at the time of marriage to either party to the marriage in the form of any articles the value of which does not exceed TK 500 (US\$6.5) shall not be regarded as dowry unless they are made in consideration for the marriage. This presumes that gifts the value of which does not exceed 500 TK (US\$6.5) are not deemed to be dowry unless made in consideration for the marriage. This also contemplates that if the value of the gift exceeds TK 500 (US\$6.5), it must have been given as consideration for

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<sup>15</sup> BRAC stands for Bangladesh Rural Advancement Committee, one of the renowned non-governmental development organisations in the world based in Bangladesh. It was established in 1972 by Sir Fazle Hasan Abed.

<sup>16</sup> Begum Afroza (2004) Protection of Women's Rights in Bangladesh: A Legal Study in an International and Comparative Perspective. Unpublished *PhD thesis*, Australia: University of Wollongong, p.255.

<sup>17</sup> *Mihir Lal Saha Poddar @ Mihir Kumar Poddar Vs. Zhunu Rani Saha* (1985) 37 DLR (Dhaka Bench). p.228. It is regarded as the first reported cases on dowry demand in Bangladesh.

the marriage.<sup>18</sup> Thus, the law does not take into account the changing form of marriage transactions.

As regards the punishment for dowry-related offences, section 3 of the Act places less emphasis on penalties. This Act leaves much discretion with the Court to reduce the sentence, and imprisonment is equated with a fine. Thus, penalties under section 3 seem to be vulnerable due to the possibility of scope of biasness on the part of the Magistrate as Badruddoza (2002) says, 'in repression cases against women usually the offender is more powerful and it is a matter of great shame to say that even many judicial members are corrupt and sometimes the judgment can be bought.'<sup>19</sup>

In assessing criminal liability, section 3 of the Act puts dowry - giver and dowry - taker in equal place. In so doing, it fails to recognise that the gravity of criminality and immorality involved in taking dowry is more severe and more blameworthy.<sup>20</sup> This is because in nearly all cases, dowry is motivated by the greed through the manipulation of the superior bargaining power of the groom's family. The Joint Committee of the Parliament of India rightly said that the dowry- givers '... do not give dowry out of their free will but are compelled to do so'.<sup>21</sup> Thus, the deeply entrenched socio-cultural values attached to the marriage ceremony in Bangladesh, a smooth completion of marriage and concern for the daughter's happiness influences the parents to provide dowry as mentioned. On numerous occasions, parents need to incur huge financial liability to satisfy the demands of the in-laws. Certainly, this liability does not represent their voluntary choices for offering dowries in favour of in-laws.<sup>22</sup> The Act disregards this particular situation of the bride's parents. Besides, when provision of punishment is kept for the giver and taker, no giver can be expected to come forward to make a complaint.<sup>23</sup> Lawyers have found the fact that by making both parties liable under the Act makes it less likely that a complaint will be filed. Even when one party is innocent, the other party may threaten to file a counter complaint.<sup>24</sup> One of the lawyers of Dhaka Judge Court commented, 'until and unless the law is amended to make only the dowry taker liable to be punished, the Act will not be effective to eradicate the dowry from the society.' The reality is that, no case has been filed or prosecuted against the dowry givers in Bangladesh although more than three decades have passed after the enactment of the Act.

Section 4 of the Act, 1980 makes 'direct and indirect demand', for dowry, an offence. But, neither the Act defines the term 'indirect demand', nor any guidelines are

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<sup>18</sup> Monsoor Taslima (2008) *Management of Gender Relations Violence Against Women and Criminal Justice System in Bangladesh*, Dhaka: The British Council, p.37.

<sup>19</sup> Badruddoza A.S.M. (2002) Plight of Women in Bangladesh, *PUCL Bulletin*, December, p.2.

<sup>20</sup> Kaushik S.Tara (2003) The Essential Nexus Between the Transformative Laws and Culture: The Ineffectiveness of Dowry Prohibition Laws of India, *Santa Clara Journal of International Law*, 1(1), p.88; See also Kishwar Madhu Purnima (2005) Strategies for Combating the Culture of Dowry and Domestic Violence in India, *Violence against Women: Good practices in combating and eliminating violence against women* in Expert Group meeting, Austria: Vienna, p.14.

