

**10 April 2015**

## **PREVENTION OF DOMESTIC VIOLENCE IN INDIAN COMMUNITY**

### **Refusal to Comply With Demands for Dowry Contributes To Family Violence and death in Victoria**

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#### **About the Australasian Centre for Human rights and Health inc.**

The Australasian Centre For Human Rights and Health (ACHRH) was launched September 2012.

ACHRH vision is to create happy communities. Our Mission is to build individual and community resilience through harmony in the home, positive mental health, and collective cultural respect.

ACHRH primarily works with immigrants from the Indian Subcontinent and South Asia . ACHRH is a think tank that engages in community based research and runs community based education activities that are evidence based . ACHRH works with the Governmental authorities to influence policy. ACHRH looks to find new and innovative methods of research and find solutions to the problem of gender power imbalance, gender inequality , and Domestic Violence in the Indian and South Asian community.

ACHRH supports migrant settlement into Australia through cultural awareness, understanding and appreciation among migrants of Australian mainstream cultural values. ACHRH has been funded by the Commonwealth of Australia to conduct ACHRH designed Australian Culture Awareness course for migrants titled “Mutual Cultural Respect”.

**The following terms of reference of the Roayl Commission into Family Violence will be addressed in this Submission**

- 1. The prevention of family violence;**

2. **Early intervention to identify and protect those at risk of family violence and prevent the escalation of violence**
3. **Support for victims of family violence and measures to address the impacts on victims, particularly on women and children**

## **Foreword**

ACHRH is grateful for opportunity to present this submission “Refusal to Comply With Demands for Dowry Contributes To Family Violence and death in Victoria”

Based on the observations and findings of ACHRH and its Founder /Director , ACHRH has come to recognize the significant adverse role played by dowry in domestic violence in the Indian and the South Asia communities . Dowry is defined as Substantial gifts in marriage that are out of proportion to the income of the two families. Although the Indian culture is renowned for its infamous practice of “DOWRY” demands by the Groom , this archaic practice of giving and taking dowry flourishes in other CALD communities of Australia . Dowry demands have recently been linked with at least two deaths in Victoria - Chinese and the Indian community(Appendix 1 Herald Sun Report 24/4/2015).

ACHRH commenced a petition against dowry in Victoria in 2013. This petition has been tabled in the parliament twice by Mr Ted Baillieu in 2014 ( APPENDIX 2 ) and has received substantial media coverage since 2013 (APPENDIX 3).

This is also the custom in Middle Eastern and Muslim communities of Australia where the father can “sell” his underage daughter to the highest bidder, usually many years her senior. (Anne Baraclough The Australian 2014)

Thus marriage in certain ethnic communities is being conducted as a business transactions in which the women are seen as commodities to buy or sell . This sows the seed for gender based inequality from day one of the marriage irrespective *whether the dowry is given to the groom or given by the groom*. It is the young bride who suffers emotional abuse and physical violence either because his greed is too great and did not enough ; or because the groom felt aggrieved for having to give “too much dowry”. To add to the complications Australian residency as being used as a bargaining tool to enhance their dowry value.

We urge the Royal commission to acknowledge that this problem exists in our society and implement our recommendations comprising a number of legal and social changes , both at the State and the Federal level.

## **Executive summary**

Wedding Day should be a happy day, but this is hardly a day to celebrate for many Indian women and their families who are enforced to spend money on weddings, material gifts, gold

