

Dower & Dowry Situation in Bangladesh & the Judiciary's Role towards the Disposal of Dower Cases: An Exploration.

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Abstract: Till a certain period, dowry was unknown to Bangladeshi society. As an Islamic country in Bangladesh there was a practice of giving dower by the husband to his wife. But the scenario has changed radically. Dowry has taken place of dower. For 4 decades, Bangladesh has fought a losing battle against the existence of dowries and their associated abuse with no indication of even a minimal impact as dowry demands inflate and violence increases. This article aims to ascertain present situation of dower and dowry. In this article the role of different social factors in prohibition of dowry and enforcement of dower has been investigated. Specially, it has been investigated that how much contribution Islamic values make in prohibition of dowry and enforcement of dower. On top of that the effectiveness and appropriateness of existing laws have been examined in this respect. A part from that it has examined judiciary's attitudes towards the disposal of dower cases. In the end, the article has come up with some findings and recommendations thereto.

Keywords: Dower, Dowry, Rampant Practice, Different Factors, Effectiveness, Judiciary's Attitude]Dower & Dowry Situation in Bangladesh & the Judiciary's Role towards the Disposal of Dower Cases: An Exploration.

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I. INTRODUCTION

Allah says in the Qur'an: "Wa aatoo an-nisaa'a saduqaatihinna nihlatan. And give the women their dower with a good heart" (Sura Nisa:4).

What does the holy Quran ordains, but what do we practice? The holy Quran ordains for payment of dower, but we practice dowry. What is supported by the touchstones of the rules and regulations of the holy Quran is absolutely beneficial for us and what is not supported by touchstones of the rules and regulations of the holy Quran is a cause of our danger. As it is obvious in the dower and dowry systems.

Now a days dowry which is not under Islamic law is a name of panic. It is totally a new phenomenon (Monsoor 46) which has spread in the Muslim societies in Bangladesh like HIV virus and drugs. In Bangladesh, the dowry system first emerged in the 1950s and has now almost fully replaced the traditional system of dower, making it the only Muslim country in which dower is rarely observed and dowry almost universally practiced (Monsoor 46).

Statement as to Dowry and Dower Problem

Dowry and non-payment of dower are subsequent social development in Muslim communities in Bangladesh with renewed effects after independence. Now a days, it is seen that dowry has become essential for marriage on the one hand, on the other hand it has become rule not to pay dower to the wife. In lower class families, taking the chance of exploiting the bride's family dowry is being used as an instrument for improving from poverty, and in upper class families, the same is used as a symbol status of so called aristocracy. The purpose of this study is to assess the dower and dowry situation in Bangladesh and to evaluate the judiciary's attitude towards the disposal of dower cases in Bangladesh.

Definition of the Connotations

Dowry: There is a 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 (Monsoor46). So it is obvious that defining dowry is not an easy task. Some views are given below:

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 (Monsoor 46). The property which woman brings to her husband in marriage; also sometimes called a "proportion" (Black 443). A dowry or groom price is a payment made from the bride's family to the bride, the groom, the wedded couple, or the groom's family. It may consist of movable

property such as money, ornaments, clothing, household goods, or cattle. In some cases land is also provided as a part of the payment ("Dowry and Bride Price").

For legal purpose, dowry has been defined under section 2 of the Dowry Prohibition Act, 1980 and section 2 (j) of Nari O Shishu Nirjatan Daman Ain, 2000 almost in verbatim. But definition given by Nari O Shishu Nirjatan Daman Ain in Bengal. The definition runs as follows:

Dowry means any property or valuable security given or agreed to be given either

(a) by one party to a marriage to the other party to the marriage;

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

at the time of marriage or at any time before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Dower: Dower is a unique concept in Islamic law. But nowhere in the statutory laws has the term dower been defined. In this respect we can take resort to the definitions given by different jurists. Accordingly the noted definitions of dower are given below:

Mr. Justice Mahmood defines in the case of Abdul Kadir vs. Salima as: "Dower under the Mo. Law is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of the marriage and even where no dower is expressly fixed or mentioned at the marriage ceremony. The law confers the right of dower upon the wife." According to Jamal J. Nasir, "The dower is a sum of money or other property which becomes payable by the husband to the wife as an effect of marriage (46)." According to Ameer Ali, "A certain sum of given by the husband in consideration of the marriage (qtd. in Monsoor 31). Shaukat Mahmood opines that "dower is a sum of money or other property which the wife is entitled to receive from her husband as an incident of the contract of marriage (71)." According to Tyabji, "Mahr or dower is a sum that becomes payable by the husband to the wife on marriage, either by agreement between the parties, or by operation of law(qtd. in Rashid 82)." The best clear and a unique explanation of dower has been given by Professor Dr. Taslima Monsoor. She observes:

"The Mahr/Dower is something that is paid by the husband to his wife. It is paid to 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. The husband thinks twice before divorcing a wife when he knows that upon divorce the whole of the dower would be payable immediately (46)."

II. RESEARCH METHODOLOGY

In this study both qualitative and quantitative methods are applied. The survey method has been applied to ascertain the existing condition of dowry and dower practices from education, socio economic and religion perspective. The survey has been conducted among 30 married women in the locality of Chaitabatar under Dohar of Dhaka. It is a matter to be glad that the survey could be conducted very easily. It did not face any difficulties. It was also seen that there was a wide-spread responses from the respondents. They also assisted the interviewer from their own in different ways. In this study, unreported cases collected from Family Court of Dhaka have been visited to examine the judicial attitude towards the disposal of dower cases. Besides these, all the usual means like legislations, books, research articles, newspapers and websites etc. have been used to complete the research.

III. DISCUSSION

Rampant Practice of Dowry in Bangladesh

In survey it has been found that in the locality of the respondents, there is practice of giving dowry though dowry is not claimed. Despite this situation, I have got seven cases where dowry has been claimed expressly. This datum is enough to realize how severe the dowry practice in Bangladesh is! The dowry is practiced in both upper and lower class families though the purpose and format are different. In upper class dowry practice is shown as status symbol. In that case dowry is given in the form of furniture, ornaments and flat etc. In lower class dowry is practiced as an earning source of the bridegroom. In that case dowry is claimed showing that the husband will go abroad or will do petty business and so on. It is very much rare to find a marriage without dowry transaction. The contemporary concept of dowry in no way resembles the original concept of dowry (Begum 251). Over time, what was voluntary has become obligatory—an essential part of marriage and recovered through coercion of brides. Till 1970, dowry was unknown in Bangladesh. In a research it was shown that in 1945-1946 dowry rate was 3% in Bangladesh (Anderson 151-174). Since then dowry rate was on the increase. A Research in Bangladesh's Northern Districts revealed that about 80 percent of marriages required dowries (Begum 251). In a research conducted by BRAC and American Population Council in 2008,

dowry ranged from 20 to 80 percent in different districts of Bangladesh (Amin). The following chart bears the evidence of increased rate of dowry practice in Bangladesh

Table 1.1

Years	Dowry Rate
1945–1960	3%
1960–1975	11%
1975–1990	44%
1990–1996	61%
2003	76%

Source: The Economics of Dowry and Brideprice by Siwan Anderson

Influence of Different Factors upon Dowry

Educational Side: Education is highly significant for socio-economic change. It broadens the mental horizon of a person which has wider social implications. It is one of the determinants of marital alliance and existence of dowry too. It is mentionable here that dowry related statistics has been made on the basis of 7 respondents who are concerned with dowry transaction leaving rest of the respondents i.e. the denominator of my equation is 7.

Table 1.2

Levels of education	Dowry transaction	
	Number	percentage
No formal education	2	28.57
Primary education	4	57.15
Six to eight	1	14.29
Nine and ten	0	0

Source: Field survey

There has been found correlation between educational level and dowry transaction. Table: 1.2 shows that in the case of dowry transaction, there is abnormal difference between the categories of no formal education and primary education in dowry transaction. In this respect, the reason may be that any other factors might have functioned or no difference has been made between the categories of no formal education and primary education. Perhaps, both categories have been treated as uneducated. The table also shows that in the category of six to eight, the number of dowry transaction is very low that is only 3.33% and in the category of nine and ten there is no dowry transaction.