<sup>21</sup> Nangia Ashu (1997) The Tragedy of Bride Burning in India: How Should the Law Address it? *Brooklyn Journal of International Law*, 22, p.666.

<sup>22</sup> Supra 16, p.257.

<sup>23</sup> Supra 21, p.667.

<sup>24</sup> Ameen Nusrat (2005) *Wife Abuse in Bangladesh: An Unrecognised Offence*, Dhaka: The University Press Limited, p.58.

developed by the parliament or concerned ministry or judiciary of the country to shed some light on to the definition of this term. In the absence of such clarification, many undue expectations of the in-laws and their fulfillment might remain beyond the scope of 'indirect demand'.<sup>25</sup> This sort of implicit tactic of obtaining dowry also tends to physically or emotionally abuse a newly wedded woman within the four walls of the matrimonial home when she deserves to be treated well.<sup>26</sup> Moreover, such a situation leaves no scope to assess in-laws' treatments towards her, or to differentiate between undue expectation and 'indirect demand' by an independent witness.

Section 7 of the Act clearly states, 'no court shall take cognizance of any such offence except on a complaint made within one year from the date of the offence'. It is quite a surprising exception included in this Act, because, generally, the law of limitation does not apply in criminal cases. Moreover, the term 'no court shall take cognizance' as used in the section is absolute in form and this does not leave for any scope for 'condonation of delay'.<sup>27</sup> One of the lawyers of the Magistrate court of Dhaka expressed:

The time limit as embodied in the section 7 is a stumbling block to implement the Act properly and, in most of the dowry demand cases the lawyer of the defendants try to establish that this is an occurrence of more than one year ago and hence, the case is not sustainable.

According to section 8 of the Act, 'every offence... shall be non-cognizable, non-bailable and compoundable'. Under the Act of 1980, offences are only cognizable if a complaint is filed with a Magistrate of First Class. This is in contrast to a normal criminal case with which may be lodged with police. Because of this procedural requirement, those wishing to report any violation of the Act of 1980 cannot do so at the local police station rather, they most likely must employ the services of a lawyer to register the complaint in the Magistrate Court. Given that the victims of dowry demand are often very poor and are unable to take assistance from the law enforcing agencies makes the Act ineffective and often fails to protect the victims from dowry demand.<sup>28</sup>

### ***B. The Women and Children (Repression Prevention) Act, 2000***

Section 11 of the Act provides severe penalties for dowry related violence. Besides, along with the offence of murder and the attempt to murder for dowry, in this section 'attempt to cause hurt for dowry' has also been included as an offence and, accordingly, the section is divided into three parts: (a) causing death or attempt to cause death, (b) to cause grievous hurt or attempt to cause hurt, and (c) to cause simple hurt. But, what acts or attitudes will amount to an attempt to cause hurt for dowry has not been mentioned in the Act, thus, leaving the law absolutely vague. Furthermore, the pertinent section does not provide

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<sup>25</sup> Supra 21, p.667.

<sup>26</sup> Supra 16, p.260.

<sup>27</sup> Abu Bakar Khandakar (1989) *A Hand Book on the Dowry Prohibition Act of 1980 and the Cruelty to Women (Deterrent Punishment) Ordinance of 1983*, Dhaka. p.1.

<sup>28</sup> Supra 7, p.148.



any punishment for ‘attempt to cause hurt for dowry’. But from a careful reading of the section it appears that the legislators intended to impose the same punishment provided for causing hurt and grievous hurt for dowry but they have omitted the words ‘attempt to cause....’ mistakenly. Such careless drafting of law leaves the scope for different interpretation and make the application of law confusing.<sup>29</sup>

Again, the Act provides the punishment for physical abuse and cruelty but, neither the principal Act nor the amendment made the provision for psychological abuse of women by their husbands and in-laws. Moreover, if a woman commits suicide due to mental torture, there is no provision in this Act for the punishment of the abettor of suicide.<sup>30</sup>

Section 18 of the Act provides that the investigation must be completed within 120 days. Additionally, section 18(iii)(a) provides, if the investigating officer fails to complete the investigation within 120 days, then another investigating officer may be appointed for doing so and will complete the investigation within another 30 days. But, it is not mentioned in the Act that, what will happen if the investigating officer who is subsequently appointed fails to complete his task within 30 days. However, the reality is that most of the investigations are not completed within this time period due to various reasons.<sup>31</sup> One of the Sub-Inspectors of Kalabagan Police Station, Dhaka expressed that 120 days is not enough to complete the investigation. As he said:

We go to the place of occurrence but hardly find the witnesses to talk to us. Moreover, the neighbors of the victims are not helpful in this regard. Sometimes they misguide us by providing false information. Furthermore, we conduct the investigation of other cases at the same time, and cannot concentrate on a particular case like dowry violence.

