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Submission to “The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child”

Re: Dowry demands related family and domestic violence against migrant women: A plea for legal deterrents in Australia and other host nations

About the Australasian Centre for Human Rights and Health (ACHRH).

ACHRH primarily operates in Australia. It was founded in 2012 and is the only South Asian NGO in Victoria that is a Think Tank, uses evidence based advocacy and prevention activities, in a bid to attain its vision -to create an equitable and harmonious society. To that end ACHRH promotes gender equality and respect, and family harmony for new South Asian migrants. ACHRH continues to do this by mobilizing the Australian South Asian community on behalf of those who are victims of family violence, dowry abuse, abandoned brides suffering mental health harm, excluded, isolated and new to the country. ACHRH has adopted evidence based approach in raising awareness against family violence in the community, conducted action research, and provided submissions to enquire, the Victorian Royal Commission into family violence, hearings and made input into the 3rd National Plan.

ACHRH team has led a number of community based action research, projects, and activities-for example raised a petition against dowry in 2013, tabled in Victorian Parliament in 2014 and incorporated in recommendation 156 by the Royal Commission into Family Violence. In 2015-16 conducted a community participatory theater project “Natak Vihar” funded by Victorian Government with the aim to

involve the South Asian community members to explore culturally responsive solutions to dowry abuse and family violence. The videotape is available on www.achrh.org

This submission to CEDAW seeks to present physical and emotional abuse associated with dowry and financial extortion in context of arranged marriages in migrant women. And it makes a plea for legal framework and other comprehensive responses to combat dowry abuse in migrant women in Australia and western host countries.

Method

ACHRH considers that dowry and dowry related abuse is a catalyst for emotional, physical abuse, violence in the Indian, the South Asian, Chinese, African and the Middle-Eastern communities. It is a form of exploitation , the marriage is based on false pretenses with a clear intent to exploit the bride and her family . This position is based on:

- **Information received by, and consultation with members of the Indian and other Asian communities;**
- **The media. -A media report (The Herald Sun 23/4/2015) and a documentary (‘Australia’s dowry deaths’ 2017 by Al Jezeera) has linked domestic violence deaths to dowry**
- **Action research based on the Indian community in Australia, conducted in collaboration with the University of Melbourne (Appendix 2 and 3)**
- **Clinical data of its Founder and Director, Dr Manjula O’Connor, Psychiatrist.**
- **Ms Uthra Ramachandran. Master Thesis in Law, 2018. Monash University. *Addressing Dowry Violence In Australia: Legislative Responses And Future Directions 21***

Introduction

Practices that enforce gender inequality contribute towards family and domestic violence (1). Individual factors such as having experienced physical or sexual abuse as a child and witnessing parental violence can contribute to IPV, research evidence shows community and societal risk factors, such as rigid traditional gender norms, unequal social, legal and economic status of women, and weak community sanctions against violence are significant contributory factors(1). The gender based power differential gives rise to harmful cultural practice in turn reinforces gender inequality. Dowry is one such practice and is found across the globe (2). And is associated with physical and mental health harm. The extreme expression of dowry abuse is murder and only associated with female gender. The World Health Organization (2012) terms this femicide, or intentional murder of women, that is related to dowry. Such murders are reported to a greater extent in the Indian Subcontinent, whereas in Africa communities bride-price may be associated with contractual marriages and linked with human slavery by CEDAW.

Dowry as a harmful cultural practice

In the Indian Subcontinent dowry continues as an ancient practice originally designed as payment to daughters in lieu of inheritance it was meant primarily for the bride's use(2). Dowry in the Indian Subcontinent is a common practice. In modern India equal inheritance for daughters is ensured in its laws but the practice of dowry continues and **is being transported across the globe via the custom of arranged marriages(2)**. The reasons why the practice of dowry giving and taking continues are complex. Although primarily a Hindu custom in olden days, it has become incorporated into the social practices of other religious groups. India is a caste-based society, and status has always been important (3). In olden days, status was independent of wealth, but change, as a result of modernization and increasing wealth dispersion has conflated wealth and status and with it the size of dowry payments(3). No longer seen as goods and cash to assist the new bride commence her married life, the size of both the wedding celebrations and the associated dowry of cash, jewellery and consumer goods have become social signifiers, indicating not only the social status of the groom but, by association, the increased social standing of the bride's family (3).