Respondents' Husbands' Obeisance of Religion Perspective: There is a surprising relationship between respondents' husbands' obeisance of religion and dowry transaction. In this study the husbands of the respondents have been divided from the obeisance of religion perspective into three categories: regular, irregular and strict. The relationship has been shown in the following:

Table 1.3

Status of adherence to religion	Dowry transaction	
	Number	percentage
Irregular	7	100
Regular	0	0
Strict	0	0

Source: Field survey

In the above table it has been seen that the ones belonging to regular and strict categories did not take any dowry at all. This matter is supported by a research by Population Council based in the USA where it has been shown that the dowry transaction rate is low in the region enriched with religious values (Amin).

Respondents' Husbands' Financial Condition Perspective: There is a somewhat relationship between financial condition of the husband and dowry transaction. With the affluence of the husband, the rate of dowry transaction decreases to some extent. This position is corroborated by the following table.

Table 1.4

Financial Condition	Dowry transaction	
	Number	percentage
Poor	4	57.14
Affluent	3	42.85

Source: Field survey

Dower situation in Bangladesh

In the survey, it has been found that more than one third of the respondents do not know about dower. It is also surprising that 16.67% school going respondents do not know about dower. It has also been meticulously observed that among 19 respondents having knowledge of dower 15 have exempted their unpaid dowers. One respondent's dower is neither paid nor demanded. And 3 have been fully paid. In the following charts the matters are shown.

Table: 2.1

Description	Number	Percentage
Fully paid	3	10
Partially paid	15	50
Not paid at all	1	3.33
Don't know about dower	11	36.67

Source: Field survey

Table: 2.2

Levels of education	Knowledge of dower	
	Yes	No
No formal education	3(10%)	6(20%)
Primary education	5(16.67%)	1(3.33%)
Six to eight	5(16.67%)	2(6.67%)
Nine to ten	6(20%)	2(6.67%)
Total	19(63.33%)	11(36.67%)

Source: Field survey

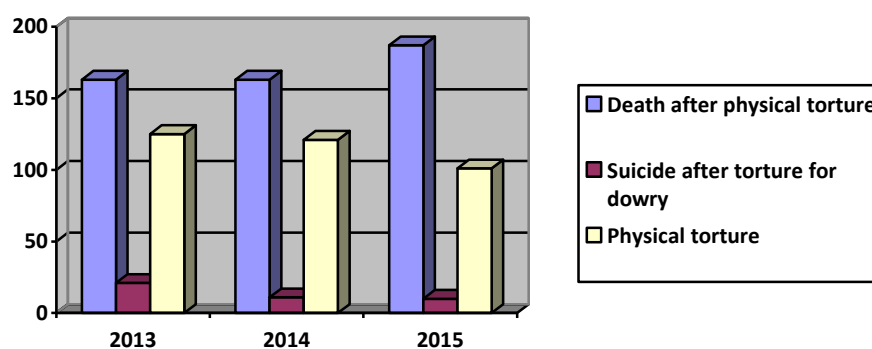
In Muslim Marriages, the provision of dower is considered as an essential aspect. Dower is considered under Sharia law, as an inalienable right of the wife as well as an obligation of the husband to pay dower (Bhuiyan). But it is a matter of regret that most of the women in Bangladesh have no knowledge about the dower. Table 2.1 bears the evidence of it, though this does not represent whole Bangladesh. At the same time it is evident from the table that the rate of knowledge as to dower is much more in the possession of those who are educated. It has also been observed that with the increase of level of education the rate of knowledge as to dower has also increased. It is to be mentioned here dower is neither optional nor a social tradition rather it is quaranic obligation and ibadat. In reality, however the lofty ideals of Sharia law have no application in the lives of Bangladeshi women. In practice and in reality, the non-payment of prompt dower is more common in Bangladesh. In rural areas, 90% of Muslim wives do not get any dower money at all whether prompt or deferred dower (Bhuiyan). In another survey it was shown that 88% women in Dhaka metropolitan did not get the payment of dower (“Women’s Right of Dower....”). Table 2.2 supports this deplorable condition of dower payment.