Again, Section 20 provides that the trial should be completed within 180 days. But, in Bangladesh no case under the *Nari-Shishu* Tribunal has yet been settled within the prescribed time period.<sup>32</sup> In this regard, one of the tribunal judges said, ‘it is not possible to settle a dowry violence case within 180 days in the present criminal justice system.’

### III. Role of Law Enforcing Agencies

#### A. Role of the Police

The police force is the principal agency of the criminal justice for the enforcement of laws.<sup>33</sup> They arrest the criminals, conduct investigation and in the Magistrate Court,

<sup>29</sup> Tania Sharmin Jahan (2007) Special Criminal Legislation for Violence Against Women and Children- A Critical Examination, Special Issue: *Bangladesh Journal of Law*, p.209.

<sup>30</sup> Zahan Asma Aktar (2005) *Bangladeshe Nari Nirzaton abong Aingoto Kathamo: Ain Proyogkari Pratishthansomuher Bhumika* (in Bangla). Bangladesh Freedom Foundation: Forum on Women in Security and International Affairs, p.35.

<sup>31</sup> Naripokkho (2001), Women and Children (Repression Prevention) Act, 2000: An Assessment, Dhaka.

<sup>32</sup> Nari-Shishu Tribunal is established under s. 25 of the Women Children (Repression Prevention) Act, 2000. By analysing around 15 cases of the Tribunals both reported and unreported, not a single case could be found which was settled within 180 days.

<sup>33</sup> Khandakar Abu Bakar (2011) The Investigation and Criminal Justice. *MLR (Journal)*, 16, p.51.

the prosecutions are conducted by the court Police Inspectors. From the recording of the FIR<sup>34</sup> up to execution of the judgment of the Court, police play a significant role in criminal justice system.

However, the study<sup>35</sup> shows that one of the main reasons for the non-enforcement of the dowry prohibition laws is ineffective and defective role of police. This ineffective role starts from filing the case and continues till the final settlement of the cases.<sup>36</sup> When the victims or her guardians go to police station to lodge an FIR, police show reluctance to file it properly and sometimes file it under wrong section of the Act.<sup>37</sup> According to a report of a Bangla newspaper Abdul Hoque, the father of the dowry victim Khadiza went to police station to file the case, but without recording the case police advised him to go to the Court and, since the Court was closed in December he came back without lodging the case.<sup>38</sup> Sometimes police take bribe for recording the cases. One of the respondents named Parul Akter (real name) shared during the interview that, she along with her father went to *Pirgacha* police station to file a case against her husband for torturing her for dowry, but the then duty officer demand TK10,000 (US\$128.53) as bribe, due to which they came back home without filing the complaint. Another respondent replied with anger, 'to deal with the police is another type of violence.' Without admitting these complaints against them, some police officials said, 'most of the accusation of dowry violence are false and fabricated, people do it to harass others if there is any conflict between them on any family issue.' Thus, the attitudes of the police towards the dowry related offences are not really helpful for enforcing the laws.

Investigation is an important part of a criminal case and the success of criminal justice mostly depends on the effective investigation report which is again conducted by the police officers. In dowry violence cases, like as other criminal cases, police enjoy unfettered power during investigation where even the Court cannot interfere. A criminal case is said to have a positive result when the investigation is done on correct line for drawing up of a police report.<sup>39</sup> Likewise, the manipulation of the investigating process by the police has been one of the serious obstacles for getting a favourable remedy in dowry violence cases. A number of lapses appear during the process of investigation which effectively destroys the credibility of cases.<sup>40</sup> For example, statements of reliable and important witnesses are almost never recorded in due time. Moreover, relevant witnesses' failures to accompany the police to the relevant spot at the relevant time

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<sup>34</sup> F.I.R. is the abbreviation of First Information Report which can be filed to the police station regarding cognisable offence under Section 154 of the Code of Criminal Procedure, 1898.

