



Initiatives for Women in Need (IWiN) Submission on
***The Practice of Dowry And The Incidence of Dowry Abuse
In Australia***

(Submitted Online 17 August 2018 to
the Senate Legal and Constitutional Affairs Committee)

This Submission is supported by
the Canberra Multicultural Community Forum (CMCF), ACT

Acknowledgement

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Initiatives for Women in Need (IWiN) Submission on *The Practice of Dowry And The Incidence of Dowry Abuse In Australia* (17 August 2018)

Initiatives for Women in Need (IWiN) welcomes the opportunity to share its views and knowledge on the practice of dowry and the incidence of dowry abuse in Australia with the Legal and Constitutional Affairs References Committee in reference to the Australian Senate inquiry. IWiN understands that this particular Senate inquiry focuses on **exploring the nature of dowry as a cultural practice, and the adequacy of current Australian policy settings and legal frameworks regarding dowry and dowry abuse**. Accordingly, IWiN puts forward this Submission with a set of recommended actions aimed at community welfare, particularly from the multicultural community's perspectives.

IWiN looks forward to participating in further actions and consultations on the dowry abuse issues affecting the economic and social advancement of Australia's multicultural communities.

About IWiN

Initiatives for Women in Need (IWiN) is an ACT based volunteer led organisation that was founded in 2013 to support and advocate for socially and economically disadvantaged women and children. We also aim to support migrant families experiencing domestic violence and discrimination at home and at work, particularly coming from culturally and linguistically diverse (CALD) communities.

IWiN aims to educate, empower and enrich the lives of these women and children. Consequently, IWiN has been working relentlessly to raise awareness of the impacts of violence against women along with gender inequality and discrimination against women with disabilities in the ACT region. IWiN does this through seminars, panel discussions, workshops, public consultations, e-newsletters and policy advocacy. IWiN frequently advocates for issues faced by the CALD communities in Australia through policy submissions such as the:

- *IWiN Submission on the Family Law Amendment (Family Violence and Cross examination of Parties) Bill 2018* (To the Senate Legal and Constitutional Affairs Committee, Australian Parliament, July 2018)
- *IWiN Submission on National Ageing and Aged Care Strategy for People from Culturally and Linguistically Diverse (CALD) Backgrounds – Review* (To the Department of Health, Australian Government, May 2017)
- *IWiN Submission on the Foreign Policy White Paper 2017 regarding professional migrant women employment issues* (To the Department of Foreign Policy Affairs & Trade, Australian Government)



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Over time, IWiN's scope of work has expanded to include advocacy and research on other broader social justice issues affecting the welfare of women and their families – such as job market discrimination, workplace flexibility, collaborative community action and national security.

IWiN 's current focus is on developing a collective impact action plan for the economic advancement of CALD women in the ACT region, supported by an ACT Government's 2018 Participation (Women's) Grant.

IWiN Views on Dowry Abuse

IWiN recognises that dowry abuse is a form of financial abuse, and a common subset of domestic, family or intimate partner violence. It can be enacted by anyone for whichever reasons and is often used to establish a sense of power over the party who is failing to provide.

In the case of dowry as practiced in the communities coming from the South Asian ancestry, it is a lump sum of financial assets (in kind and/or in cash) provided on demand at the time of marriage, that can then be invoked in a way that creates power imbalances within a family set up, disadvantaging mostly married women.

IWiN would argue that financial abuse occurs in most domestic violence cases, and that it is inappropriate to single out any particular CALD community, such as the Indian community, as being the main perpetrators of dowry abuse, as seen in recent media reports.¹ As per the informal consultations carried out by IWiN with other CALD community organisations and experts in the field, expectations and practices on marriage related financial benefits are prevalent in other communities also, such as, Chinese, Indonesian, and African traditional communities.

Therefore, policymakers must be careful to frame dowry abuse as a case of utilising particular cultural traditions as a justification for financial abuse, or else they risk feeding into anti-immigrant or prejudiced rhetoric about Asian, South American or African communities being particularly violent or cruel.