Dowry as a Curse to the Society

Dowry has severe impact in our society. It has emerged as a curse in our society. Dowry creates an over-burden upon the bride’s family. The girl’s father sells all his properties, borrows money at a high rate of interest to arrange for his daughter's marriage and he suffers to repay the loan for many years to come. Due to dowry harassment, many poor girls opt for either running away with someone or enter into prostitution or even commit suicide. As a result, the name of the family is spoilt. Sometimes girls are not married even after thirty years of age. In some other cases, the girl’s father goes begging in order to make financial arrangements for his daughter’s marriage and gets loan at a heavy rate of interest. These matters otherwise indicates the fact that the women are unwelcome to the world and they are burden our society which causes the inferiority in women. In the case of marriage without assets, she usually does not have value. For the reason of dowry it seems to me that they are treated as commodities because the dowry with bride is as like as 'free offer for selling goods'.

Now a days women harassments for dowry have become every day's news headlines in both electric and print media. In this age of civilizations women are being treated brutally like age of ignorance. Many women have to give up their lives in a hair-rising way due to dowry related offences. For the failure to meet the dowry demand the wives are abused physically and verbally. Physical abuse includes beating, burning with cigarettes, withholding food and many other things. The verbal abuse includes speaking of the wife's parents in abusive terms and spreading rumour about the character of the wife as well as her parents, brothers, sisters and so on. The dowry virus is not only killing helpless women but also it has many other consequences such

Figure 1: Dowry related violence



Source: Ain o Salish Kendra

Effectiveness of Legislative Measures on Dower and Dowry

With regard to dowry, there are mainly two pieces of legislations in Bangladesh i.e. the Dowry Prohibition Act, 1980 and the Women & Children Repression Prevention Act, 2000. The Dowry Prohibition Act, 1980 Act is the primary law dealing with dowry in Bangladesh. It makes dowry a criminal offence, originally punishable by a maximum penalty of one year's imprisonment or a fine of BDT 500 or both. The Act criminalizes the taking and giving dowry, and governs associated investigation and trial proceedings. In attempts to redress deficiencies, it was amended on a number of occasions. For example, its 1986 amendment increased the penalty for claiming dowry and made dowry a non-cognisable and non-bailable offence (Begum 253). Despite the introduction of strict penalty for taking dowry in the 1986 amendment, the practice continues to increase. One reason may be the degree of emphasis on court discretion regarding penalties. Section 3 provides that the penalty for any person giving or taking dowry shall be imprisonment from 1 to 5 years, or a fine or both. Consequently, the court can reduce the sentence; and imprisonment is equated with a fine—however, a fine is not fixed or properly clarified. Thus, sanctions appear vulnerable to judicial bias and any higher socio-economic status of the husband (Begum 253). The Act fails to recognize the gravity of the crime and the immorality involved in 'taking dowry' by placing dowry giver and dowry taker on an equal plane. It fails to take into account the unequal power balance in operation. Dowry-takers are more blameworthy as they are motivated by greed and utilize the groom's superior bargaining position. By contrast, the deeply embedded socio-cultural values attached to a 'marriageable daughter' force parents to offer dowry. Their concerns include providing for her future via marriage and reduced marriage prospects as she ages (Begum 253). Besides this, another loophole is that it has made a provision that offences under this act are cognizable if a complaint is filed with First Class Magistrate. On account of this procedural requirement in most cases dowry cases become spoilt (Begum 253) and cannot see the face of light. Another Act mentioned earlier Prevention of Repression against Women and Children Act 2000, also addressed dowry and section 11 provides penalty for causing death, or attempt to murder, or causing grievous hurt, or simple hurt to the wife for dowry demand which is respectively death penalty, life imprisonment and fine, or any term of imprisonment up to twelve years and not less than five years. This kind of strong sanction is really worth to appreciate. When a dowry death is alleged, the motive of the murder will decide the jurisdiction of the court (court established under the Act). The problem is that, if the court finds no proof of existence of the motive of dowry, it must take its hands off the case. In a case (State vs. Abul kalam, 2003) the trial court convicted the accused under section 11 for murder of his wife for dowry. On appeal the High Court Division, found no evidence that the murder was committed for dowry and held that the case fall under section 302 of the penal Code, and quashing the conviction order (Qudder 137).

With regard to dower, there are mainly two sections which deal with it. One is Section 10 of the Muslim Family Laws Ordinance and another is section 5(c) of the Muslim Family Court Ordinance, 1985. But in reality these have been proved to be inadequate.