Dowry system is a social practice that is reported to perpetuate oppression, torture, violence, and murder of women in India (4) and migration has helped to internationalize the practice (4, 18). Violence can occur when the dowry, or bride-price, is deemed unsatisfactory by the recipient (4). In addition to the practice of dowry in India and South Asia, similar practices, and the risk of violence with them, also exist in Muslim communities (5), and a number of African communities (6). In Africa and the middle-east it is the groom that makes substantial dowry payments to the bride and her extended family with similar but different set of problems. Evidence shows that victims may be subjected to acts of physical or

psychological violence, including murder, burning and acid attacks, for failure to fulfil expectations (10, 11,12,17) regarding demands of payment of a dowry or its size .

CEDAW refers to dowry related violence as a 'harmful traditional practice'. Traditional because it has been practiced for considerable periods, and abuses have come to be regarded as a part of accepted cultural practice. These violations include female genital mutilation or cutting (FGM), dowry murder, forced marriage. CEDAW identifies payment of dowries and bride prices as a factor that may increase the vulnerability of women and girls to violence. CEDAW further states in its general recommendation No. 29 that such practice should not be required for a marriage to be valid and that such agreements should not be recognized by a State party as enforceable.

Intersectionality -Relationship with migration

Residency of first world country enhances the potential groom's social status and hence in the marriage market. Families of bride keen to enhance the social status escalating his dowry worth (2).

When young Indian women marry Indian men living abroad, including Australia, their husbands often command a premium dowry, as they offer the bride a chance of a better life overseas (2). The departure from India also takes away the legal protection afforded by Indian laws for the young women (7). The giving of dowry does not begin and end with the formality of marriage but can continue for many years in the form of financial and emotional blackmail with the groom's family demanding funds or goods from the bride's family using the bride herself as the conduit (3, 8).

In a highly mobile and migratory world culturally responsive laws are needed internationally to better protect human rights of migrants. New brides who travel distances for love, are often isolated making them vulnerable to dowry demands/extortion and related violence, with threats to health and life.

Inclusion of dowry extortion /coercive demands as statute examples is needed across the world. It will act as deterrent and support primary prevention of family violence. Such laws will also support the first responders including the Police and the Judiciary bringing to their attention the real and potential threats to health and life arising from dowry related coercive demands. World Health Organization (2012) recognizes femicide as the intentional murder of women and is related to dowry demands. The laws internationally will assist the victims and hold perpetrators to account. Laws will set the impetus for social education, essential to support the legislation.

CEDAW and CRC note that harmful practices are deeply rooted in social attitudes according to which women and girls are regarded as inferior to men and boys based on stereotyped roles²². CEDAW further notes that sex- and gender-based attitudes and stereotypes, power imbalances, inequalities and

discrimination perpetuate the widespread existence of harmful cultural practices that often involve violence or coercion. UN Resolution A/RES/48/104 dated 20 December 1993 states that gender based violence is a manifestation of unequal power balance between power relations between men and women and it is concerned that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women are more vulnerable. The resolution welcomes the role that women's movements are playing in drawing increasing attention to the nature, severity and magnitude of the problem of violence against women. In Article 2 the Resolution declared that Violence against women shall be understood to encompass dowry-related violence, marital rape, and other traditional practices harmful to women, non-spousal violence in addition to commonly known forms of violence²⁰.

We argue that States are in breach of UN Resolution A/RES/48/104 by not protecting migrant women who are being subjected to dowry related extortion, in situation of entrapped marriage – it is exploitation of one human being by another for personal gain

The Australasian Centre for Human Rights and Health has been made aware of dozens of dowry related domestic violence perpetrated by spouses and non-spouses ie members of the extended household of the spouse and in recognition of the CEDAW and UN Resolution ACHRH raised a petition in 2013 to order to bring to the attention of the Parliament of the Australian State of Victoria that laws were needed to protect immigrant Indian and South Asian women's right to safety from culturally harmful practice of dowry. The petition was tabled twice in the Victorian Parliament by the Former Premier the Hon Ted Baillieu in 2014. The Victorian Royal Commission into Family Violence report (2016) accepted the petition and recommended to the Victorian Government that such a law is needed ⁹ (see Recommendation # 156 , Vol 5, p 113) ⁹.