Senate Inquiry Terms of References (TORs) and IWiN Recommendations

TOR (a): The extent and nature of knowledge regarding cultural attitudes to, the practice of, and the prevalence of dowry in Australia, both before and after marriage

Most of the multicultural community members, coming from communities where dowry is a custom, have a reasonable understanding of the concept of dowry. However, when discussed in media or courts, the term refers to the legal definition of the anti-dowry laws of the country of their origin. For example, a news article on dowry abuse of women of Indian origin would refer to dowry as the “substantial gifts” **demanded** in the context of a marriage (on or after the marriage), where the value of gifts is out of proportion to the income

¹ <https://www.sbs.com.au/yourlanguage/punjabi/en/audiotrack/senate-inquiry-investigating-dowry-related-abuse-australia>, as accessed on 16/08/2018



of the families (L-Dowry). In fact, Indian anti-dowry laws are very harsh on men. Please see **Box 1** (next page) that provides brief information on these laws.

Box 1 - Anti-Dowry laws in India

The Dowry Prohibition Act, 1961 prohibits the giving and taking of dowry. The legal definition of dowry as clarified by a court judgment is:

"Dowry" in the sense of the expression contemplated by Dowry Prohibition Act is a demand for property of valuable security having an inextricable nexus with the marriage, i.e., it is a consideration from the side of the bride's parents or relatives to the groom or his parents and/or guardian for the agreement to wed the bride-to-be.

The Dowry Prohibition Act, 1961 article 3 specifies that the penalty for giving or taking dowry does not apply to presents which are given at the time of a marriage to the bride or bridegroom, when no demand for them have been made.

Section 498A of the Indian Penal Code required the bridegroom and his family to be automatically arrested if a wife complains of dowry harassment.

The practice of dowry, as defined by the Merriam -Webster dictionary² (D-Dowry), is almost universal, including in Australia, across many communities including Indian and many South East Communities across the world (SE communities). The value of D-Dowry generally depends on the wealth of the bride's father.

Generally, Australians, including migrants from CALD communities, do not like to use the word 'dowry' due to the negative connotation attached to it. However, in practice, like other Australians, they are not averse to receiving gifts or financial support from their parents, before, at or after marriage. In fact, it is quite common for a married couple to accept gifts from both sides of the family, for various social occasions following their specific cultural tradition. In the South Asian cultural practices, the value of gifts given at the time of marriage by bride's parents is usually significant and these gifts generally include some cash amount, clothes, furniture, vehicles, expensive ornaments and at times, real estate. However, most of these gifts (except real estate, cash and gold ornaments) do not have much resale value. Therefore, most of the wedding gifts do not provide much financial support in times of crisis.

The incidences of L-Dowry are rare where both marrying partners have been brought up in first world countries such as the USA, Canada, Australia, the UK or Europe, irrespective of type of marriage (arranged or not); but not uncommon where one of the partners is from the South Asian community. Most cases of L-Dowry are found in arranged marriages (not all arranged marriages) where dowry is used as a means to maintain social status by attracting a husband of at least equal standing - by virtue of wealth, power, and possibly claim to a superior hereditary status (as per the Indian caste system) - for one's daughter. In these

² Merriam -Webster dictionary defined the dowry (D-Dowry) as money or property that a wife or wife's family gives to her husband when the wife and husband marry in some cultures.



cases, the value of dowry generally depends not only on the wealth of the bride's father, but also on the groom's future career prospects.

Prospective grooms from the first world countries are in high demand for the parents in the third world countries as these marriage alliances are supposed to provide better life opportunities not only to their daughter. It also provides the opportunity for remaining family members to migrate to these countries.

Recommendation 1:

IWiN recommends that the Australian Government should discourage any cultural practices of demanding gifts (in kind and/or in cash) at the time of marriage by making these activities legally punishable.

TOR (b): The appropriateness and impacts of dowry as a cultural practice in modern Australia, taking account of our national commitment to gender equality and human rights, and approach to multiculturalism

Examining the practice of dowry through the lenses of gender equality and human rights is welcome, but fails to provide the full picture, as this approach is equivalent to scrutinising the dowry issue through women's perspective only. It is because, though throughout their married life, both partners receive gifts from their parents, attached to cultural rituals, it is prevalent that gifts given by girl's parents are called dowry while gifts from boy's parent are considered only gifts.