Attitudes of the Judiciary in respect of Disposal of Dower Cases

After scrutinizing the cases it is convincing that almost full percent suits of dower are decreed in favour of the plaintiff ensuring the right of dower. So, it is obvious that the attitudes of the judiciary in disposal of dower cases are very much positive. Despite this there is also a negative aspect to this effect that in most of the cases court strictly followed the rule of prevalence of documentary evidence over oral evidence arising out of the provisions of sections 91 and 92 of the Evidence Act, 1872. For this in most cases judgments go against the Plaintiff. As it has been seen in the case of Lubna Jahan vs Md. Ashequr Rahman (unreported Family Suit No. 195 of 2007) that the court has ignored the 4 oral evidences against the documentary evidence. The same was observed by Dr. Taslima Monsoor in the case of Mst. Razia Akter vs Abul Kalam Azad. Also at the same time it was found that the court giving emphasis on documentary evidence deducted the dower on the basis of Wasul concept without going further investigation.

So I think that court has failed to appoint women friendly approach to deal with the dower cases and it cannot come out of the traditional trend of rules of evidence. Still it has confined itself within four walls of the principle of the prevalence of documentary evidence. Nevertheless there is ample scope to come out of this restriction in the very sections of 91 and 92 of the Evidence Act, 1872. And this can easily be done by way of judicial interpretation which is otherwise known as judicial activism.

Findings of the Research

1. It has been found that the transaction of dowry is influenced by several factors such as condition of obeisance of religion, levels of education and financial condition. Specially, it has been noticed with surprise that the persons who obey the religion do not take dowry.
2. It has also been seen that the respondents who in the category of nine and ten had not to pay dowry. At the same time it has also been seen that in the case of solvent person, the rate of taking dowry is comparatively low.
3. With regard to dower it has been noticed that more than one third of the respondents have no knowledge about dower at all. It has also drawn my attention that there is no major difference between school and illiterate women as to ignorance of dower. Further it has been noticed that almost cent percent wives out of 19 exempted their husband from payment of unpaid dower.
4. In legal field it has been found that in the Dowry Prohibition Act, 1980 there are somewhat lacuna. And with regard to dower there is no mentionable number of legislation.
5. In case study on dower it has been noticed that the court strictly follows the rule that "documentary evidence prevails over oral evidence". It has also been found that the sacred Wasul concepts are being misused by some dishonest husbands and his family.

IV. RECOMMENDATIONS AND CONCLUSIONS

Recommendations for Removing dowry and Enforcement of Dower

1. To afford the education on the canons of the Sharia law in extensive manner.
2. To make women educated specially in the religious education.
3. To include the topic of dowry and dower in the NCTB from lower level to upper level.
4. To arrange wide spread study on the problem and to train up the judges to become women friendly in dealing with dower and dowry cases.
5. To discuss the Islamic ordains on dower and dowry after *Salat* specially in the Khutba of Salat-al-Zuma by Imam because the same is one of the best ways of congregation.\
6. In order to raise awareness against dowry and for practice of dower the government through Islamic Foundation can make the best use of *Imam Samiti* which is the biggest organization of the Imams all across the country. Because, they have the direct contact with the people of the society and the people are much influenced by their lectures.
7. To boycott perform and join dowry marriages by the *ulama-e-kiram* and respected persons in the society and also to abstain to record the marriage of dowry in the *Nikah* Register by the *Qazi*.
8. To boycott the people who are dowry greedy and indifferent to dower by the brides.
9. To remove the lacuna of the Dowry Prohibition Act, 1980 and to make ADR mandatory in the same because it is seen that in the most of the cases, marriages are broken by divorce by husband after filing dowry case. Then the women become more vulnerable than the previous situation because they have no place for asylum even in the paternal house.

Conclusion

It is clear from the discussion dowry system is a dangerous problem. From lower class to upper nobody is not free from the impact of dowry and non-payment of dower. People of the upper classes treats dowry as status symbol and the people of the lower class treats dowry as medium of earnings. But in the payment of dower,

husbands are in most of the cases shows reluctance. People of all levels should come forward to solve the problem. Otherwise the whole nation will suffer badly.

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