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The Role of Law Enforcement Agencies in Preventing Dowry-Related Crimes in Bangladesh and India

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ABSTRACT

Laws are made for implementation. Needless to say, the effective enforcement of laws depends on proper functioning of the law enforcement agencies. Both the Governments of Bangladesh and India have enacted a number of legislations relating to the issue of dowry. Payment of dowry is a social custom still prevalent in both countries where women have become victims of violence every year. Thus, it is the law enforcement agencies that can prevent the women from the menace of dowry-related crimes through the proper application of existing criminal law. In this context, the role of the law enforcement agencies concerning crimes of dowry is crucial. Enforcement of law is a continuous process from the time an offence is reported till the offender is prosecuted and punished. This is a long process involving various stages such as, investigation, prosecution, trial and judicial decision. In this long procedure numerous agencies e.g., the police, the judiciary and the lawyers play their roles. The article looks at the position in Bangladesh and India because unlike India, where there exists the dowry prohibition Officer who deals with dowry demands, Bangladesh lacks a similar enforcement mechanism. Thus, the objective of this article is to examine the position in both countries where the role and functions of the law and law enforcement agencies are made. The article is developed based on the analysis of secondary sources and the decisions of the judiciary of Bangladesh and India concerning dowry-related crimes.

Keywords: Bangladesh, dowry, enforcement, India, law enforcement agencies

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PENCEGAHAN JENAYAH BERKAITAN MAS KAHWIN: PERANAN AGENSI PENGUATKUASAAN UNDANG-UNDANG DI BANGLADESH DAN INDIA

ABSTRAK

Undang-undang perlu dikuatkuasakan. Penguatkuasaan undang-undang bergantung kepada keberkesanan agensi-agensi penguatkuasaan. Di Bangladesh dan India, terdapat undang-undang berkaitan pemberian mahar dari pihak perempuan. Budaya ini terdapat di kedua-duaa buah negara dan ini telah menyebabkan ramai wanita menjadi mangsa keganasan setiap tahun. Oleh sebab itu, jika pihak penguatkuasa memainkan peranan yang lebih berkesan, maka permasalahan ini akan dapat diatasi. Penguatkuasaan undang-undang adalah proses yang bermula dari saat pengaduan direkodkan sehinggalah pesalah di dakwa dan mahkamah mendapatinya bersalah dan dia seterusnya dihukum. Ini adalah proses yang panjang yang melibatkan bahagian siasatan, pendakwaan, dan proses mahkamah sehinggalah keputusan diberikan. Prosedur yang panjang ini melibatkan banyak agensi seperti polis, para peguam dan para hakim. Makalah ini melihat keadaan di Bangladesh dan India, di mana telah didapati bahawa terdapat perbezaan dari segi undang-undang dan juga penguatkuasaan. Di India, terdapat undang-undang khas yang memperuntukkan keperluan kepada Pegawai penahan mahar yang mengendalikan segala aduan yang melibatkan kes mahar. Berdasarkan kajian, Bangladesh tidak mempunyai peruntukan yang sama. Oleh sebab itu, objektif makalah ini ialah bagi melihat bagaimana undang-undang dan juga bagaimana undang-undang ini di kuatkuasa di kedua-dua buah negara. Makalah ini ditulis berdasarkan analise yang dilakukan terhadap kes-kes yang telah dibicarakan di mahkamah-mahkamah Bangladesh dan India.

Kata kunci: Bangladesh, pemberian mahar, penguatkuasaan, India, agensi penguatkuasaan undang-undang

INTRODUCTION

The practice of dowry[1] exists as a social phenomenon in many of the South Asian countries.[2] Bangladesh and India are examples of two South Asian countries that have been facing this problem for a long time. This custom is such that even in the 21st century, a husband consumed by greed can brutally murder his wife when her family members are unable to fulfill the demand of dowry.[3] Due to the increase in dowry-related crimes, the government of India enacted the Dowry Prohibition Act in 1961. Nearby Bangladesh had also enacted a similar law, however, only doing so in 1980. This law was subsequently amended on a several occasions. Besides this law, other laws in both countries also exist to address the dowry-related crimes. These laws provide for severe punishments including death the penalty against the perpetrators.

Even though stern punitive measures have been adopted, in reality, the number of women who have become victims of dowry-related crimes in Bangladesh and India still occur. For example, according to the report of the Times of India one woman dies every hour in the country due to this crime.[4] The National Crimes Record Bureau of India mentions in one of their reports that a total 8,233 women were killed over the demand of dowry.[5]

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1 'Dowry' is a pattern of marriage payments settled openly or discreetly mostly before the wedding. In practice, the dowry is demanded by the groom from the bride and consequently paid by the bride and/or her parents. If the dowry is not paid according to the demand, brides face physical and mental torture. Brides are sometimes killed by their husbands or in-laws for failing to pay the dowry. Other times, brides commit suicide when they cannot tolerate physical and psychological ill-treatment for failure to pay the dowry. The scenario is almost similar in Bangladesh and India.

2 The society of Bangladesh, India, Nepal, Pakistan, and Sri Lanka mainly follow this custom.

3 Zeenath Khan, "Dowry Death," *The Daily Star*, accessed February 18, 2015, http://archive.thedailystar.net/newDesign/news-details.php?nid=141889.

4 "Dowry Deaths: One Woman Dies Every Hour," *The Times of India*, accessed February 18, 2015, http://timesofindia.indiatimes.com/india/Dowry-deaths-One-woman-dies-every-hour/articleshow/22201659.cms.

5 Ibid.

On the other hand, in Bangladesh, the human rights organisetion '*Odhikar*' states that from January to November 2014, a total 237 women faced various dowry-related mistreatments.[6] However, as compared to the actual number of dowry-related crimes, the number of complaints registered is scanty.[7] Further, in those cases where there have been complaints lodged, the acquittal rate is high if compared to the conviction rate. This may indicate one of two possibilities, i.e. either the existing laws on dowry-related crimes are not implemented effectively or it is the law enforcement agencies who are not working properly. Therefore, in the following section of this article focuses on the role of law enforcement agencies. The discussion will begin with the analysis of the role the dowry prohibition officers. Then the role of police, lawyers, and the judiciary will be addressed.

ROLE OF DOWRY PROHIBITION OFFICERS

Unlike Bangladesh, section 8-B of the Dowry Prohibition Act, 1961 of India stipulates for the appointment of dowry prohibition officers by the State Government.[8] This section also comprehensively discusses the powers and functions of the dowry prohibition officers.[9] But, until recently, only a few States have taken initiatives to appoint dowry prohibition officers.[10] The State of Haryana is one of the few States

6 "Odhikar Human Right Report November 2014," *Odhikar*, accessed September 4, 2015, http://1dgy051vgyxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2014/12/human-rights-monitoring-monthly-report-november-2014-eng.pdf.

7 Biswajit Ghosh, "Persistence of the Practice of Dowry in Rural Bengal," *Journal of Social Work & Social Development* 1, no. 1 (2010): 2.

8 This provision was inserted in the Act of 1961 by the Dowry Prohibition (Amendment) Act, 1986.

9 Section 8B(2) of the Act, 1961 states, "every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely, -
(a) to see that the provisions of this Act are complied with;
(b) to prevent, as far as possible, the taking or abetting the taking of, of the demanding of, dowry;
(c) to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act; and
(d) to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act."