IWiN would like to draw attention of the Senate Committee to many instances in Australia where the husband's parents have provided financial help to their son to buy property or motor vehicles. But at the times of divorce, the wife has received an equal share of assets, thus ignoring the significant contributions made by the husband's parents to build those financial assets.

Recommendation 2:

IWiN recommends that any anti-dowry law focusing on gifts/contributions made by only bride's parents at, before or after marriage would be unfair to men, so gifts from both parental sides should be considered.

TOR (c): Reports of dowry abuse, including potential links to family violence, pretext for arranged marriage, forced marriage, modern day slavery, financial abuse, domestic servitude, murder, and other crimes, as well as any connections between dowry abuse and adverse mental health outcomes for affected women, including self-harm and suicide;

As mentioned earlier, the incidences of L-Dowry are mostly found in arranged marriages (not all arranged marriages) where dowry is used as a means to maintain social status. Though prospective grooms from First World countries are in high demand in Third World countries, it is observed that many of them provide false information about their education, social-status and employment details to attract high-value marriage



alliance(s) with highly qualified women from financially and/or politically strong families who are ready to pay high a dowry amount. Post marriage, women and their families learn the truth and marital relationships between the couple deteriorate. This is consequently how and where the domestic abuse begins. This is evident from some recent media coverage, for example:

- Most of the incidences presented in the ABC News' investigation into *religion and domestic violence* (2017)³ relates to couples where at least one partner was from India.
- Manjula O'Connor, Director of the Australasian Centre for Human Rights and Health who has campaigned for this cause since November 2012, said "Often these victims who come as brides to Australia from India are cheated by their husbands and in-laws. Their education, their social-status, their employment details are either false or exaggerated. One victim told me that her husband claimed to her that he was a businessman, when in fact he was driving a taxi here. Another victim shared how her husband had lied to her about his educational qualifications. She herself was an IT Engineer from a reputable institution in India and was disappointed that her husband was nothing what he claimed," O'Connor says.⁴

In such cases the underlying reason for domestic violence is the betrayal related to the basic foundation of the marriage alliance itself, **not dowry**. The violence arises from the couple's inability to handle the situation without the wife being subjected to domestic violence.

These situations also lead to a range of adverse outcomes related to physical and mental health, financial, and social impacts on individuals and families, particularly migrants, that can hinder them from achieving their full potential in Australian society. Further, they raise the social costs through increased expenditure on health, law and order, legal aids and lost productivity.

Recommendation 3:

IWiN recommends that migrant settlement services should provide mandatory induction sessions to all new arrivals, particularly individuals on a temporary spouse visa, regarding their rights and obligations within six weeks from the date of their arrival in Australia, and the cost of this service can be recovered from the spouse visa fees.

The induction sessions should include information about:

- ***making legal agreements or statutory declarations on personal assets to avoid dispute over assets at the time of divorce/separation***
- ***all types of available services, including services for domestic violence victims***
- ***various social networks and CALD communities to create a strong base of support***

³ Jopson, Debra (18 December 2017), The secret scourge of family violence and murder in Australian Hindu and Sikh Communities. <http://www.abc.net.au/news/2017-12-18/scourge-family-violence-in-hindu-and-sikh-communities/9257724> as sighted on 5 August 2018.

⁴ <https://www.sbs.com.au/yourlanguage/hindi/en/article/2016/04/08/dowry-ruining-lives-australia>, as accessed on 15/08/2018



TOR (d): The adequacy of the family law system, including how divorce and property settlement proceedings deal with dowry and dowry abuse, and the operation of and need for extra-jurisdictional (including international) enforcement mechanisms.

TOR (i): The adequacy of current Commonwealth and State and Territory laws in establishing broadly accepted community norms and in preventing dowry abuse, and specific recommendations for change if laws need to be strengthened

IWiN is of the view that Australia's Family Law system is adequate to deal with financial abuse in a marital relationship, which is the basic tenet of dowry (irrespective of the type) and dowry abuse. The demand for dowry (whether met or unmet), though not acceptable in principle, by itself may not harm anyone in a marital relationship unless it is followed by incidences of domestic violence.