and as cash , amounting to multiple times their annual income. The gifts are for the new husband and his family and are termed “dowry”. Dowry is an ancient system in India, originally designed to protect the rights of daughters who were not entitled to receive share in ancestral property and wealth. The practice of dowry is illegal in India since 1961. And the inheritance laws now give equal share to both genders . But the problem continues to flourish and in fact has worsened in modern times as the dowry demands appear to be on the increase and marriage has taken the form of business transaction some say due to excessive greed and materialism (Colucci and O’Connor et al 2013). Continuous demands by groom’s family and criticisms by in-laws of insufficient dowry offerings is shown in Indian and Australian research to be associated with domestic violence, emotional abuse, humiliation(O’Connor personal communication 2015) . Onset of first episodes of depressive illness is recorded in victims of dowry related violence in India and higher rates of suicide(Chowdhry and Patel 2008). In India dowry deaths are a known problem (Ranjana Kumari)and the recent Indian figures show an increase in Dowry deaths(Babu and Babu 2012) . The problem becomes acute when young Indian women marry Indian men living abroad such as Australia. Non Resident Indians or NRIs as they are called command a premium dowry sum as they offer the bride a chance at better life in Australia(Palriwala and Uberoi 2006). The departure from India for the young women takes away their legal protection afforded by Indian laws that criminalize dowry and make it mandatory for husband and his family to return the dowry after separation for up to seven years after the new marriage under Section 498A of Indian law.

Australia is a multicultural country and celebrates the glory of its diversity. There is a dynamic interaction between cultural diversity and Australian milieu. This interaction on occasions can throw up cultural issues that cause problems for residents. One such example is the issue of dowry demands, expectations of substantial cash, or other gifts which are multiple times the annual income of the bride or the groom’s family leading to domestic violence, suicide and depressive illness affects young Australian Indian women who are newlyweds. This has become apparent in clinical cases seen in one Psychiatric Practice where victims of domestic violence from Indian Subcontinent and South Asia are treated(M O’Connor 2015, personal communication) and supporting the women from Indian and South Asian community by our association , the Australasian Centre for Human Rights and Health(ACHRH). It has also come to ACHRH attention that dowry demands are also being made among other CALD communities, for example Eastern and South Eastern Asia, the Middle East, and African cultures. The women whether they receive or give dowry face domestic violence.

**Absence of specific laws in Australia that can protect Indian and ethnic new spouses from dowry demands during marriage and confiscation of dowry by in-laws following separation are leaving a group of women vulnerable to verbal threats, humiliations ,social isolation from their families leading to adverse mental health effects such as depression and suicidal thinking . There is clinical evidence of physical violence and even death in at least 2 women of Victoria .This loop hole could be closed to minimize harm , prevent dowry related domestic violence and potential deaths .**

### **Background**

WHO (2005, 2009, 2013) has firmly put the agenda of Intimate Partner Violence (IPV) including Domestic /Family Violence (FV) on the international agenda emphasizing that intimate partner violence is the most common type of violence suffered by women, affecting approximately one third women worldwide. In some regions of the world the rates are higher for example South East Asia, and Africa the rates are up towards 37% . The variable rates of FV are relevant for Multi-cultural Australia where respect for continuity of one's original culture is valued and cherished(Berry 1995). This is seen as conducive to overall good mental health and a cohesive society (Bhugra et al 2013). Yet this brings its own issues. One important point is the need for culturally sensitive interventions necessary to support the response and prevention programs (Victorian Action plan 2012)

The issue of Prevention of Violence against Women (PVAW) is taken seriously by all levels of Governments in Australia. The Commonwealth government of Australia released its 'National Plan to Reduce Violence against Women and Children' ( 2012-2022). In 2012 Victoria's 'Action Plan to Address Violence against Women and Children' was unveiled. In 2014 Premier Daniel Andrews announced Royal Commission into improving our current response and prevention of FV .

The Victorian Action plan 2012 -2015 makes a special mention of the role of the community. *The Victorian Government cannot end violence against women on its own. We need change across our community to stop violence against women and children. We need the community talking about this issue and rejecting violence against women and children. We need men to lead and challenge other men about this issue. All of us must take a stand on this issue – violence against women and children is unacceptable.*" This submission puts the community view that is supported by clinical data(Dr M O'Connor 2015) to urge the Royal Commission to amend the FV Legislation of Victoria 2008, and include the word Dowry as an additional example of economical abuse under SECTION 6 "Meaning of Economical abuse" .

