



Star LAW analysis

Dower and Dowry: Its affect on the empowerment of muslim women

DR. TASLIMA MONSOOR

THE Mahr/Dower is something that is paid by the husband to his wife. It is paid to the wife only as an honour and respect and to show that he has a serious desire to marry her and is not simply entering into the marriage contract without any sense of responsibility and obligation or effort on his part. It is also a provision for her rainy days and socially it became a check on the capricious exercise by the husband of his unlimited power of divorce. 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.

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. The simple gesture of mutual ador or special affection shown to the bridegroom has been transformed to the shape of daabi or dowry by the bridegrooms. Even poor men are taking this chance of exploiting the bride's family to improve their fate from poverty and unemployment. This is making marriage a commercial transaction, giving more value to property and money than the bride herself.

The right of Dower/Mahr

Allah says in the Qur'an:

"Wa aatoo an-nisaa'a sadaquaatihinna niihatan... And give the women their dower with a good heart..."

This verse is addressed to the husband because it is their responsibility to pay the dower. This verse shows that the dower must be given to the wife and should not be given to the guardians. There are other verse which shows the obligation to pay dower to the wife.

Regarding dower there are 3 different views. One is that in its incidents it is similar to Donatio propter Nuptias of the Romans. Second that it is given by the husband to the wife as a mark of respect; and Third that it is a device to control the unfettered power of the husband to divorce his wife. According Islamic law where there is a marriage there is a dower. It is a bridal gift. It is a token of respect to the bride.

Lawson Dower

Prompt Dower becomes payable immediately after the marriage and must be paid on demand. The wife claiming the prompt dower stands as an unsecured creditor. If the prompt dower is not paid she could refuse to stay with her husband and also can take legal action. In Nuruddin Ahmed v. Masuda Khanam it was held that prompt dower may be considered a debt always due and able to be demanded and payable upon demand. The wife is under the Muslim law entitled to refuse herself to her husband until and unless the prompt dower is paid.

Where the wife felt that possible way to win or retain the affection of her husband was to act on his suggestion and to remit the dower. It was held that she should not act as a free agent and it would be inequities to hold that a woman who remits dower in such circumstances is bound by it.

It was held in the case of Rahim Jan v. Md. that the wife can refuse to live with her husband if dower is not paid on her demand and consummation does not affect this right of the wife. But after cohabitation, the proper course for the court is to pass a decree for restitution of conjugal rights conditional on payment of prompt dower this was held in the leading case of Anis Begum v. Md. Istafa Wali Khan.

In Rabia Khatoun v. Muktar Ahmad it was held that the right of refusing herself is lost on consummation. Thus if the husband files a suit for restitution of conjugal rights before consummation nonpayment of prompt dower is a complete defence.

Deferred Dower becomes payable at the termination on dissolution or marriage either by death or divorce. If by divorce than dower can be recovered by compromise or suing in the family court. If by death than dower can be recovered from her husband's estate / compromise / suing.

Islamic law does not fix any maximum amount of dower, but makes it obligatory for the husband to pay whatever amount has been specified and whatever amount is assessed if not specified. Fixing of excessive amounts of dower is being used in South Asia as a means to control and check the husband's unilateral and unlimited power of divorce, as he has to pay the full amount of dower at the time of divorce. But it also acts as a status matter, in which case there is no intention to pay the stipulated amount in full. Attempts have been made to curb the fixation of excessive amounts of dower in India which go against the interests of Muslim women, but no similar provision has been made in Pakistan or later in Bangladesh. There has been some confusion over dower and dowry after the Dowry and Bridal Gifts (Restriction) Act of 1976 in Pakistan, but this has now been clarified.