10 Ish Kumar Magoo, *An Eagle Eye on Dowry Demand Cruelty & Dowry Death*, 2nd ed. (New Delhi: Capital Law House, 2012), 404. The State of Orissa adopts

that adopted the Dowry Prohibition Rules in 2003,[11] and accordingly appointed dowry prohibition officers. Under the rules, they are appointed and empowered not only to register complaints from the bride, her parents or relatives, but also to carry out surprise raids.[12] However, it is only when the complaints are made by the brides or her parents and the dowry prohibition officer submits a report to the judicial magistrate based on that report, as per the rule that such report has any evidentiary value.[13]

The Chief Minister of Haryana said that they considered the institution of dowry prohibition officers as a necessity because they believed that the "strict enforcement of the anti-dowry laws is the answer to the social menace."[14] Thus, it is obvious that the dowry prohibition officers can play an important role to eradicate the century old practice of dowry from the society. By adopting such rules, for the first time a State Government, Haryana, has shown their willingness to enforce the dowry prohibition laws.[15] On a comparative note, Bangladesh has taken the same steps and it is argued here that it is only prudent that she should adopt similar provisions in its Dowry Prohibition Act, 1980 as the crimes related to dowry are also strife in the community and there is no sign that the practice of dowry is to be removed from the society. If the law is amended for appointment of dowry prohibition officers, they can work to aid the police and other law enforcement agencies.

Dowry Prohibition Rules in 2000. By an amendment the Rules in 2005 (came into force in 2006) they include the provision concerning the appointment of dowry prohibition officer which is now regarded as the Orissa Dowry Prohibition (Amendment) Rules, 2006.

11 The Rules were adopted on 20th February, 2003; The State of Kerala adopts the Dowry Prohibition Rules in 1992 and for making appointing the dowry prohibition officers they amends their rules in 2004; The State of Karnataka adopts Dowry Prohibition Rules in 2004 and appoints dowry prohibition officers.

12 Section 7(1)(ii) of the Haryana Dowry Prohibition Rules, 2003

13 Ramesh Vinayak, "The Battle of the Baraat Begins: For Dowry-Hungry Bridegrooms, Haryana Is No Longer a Safe Place," *India Today*, accessed May 15, 2015, http://indiatoday.intoday.in/story/for-dowry-hungry-bridegrooms-haryana-is-no-longer-a-safe-place/1/206999.html.

14 Ibid.

15 Ibid.

ROLE OF THE POLICE

Depending on the nature of the offences, the dowry prohibition laws of Bangladesh[16] and India[17] classify dowry-related crimes[18] into two categories widely known as cognisable and non-cognisable offences. Of course, cognisable offences are generally of a serious nature where the police needs to have a warrant before any arrest can be made.[19] However, at the same time, police also have an important role to play in non-cognisable offences.[20] Thus, as in the criminal justice system, the police are the principal agency to enforce the dowry prohibition laws whether the offences are cognisable or non-cognisable.[21] The task of crime reduction, prevention and control are difficult tasks carried out by the police. In doing so it is also necessary for them to ensure that the collection of evidence is done carefully and efficiently.[22] They arrest the criminals, conduct investigation and in the magistrate court prosecutions are carried out by Police Inspectors. From recording the First Information Report (F.I.R.) up to execution of the judgment of the court, the police play a significant role in dowry violence cases which is similar to other criminal cases. This part of the article looks into the specific roles of the police officers in relation to dowry-related crimes.

16 Section 8 of the Dowry Prohibition Act, 1980 states that, all the offences under this Act are non-cognisable offence. However, under the Suppression of Repression against Women and Children Act, 2000, the offences concerning dowry are cognisable offence.

17 The original Dowry Prohibition Act, 1961 made the offences non-cognisable. But, after the amendment of 1986 the offences occurred under this Act are cognisable for the purpose of investigation only. However, dowry violence under section 498A and dowry death under section 304B of Indian Penal Code are cognisable offence.

18 Dowry-related crimes indicate the offences related to dowry such as giving, taking, demanding dowry as well as simple hurt, grievous hurt and murder for dowry.

19 According to section 4(f) and 2(c) of the Cr.P.C. 1898 and 1973 respectively, cognisable offence means an offence for which a police officer can arrest the accused without the warrant.

20 Section 4(n) and 2(l) of the Cr.P.C. 1898 and 1973 respectively defines non-cognisable offence as an offence for which a police officer cannot arrest an accused without warrant.

21 Khandaker Abu Bakar, "Investigation and Criminal Justice," *Mainstream Law Report* 16 (2009): 51–53; Mohd Umar, *Bride Burning in India: A Socio Legal Study* (New Delhi: APH Publishing, 1998), 211.

22 Mehraj Uddin and Qazi Rais, "Filing of FIR: Its Efficacy and Importance An Empirical Study of Districts of Srinagar and Jammu," accessed March 11, 2014, http://bprd.nic.in/writereaddata/linkimages/2019915346-filling of fir projrct.pdf.

Preventive Role

In both, Bangladesh and India, the police are vested with certain authority under different laws[23] to carry out preventive actions to prevent a crime from even happening. Under section 149, 150 and 151 of the Code of Criminal Procedure (Cr.P.C.), 1898[24] in Bangladesh and 1973[25] in India, the police are empowered to prevent the crime from happening. Section 149 of the Cr.P.C. provides that a police officer may interpose for the purpose of preventing and shall, to the best of his ability to prevent the commission of any cognisable offence.[26] The word interpose used in section 149, Cr.P.C. connotes active intervention by a police officer to prevent the commission of a cognisable offence.

Under section 150 of the Cr.P.C. a police officer may exercise the power to prevent the commission of a crime if he receives any information regarding the design to commit any cognisable offence.[27] Again, the powers of arrest have been conferred on the police officers under section 151 Cr.P.C. to arrest a person without a warrant if he knew that the person arrested has made a plan to commit a cognisable offence.[28] Besides, if it appears to such police officer that there is no other way to prevent the arrested person from committing the offence, they can arrest those persons. Further, wide powers are also given to the police under section 23 of the Police Act, 1861.[29] Under these provisions, the police can adopt preventive actions in cognisable offences. However, existing literature shows that in both Bangladesh and India, police seldom make arrests if compared to the total number of incidents, and even then they are found to be very reluctant to do this

23 Different laws indicate the Penal Code, 1860 of Bangladesh and India; The Police Act 1861 and the Criminal Procedure Code 1898, and 1973 in Bangladesh and India respectively.

24 Act No. V of 1898.

25 Act No. 2 of 1974.

26 Section 149 of the Code of the Criminal Procedure.

27 Section 150.

28 Section 151 of the Cr.P.C.

29 Act No. V of 1861; Section 23 of the Act thus provides, 'It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisences; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists: and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking-shop, gaming-house or other place of resort of loose and disorderly characters.'

job.[30] Ghadially and Kumar observed in their study that, even "when the police was informed that a young woman's life was in danger, they refused to intervene in family affairs."[31] From here it is clear that although the law allows it, this attitude of the police is still very much influenced by custom, whereby they have a disregard for taking preventive action against dowry-related crimes.