The 2011 Australian census revealed that over one-quarter (26%) of Australia's population was born overseas, and an additional one-fifth (20%) had at least one overseas-born parent. Since 2006, an increase from 0.5%–1.5% has been recorded in the proportion of Indian migrants to the Australia (ABS, 2011), and such people numbered 295000, or 5.6% of the population. In Victoria the number of Indian people has increased rapidly from approximately 60,000(in 2006) to 110,000 approximately in 2011, a hundred percent increase ( ABS 2011 ). A further 60,000 approximately Indians migrated into Victoria in 2013(ABS 2013-14), bringing the number to 170,000. The number is even greater when International students that approximately totaling 22,000 (2013) are added along with family members here on tourist visas. This increase is not matched by policy and service provisions.

Multicultural communities must participate in and take initiative in preventing DV . The ancient culture of the Indian migrants and Indian culture interacts with Australian culture as a dynamic system and gives a particular cultural colouring to the gender-based stories of oppression and domestic violence. In India DV rates are high and certain cultural traditions reinforce gender inequality. Our community action research(Collucci and O'Connor et al 2013) has confirmed continuation of Indian cultural traditions in Victoria .One such practice is giving of Dowry. This harmful cultural practice is associated with domestic violence and murders in India (Babu and Babu 2011). Indian National Family Survey 2012 recorded more than 10,000 dowry related deaths approximately. According to UN WOMEN(2014) the numbers of dowry deaths in India are far in excess of officially records and the numbers are rising. Experts have blamed the culture of son preference associated with the culture of greed and commercialism. In particular it is noted that the Expats, also called Non -Resident Indians (or NRI s) are contributing to the rising problem of coercive dowry demands, related violence and deaths in arranged marriages (Palriwala and Uberoi 2008). The reason 'Permanent Residence'(PR) of affluent countries such as Australia is cited as highly prized. Thus the Australian-Indian men who return back to India for arranged marriage are able to command huge dowry. The Groom's father and mother often live in India and they play key role in setting up his arranged marriage, and negotiate the cash, gold and gifts they would expect to receive during and after the wedding( See Appendix 4 and 5 , Letter of Support by Mr Ashok K Godara, father of murdered Ms Deepshikha Godara ).*The bride s parents start saving form the time she was born.*

The bride is a divine gift who will be gifted to the groom's parents and family. Henceforth she will stop having substantial relationship with her parents. Her parents henceforth will always be worried that she will be abused should his parents feel slighted in any way at the time of the wedding . Hence the groom and his family are treated as 'Royalty' by the bride's parents while they themselves act a subservient and submissive role to the grooms family.

Thus the context for gender inequality is set from day one of the arranged marriage, a fundamental social driver of FV (Vichealth 2006) .

### **Origin of dowry system: a historical perspective**

Indian maxims properly present the mass mentality towards women. It goes “raising a daughter is like watering a neighbor’s plant,” or “for fulfillment many sons but for the sake of beauty only one daughter” or “a son spells rewards, a daughter only expense”. From birth to death, women are unexpected, unaccepted and unwanted in the society and sometime even to parents.

In ancient times women were treated as chattel and had been used in all domestic work. So at the time of marriage the bridegroom gave money or other valuable things to bride’s father as sort of compensation. In medieval times, the hypergamy system of marriage among upper class Hindu families gave rise to the practice of dowry. Under this system, women of lower class married wealthy superior class men with power and prestige. The parents of young women wanted to arrange marriage with rich, upper-caste men for a sudden lift in the society. For that reason they willingly paid the dowry money with the bride.