<sup>35</sup> During the fieldwork, it was found that about 80% of the respondents were dissatisfied with the behaviour of police.

<sup>36</sup> Supra 24, p.62.

<sup>37</sup> Greenberg G. Judith (2003) Criminalising Dowry Deaths: The Indian Experience, *Journal of Gender, Social Policy & the Law*, 11(2), p.803 ; See also Monsoor Taslima (2003) Dowry Problem in Bangladesh: Legal and Socio-Cultural Perspectives, *The Dhaka University Studies*, Part-F, 14(1), p.12.

<sup>38</sup> Khandakar Anis (2013) Advise to go to the Court without taking the case, *The Daily Prothom Alo* on January 7, p.7.

<sup>39</sup> Chowdhury Asad Hossain (2011) All about Criminal Law, *BLD (Journal)*, 31, p.4.

<sup>40</sup> Supra 33, p.52.



further compound the difficulties.<sup>41</sup> The failure of the police to investigate properly and to take proper action helps many offenders to go legally unchallenged.<sup>42</sup> Besides, due to corruption and politicization of the police department, they sometimes submit defective investigation report.<sup>43</sup> One of the tribunal judges of Dhaka expressed his view that, ‘from my experience I have seen that in most of the cases police submit final report by taking bribe from the accused parties and in other cases present weak charge sheet.’ Apart from corruption and manipulation in investigation, it was revealed that investigations are often conducted by junior and inexperienced police officers who may not be well versed with technicalities required to carry out effective investigations. In addition, they engage with a lot of functions at the same time and as such, cannot concentrate on the investigation of a particular case.<sup>44</sup> Thus, the police officials suggested that, ‘the investigation should be conducted by experienced and senior police officers.’

### **B. The Role of the Judiciary**

Although an increase in the number of dowry violence cases is evident, only a small proportion is reported, of which fewer ultimately reach to the trial and judgment stage.<sup>45</sup> What ails the Bangladeshi judiciary, preventing it from performing its duty as protector of justice? On being asked about possible explanations, a sample of 20 judicial magistrates and 10 judges of the tribunal interviewed opined that ‘the courts are at the mercy of the evidence placed before them.’ Chowdhury (1998) stated in her study:

Faulty and fabricated evidence or a complete lack of it, circumstantial evidence which might prove to be inadequate, lack of proof and corroborative evidence, prime witnesses turning hostile and hesitating to depose, and the self-contradictory nature of the legal provisions, were cited as major difficulties faced by the court in arriving at a fair and just verdict.<sup>46</sup>

Besides the procedural insufficiency, the attitude of the judiciary towards gender equality which stems from the values of the patriarchal society of which they are a part may be seen as an important component in preventing a truly impartial appraisal of dowry offences. During the interview with the judicial magistrates, only 3 out of 20 (one is female), that is only 15%, expressed their opinion that they tried the dowry demand cases

<sup>41</sup> Khair Sumaiya (1999) Violence Against Women: Ideologies in Law and Society, *Bangladesh Journal of Law*, 3(2), p.154.

<sup>42</sup> For example in *Akbar vs. State* (1999) 51 DLR 268 (court explains how faulty investigations of the case by the police helps the accused escape punishment).

<sup>43</sup> Musa Sainabou (2012) Dowry-Murders in India: The Law & Its Role in the Continuance of the Wife Burning Phenomenon, *Northwestern Interdisciplinary Law Review*, V(I), p.240.

<sup>44</sup> Police go to arrest the accused, perform protocol duties, appear at the court to be witnesses in other cases and engaged in maintaining law and order situation such as conflict between political parties.

<sup>45</sup> *Supra* 16, p.275; See also, Menski F. Warner (1998) Legal Strategies for Curbing the Dowry Problem in Werner F. Menski (Ed.), *South Asians and the dowry problem*, London: Trentham Books & SOAS, p.104.