First Information Report (F.I.R)

In India, the term 'First Information Report' (the F.I.R) is not defined in the Code of Criminal Procedure (Cr.P.C), but according to case law, it has been taken to mean, the information recorded under section 154 of the Code.[32] In order to qualify as a F.I.R, the information, must have been taken by the officer-in-charge of a police station, in front of whom the victim had notified about the commission of a cognisable offence.[33] It is based on the strength of this report that the investigation into that offence is started.[34]

F.I.R. is the earliest information of an offence and its object is to 'record the circumstances before there is time for them to be forgotten or embellished.'[35] In *Sk. Hasib v. State of Bihar*,[36] the Supreme Court of India has rightly pointed the object of the F.I.R. as:

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30 Afroza Begum, "Protection of Women's Rights in Bangladesh: A Legal Study in an International and Comparative Perspective," *University of Wollongong Thesis Collection*, 2004, 263.

31 Rehana Ghadially and Pramod Kumar, "Bride-Burning: The Psycho-Social Dynamics of Dowry Deaths," *Women in Indian Society. New Delhi, India: Sage*, 1988, 174.

32 *State of Maharshtra v. Ahmed Shaikh Babajan and others*, (2010) 1 SCC (Cri) 1356

33 Cognisable offence means an offence for which a police officer may arrest the suspect without warrant. Schedule II of the Code of Criminal Procedure, 1898, categorically mentioned the list of cognisable offences.

34 *State of Bombay v. Rusy Mistry*, AIR 1960 SC 391: 1960 Cr. LJ 532; *Gurusami Naidu alias Chinnasami v. Villis Guruswami Naidu*, AIR 1951 Mad 812, 813: 1951 Cr.LJ 857. Though as observed by the Privy Council in *King Emperor v. Khwaja Nazir Ahmad*, (1944) 71 IA 203 : AIR 1945 PC 18, recording of a first information report is not a condition precedent to the setting in motion of the criminal investigation, yet from the point view of the investigating authorities, it conveys to them, the earliest information regarding the circumstances in which the crime was committed; the names of the culprits and the role played by them as well as the names of the witnesses present at the scene of occurrence, so vital for an effective and meaningful investigation.

35 *Gulshan Kumar v. State*, ILR (1993) 2 Del 168; See also, *Emperor v. Khawaja Nazir Ahmad*, A.I.R. 1945 P.C.18; See also, Umar, 214

36 A.I.R. 1972 SC, p.283; (1972) 4 SCC 773; 1972 Cr.LJ 233, 236

> The principal object of the F.I.R. from the point of view of the informant is to set the criminal law in motion and from the point of view of investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party.[37]

F.I.R. is put in evidence when the informant is examined. Further, it is also used for the purpose of testing a fact and corroborating the claims of the prosecution story.[38]

In addition to prompt filing and correct lodging,[39] the F.I.R. is extremely important from the legal point of view.[40] It constitutes the foundation of the case in the first instance and the entire case depends on it.[41] If it is not properly filed, then the prosecution case is bound to be weak.[42] A trivial mistake in recording the F.I.R may land the entire trial process in trouble and provides an opportunity for the defence counsel to reap upon the loopholes. Therefore, even, "a slight lapse in recording the F.I.R. can give an advantage to the accused party to give a twist to the prosecution version and prosecution case may become weak and lead to the acquittal of the accused person."[43]

Meanwhile, in Bangladesh, even though the police constable, also known as the *Munshi,*[44] frequently records the F.I.R, in most cases this

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37 Ibid.

38 Sharin Shajahan Naomi, "The Legal Challenges on the Way to Judicial Remedy in Rape Cases: The Role of Human Rights and Legal Services Programme of BRAC" (Dhaka: BRAC Research and Evaluation Division, 2009), 16.

39 Correct lodging of the F.I.R indicates that, there must be something in the nature of a complaint or accusation or at least some information of the crime given with the object of setting the police or criminal law into motion. It is true that a first information report need not contain the minutest details as to how the offence had taken place nor it is required to contain the names of the offenders or the witnesses. But it must at least contain some information about the crime committed as also some information about the manner in which the cognisable offence has been committed. A cryptic message recording an occurrence cannot be termed as a first information report. *Patai alias Krishna Kumar* v. *State of Uttar Pradesh*, (2010) 4 SC 429

40 *R. Payani v. State*, 1994 Cr.LJ 78 (AP)

41 *Markanda Naik v. State*, 1993 Cr.LJ 3328 (Ori.)

42 The Supreme Court of India held in *State of A.P. v. Golconda Linga Swamy*, (2004) 6 SCC 522 : 2004 SCC (Cri) 1805, that the F.I.R. is not intended to be an encyclopedia of the background scenario. Nevertheless, having regard to the fact that it is one of the modes by which a person aggrieved sets the criminal law in motion, it must disclose the commission of an offence and correctly filed.

43 Uddin and Rais, "Filing of FIR: Its Efficacy and Importance An Empirical Study of Districts of Srinagar and Jammu," 28.

44 *Munshi* is a constable who is educated and has good handwriting, who works

is done unprofessionally whereby they are known to manipulate the statements to assist the accused in trial for a certain amount of payment. In many cases, the police or *Munshi* does not even bother to read the statement again to the victim or her family for clarification of what they are saying. As an obvious result, the structure of the F.I.R. becomes crippled, weak and full of inconsistencies, which in turn becomes an opportunity for the defence lawyer to weaken the prosecution case.[45] Most of these women and their parents and relatives are not aware that the contents of the F.I.R. are irrevocable. It is an important document and the police officer recording it must read it out to the person filing the F.I.R.[46]

Moreover, it is seen in Bangladesh that, when the victims or her guardians go to the police station to lodge an F.I.R., the police are reluctant to file a proper report and when it is filed,the charge is sometimes made under a wrong section of the Act.[47] According to a report of a Bangladeshi newspaper, Abdul Hoque, the father of the dowry victim, Khadise, went to the police station to file the case, but without recording the case, the police advised him to go to Court and, since the Court was closed in December he went back home without even lodging the report.[48]

Meanwhile, in India, regardless of the media focus on dowry-related violence, the police still consider the dowry-related deaths as suicide without even investigating the matter and are even reluctant to register such incidences.[49] Additionally, the police have the mentality that can be translated as thinking, "…only a foolish policeman will be at pains to register every case and endorse it as a crime, because if the volume of crime cases registered is very high, he will be the first to be transferred from his police station."[50] Therefore, the police do not

in the police station. Generally, in the police station of Bangladesh there is no provision for the appointment of a clerk. Thus, the Munshi is the person who performs clerical duty. Although the Code provides that the F.I.R needs to be recorded by the police officer but in Bangladesh the practice of recording by *Munshi* has been continuing for a long time.

45 Naomi, "The Legal Challenges on the Way to Judicial Remedy in Rape Cases: The Role of Human Rights and Legal Services Programme of BRAC," 11.

46 Section 154 of the Cr.P.C. lays down that information relating to the commission of cognisable offence shall be reduced in writing by the police officer and shall be read over to the informant.

47 Taslima Monsoor, "Dowry Problem in Bangladesh: Legal and Socio-Cultural Perspectives," *Th Dhaka University Studies* 14, no. 1 (2003): 12.

48 Khandakar Anis, "Advise to Go to the Court without Taking the Case," *The Daily Prothom Alo*, January 7, 2013.

49 Umar, *Bride Burning in India: A Socio Legal Study*, 215.

50 Umar, *Bride Burning in India: A Socio Legal Study*.

want to register the cases as they do not wish to be burdened with the increasing number of offences.