By the 13th and 14th century, dowry became a regular trend among the upper castes. But it has to be noted that at that time dowry was given with the intention that the new couple can start family with flexible financial condition. Dowry was seen as blessing from the elders with no social evil attached to it. Another reason was that there was no compulsion from the groom’s family for dowry. *In course of time the position of dowry has shifted from the voluntary gift to compulsory requirement of the marriage.*

### **The present situation of dowry demand**

Social inclination for dowry makes it the precondition of marriage irrespective of religion. The modern phenomenon of dowry shows a dramatic change where grooms family claim dowry as of rights. Dowry is demanded as sort of compensation because the in laws family treat the existence of the girl in the family as purely a financial burden. Now the bride’s family is compelled to meet the dowry demand to ensure daughter’s welfare and happiness in her in laws family. In other sense, parents want to ‘buy’ daughter’s happiness in exchange of dowry so that she is not treated badly and do not be the victim of domestic violence. In addition to that parents see dowry as negotiation tool in in-laws family that gives her bargaining capacity. Sometime if the girl’s family does not give extra dowry beyond the demand, she is subject to violence.

If ever increasing dowry promises are not fulfilled the bride is sent back to the parent’s home. This is considered shameful for not only the bride but also for her whole family. Even after

marriage the ghost of dowry haunts. In laws family of the groom expects dowry in every religious occasion, birth of children and in any social event of the family in the name of gift(See Mr Ashok Kumar Godara's letter of Support, Apendix 4 and 5) .

### **The reason women endure sufferings**

Domestic violence, especially maltreatment to wife is a common phenomenon in traditional family structure in societies. Women are regarded as inferior to men and men's dominance is treated as blessing for women. The trace of this mentality is backed by Hindu religion and scriptures. One of the most important religious scripture Laws of Manu (the Manusmriti) suggests that women should always remain under custody of men. In childhood a girl will be under the supervision of father, after marriage under control of husband and in case of widowhood under guardianship of son or in the absence of son under protection of brother.

From the childhood, women are always taught to be whole heartedly obedient, subservient and submissive to their masters irrespective of the change of the ownership. The lifelong religious, social and familial teaching change the individual behaviour, prepare women according to the cultural expectation. Through the socialization process, women learn to be tolerant to domestic violence. On the other hand, men are taught to establish full authority over all familial matters and sometime to be violent because that is men like.

Official statistics shows distorted reality because underreporting of domestic violence is common phenomenon. Long standing family tradition suggests that family matters should be kept secret within the family because it is the question of honor of the family. We have told earlier that marriage is considered to be marriage between two families. So families want to be hassle free after the marriage ceremony. For this reason, if the new bride is tortured by the in-laws, her natal family counsels her to be a good wife by making compromise and sacrifice. Not only in laws family want exclusive submissiveness from the bride, her family educates her if they find that the docility is insufficient in the standard yardstick. Moreover, the words of Manu secretly rule the structure still to date. Apparently the father has lost his control over the daughter and does not interfere in the family matter of daughter's new home which is seen in Indian society as intrusion.

The situation of immigrant women was not found to be too different from their domestic counterparts in qualitative study of Indian women using Modified Forum Theater([http://islamicmuseum.org.au/index.php?option=com\\_content&view=article&id=451](http://islamicmuseum.org.au/index.php?option=com_content&view=article&id=451)).

It was found that women come to Australia under spouse visa as dependent. When they face domestic violence for the demand of dowry, they tend to keep it as a personal matter for couple of reasons. It is often for limited linguistic skill in foreign language, fear of police, lack of

knowledge about the counseling facility, isolation from the family, apprehension about the visa status, fear of marital break down, family pressures to keep family together (Colluci, O'Connor et al 2013). The victims usually do not share the series of violence with the family because the family have already shared the lion's share of family savings and property, multiple times the annual income of the family (Babu and Babu 2012). Moreover, when the Indian currency is exchanged in the foreign currency it gets exorbitant for her family to fulfill rapacious demands. Being afraid of being called a repeated burden for parents, victims suffer in silence with mental health impacts such as depression and suicide (O'Connor and Colluci in press, accepted 2014).