There is lack of systematic data collection in countries with diaspora from the Sub-Continent. Although anecdotal evidence is plentiful ⁹. The secrecy around the practice of giving and taking dowry in immigrant women, the related abuse and other possible consequences has rendered this group of women highly vulnerable to this harmful practice^{9,10}. This note requests the protection for the Immigrant women and women of Indian diaspora across the world by requesting the Committee for Elimination of Discrimination of Women to urgently demand that Australia its member states to formulate clear laws proclaiming the dowry taking and dowry extortion a breach of human rights of women and perpetrators liable to civil and criminal action. Article 5 of UN Charter of Human Rights states “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Dowry related harassment is associated with cruelty, inhumanity and degrading treatment ^{9,10}

Recommendations

- 1) In view of at least two dowry related deaths of Indian women¹⁹, one Chinese woman in Australian and anecdotal reports from UK ⁽¹⁹⁾ this note demands the protection conferred by the Article Six of the International Covenant on Civil and Political Rights and Article 2 that places obligations on the States with respect to the right to life of South Asian and other migrant women exposed to dowry abuse
- 2) Harmful practices noted by CEDAW (Article 24(3)), (Articles 2, 5 and 16. And Recommendation 31 that recognizes *the payment of dowries and bride prices, which varies among practising communities, may increase the vulnerability of women and girls to violence and to other harmful practices* . It reminds States of their obligations to CEDAW and CRC by to ensure full compliance with their obligations to eliminate harmful practices ⁽²²⁾.
- 3) CEDAW Recommendation 31 also states that harmful cultural practises such as the dowry when practiced should not be required for a marriage to be valid and that such agreements should not be recognized by a State party as enforceable. **It is important to keep in mind the intersecting vulnerability of migrant women** . They migrate after an arranged marriage , having given dowry the bride migrates on the basis of sponsored partner visa with right to temporary residency of Australia . Following domestic violence and abuse the marriage breaks down , with loss of partner visa sponsorship and loss of residency status making the woman an illegal migrant . It is recommended that the women subjected to dowry abuse are given full rights to permanent residency visa.
- 4) Dowry is given in India but marriage breaks down in Australia leading to loss of dowry. As recovery of dowry and perpetrator accountability is poor due to it being a multilateral issue, ACHRH recommends co-operation and agreements between Australia, India and other countries to protect human rights of migrant women victims of dowry abuse
- 5) Legal measures are needed in the Australian Family Law Act to include dowry abuse and also in the proposed act of Modern Slavery.
- 6) Policy change to fund education of Judicial and Police Officers, the communities and Politicians is required , with accountability at all levels.

Case history 1- A young woman Miss S was married off at age 19 by her family in an arranged marriage. It was a marriage held with her consent. She was studying law, she was keen to finish her degree. She was not allowed to go to University after marriage. She was told to stay indoors with her in-laws in India while she waited for her spousal visa to gain entry into Australia. She was told to cut off ties with her family and friends, and was made to do household servitude. Her in-laws dismissed their maid servant and she was enforced to fulfil the duties of the maid, to become the household's servant, told to take care of all the needs of household members, his elderly parents; baby sit sister-in-law's daughter while she went out shopping. Her husband married her under pressure from his family. The victim found out immediately after arrival in Australia that he had a girlfriend in Melbourne but was pressured by family to marry her. His family instead sought out the victim's family as they were willing to pay the dowry. He fell into the trap of his family's sense of entitlement to dowry, to societal expectation that a bride's family will give dowry. He reluctantly agreed to marry. Her parents spent about AUD 80,000 in cash and gifts, money in lieu of car, gold jewellery for the groom and his family. Miss S discovered his relationship with his girlfriend within days of arrival in Australia. She questioned her new husband she was told she is insolent, that she had insulted his parents by refusing to do housework, back chatted and deserves to be punished. She was subjected to extreme violence, hair pulled out of its roots with severe bruising on face needing hospital treatment. He was given IVO.

She never recovered the Dowry gifts given that furnished the in-laws home, her personal gold jewellery that was taken over by mother-in-law for safe keeping but never returned. There is no legal protection in Australia that could support her claims for dowry return. It was given in India but the marriage broke down in Australia. In India her parents have so far been unable to claim the dowry back.

Case 2- A message received by email from India. " I am Khushboo Batra a citizen of India, got married to Australian Indian man in Aug, 2013 through an arranged marriage in Karnal, Haryana.I have been a victim of a marriage fraud. Taken to Australia in Feb 2014 on Tourist Visa. Forced to settle in Australia against the wish of my family .Demand for money from my parents & extended family.My parents/family provided huge money over time. He sold my gold jewellery in Australia..... Then birth of a baby boy, and constant harassment for further money..... He received PR on 1/June/2016. This milestone resulted in dramatic change of behaviour towards me, he threw me out of his house several times and..... forced me to go to India after booking my tickets without consulting me..... To our shock, Divorce Notice sent by husband from Australia was received at my parental address where I reside now since 4 Aug'17.

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