Investigation

'Investigation' etymologically means, 'to probe into something in order to find out the truth'.[51] It is a vital part of criminal justice and the success of a criminal case mostly depends on an effective investigation report which is again conducted by the police officers. A sound investigation provides sufficient evidences to the trial court for conviction.[52] As in other criminal cases, a dowry violence case is said to have a positive result when a police investigation is done thoroughly based on the F.I.R.[53] Hence, similar to the manipulation of the F.I.R, the manipulation of the investigative process by the police has also been one of the serious obstacles in dealing with dowry-related crimes. The criminal investigation in dowry violence cases commences when the police comes to know of the commission of the offence. In such cases, the police is empowered to investigate the offence without the consent of the court since the offences are cognisable. Like other criminal cases, during the investigation of dowry violence cases police enjoy unfettered power where even the court cannot interfere.[54]

According to clause (l) of Section 4 of the Cr.P.C., 'investigation' includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a magistrate) who is authorised by a magistrate.[55] The procedure for investigation is laid down in Section 157 of the Cr.P.C.[56] This section states that when an officer–in-charge of a police station has reason to suspect the commission of a cognisable offence, he shall forthwith send a report of the same to the Magistrate empowered to take cognisance of such offence. Further, he may proceed in person or shall delegate a subordinate officer if the case is not of a serious nature. Sub-section (1) (b) of section 157 Cr.P.C. gives wide discretion to police officers not to investigate a case when it appears to be not worth investigating.[57]

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51 James Vadackumchery, *Indian Police and Miscarriage of Justice* (New Delhi: APH Publishing, 1997), 34.

52 A.K. Roy, "Investigation and Trial of Criminal Offences: In Quest of Capacity Enhancement," *BLD* 19 (1999): 69–76.

53 A. H., Chowdhury, All About Criminal Law, 31BLD *Journal* (2011): 1-8.

54 See, section 156 of the Code of Criminal Procedure, 1898 in Bangladesh and 1973 in India.

55 Section 4(l) of the Cr.P.C., 1898.

56 Section 157.

57 Section 157(1)(b).

Although the Code clearly states the procedure of carrying out the investigation, the reality is that, the investigations of dowry relate crimes are conducted in an "extremely casual and unscientific manner."[58] A number of lapses appear during the process of investigation which effectively destroys the credibility of cases.[59] For example, statements of reliable and important witnesses are almost never recorded in due time.[60] Moreover, without taking fingerprints and/or photographs, the police prepare their report by merely relying on the statements of the relatives.[61] The failure of the police to investigate properly and to take proper action helps many offenders to go free with their acts legally unchallenged.[62]

Furthermore, the investigation is frequently conducted by the junior police officers. The Home Ministry of India issued a circular with specific instructions that all the cases of dowry deaths should be investigated by police officers not below the rank of Deputy Superintendent of Police.[63] However, the government's directions are rarely followed i.e. investigations are, still mostly, carried out by the junior police officers. Because of their inexperience, the junior police officers, sometimes, cannot conduct a proper investigation.[64] Following this, in dowry death cases, the investigating officers, sometimes, cannot decide whether such death is a case of suicide or an accident and what role the husband has played in the particular incident.[65] Furthermore, the police become so callous due to their inexperience in conducting investigations that even the courts are doubtful of the efficiency and integrity of the police authorities.[66]

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58 Umar, *Bride Burning in India: A Socio Legal Study*, 219.

59 Bakar, "Investigation and Criminal Justice," 52.

60 Sumaiya Khair, "Violence Against Women: Ideologies in Law and Society," *Bangladesh Journal of Law*, no. 3 (1999): 154.

61 Namratha S Ravikant, "Dowry Deaths: Proposing a Standard for Implementation of Domestic Legislation in Accordance with Human Rights Obligations," *Mich. J. Gender & L.* 6 (1999): 476.

62 See *Akbar v. State* (1999) 51 DLR 268 (court explains how faulty investigations of the case by the police helps the accused escape punishment).

63 Melissa Spatz, "Lesser Crime: A Comparative Study of Legal Defenses for Men Who Kill Their Wives, A," *Colum. JL & Soc. Probs.* 24 (1991): 611.

64 In addition to lack of expertise, the junior police officers who are undertaking to investigate such cases have many other cases in his hand to investigate. Therefore, they don't have much time to concentrate in a particular case. With numerous and urgent matters needing their attention, they always cannot adequately deal with such cases.

65 Umar, *Bride Burning in India: A Socio Legal Study*, 220.

66 Ahuja Ram, "Crime against Women," *Rawat Publication*, 1987, 8.

Final Report or Charge Sheet

At the conclusion of an investigation, the investigating officer is required to submit a report to the Magistrate competent to take cognisance of the case under section 173 of Cr.P.C. The report may be either in the form of a 'final report' or a 'charge sheet'.[67] If sufficient evidence against the accused is not found during investigation, the officer will submit the 'final report' to that effect along with other relevant records. Thus, the submission of the final report means that no case of the offence has been made out of the investigation and, as such, the accused should be released from custody or discharged from the bail bond as the case may be. Conversely, if adequate evidence is available against the accused then the investigating officer will submit the 'charge sheet' to the Magistrate in order for him to take cognisance of the case together with the accompanying relevant documents. The submission of 'charge sheet' means that there is a recommendation to prosecute the accused.

The submission of the report to the Magistrate, be it the final report or charge sheet, is the final step of the investigation of dowry-related crimes by the police.[68] It is apparent that the police have full control over the proceeding of the investigation and neither the Magistrate nor the High Court has any power to interfere with such proceedings.[69] But, this uncontrolled power of the police sometimes creates problems as they are unable to submit the report within a particular time period. For example, in Bangladesh, section 18 of the Suppression of Repression against Women and Children Act, 2000 provides that the completion of an investigation and submission of the report is to be made within 120 days. Again, section 18(iii)(a) provides that, if the investigating officer fails to complete the investigation within 120 days, then another investigating officer may be appointed in order to continue doing so. He will complete the investigation and will submit the report within another 30 days. However, the reality is that most of the investigations are not completed within the prescribed period and hence, the report whether the charge sheet or final report is not submitted.[70] This is also another problem faced by the victims of the dowry-related crimes.

The submission of the final report of the charge sheet starts the case

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67 The terms 'final report' or 'charge sheet' are not used in the Cr.P.C. These have used in the Police Regulations, Bengal, 1943 (Regulations 272-274 for charge sheet and 275-277 for final report).

68 Umar, *Bride Burning in India: A Socio Legal Study*, 225.

69 *Emperor v. Khawaja Nazir Ahmad*, A.I.R. 1945 P.C.18

70 Naripokhho, *Women and Children (Repression Prevention) Act, 2000: An Assessment*, (Dhaka, 2001): 5.

in motion for actual starts the case in motion for actual trial in court. From here, the discussion will continue on the roles of counsel, public prosecutors and the judiciary in dowry-related crimes

ROLE OF LAWYERS AND PUBLIC PROSECUTORS

Role of Lawyers

Lawyers are generally called the 'officers of the court'.[71] As an officer, a lawyer not only represents their clients in the court but, has a special responsibility to ensure that their clients' voices are heard in the Court of law and that justice prevails.[72] The duty of the lawyer is to present the argument and assist the court to establish a case, unfortunately, some lawyers mislead the court in dowry demand cases. For example, the lawyer of *Hanif Howlader's*[73] case has insisted the Appellate Division for a rule although he was engaged in the *Abul Bashar Howlader v. State*[74] case and was very much aware about the decision of the Appellate Division.[75]

From the above, it is obvious that, sometimes lawyers try to conceal certain facts which they think could be detrimental to their clients' position. Therefore, while police officers tend to lean towards carrying out inefficient investigation that results in the non-commital of the husband, lawyers on the other hand tend to go to the other end of the extreme. Women, when convinced by their lawyers, often file false allegations that their husbands committed dowry-related crimes

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71 "Ohio Rules of Professional Conduct 2007," accessed July 15, 2014, http://www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf.