### **Why Muslim women have to give dowry?**

Dower is an essential requirement of a valid Muslim marriage. Mahar or Dower is an amount of money, equivalent property or other valuable things that is paid in marriage by the groom to the wife. This is token of love, respect and symbolic in term that the husband can maintain his wife. Dower also restrains men's arbitrary power to divorce the wife unilaterally.

Dower money is broadly divided into two categories. Prompt dower is given at the time of marriage and deferred dower is given at the termination of the marriage by divorce or death of any parties.

*Due to exchange of religious culture, Muslims in India have taken the dowry system as precedent and ignore the rule of dower.* In most of the cases, big amount of dower is primarily fixed which is not given to women. On the other hand, keeping pace with the cultural pressure Muslim women face similar experiences like their Hindu sisters. The use of dowry is so extensive in Muslim society as well that no marriage can be imagined without the transaction of dowry. *Being afraid of future domestic violence and verbal abuse against the daughter, parents are compelled to give dowry (UN WOMEN 2014).* Another apprehension is that if the marriage dissolves, it will be more difficult to arrange a marriage for the divorced daughter. It is economic drain and collective stigma for the family. Considering all factors, parents prefer to give dowry at the beginning of the marriage, a fact that is exploited by ex-pat Indians. The Sudanese community also gives dowry in the form of cows and animals back in Sudan that can become a cause of conflict in cases of FV and separations (Personal communication, Magistrate Sunshine Court 2014)

### **Whether dowry money can be taken back**

Section 5 of the *Marriage Act 1961* (Commonwealth) defines marriage as "marriage means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life". The



definition of marriage in Australia involves few conditions. It includes a voluntary union, for life, of one man and one woman and to the exclusion of all others.

A polygamous marriage is a marriage that allows more than one husband or more than one wife. It is not permissible to enter into a valid polygamous marriage in Australia. But section 6 of the *Family Law Act, 1975* states that a union in the nature of a marriage which is, or has at any time been, polygamous, being a union entered into in a place outside Australia, shall be deemed to be a marriage. The aim of the provision is the persons who have entered into a polygamous marriage where that is legal can get the legal help from the Australian Courts. So considering public policy, the law has accepted polygamous marriage. *Similarly, we urge that Government will make a provision where if a girl provides dowry in marriage, she will get it back in case of divorce or her death where the marriage has occurred outside Australia.*

### **Indian situation-dowry as a cause of public health concern**

In her book 'Brides are not for Burning' Dr Ranajana Kumari gives examples of deaths within months and years of in-laws complicit with husband burning, torturing, aiding and abetting suicide in the new bride as a form of punishment for not bringing enough dowry. The husband can go on to marry a second time and earn more gifts and cash as dowry doubling his income. Babu and Babu (2011) make a plea to call dowry deaths a major "public health issue" of India. Criticisms of insufficient Dowry by the in-laws and husband are a known cause of Major Depressive Illness and suicide in women of India is a fact well recognized in India (Chowdhry and Patel 2008). Bureau of India records highest number of dowry deaths in 2010 at 8000. This figure is considered an under- representation by possibly three times the actual figure (UN Women2014).

### **Legal Action taken by Indian Government**

In 1961 the Government of India passed a law making the taking and giving of Dowry illegal in India.<sup>1</sup> It also shifted the burden of proof on the person being prosecuted. Provisions were also introduced in the Indian Penal Code to make Dowry deaths and cruelty related to dowry a punishable offence with severe penalties such as imprisonment for life.<sup>2</sup> *Despite these stringent laws the practice has continued to thrive in India and the Indian Diaspora*(BBC Report 2009).

One way the groom's parents get away with it is by pretending before the wedding they do not want dowry. After the wedding though if the bride has not brought enough dowry and gifts for

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<sup>1</sup> <http://www.vakilno1.com/bareacts/dowryprohibitionact/dowryprohibitionact.html>

<sup>2</sup> [http://www.vakilno1.com/bareacts/indianpenalcode/indianpenalcode.html#Section\\_304B\\_Dowry\\_death;](http://www.vakilno1.com/bareacts/indianpenalcode/indianpenalcode.html#Section_304B_Dowry_death;)

the husband and his family she is subjected to humiliation, verbal abuse, violence, murder or even aided and abetted in committing suicide. The community members in India rarely complain to the police due to stigma attached and the fear the new bride will be ostracized by the husband and his family. Added to this is the anecdotal reports the law is not fully implemented by the law enforcers leading to flagrant abuse of the laws .