<sup>46</sup> Chowdhury Manjaree (1998) Miles to go: An Assessment of the Enforcement Hurdles in the Implementation of the Anti-dowry Law in India. In Werner F. Menski (Ed.), *South Asians and the Dowry Problem*, London: Trentham Books & SOAS, p.156.

more sympathetically and from the aspects of the establishment of women's rights and women's access to justice. Again, with the interview of tribunal judges, it was found that none of them tried the dowry violence cases from the perspective of women's rights rather they depend on concrete evidence and follow the principle of innocence.<sup>47</sup> However, some scholars consider it as the patriarchal mentality of the judges which is an obstacle to render justice to the female victims.<sup>48</sup> Thus, Sarkar (1985) remarks that, 'judicial commitment to social justice and declaration of the need to promote gender justice often brings in conflict with the years of unquestioned principles of male dominance and women's inferior status.'<sup>49</sup>

Again, it is seen that in dowry violence cases, sometimes the attitudes of the judges and magistrates are not women friendly. They also consider, like the police, that most of the cases relating to dowry demand and dowry violence are false and concocted.<sup>50</sup> During the fieldwork, the hearing of one of the case on dowry violence was observed and it was found that the judge warned the complainant about filing a false case and wasting the time of the Court on trivial issues. In this case, the victim was a poor woman from a rural area and could not adduce sufficient evidence as the incident took place in her in-laws house. The failure of proving the case before the Court however, does not mean that it is false. Thus, making such observations, without considering the situation of the female victim, reflect the attitude of judges which is not really practical to mitigate the untold sufferings of the ever increasing victims of dowry related violence.

If, after facing all the hurdles, a dowry violence case ended up in conviction, but in the High Court Division, most of those cases are dismissed by acquitting the accused.<sup>51</sup> Without considering the intent of the Act, the higher judiciary considers the cases of dowry violence from the perspective of traditional principles of criminal justice. This is reflected in their judgments.<sup>52</sup> One tribunal judge was of the opinion that, 'the higher courts consider the issues more liberally, that's why the offenders who are convicted by the tribunal are acquitted in the higher court.'<sup>53</sup> In many reported cases<sup>54</sup> it is seen that, the court uphold a very restrictive approach and placed much emphasis on formal wording of the law instead of its intent. For example, in the case of *Kishore Kumar Dutta v. State*,<sup>54</sup> where there was no ocular evidence of the occurrence, the High Court Division held that, 'the allegation for causing hurt is not for any demand of dowry hence section 11 (b) of the Act is not attracted.'<sup>55</sup> Again, in the case of *Nakib Ashraf and another v. State and another*,<sup>55</sup>

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<sup>47</sup> Of course the judges will settle the cases according to laws and principles of criminal justice, but where there is scope to apply discretion, it is suggested that they should apply their discretion and judicial activism.

<sup>48</sup> Vindhya U. (2000) Dowry Deaths in Andhra Pradesh, India: Response of the Criminal Justice System, *Violence Against Women*, 6, p.1097; See also, Supra 43, p.243; Supra 18, p.38.

<sup>49</sup> Sarkar Lotika (1985) Women and the Law, *Annual Survey of Indian Law*, New Delhi: Indian Law Institute, 493

<sup>50</sup> In response to a question relating to the reasons of high number of acquittal, the magistrates replied, 'actually most of the complaints are false hence, it seems the offenders are acquitted.'

<sup>51</sup> Supra 41, p.156; Supra 18, p.38.

<sup>52</sup> Supra 21, p.233; Supra 16, p.279.

<sup>53</sup> Reported cases mean judgments which are reported in Law Reports like DLR (Dhaka Law Reports), BLD (Bangladesh Legal Decisions), BLT (Bangladesh Law Times), MLR (Mainstream Law Reports) etc.

<sup>54</sup> 15 BLT (2007) (HCD) 174-181.

<sup>55</sup> 14 MLR (2009) (HCD) 286.

the High Court Division, totally ignoring the circumstantial evidence, observed that when no injury is caused to the wife and the occurrence takes place elsewhere in which the relatives of the wife are assaulted by the accused in demand for dowry, the allegations do not constitute offence punishable under section 11(c) of the Act of 2000. In *Abul Kalam Azad vs. State*,<sup>56</sup> the accused got acquittal from the High Court Division and the Court's observation was that, 'since the prosecution has failed to prove beyond reasonable doubt that the death of the bride was due to dowry demand, the accused should be acquitted.'

Thus, there is a marked disinclination of the judiciary to impose exemplary punishments against persons accused of dowry violence against women despite the strict measures laid out the relevant Acts. One of the Tribunal judge said in this regard, 'since severe penalty is not charged with and example is not set that's why violence is continuing and the offenders dare to commit such types of crime time and again.'