The real scenario

It was found in a study of the metropolitan city of Dhaka that 88% of Muslim wives did not receive any dower at all. If this is the situation in the capital city, one can anticipate an alarming situation in the rural remote areas. Why are

women not receiving their legal right of dower? To inquire into this one has to probe into the causes for not giving dower. Here the same causes for which the women in Bangladesh are being subordinated come in, as women are dominated in the patriarchal family and in the wider socio-religious arena. What needs to be ascertained here, in particular, seems to be whether the women's right to dower is being enlarged or reduced by local customary conventions.

Defining dowry

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.

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. Much of this literature concerns the problems of the wide-spread switch from bride-price to dowry as marriage pre-stations.

Outgrowth of dowry

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. 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. The emergence 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. 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.

The confusions

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

It is important to note that until now authors confuse dower with dowry. 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 authors. 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?

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. 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.

Curse of dowry

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 supposed to protect them, i.e. their husband or in-laws. It has been rightly pointed out that dowry deaths are gruesome reminder of the authoritarianism of patriarchy. In one study, dowry demands have been identified as one of the major causes of murder of women in Bangladesh. 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.

Lawson dowry

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. After independence in Bangladesh the problems of 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 commodification 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.

The real need of women in Bangladesh is to be protected from violence and economic deprivation. 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 Women and Children Repression Prevention (Special Provision) 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.

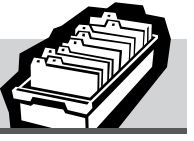
Concluding remarks

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 authoritarianism 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. 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 as the dower right.

Dr. Taslima Monsoor is Dean and Associate Professor of Faculty of Law, University of Dhaka.

FACT file



Marriage with rapist!

FARHANA AKHTER

Babul Khan should have been in prison for raping a 14-year-old girl, his neighbour in southern Bangladesh. Instead, the 26-year-old man became the husband of his victim. Village elders forced the girl to marry his attacker. The elders considered the settlement the best they could to punish the attacker and reward the victim. For Babul the marriage was a gift and way out of jail.

Babul wanted to marry the girl, who was considered the prettiest at her village in Patuakhali district. In spite of being poor, the girl and her family resisted the marriage proposal from Babul. The man took the rejection as an insult. He vowed to take revenge. The revenge came in the form of a sexual assault on the girl. Babul fled his village after the incident in August last year. Police investigated the rape allegation filed by the girl's family and charged Babul with rape violence while he was still in hiding.

Month's later Babul was arrested during the Operation Clean Heart by the joint forces. But as the army prepared to send Babul to jail elders from his village intervened. The village elders promised to punish Babul. The army agreed to let him go. The girl's family was too poor and weak to reject the elders. He gave in to their pressure and persuaded her daughter to accept her rapist as the husband.

"What an irony! How can I live a happy life? Thundered the girl. She spoke for many such Bangladeshi girls and women who are forced to marry their tormentors. Some of those who control the society are responsible for such odd marriage. Another northern village girl suffered a similar attack in 2001. She was also forced to marry her rapist and the arbitrators thought they saved the girl from humiliation and even death.

The country's law has provided for trial and punishment for such violence against women. Rape offenders face up to life term in jail in Bangladesh. But kangaroo courts set up by village elders often help the offenders escape trial by a court of law and evade punishment.

In most cases, the victims and their families are forced to accept such marriage. Considering the social stigma, the victims also agree to marry the men who raped them. The women and their families lack social standing to oppose the elders. They also lack the ability to go to court. Such unequal marriages may appear to be bizarre. But the practice has become common in Bangladesh. In most cases the attackers are far higher in social and financial standings than their victims.

Predictably this type of marriage does not last long. Most such marriages are terminated within months. After the focus on the crime peters out, the rapists-turned-husbands usually ditch their victims-turned-wives. Men in Bangladesh have hundreds of reasons to abandon their wives. No one really cares about the abused women.

Nazma Begum (not her real name) of Chhit Ganga village in Ranishankal upazila under Thakurgaon district is a glaring example of this odd phenomenon. She was married to her rapist Mosharraf Haq, 29, following arbitration. After marriage, she was subjected to torture by her in-laws.