72 "Role of Lawyers – Global Issues Series," accessed July 15, 2014, http://www.westglobalissues.com/forms/ethics_sample.pdf.

73 23 BLD (2003) 510.

74 46 DLR (AD) (1994) 169.

75 *Md. Hanif Howlader* v *Most. Jahanara Begum and another,* 23 BLD (2003) (AD) 510; In this case, the lawyer of the appellant was Syed Ziaul Karim. Interestingly, he was also the lawyer in the case of *Abul Bashar Howlader* v *State.* Being the lawyer of this case, he was aware about the decision of the court that if dowry is demanded after the marriage about which there was no agreement at the time of marriage or at any time before or after the marriage it will constitute the offence of demanding dowry which is punishable under section 4 of the Dowry Prohibition Act, 1980. This decision of the AD has come out in a number of subsequent cases. However, in *Hanif Howlader's* case the lawyer was also Syed Ziaul Karim and having being informed of the decision of *Abul Basher Howlader's* case, he insisted the court to give a ruling in this regard.

that are graver than the actual act. There are even cases that although there is no dowry-related crime involved at all,[76] yet the case was still brought to court

Again, as in other criminal cases, delays in cases concerning dowry-related crimes are one of the greatest barriers to dispensing justice.[77] To some extent lawyers cause delays.[78] Generally, in the lower courts, lawyers are paid on the basis of days of appearance. This means a lawyer can take the greatest benefit by simply lingering on a case. Apart from that, many cases are concentrated among a handful of lawyers, and these lawyers adjourn cases simply because it is not practically possible for them to deal with all cases on the same day. But, delay and neglect are inconsistent with a lawyer's duty of diligence. It also undermines public confidence, and may prejudice a client's cause. Reasonable diligence and promptness are expected of a lawyer in handling all client matters and will be evaluated in light of all relevant circumstances. The lawyer disciplinary process is particularly concerned with lawyers who consistently fail to carry out obligations to clients or consciously disregard a duty owed to a client.[79]

Lawyers are not accountable to their clients for bad consequence of cases. They do not have to pay the costs from their own pockets and hence most lawyers take every case they can get. Therefore, the majority of cases fail.[80] As a result, the profession as a whole is losing public faith. The delay in disposal of cases is also making people

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76 Quazi Maruf, Women and Children (Repression Prevention) Act 2000, Preventing Abuse of Law, *The Daily Star*, March 23, 2013. The situation is also the same in India where the lawyers pursue the women to file false allegations against their husbands and in-laws. See Madhu Kishwar, "Laws Against Domestic Violence: Underused or Abused?," *Atlantis: Critical Studies in Gender, Culture & Social Justice*, 2003, 37–44.

77 Ravikant, "Dowry Deaths: Proposing a Standard for Implementation of Domestic Legislation in Accordance with Human Rights Obligations," 478.

78 Meredith Sherman Fahn, "Noncompliance with India's Dowry Prohibition Act of 1961: A Society's Reactions to Imposed Law," *Temp. Int'l & Comp. LJ* 4 (1990): 123.

79 "Ohio Rules of Professional Conduct 2007," 1.

80 It is essential in dowry violence cases, as in other criminal cases, to single out the accused. However, by being influenced by the lawyers, the victims and sometimes her natal family members charge the entire family of her husband instead of specifying the actual offender. While this is understandable in the given scenario where a woman often faces combined violence by husband and in-laws, it is not acceptable in the courts of law where she is required to specifically identify her attacker. Failure to single out perpetrators results in quick acquittals of all the accused. See, Khair, "Violence against Women", 154; See also, *Md. Dulal Mia* v *The State*, v *ADC* (2008) 714.

fear the court. It is the solemn duty of lawyers to give proper advice and speedy relief for the sake of their own profession.[81]

Role of Public Prosecutors

Public prosecutors are regarded as gatekeepers to the criminal justice process[82] and they are considered to be officers of the court.[83] They are also described as Ministers of Justice whose job is none other than assisting the State in the administration of justice.[84] The public prosecutors are the linchpin of the criminal justice system.[85] They represent the interest of the State and thereby the interest of the public in creating and maintaining a lawful and orderly society. They play a great role in aiding the judiciary to come to a proper decision-making in state-led cases.[86] Once the investigation is complete, the role of the public prosecutor commences.[87]

In Bangladesh, the public prosecutors are appointed under section 492 of the Code of Criminal Procedure, 1898.[88] Moreover, according to section 25(2) of the Suppression of Repression against Women and Children Act, 2000, at the tribunal the person who will be dealing with the cases on behalf of the victim or the complainant will be known as 'public prosecutor.' Section 493 of the Cr.P.C. empowers the public prosecutors to appear and plead before any court without any written

81 Tanvir Parvez Mohammod Hossain, "Two Lawyers Views on the Rule of Law and Their Profession in Bangladesh," accessed March 15, 2014, http://www.article2.org/mainfile.php/0802/349/.

82 197th Report of Law Commission of India, 2006, 13.

83 *Subhash Chander v. State*, AIR 1980 SC 423.

84 *Babu v. State of Kerala*, 1984 Cr.LJ 499(ker).

85 Harish Salve, "A Case for Prosecution," *India Today*, accessed September 12, 2014, http://indiatoday.intoday.in/story/A+case+for+prosecution/1/39688.html.

86 Zahidul Islam Biswas, "Do We Have an Independent Judiciary?," *Forum - a Monthly Publication of the Daily Star*, September 2012.

87 Salve, "A Case for Prosecution."

88 According to section 492 (1) the government may appoint generally, or in any case, or for any specified class of cases in any local area, one or more officers to be called public prosecutors.
(2) the chief metropolitan magistrate or the district magistrate, or, subject to the control of the district magistrate, the sub-divisional magistrate, may, in the , absence of the public prosecutors, or where no public prosecutors has been appointed, appoint any other person, not being an officer of police below [such as rank as the government may prescribe in this behalf] to be public prosecutor for the purpose of any case.

authority.[89] In India, the public prosecutors are appointed in accordance with section 24 of the Cr.P.C., 1973.[90]

As a representative of the State, the public prosecutors have duties of different categories. For example, in every trial before the sessions Court, the prosecution shall be conducted by the public prosecutor.[91] Upon the appearance of the accused, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.[92] At the trial, the prosecutor is required to lead the presentation of evidence and at the conclusion of it to sum up his case.[93] However, it is the duty of the public prosecutors to conduct whole case by producing witnesses in the court, in order to bring the perpetrator to justice.[94]

Thus, like as other criminal cases, the public prosecutors have a great role to play in dowry violence cases. Indeed, the success of dowry violence cases, on some occasions, depends on the strong and effective efforts of the public prosecutors. But, in most cases the best lawyers are not appointed in the prosecution office.[95] For example, Bangladesh has a longstanding practice of appointing ruling party-affiliated lawyers as public prosecutors.[96] The Ministry of Law, Justice and Parliamentary Affairs makes appointments from politically acceptable practicing lawyers, for short-term duration, with no office or staff provided to them. Their term could be for the duration of one case, and normally lasts until the political government making the appointment is in power or until the appointment suits the executive government politically and professionally.[97]

Since the Public Prosecutors are politically appointed, they are committed more to the political party rather than their activities in the court. Sometimes, they become corrupted if the accused are financially

89 See section 493 of the Code of Criminal Procedure, 1898.

90 Section 24 of the Cr.P.C., 1973 comprehensively deals with the appointment of public prosecutors, and additional public prosecutors.