### **Situation in Australia**

In Victoria community based action research exposed Dowry demands as cause of cruelty, abuse , torture and physical violence ( Colluci, O'Connor et al 2013). The number of reported cases of domestic violence have increased in Victoria(Police crime statistics 2013-2014) .

The Indian migrant numbers have increased significantly in the past few years, comprising approximately 200,000 in Victoria and about 450,000 in Australia comprising approximately 5% of the total Australian population (ABS2013). the numbers of women seeking help has grown steadily over the past 3 years (O'Connor M, personal communication 2015).

### **Clinical cases seen by Dr Manjula O'Connor in her Psychiatric practice 2013-2015**

Total number of cases 341 since 2013(number of men =4). Coercive demands for Dowry associated with domestic violence was described by 270 women (75%). Of that 260 women were Indian and 10 women from other ethnic communities -from Bangladesh, Sri Lanka, Pakistan, and Muslim Indian women .

ACHRH has found two dowry related deaths – one in Indian community (personal communication Mr Godara2015) and one reported in the Chinese Community (Hearld Sun 2013, 2015).

(Manjula O'Connor Personal Communication 2015)

**This information has been obtained during clinical** consultations with Godara family – father, brother and sister consulted in December 2014 and January 2015. The story is produced with the family’s permission.

Ms Deepshikha Godara Benipal was murdered by her husband Mr Sunial Benipal after 7 years of continued emotional, verbal abuse, humiliation and put downs regarding her

Year	DV cases (Women Face to face)	MALE Perpetrators (Seek help and guidance )	MALE VICTIMS	Telephone support , internet, Face Book, and emails	Dowry reported as a contributory factor
2013	92	5	3	17	82
2014	152	7	3	9	118 Muslim-Indian women-3
2015(to April 2015	98	3	1	12	70 (3-Sri Lankan, 3 -Pakistani, 2 -Bangladeshi )
Total	341	16	7	38(Some seen face to face as well )	270(76.5%) (11 cases from other ethnicities , majority were Punjabi, and Hindu Indians

and family’s *lowered social ranking* for not giving enough dowry and wedding gifts. Mr Godara says the groom’s family requested a lavish wedding ceremony comprising 300 guests , and asked the entire cost be borne by him, being the bride’s father. This was said to be in lieu of dowry. He says he asked them again if they had any requests for gifts. The Groom’s family said they did not want gifts. However the next day the father-in-law turned up at their home and asked for Rs 300,000(\$6000). Mr Godara says he was dismayed and told them he had not arranged for any cash gifts as per their requests .The Groom’s Father became hostile and oppressive and said it was a matter of family honour . It was he said to give traditional cash gifts to relatives to celebrate the wedding. Mr Godara said he gave the money “out of fear” or they will torture his daughter . To Mr Godara’s great disappointment he came back a week later and asked for another Rs 600,000(\$12,000) . This time the money