The husband not only tortured Nazma; he also divorced her abruptly without showing any reason. Nazma was in troubles. She had difficulties in rearing her one-year-old baby. She could not claim any compensation, as the marriage was unregistered. She had no document to prove that the marriage was legal.

Another 14-year-old girl from Dharmahata village in Paba upazila of Rajshahi district was violated by two people - Shafuiddin and her brother-in-law Nayan. Then arbitration was arranged and the village 'matbors' ordered Shafuiddin to marry Ruma without considering the consequence.

Lawyers said forceful marriage has no legal basis even if the marriage is registered. If the bride is forced to marry by any quarter she may agree and say 'kabul' which is considered as her consent to the marriage. But unless and until the bride gives her consent willingly and independently, without any pressure, the marriage cannot be completed.

Advocate Salma Ali, executive director of Bangladesh National Women Lawyers' Association, said if a rape victim is forced to marry the rapist and the marriage is broken thereafter, it becomes very difficult to bring about remedy. "In that case, the rape victim and divorced woman cannot file a rape case and the rapists go unpunished. In fact, they take the marriage as a strategy to avoid court case and punishment," she pointed out.

A general public sentiment in Bangladesh society is when a woman is raped, she lost her dignity; and when she is married, she regained her dignity.

Advocate of the Supreme Court Zahirul Islam said a new law should be enacted so that the rapist cannot divorce his wife soon after the marriage with rape victim. "And that divorce should be treated as proof of the rape so that the culprit can be punished as per law," he said.

Dr Mahbubuddin, a professor of Sociology Department of Dhaka University, said the government as well as society should ensure stern punishment to the rapists. "Then it will be possible to check the trend of the arbitration trial," he added. "If civic norms are properly followed and law is enforced without any lapses, the tendency of rape will reduce automatically."

NewsNetwork.

LAW campaign

Women's voices in the food chain

DR. ALICE ESCALANTE DE CRUZ

ALl over Asia, women toil longer hours than men in the fields, tend domestic livestock and vegetable gardens, pick fruit, gather fuel wood, fetch water, cook, feed and care for children, the elderly and disabled family members, market farm produce, select and preserve seeds and manage the household finances. Yet, they do not have the power or the authority over the land they till or they yields they produce.

Access to and control of resources are reflective of power issues. In the Asian context, women's access to land and other resources are constrained as a result of cultural, traditional and sociological factors. Agrarian reform policies that do not address these underlying issues fail to weed out the root causes of women's disempowerment.

The feminisation of agriculture

Around 70% of the population in India earn their livelihood from agriculture. Women in rural India are extensively involved in farming activities. Their roles range from managers to landless labourers depending on the land-owning status of farm households. Women in India make up 55% - 66% of the total labour force, with higher percentages in certain regions.

In Pakistan, women play a major role in agriculture, livestock raising and cottage industries. They are involved in all operations related to crop production such as threshing, winnowing, drying, grinding, husking and storage, in addition to their daily household chores. In a survey of five districts in Pakistan, it was found that 82% of women participated in agricultural activities. They account for 25% of the production of major crops. Rural women in Pakistan spend a considerable amount more time on livestock rearing than on crop production. A typical rural Pakistani woman works 15.5 hours a day; 5.5 hours on caring for livestock and only 50 minutes caring for her children.

The role of women in agriculture in China changed with the development of the market economy. Previously women's work on the farm was highly seasonal and depended on the locality. With the economic reforms and men moving out into the labour force, women handle most of the agricultural activities. In 1991, women accounted for 41.2% of the rural labour force in agriculture, and 22.96% in agricultural services. But by 1998, women were responsible for more than 60% of the agricultural activities in the Hongpo Administrative Village. In the Yunnan Province, women make up 46.6% of the agricultural labour force. After the introduction of the new

household responsibility system, women accounted for 60% - 70% of the total farm manpower. Women are exclusively responsible for home garden production almost everywhere in China.