91 See, section 265A of the Cr.P.C. 1898.

92 See, section 265B.

93 Taslima Monsoor, *Management of Gender Relations: Violence against Women and Criminal Justice System in Bangladesh* (Dhaka: British Council, 2008), 23.

94 Aminul Hoque Mithu, "Low Conviction Rate in Bangladesh: Some Relevant Thoughts," *The Daily Star*, May 13, 2006.

95 Sheikh Hafizur Rahman Karzon, "In Search of a Permanent Attorney System for Bangladesh," *The Daily Star*, April 16, 2005.Sheikh Hafizur Rahman Karzon, "In search of a permanent attorney system for Bangladesh", Law & Our Rights, *The Daily Star*, April 16, 2005.

96 Biswas, "Do We Have an Independent Judiciary?".

97 Monsoor, *Management of Gender Relations: Violence against Women and Criminal Justice System in Bangladesh*.

or politically influential.[98] Moreover, they remain absent in court during the hearing which creates adjournment or dismissal of the case. Sometimes, it is their indifference in promptly prosecuting the case that leads to several adjournments and may also lead to drastic results.[99]

In one of the cases in India, the trial of the case was adjourned at the request of the prosecutor for adducing prosecution evidence. On a given day, four of the prosecution witnesses were present in the court. Though everyone in the court was ready, the prosecutor in charge of the case had not appeared before the court. The Magistrate deputed his staff to fetch the prosecutor but they could not find him. Through other means the court sent information to the prosecutor to come and produce the witnesses. All this proved in vain and the prosecutor had not appeared. The trial court discharged the witnesses and acquitted the accused. Then the state appealled, challenging the order of the trial court. The High Court did not approve of the challenge of the State and held that mere presence of the witnesses in court does not amount to the production of evidence. Witnesses had to be produced by the prosecutor in court, so that their statements of evidence may be recorded by the court. It is not the intention of the legislature that a Court should step into the shoes of the prosecutor and examine witnesses. When there is no one present for the prosecution to produce evidence in support of the prosecution case, the Magistrate could not have been expected to waste public time by waiting indefinitely day after day for the prosecution agency to produce evidence though no one appeared on behalf of the prosecution for producing witnesses.[100]

ROLE OF LOWER JUDICIARY

Magistrate Court

Cases of dowry-related crimes are usually brought under the Dowry Prohibition Acts and are tried in the First Class Magistrate Court.[101] After filing a complaint concerning dowry-related crimes, the Magistrate examines[102] the complaint and if he thinks that there is a

98 Karzon, "In Search of a Permanent Attorney System for Bangladesh."

99 V Radha Krishna Krupa Sagar, "The Role of Public Prosecutor in Criminal Justice System" (Guntur, 2013), 43.

100 *Ibid*; See also, *State v. Ulfatia* 1972 Cr.L.J. 1994 (Allahabad).

101 According to section 7(a) the magistrate of first class is empowered to try the dowry demand cases.

102 Section 200 of the Cr.P.C. states, A magistrate taking cognisance of an offence on complaint shall at once examine upon oath the complainant and such of the

basis for initiating the proceeding, he takes cognisance. After taking cognisance, the Magistrate will issue a process, i.e., either summon or warrant compelling the attendance of the accused. However, after examining the complaint, if the magistrate thinks that there is no sufficient ground for proceeding, he can dismiss the complaint.[103] This is what actually happens in most of the dowry demand cases. Further, there is a common tendency of to dismiss the complaint, due to the perception that these dowry demand cases are based on a false claim.[104]

In India, section 7(1) (a) of the Dowry Prohibition Act, 1961 empowers the Magistrate of First Class to try the offences under this Act, which is similar to the position in Bangladesh. Literature shows that the Magistrate Courts in India adopts a very restrictive approach when they interpret the dowry prohibition laws.[105] Moreover, the courts are, sometimes, gender biased and they tend to have a mindset that does not sympathise with the plight of women who have been victims of dowry-related crimes and this is reflected in the precedent that they set.[106] Furthermore, they give low priority in settling the disputes under this Act that it takes a long time in settling the case. Carlson-Whitely writes that, "it can … take up to one year before the court even agrees to grant a hearing."[107] Like the police, the courts consider that most of the cases under this Act are false and fabricated and their intervention will worsen the adjustment between husband and wife.[108] Thus, in addition to the role of the police, the attitudes of the Courts of Magistrates of Bangladesh and India are not really helpful to implement the Dowry Prohibition Acts in these countries.

witnesses present, if any, as he may consider necessary and the substance of the examination shall be reduced to writing and shall be signed by the complainant or witness so examined and also by the magistrate.

103 Section 203 of the Cr.P.C.

104 It was observed after analyzing some unreported cases on dowry demand of the Magistrate Courts.

105 Tara S Kaushik, "The Essential Nexus between Transformative Laws and Culture: The Ineffectiveness of Dowry Prohibition Laws of India," *Santa Clara J. Int'l L.* 1 (2003): 109.

106 Kaushik, "The Essential Nexus between Transformative Laws and Culture: The Ineffectiveness of Dowry Prohibition Laws of India."

107 Angela K Carlson-Whitley, "Dowry Death: A Violation of the Right to Life Under Article Six of the International Covenant on Civil and Political Rights," *U. Puget Sound L. Rev.* 17 (1993): 648.

108 Judith G Greenberg, "Criminalizing Dowry Deaths: The Indian Experience," *Am. UJ Gender Soc. Pol'y & L.* 11 (2002): 811.

Nari o Shishu (Women and Children) Tribunal and Sessions Court

In Bangladesh, the dowry-related crimes including dowry death cases are triable by the judge of the *Nari o Shishu Nirjatan Daman* which means, the Women and Children Prevention Tribunal. The tribunals are established under section 26 of the Prevention of Oppression against Women and Children Act, 2000. The judges of the tribunal are treated as Sessions Court Judges and the tribunals are also treated as Session Court.[109] Thus, the tribunals can apply all powers of the Session Court as provided in the Cr.P.C., 1898.

When the accused is brought before the Magistrate and if it appears that the offence is triable exclusively by the Tribunal, the Magistrate shall send the case to the Tribunal.[110] Then, the tribunal will proceed with the next procedure following the Cr.P.C. The trial in the tribunal is more formal and lengthy compared to those in the court of a Magistrate where there are formal openings, arguments, and closing sessions for every case heard in the Tribunal.