was needed to pay for the Groom's uncle's airfares from India to Australia . Mr Godara says he was very traumatized and upset by their coercive and heavy handed demands . He said to them "how can I arrange so much money" and they seemed annoyed by his refusal. He says he eventually arranged the money out of his pension fund but was delayed by a couple of weeks . This angered her father- in- law, mother- in -law, uncle and her husband. According to Mr Godara , they started criticizing her and her family. They said to her that by marrying him she had scored a great life in Australia but she and her family had not shown gratitude as there were no cash gifts at the wedding. She was ridiculed daily, humiliated by her husband, judged for minor mistakes, shown disregard and disrespect by uncle who was living with them in Melbourne. Mr Godara says mother-in- and father-in-law who lived in Delhi were inciting the problem by frequent phone contact with her new husband, criticizing her and her father .Mr Godara says he is a Secondary School teacher in India . His annual income is meager, around Rs 100,000. He had spent about Rs 300,000 on the wedding ceremony .Then he was forced to spend a further Rs 1000,000 as cash gifts. He is extremely bitter and sad. To make matters worse, her brother Dr Dinesh Godara said in a separate session said they were expected to give cash gifts to his mother, his father and his extended family in India at every Indian festival, at every family weddings that took place in his or her extended family of uncles , aunts etc living in India<sup>3</sup>.

When Mr Godara was asked why he gave into demands for money as dowry. He said the groom the anti-dowry laws Section (498A) is there to protect the brides, it is draconian and can put people in jail without any bail, should a bride or her parents make a complaint to the police but the laws are used sometimes by some people but rarely in rural and regional areas.

The Godara family particularly father Mr Ashok Kumar Godara has decided to support the Victorian petition to amend the FV 2008 LEGISLATION moved by ACHRH Please attach 2 letters of support from him. (Appendix 3) . He came to Australia especially to attended the International Women's day arranged by ACHRH (Please see pictures below ) in support of raising awareness on connection between dowry, domestic violence, and murder. . He also attended the Holi Festival to reach out to the young people with the same message.

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<sup>3</sup> This story shows the continuity of culture between India and Australia.



Deceased woman Deepshikha Godara's father  
Mr Ashok Godara speaks on connection  
between dowry and domestic violence at  
Int Women's day 8 March 2015 ,Preston ACHRH function



Deceased -Deepshikha Godara and husband



Mr Godara at Holi Festival or Colour Festival at Werribee Race Course, 7 March 2015,  
To raise awareness on domestic violence related deaths. Function Attended by more than 2000 people.

## **Case History no 2**

Deepa (not her real name), a 28-year-old woman arrived in Melbourne on spousal visa. She was living in the East suburbs of Melbourne. She described her early days. "It was a huge culture shock," she said "It's adjusting to your new surroundings, missing your family". And then he refused to speak to her properly. He was angry because she did not bring enough gifts and cash. He said "your family is mean". They had not given him adequate amount of cash. He was expecting \$50,000 so he could buy a retail business in Melbourne. He asked her to telephone her parents in India to ask them for more money. She refused as she felt embarrassed to ask for money and it would put more financial burden on her parents who already had spent a considerable amount on the wedding.

He started beating her and on a number of times threw her out of the house in the middle of night .She returned back home after a few hours of wandering the streets. The story repeated itself the next week. This time her mother-in-law joined in. His parents had migrated and lived with him. She started beating her, swearing and abusing her, calling her names like "you are useless", "you are eating free food here", "you are a financial burden," "your parents are not respect worthy".

She was subjected to verbal and physical abuse over 8 months. She eventually picked up enough courage and left him. She was referred for treatment of severe suicidal depression and Post Traumatic Stress Disorder by her GP. She needed heavy doses of antidepressant treatment and weekly therapy for 8 months. She improved as she re-gained her sense of identity and self

worth as a single woman. Her spousal visa was cancelled by her husband but much to her relief she was given Permanent Residency by the Immigration Department.

*Her husband applied for divorce in Australia and not in India where the traditional ceremony had taken place*. The reason she said was in India divorce is difficult to obtain and the courts are strict regarding return of every article of dowry. They enforce the return of dowry cash, and gold jewelry confiscated by mother-in-law. By applying for one sided divorce in Australia dowry is not mentioned in the court judgment. Hence the Indian courts said she was not entitled to reclaim her dowry in India as the Australian courts made no mention.

One day she said she saw an advertisement for a bride for ex-husband. He was going to get married second time with impunity and stood to *gain second lot of gifts and money as dowry*<sup>4</sup>.