Women as seed breeders

Women are the custodians of genetic diversity and traditional knowledge. Their expertise is only recently being attested by modern science. A collaboration between scientists at the Rwandan Agricultural Research Institute (ISAR), the International Center for Tropical Agriculture (CIAT) in Colombia and the local women farmers to breed improved bean varieties showed remarkable results. Women farmers outperformed the bean breeders in the selection of bean varieties that displayed most potential under actual conditions. In many rural villages of Asia, women hold the secrets to knowledge of seeds for food, medicine, and cultural or other uses.

Women farmers in Humnapur, Kalimela and other villages in the Medak district in India collect old varieties of seed from parents-in-law and grandparents, from relatives living far away, from neighbouring villages and gene banks. These women know the characteristics of the various varieties of seed, they know the soils on which they grow best, many of which need little rain, those seeds that add nitrogen to the soil, and which types are resistant to pests. Today, at least 1,500 small and marginal farming families in around 75 villages can access these collections of traditional seeds kept in a mixture of clay and cow dung. Ashes and neem leaves protect these against pests.

In Bangladesh, the women of Nayakrishi have rebuilt their own 'seed wealth' at the household and community levels. Seed preservation and germination are largely based on the knowledge of women. They use earthen pots for the preservation of seeds kept in a place similar to a farmer's house.

In the village of Wenteng, southwest China, women expert maize breeders skillfully control the breeding process, from field design to seed selection through pollination. Traditional plant varieties are maintained through generations by separating the planting of different varieties in space and time. Women farmers also acquired, maintained, and refreshed their preferred varieties through open pollination hybridisation.

In Nepal, women and children do the collection of more accessible medicinal and aromatic plants.

Towards gender-sensitive food policy



Despite the reality of women's work on the land and their immense contribution to food security, they remain largely invisible and unsupported by agricultural policies that still favour and consult men. This even in modern times where men are increasingly absent from farms and rural areas as they migrate to cities or abroad in search of paid employment, leaving behind their wives and older folk to manage their farms. In addition, war, sickness and death from HIV/AIDS is also taking a toll on rural male populations. Women are therefore taking on more of the burden and responsibility of farm management without the power over these assets.

Though women's work constitutes 60% of the world's labour, they

receive only one-tenth of the world's income and own less than 1% of the world's land. In India and Nepal for instance, fewer than 10% of women farmers own the land.

Poverty is also seeing an increasingly feminine face. Statistics indicate that since the 1970's, the number of women living below the poverty line has increased by 50%, in comparison to 30% for men. Of the 1300 million poor people in the world today, more than 70% are women.

- 4|If mainstream investments and development interventions continue to be gender-blind, they will remain ineffective in addressing the inequities faced by women. Policy makers need to consider the following:
- 4|Study the gender roles in agricultural production by documenting the different roles played by women and men.
- 4|Recognise the contribution of women in agriculture and consult them before national policies relating to these roles are implemented.
- 4|Put control over land and revenue in the hands of women where they perform the major tasks of food production.
- 4|Support the needs and priorities of women in research and development in agriculture. Simple labour-saving devices can help women reduce the burden of long hours in the field and free them to spend more time on child rearing or enjoy better quality of life.
- 4|Recognise the role of women as seed savers and breeders. Scientists and agricultural extension agencies should work with women to develop new varieties and conserve bio-diversity.
- 4|Recognise the potential of women as community leaders and mobilise them into community groups to assist with rural development. Provide them the opportunity to get educated and gain specific skills to lead their households and communities out of poverty.

Concluding remarks

Throughout the new Food & Nutrition programme, emphasis will be placed on the gender issue and the work structured so as to result in a greater appreciation of the role of women in the food chain. With this initiative, we hope to help the voices of these women to be heard.

Dr. Alice Escalante de Cruz, Programme Officer, Food Security and Safety, Consumer International (CI), Malaysia.