Section 20 of the Act, 2000 provides that the completion of a trial is within 180 days. But, in Bangladesh no case under the *Nari-Shishu* Tribunal has been settled within the given time period.[111] The judges of the tribunal blame the police and lawyers for the delay. They further highlight that dowry-related crimes are false and fabricated.[112] Moreover, sometimes, they amicably settle the dispute among themselves and do not proceed further in the case.[113] That is why the rate of conviction is very low in cases of dowry-related crimes. All these claims may be true to a certain extent. But, where there is scope to apply to judicial discretion, then what prevents the judges of the tribunals to show their activism? Perhaps, Sarkars' comment will be pertinent here as she remarks that:

> [J]udicial commitment to social justice and declaration of the need to promote gender justice often brings in conflict with the years of

109 Section 26(i) of the Act.

110 Section 205C of the Cr.P.C.

111 Nari-Shishu (Women and Children) Tribunal is established under s. 25 of the Suppression of Reppression against Woman and Children Act. By analysing around 15 cases both reported and unreported of the Tribunal I did not find a single cases which has been settled within 180 days.

112 Mohammad Abu Taher and Siti Zaharah binti Jamaluddin, "Dowry Prohibition Laws in Bangladesh: Problems of Implementation," *Journal of Malaysian and Comparative Law* 41, no. 1 (2014): 10.

113 Taher and Jamaluddin, "Dowry Prohibition Laws in Bangladesh: Problems of Implementation."

> unquestioned principles of male dominance and women's inferior status.[114]

In India, unlike Bangladesh, dowry-related crimes are triable by the Sessions Court constituted by section 9 of the Cr.P.C, 1973. After submission of the police report to the Magistrates, the Courts are empowered to take the cognisance of dowry-related crimes under section 190 (1). If the Magistrates find that the offences are exclusively triable by the Sessions Court, they are required to send it to be tried there. After hearing the accused and the prosecution, the Session Court is empowered to discharge the accused if there are no sufficient grounds to intervene.[115] However, if it seems that the accused has committed the offence of dowry violence, the court can bring a charge against the accused person.[116] Thus, as the criminal courts at the lowest level, the Indian Sessions Courts have a great role to play in settling dowry-related crimes.[117]

However, it is observed that the courts record a higher number of acquittal if compared to the number of conviction.[118] Sometimes, the courts misread the problem of dowry-related crimes and do not consider it as part of the larger problem of violence in the society that control wives' lives.[119] In this respect Greenberg writes, "India[n] judges are happy to dismiss criminal proceedings if the victimised wife requests it."[120] Judges are, sometimes, reluctant to apply their discretion and find it easier to acquit the accused if there is any fault in investigation.[121] Further, due to misreading and misinterpretation of the law, the accused are acquitted and hence, the number of acquittal is high compared to the amount of conviction.[122]

To try the dowry violence, the judges of the Session Courts rely on direct evidence and eyewitnesses whilst suppressing other

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114 Lotika Sarkar, "Women and the Law," in *Annual Survey of Indian Law* (New Delhi: Indian Law Institute, 1985), 493–500.

115 Section 227 of the Code of Criminal Procedure, 1973.

116 Section 228 of the Code of Criminal Procedure, 1973

117 Vineeta Palkar, "Failing Gender Justice in Anti-Dowry Law," *South Asia Research* 23, no. 2 (2003): 181–200.

118 Carlson-Whitley, "Dowry Death: A Violation of the Right to Life Under Article Six of the International Covenant on Civil and Political Rights," 648.

119 Greenberg, "Criminalizing Dowry Deaths: The Indian Experience," 813.

120 Greenberg, "Criminalizing Dowry Deaths: The Indian Experience."

121 Laurel Remers Pardee, "Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe, The," *Ariz. J. Int'l & Comp. L.* 13 (1996): 502.

122 Rani Jethmalani and P K Dey, "Dowry Deaths and Access to Justice," in *Kali's Yug: Empowerment, Law and Dowry Death. New Delhi: Har-Anand*, ed. Rani Jethmalani (New Delhi: Har-anand, 1995), 57.

types of evidence, such as suicidal notes, dying declarations and the circumstantial evidence.[123] They sometimes ignore the situation that dowry violence always takes place in the secrecy of the in-laws house where it is hard to get the evidences which are directly connected to the occurrence.[124] Therefore, most of the dowry-related crimes end with acquittal. Having disregarded this situation, the Sessions Court sometimes spoil the chances of an effective enforcement of the laws.

ROLE OF HIGHER JUDICIARY

In Cases Related to the Demand of Dowry

Even when a case of dowry-related crime ends up in a conviction, if there is an appeal to the higher court, the probability for a reversal is very high.[125] The Court deems the cases from the perspective of traditional principles of criminal justice, which is reflected in their judgments.[126] In many reported cases[127] it is seen that the courts uphold a very restrictive approach and placed much emphasis on formal wordings of the law. Indeed, there are a few cases where the judiciary showed judicial activism in resolving the dispute. For example, in *Masud Hossain v. The State and another*,[128] the Court stated that: the dowry having been demanded during the continuance of the marriage cannot be quashed on the plea of divorce subsequent to the demand of dowry. In this case, dowry was demanded on 9.11.1990 during the continuance of the marriage and the complainant divorced on 20.12.1990. Despite this fact, the dowry demand case can still be continued and cannot be quashed on the plea of divorce.

Even though the higher judiciary of Bangladesh and India is considered to be gender sensitised[129], the members of the judiciary

123 Ravikant, "Dowry Deaths: Proposing a Standard for Implementation of Domestic Legislation in Accordance with Human Rights Obligations," 478.

124 Jethmalani and Dey, "Dowry Deaths and Access to Justice," 61.

125 Khair, "Violence Against Women: Ideologies in Law and Society," 154.

126 Begum, "Protection of Women's Rights in Bangladesh: A Legal Study in an International and Comparative Perspective," 279.

127 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.

128 4 BLT (AD) (1996) 204

129 Fawzia Karim Firoze, Rina Roy, and Fayazuddin Ahmad, *Landmark Judgements on Violence against Women of Bangladesh, India, and Pakistan*, 1st ed. (Manusher Janno Foundation, 2007), 3.

have displayed contradictory attitudes towards the settlement of dowry-related issues. From the very beginning, the higher judiciary of Bangladesh was struggling to determine the definition of dowry, which was reflected in their various judgments. The confusing decision regarding the definition of dowry firstly arose in *Mihir Lal Shaha Poddar v. Zhunu Rani Shaha*.[130] The confusion was whether the demand was made as a consideration for marriage or not. Again, it was observed in this case that in order to be considered as an offence, the demand must be made before or during the marriage not after that. The contradictory judgments were obvious in a number of subsequent cases.[131] Consequently, the government amended the Act in 1984 and has made it clear that if the dowry is demanded after marriage it would be enough to be an offence. Further, the Appellate Division of the Supreme Court of Bangladesh delivered a landmark judgment to remove the confusion of the definition of dowry in the case of *Abul Basher Howlader v. The State and another*.[132] The point of the definition of dowry was again confirmed by Appellate Division in a recent case *Momtaz Begum vs. Md. Anwar Hossain.*[133] In this case the Supreme Court of Bangladesh held that:

> …dowry includes not only money etc. agreed to paid before, or at the time of marriage but also money etc. demanded afresh after marriage for continuing the marriage already solemnised. It also appears from the record that the legislation has taken care of to see that not only the taking or giving of dowry or abetment thereof before or at the time of marriage is made an offence but also the demand thereof after the marriage.