#### IV. Problems of adducing evidence and to prove

Another problem to enforce the dowry prohibition laws arises when the case is started for formal trial. Before the Court, all criminal cases have to be proved beyond reasonable doubt and the onus to prove the guilt is primarily upon the complainant or prosecution. But, it is quite difficult to prove the case by providing sufficient evidence as the incident took place within the four walls of the husband's house. Since most dowry related crimes occur within the household of the victim's in-laws, the in-laws and husband are in a perfect position to alter or destroy evidence of the crime.<sup>57</sup> Of course, none in the household will be willing to testify against one another.<sup>58</sup> Regarding the standard of proof of guilt, it was found that in about 60% (out of 30 cases of both the magistrate's court and tribunal) of the cases, the accused was acquitted because the complainant failed to prove the guilt beyond reasonable doubt, or because the statement of the complainant was too vague, inconsistent or unclear. Inconsistency between the statement of the complainant in the Court, and the one made to the police at the time of lodging the FIR or the one made later during investigation, is another factor that is often exploited.<sup>59</sup>

One important reason for failure to succeed in prosecutions is that often a large time gap exists between the incident of cruelty and the filing of the FIR.<sup>60</sup> The complainant generally remains tensed and scared while filing the FIR in the police station and also in the court at the time of trial. Due to anxiety and fear they cannot logically present themselves. One of the Public Prosecutor of Tribunal No. 3, Dhaka expressed his view, 'due to illiteracy and ignorance, the female victims sometimes cannot properly communicate with the lawyer.' As they fail to produce the exact minute details of the facts in the Court at the time of trial, alleged 'inconsistencies' or 'vagueness' creep into their depositions. Sometimes, the defence lawyers pamper in unnecessary character

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<sup>56</sup> 58 DLR (2006) (AD) 26.

<sup>57</sup> Manchandia Purna (2005) Practical Steps Towards Eliminating Dowry and Bride-Burning in India, *Tulane J. of Int'l & Comp. Law*, 13, p.321.

<sup>58</sup> *Supra* 20, p.112.

<sup>59</sup> Palkar Vineta (2003) Failing Gender Justice in Anti-Dowry Law, *South Asia Research*, 23(2), p.185.

<sup>60</sup> *Supra* 48, p.1098.

analyses of the victims without focusing on the actual context. In the process, victims may suppress the real evidence. As a result, conviction becomes difficult in the absence of supportive evidence.<sup>61</sup>

Again, in dowry death cases, there is a common tendency among the law enforcing agencies to treat the occurrence as accidental or suicidal.<sup>62</sup> Sometimes, medical evidences (autopsy or post-mortem report) certify the death as suicidal or accidental. The doctors do it by taking bribe or under political pressure.<sup>63</sup> But, Dr. Kazi Golam Mukhlesur Rahman, one of the forensic medicine expert of Dhaka Medical College said that,<sup>64</sup> ‘if the post-mortem or autopsy is conducted properly the reasons behind the death is easily understood.’ Khair (1999) clearly identifies, ‘after giving the reports, the medical experts remain absent in the Court to corroborate their reports tips the trial in favour of the accused.’<sup>65</sup> Moreover, post-mortem being frequently conducted by non-professionals often produces erroneous results in which case the judgment of the court may go in favour of the accused.<sup>66</sup>

## V. Structural Problems

The other major difficulty in law enforcement lies in women’s limited access to the Courts. The intrinsic mechanisms for pressing charges against perpetrators of violence are beyond the comprehension of most women. Khair (1999) states, ‘as there is no centralised source of services for oppressed women, they have no idea where to go or whom to contact in case of emergency.’<sup>67</sup> Indeed, the government has established the ‘One Stop Crisis Centre’ (OCC) in 8 Medical College Hospital, 40 districts and 20 *upazillas* for rendering health care, legal assistance and social service but till now, these services are not accessible to most of the women specially to those who are from rural areas of Bangladesh.<sup>68</sup> Moreover, the insufficient number of Magistrates, Judges and Courts, lack of infrastructure facility and non-friendly environment of the court are other hurdles to enforce the dowry prohibition laws effectively.<sup>69</sup>

According to the Women and Children (Repression Prevention) Act, 2000 there is provision of establishing the Tribunal in every district and if necessary there may be more than one Tribunal in one district.<sup>70</sup> But, till 31 December 2012, there were only 42 Tribunals in the whole of Bangladesh and some districts such as *Munshiganj, Gopalganj, Laxmipur, Meherpur* etc. are running without Tribunal.<sup>71</sup> In these districts, Session Judges discharge the functions as Tribunal judges which create extra burden on them and also

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<sup>61</sup> Supra 41, p.156.