In Australia, domestic violence is addressed through the *Family Law Act* which is gender neutral. Any form of violence is unacceptable, it is an act against an individual's basic human rights – irrespective of how and whom it affects. In practice, multiple forms of abuses are intertwined and hence it is difficult to assign them a particular category. However, victims are often inclined to categorise the incidence of violence in a way that brings them maximum sympathy from the community and the justice system, with a view to a quicker and harsher punishment to the abuser. This is evident from the abuse of anti-dowry laws in India - noted by a bench of Justice in July 2017, please see **Box 2** for reference.

Box 2: Anti-Dowry law abuse

On 27 July 2017, a Bench of Justices A.K. Goel and U.U. Lalit concluded that Section 498A (dowry harassment) of the Indian Penal Code has come under much abuse. Dowry complaints are being filed in the heat of the moment by women over trivial issues. Innocent relatives, including parents of advanced age, siblings and grandparents, suffer harassment.

Source: <https://www.thehindu.com/news/national/sc-does-a-re-think-on-dowry-harassment-ruling/article19856041.ece>

The point to be noted here is that generally no partners or their families raise any issue on the custom of dowry unless marital relationships break down, leading to a conflict over the division of their assets as the couples are at the verge of divorce. Therefore, IWIn is of the opinion that dowry practices (taking or giving gifts on demand) should be considered equivalent to financial abuses within a domestic violence context.

Dowry abuse is a problem of compliance of domestic violence laws and should be addressed that way. The problems related to L-Dowry can be reduced only when there will be reasonable income equality between



married couples and the caste-system ceases to be a pre-dominant factor of family status (Anderson 2003)⁵. From IWiN's perspective, the punishment for dowry should be applicable to both parties – the people who demand dowry and the people who give in to the demand. IWiN strongly believes that the impacted communities should play a proactive role in educating its members on dowry abuse and its negative consequences, while encouraging its women in becoming economically independent and be part of its active social network.

Recommendation 4:

IWIN recommends that it should be mandatory for all CALD community organisations, those who receive any form of government (Federal/State/Local) grants, to conduct community awareness events regularly on dowry abuse and the available services for the victims of domestic violence.

Recommendation 5:

IWIN recommends that new migrants including spouses with temporary visas to Australia should be required to sign an affidavit signed by both partners in visa applications stating the value of personal assets, if any. This would reduce the dispute at the time of divorce.

TOR (e): Confirmed and potential links between dowry, dowry abuse and forced and/or arranged marriages, both in Australia and in connection with Australia's migration program;

According to IWiN, Australia's migration program has an impact on the value of Dowry (both L-Dowry and D-Dowry) and dowry abuse (L-dowry). It has created a marriage-oriented visa market, which in some instances has favoured women in matrimonial alliances, at least in the short run.

For example, the student-visa category has increased the bargaining power of IELTS-qualified marriage candidates. In this arranged marriage alliance, the IELTS-qualified bride or groom is expected to study, while all study expenses are paid by his/her partner's family. If the IELTS-qualified partner is a female, no dowry is demanded usually; but dowry demand is applicable when the IELTS partner is a male. This relationship is mutually beneficial for some couples and the marriage is successful. However, in many cases, couples are not compatible and instead, just tolerate each other till they get the Permanent Residency (PR) or find another way to get PR (such as, corporate/state sponsorship, contract marriage with an Australian Citizen etc.). Often the partners who could not find another way to get a PR would be vulnerable to exploitation or domestic violence, and likely to use dowry as a harsh stick to harm the other partner.

In addition, certain visa category imposes conditions on the number of working hours and paid school education for children, which in turn put financial pressure on families and provide fertile ground for

⁵ Why Dowry Payments Declined with Modernization in Europe but Are Rising in India Author(s): Siwan Anderson Source: The Journal of Political Economy, Vol. 111, No. 2 (Apr., 2003), pp. 269-310. <http://faculty.arts.ubc.ca/asiwan/documents/dowry-jpe.pdf>; as accessed on 15/08/2018



exploitation such as slavery, forced labour, wage theft, servitude, and domestic violence between couples. Women, who come as the partners of such temporary visa holders, are more likely to suffer domestic violence. An example of this scenario is the domestic violence case against Mr Manku (July 2018)⁶, where Administrative Appeals Tribunal's Senior Member Griffin said,

"The incident was caused by a variety of stressors which came together on that occasion and which included the illness of their young child, financial strain, and pressure about the upcoming question of their visas."