Unlike Bangladesh, the higher judiciary of India assumed quite a liberal approach regarding the definition of dowry from the very beginning and this is reflected in their judgments. For example, in the case of *Pratibha Rani v. Suraj Kumar*[134] the Court held the view that whatever is given to the bride at the time of marriage or thereabout

130 37 DLR (1985) 227. It is considered as the first reported case on dowry demand in Bangladesh.

131 For example, *Rezaul Karim v. Mosammat TaslimaBegum* 40 DLR (1988) 360; *Anwara Begum v. The State and another* 13 BLD (1993) (HCD) 474; *Salam Mollick (Md) v.State* 48 DLR (1996) 329; *Ajit Kumar Pramanik v. Bokul Rani Pramanik* 46 DLR (1994) (HCD) p290; *Md. Hanif Howlader v. Most. Jahanara Begum and another* 23 BLD (2003) 510

132 46 DLR (AD) (1994) 169; See the 4th Chapter of this thesis regarding the clarification of dowry.

133 16 MLR (AD) 2011

134 AIR 1985 SC 628

constitutes dowry. The same view has been assumed by the Punjab and Haryana High Court in the case *Vinod Kumar v. State of Punjab.*[135]

In Cases of Dowry-Related Crimes

In a significant number of cases concerning dowry violence, the courts of Bangladesh appeared to be sympathetic and tried to provide remedy in favour of the victimised women.[136] For example, in *Salema Khatoon & otherrs v. The State*[137] the victim was severely beaten by her husband and in-laws when she expressed her inability to bring the dowry from her brother and was left in the courtyard in an unconscious state. She lost her hearing capacity due to inhuman beating and torture by the accused. The X-ray report also showed a traumatic collapse of her spine and dislocation of her bones. The court held:

> …. When a prima facie case has been disclosed and cognisance taken, this court would not embark upon an enquiry into whether the allegation is reliable or not and would not stifle the proceedings before the prosecution got an opportunity to bring evidence in support of the accusation.[138]

In the case of *Dipak Kumar Roy @ Kazal v. State*[139] the High Court observed that:

> Causing grievous hurt to a woman by her husband or his relatives or anyone on his behalf over the demand of dowry would be an offence …… even though there was no previous agreement to pay the same.

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135 AIR 1982 P. & H. 372 (FB)

136 The HCD in *Abdul Mannan alias A. Mannan v. Musammat Nurbanu and another* 24 BLD (AD) (2004) 214 held that non-examination of any independent and neighboring witness is not always fatal to the prosecution as law permits conviction of an accused on the basis of the evidence of a single trust-worthy witness; See also, *Md. Abul Kashem v. The State and another* in *Landmark Judgements on Violence against Women of Bangladesh, India, and Pakistan*, 1st ed. (Manusher Janno Foundation, 2007), 107; Dhaka, 107. See also, *Md. Noor Islam Gazi v. Most. Amena Begum and another*, Landmark Judgments, 109

137 38 DLR (1986) (HCD) 348-356; See also, *Anisur Rahman v. State*, 10 BLC (2005). In this case the HCD upheld the judgment of the lower court where the accused husband was convicted for grievous hurt to his wife.

138 *Ibid.*

139 50 DLR (1998) (HCD) 603-606; See also, *Pramanik v. Rani Pramanik*, 46 DLR (1994) 290-291

However, in numerous dowry violence cases, the Court upheld a very restrictive approach and places much emphasis on the formal wording of the law, instead of its intent.[140] For example, in *Firoza Begum v. Hormuz Ali & another*[141] the High Court observed that the mere allegation of the wife that her husband (accused) had beaten her while demanding for dowry and ousted her from the house will not be considered as an offence due to dowry. In order to obtain a remedy, there must be an allegation that the accused husband caused or attempted to cause death or grievous hurt to her. To put it another way, women are required to be severely beaten or be grievously hurt or be subjected to an attempted death before seeking remedy of dowry demand, and mere demand without these will not be enough to result in a remedy.

Again in the case of *Abdur Rahman Pramanik v. State*[142] it was held that:

> Injury alleged to have been inflicted on the wife does not come within the mischief of section 6 of the Cruelty to Women (Deterrent Punishment) Ordinance, 1983 since it is not for demand or realisetion of dowry.

Thus the impugned judgment and order of conviction passed by the Tribunal is found to be illegal and liable to be quashed.

On the other hand, the Courts of India are one step forward in settling such types of dowry violence cases.[143] In *State of Karnataka v. Syed Fareed*[144] the case was concerning physical harassment to a woman and was a domestic violence case. But, the accused was

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140 Here restrictive approach means to rely on formal wording of law rather going to content and reluctant to apply judicial activism. For example, in *MM Ishak v. State* 56 DLR (HCD) (2004) 516 the HCD said mental and physical torture and causing hurt for injury is not the same thing. Further, the Court did not recognise mental torture. Indeed, mental torture is not defined and mention in the Act but, which prevent the Courts to recognise this offence and try it.

141 40 DLR (1988) HCD 161-163; See also, *Shawkat Hossain (Md) v. State* 3 BLC (1998) (HCD) 112-116. In this case the Court held that dowry or demand of dowry is the precondition for bringing the offence under the Act.

142 11 BLC (2006) (HCD) 239-241; See also *Nibash (N) Chandra Sarker v. Dipali Rani & another,* 8 BLT (HCD) (2000) 29-33.

143 Of course there are few cases where the Courts did not show judicial activism. For example, in *State of Maharashtra v. Ashok Narayar* AIR 2000 SC 3568, the Court held that there was no evidence against husband either making a demand at any point of time or assaulting or treating wife with cruelty or torture. Cruelty, which is necessary ingredient for bringing home charge, not established; See also, *State of Himachal Pradesh v. Ashok Kumar,* 2002 Cr.L.J. 3606, (Him. Pra).

144 *State of Karnataka v. Syed Fareed* (Kant.), 2002(2) C.C.J. (DB) 773.

acquitted by the trial court. The Karnataka High Court asserted that the statement of the victim was found to be trustworthy and corroborated by medical evidence. It was held that no independent evidence is necessary. Moreover, the Court said the learned trial judge has, without any due application of mind, acquitted the accused. Thus, the accused was convicted and fined with a heavy fine Rs. 20,000 by the High Court of Karnataka.[145]

CONCLUSION

Dowry and dowry-related crimes are a social problem and one of the burning issues in the societies of Bangladesh and India. The above mentioned analyses shows that in both countries, it is important to implement enforcement of dowry-related crimes so that the society is free from the dowry menace. India is one step ahead in this regard as they appoint dowry prohibition officers in some of their States. However, in both Bangladesh and India, the law enforcement agencies to some extent do not perform their duties up to the mark. It goes without saying that the success or failure of the implementation of a law is inherent in the system of the enforcement, which depends on the effective functioning of the law enforcement agencies. Thus, if the police adopt sympathetic attitudes to register the crimes and conduct the investigation properly, the prosecutors address the witnesses and evidence strongly, and judges apply their activism, the number of convictions will increase. If the number of conviction increases, it can be said that the number of dowry-related crimes will decrease as the prospective perpetrators will think twice before ill-treating a woman for dowry.

[145] Ibid.