<sup>62</sup> Supra 2, p.74.

<sup>63</sup> Mia Abdur Rahim (2013) Role of Doctors in the Criminal Proceedings of Bangladesh with Special Reference to Women’s Access to Justice, *IOSR Journal of Humanities and Social Science*, 7(5), p.48.

<sup>64</sup> Informal conversation held on November 2012.

<sup>65</sup> Supra 41, p.154.

<sup>66</sup> Supra 63, p.46.

<sup>67</sup> Supra 41, p.155.

<sup>68</sup> Supra 18, p.61.

<sup>69</sup> Sarkar Ashutosh (2013) Backlog of Cases, *The Daily Star*, March 18, available at <http://www.thedailystar.net/beta2/news/backlog-of-cases/>.

<sup>70</sup> For example, in Dhaka there are 5 *Nari-Shishu* Tribunal and in Chittagong there are 3 Tribunals.

<sup>71</sup> Source: Ministry of Law, Justice and Parliamentary Affairs.

create a lot of problems towards the effective enforcement of laws. Moreover, it was found that the environment of these courts and tribunals are not women friendly, many people who are not related to the case or the Court were roaming around there. They sometimes try to pursue the justice seekers in various ways, and the women who come to the Court for seeking legal remedies feel embarrassed by the behavior of such outsiders.<sup>72</sup>

## VI. Social attitudes towards the legal mechanism

### A. Position of the female victims

Dowry crimes may be linked to socially structured and highly distorted traditional expectations about dowry giving, engineered to foster the inferior status of the women.<sup>73</sup> There is a pronounced tendency for women not only to accept such treatment but to conceal its occurrence in order to protect the male ego and family honour.<sup>74</sup> In the Bangladeshi culture, it seems odd that a wife reports to the police about being battered by her husband. While the practical mechanisms for complaining about dowry are far beyond most villagers, one of the greatest barriers for women to go to Court is the realisation that she will not be welcomed back to her own home if she makes an official complaint.<sup>75</sup> They either acquiesce to the unreasonable demands or condone such violence, and take it as their destiny.

Some scholars claim that 'ignorance of law' is one of the reasons for non-enforcement of laws.<sup>76</sup> But, it was found in this study that a good number of respondents have idea about the laws, which is shown below in the Tables:

**Table-1: Knowledge about the Dowry Prohibition Act, 1980**

	Frequency	Percentage
Heard about the Act	21	42%
Know the details of the Act	10	20%
Do not know the Act	19	38%
Total	50	100%

**Table-2: Knowledge about the Women and Children (Repression Prevention) Act, 2000**

	Frequency	Percentage
Heard about the Act	15	30%
Know the details of the Act	13	26%
Do not know the Act	22	44%
Total	50	100%

<sup>72</sup> This situation was observed during the visit in Dhaka Judges' Court area to talk to the Tribunal Judge.

<sup>73</sup> Supra 46, p.159.

<sup>74</sup> Supra 41, p.154.

<sup>75</sup> Supra 4, p.261.

<sup>76</sup> Ameen Nusrat (2000) Law and the State's Response towards Violence Against Women, *Bangladesh Journal of Law*, 4(1&2), p.40.

More than 50% of the respondents are aware of law, but only few know the details about the law. Despite the knowledge of law, around 47% respondents are reluctant to take any action under these Acts. One of the respondents named Shorifa Begum said, 'we prefer to settle the dispute by local *shalish* as it is common in our locality.' Although the dowry offences are compoundable under the Dowry Prohibition Act, 1980, it cannot be the alternative in dowry violence cases under the Act of 2000. Another respondent Nurmehr Khatun placed a counter-question, 'should I take any action against my husband?' Yet, it is the overall picture in most of the cases in rural areas. However, in rural society of Bangladesh, beating of wife is regarded as the prerogative of husband, at whose feet supposedly lies the heaven of wives.<sup>77</sup>

Sometimes, women do not take action due to fear of dissolution of marriage. Roksana a 30 years old victim woman said:

If I file the case against my husband he will divorce me, then what will happen to me and my children. I know, my parents will not accept me as they are living with my brothers' family whose financial condition is also not so good. So, it is better to stay with husband by enduring some abuses.