Recommendation 6:

IWIN recommends that the compliance of finances of new migrants on spousal visa applications should be strengthened appropriately.

TOR (g): Training and reporting regimes that apply to Commonwealth, and State and Territory police forces and family violence services in relation to dowry and dowry abuse

It is very important for law and order practitioners (such as the police, lawyers, law officers, judges) as well as service providers (such as domestic violence crisis services, health service providers including GPs and nurses, migration settlement services etc.) to be trained in approaching cases related to dowry abuse in a culturally sensitive manner. It is easy to have a perceived notion on dowry and its abuse being perpetrated by a particular CALD community, such as the Indian community, as seen in recent media reports.⁷ But this attitude or approach generates a risk of feeding into anti-immigrant or prejudiced rhetoric about South Asian communities as being particularly violent and abusive.

As per the informal consultations carried out by IWIn with other CALD community organisations and experts in the field, expectations and practices on marriage related financial benefits are prevalent in other communities also, such as, Chinese, Indonesian, African traditional communities.

Therefore, law and order practitioners, and policymakers must be careful to frame dowry abuse as a case of utilising specific cultural traditions as a justification for financial abuse rather than attributing it to one specific CALD community. A failure to be culturally sensitive feeds into racist narratives about CALD people, perpetuating harmful stereotypes rather than addressing the larger issue of domestic violence and its mechanisms.

Recommendation 7:

IWIN recommends that adequate and appropriate training on culturally sensitive community practices should be provided to the Commonwealth, and State and Territory police forces, legal professionals and

⁶ SBS Radio, Punjabi, (31 July 2018), *Man convicted of domestic violence saved from deportation to India*.
https://www.sbs.com.au/yourlanguage/punjabi/en/article/2018/07/30/man-convicted-domestic-violence-saved-deportation-india?cx_navSource=related-side-cx#cxrecs_s as cited on 13 August 2018.

⁷ <https://www.sbs.com.au/yourlanguage/punjabi/en/audiotrack/senate-inquiry-investigating-dowry-related-abuse-australia>, as accessed on 16/08/2018



family violence service providers, as these are critical to understand the factors behind any dowry abuse complains and its impacts on individuals and their families.

TOR (j): Any other related matters

The Victorian Parliament has passed the Family Violence Protection and Other Matters Bill 2018 on Tuesday 7th August 2018 which includes, amongst other measures, extending the meaning of family violence to include:

- using coercion, threats, physical abuse or emotional or psychological abuse to cause or attempt to cause a person to enter into a marriage; and
- using coercion, threats, physical abuse or emotional or psychological abuse to demand or receive a dowry, either before or after a marriage.

IWiN supports this new approach of extending the definition of family violence. However, there is a concern that these clauses are likely to give negative publicity to the impacted communities. Further, most family violence cases from the impacted communities may be skewed towards these clauses, thus affecting the broad community understanding of and attitude towards (specifically abuse of) the anti-dowry legislation of their country of origin. In addition, to the large Australian community, the values of the dowry abuse impacted communities would be considered very different and inappropriate from the wider community values, as more incidents relating to these clauses may increase the extent of domestic violence cases significantly. This would also create an added barrier for the impacted communities to assimilate with broader Australian community.

Recommendation 8:

IWiN recommends that the Australian Government should delay any dowry related legislation at least for three years to observe the impacts of the extended meaning of family violence in the Victorian Family Violence Protection and Other Matters Bill 2018.

Recommendation 9:

IWiN recommends that the Australian Government should liaise with Victorian Government to conduct an in-depth study, based on the data that would be generated by the extended meaning of family violence in Victorian family violence legislation, specifically with focus on use/abuse of this amendment, ease or barrier for impacted community to assimilate with the wider Australian community.



Conclusion

IWIN appreciates the efforts taken by the Australian Senate to consult with the community on its proposed inquiry on the practice of dowry and the incidence of dowry abuse in Australia. This submission contributes to this consultation process by adding the views, concerns and suggestions of the ACT's multicultural community.

IWIN welcomes this opportunity to participate and engage our members on this important dowry related policy development. IWIN will look forward to taking part in any future consultation processes, as required.

Yours sincerely,

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