Further, in family, the traditional patriarchal values are imposed by the parents and it works as training to accept and habituate with male-biased norms. A woman finds herself under pressure from her family to return to a violent marriage and adjust to the ways of her 'real' home, reinforcing the concept that her natal home is no longer her home.<sup>78</sup>

In this study, some female victims, although they are few in numbers, were found who really want to take legal action against their husbands. But, due to the cost of filing the case and other things such as to appoint lawyers discourage them to go to the Court. Jesmin said, 'once I thought to file the complaint but, my relatives asked me that there is huge financial cost relating to case which I will not be able to incur.' Thus, the women of that locality are totally ignorant of the government legal aid program.

### ***B. Position of the community***

The victims' immediate neighbours and other local residents are an important source of information which has great bearing on her decision to report the crime.<sup>79</sup> However, existing literature indicates that dowry disputes are generally accepted as a 'family affair' requiring no neighborly intervention.<sup>80</sup> There is enough misconception in Bangladeshi society that such violence exists because the girl might have provoked it. Neighbours desist from reporting anything for fear of losing the goodwill of their immediate neighbours, going to the lengths of sanctioning another dowry-based marriage for the same murderer.<sup>81</sup> Thus, the young women, though more willing to rebel against an unjust system that

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<sup>77</sup> Supra 41, p.155.

<sup>78</sup> Supra 46, p.159.

<sup>79</sup> Supra 4, p.80.

<sup>80</sup> Supra 43, p.241.

<sup>81</sup> Jha Shankar Uma & Pujari Premlata (1996) *Indian Women Today: Tradition, modernity and change*, New Delhi: Kanishka, p.39.



devalues them, are still generally compelled to put up with continual atrocities because of deeply ingrained subservience to customs and mortifying fear of the stigma of single existence in an inflexible and dogmatic society.<sup>82</sup>

## VII. Conclusion

The observations made above suggest that there are a lot of hurdles in the way of effective enforcement of dowry prohibition laws. The success of any law depends on proper implementation, whereas without proper enforcement, the law remains only on the pages of the books or mere a 'paper tiger'. To prevent the dowry violence and to protect the women from evil consequences of dowry, firstly the existing laws must be free from loopholes. Unless the government takes measures to amend the inherent weaknesses within the dowry prohibition laws, dowry-related offences will continue to be a prevalent occurrence within Bangladeshi society. Thus, it can be suggested that laws dealing with dowry and violence relating to it need to be reconceptualised to mitigate the experiences of disadvantaged women in Bangladesh and to provide them with more appropriate remedies.

While draconian laws, increased police enforcement, and a more responsive judiciary is necessary to the process of eradicating dowry and abuse relating to dowry from the society. By vigorously prosecuting and convicting perpetrators of dowry violence and increasing the expected punishment of such crimes, the law enforcing agency can play an effective role to deter the dowry violence. In this context, the exercise of sustained judicial activism by the judges and changing mentality of police, without excusing dowry violence as a private family matter and considering dowry violence cases are false, can go a long way for proper enforcement of laws. The study shows more than 50% respondents know any one of the Acts but, only a small number (around 20%) is aware of both the Acts. Again, the female victims have no idea about the government legal aid program. So, the government should strengthen its' program to educate the women not only of dowry prohibition laws but also of other relevant laws and its' legal aid programs.

By providing necessary information to police, the neighbours can play an active role for enforcing the laws. They should realise that same occurrence can be happened to their daughters, sisters and relatives. Above all, the women who are the victims of this evil practice have to come forward and raise their voice against this social menace. To eradicate the roots of dowry the women must wake up to their conscience. They have to realise that the inferiority imposed on them is not their destiny rather their deprivation. Such deprivation can be removed only when the women will be conscious about their rights as the laws provide to them.

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<sup>82</sup> Grover Kanta (1990) *Burning Flesh*, New Delhi: Vikas, p.25.