### **Application of Laws in India banning dowry**

In India the judges during divorce proceedings occurring within seven years of marriage take note of any mention of dowry. According to the Indian law where any dowry is received by a person other than the woman in whose marriage it was given, that person receiving must transfer it back to the woman within three months. If the person does not transfer within the time specified he/she shall be punishable with 6 months- 2 years imprisonment or with fine of not less than Rs. 5000. The person can also be directed to transfer the property to the person and if they do not return dowry, the said property may be recovered from them as a fine. There is no provision in Australian law to take cognizance of dowry or to punish dowry related offences.

Australian Indian divorced women, who have given dowry to Australian residents in arranged marriages, have to return back to India to reclaim their dowry. Very few Australian Indian women are known to be successful in reclaiming their dowry back in India. The groom and his family exploit the lack of treaty and common laws between the two countries over dowry.

### **Family Violence legislation Victoria, 2008.**

The Victorian Family Violence legislation<sup>5</sup> (Victorian Legislation) recognizes economic abuse as a contributor towards domestic violence. A family violence intervention orders issued by the Court (IVO) may include any conditions that appear to the court necessary or desirable in the circumstances including a condition directing the respondent to return the protected person's

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<sup>4</sup> . The ex-pat Indians are exploiting the differences in laws in Australia and India in this regard

<sup>5</sup> *Family Violence Protection Act (Vic) 2008*

personal property or property belonging to a family member of the protected person. An interim order may provide for the preservation of any property of the affected family member.

Family Violence Safety Notices issued by police officers (FVSN) provide for the preservation of property of the affected family members.

These protections may enable authorities to consider taking into account dowry as a form of economic abuse and therefore a contributing factor towards domestic violence and also for the preservation and return of Dowry money. Further as the definition of family relationships is wide enough to cover relatives by marriage i.e. in-laws, it would cover cases of Dowry related domestic violence by the spouse's family.

*However since Dowry is not a concept that the courts are attuned to considering in the normal course in Australia, it is important that Dowry be introduced as a separate concept by way of example in the legislation so that the asking or taking of it can be included as a form of economic abuse and also that it may be returned to the victim (protected person) under directions of the court in an FVIO.*

Further it would be useful if a specific provision was introduced which makes the taking and giving of dowry illegal.

### **Commonwealth Legislation**

The commonwealth Family Law legislation<sup>6</sup> has provisions that allow for economic contributions to be taken into account at the time of divorce proceedings. When determining how to divide marital property, courts are required to take into account a range of financial and non-financial contributions made by each party to the marriage including direct and indirect financial contributions. It would be useful to include dowry as a financial contribution made by the woman(victim) and that contribution be taken into account when dividing marital property so that the woman(victim) gets the benefit of it.

We also urge that the definition of Dowry should be included in Australian Legislation as Gifts in cash or material goods that are out of proportion to the family income. And as in the Indian definition to include any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage, or by the parent of either party to a marriage or by any other person, , to either party to the marriage or

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<sup>6</sup> Family Law Act (Cwth) 1975

to any other person at or before or any time after the marriage, in connection with the marriage of the said parties, whether or not that property or security is given in Australia or any other country.

We also believe that where Australian Legislation is amended to make the taking and giving of dowry a punishable offence, the punishment prescribed should be stringent.

Under Muslim Law, Dowry or 'Mehr' is part of the consideration for the marriage. The husband is required to pay a certain predetermined sum of money if he divorces his wife. Therefore under Muslim Law Dowry has a different connotation and is legalised. However, the issue in terms of Dowry for Muslim women is the right to be able to claim her Dowry on being divorced. As Dowry is not recognized in Australian Law the questions arises as to the enforceability of the contract to pay dowry by the Husband when he divorces his wife. In a 2012 decision of the NSW Supreme Court, the decision of a local court with regard to the enforceability of 'Mehr' under Australian law was upheld.. The NSW Supreme Court ordered the husband to pay his ex-wife the deferred dowry of \$50,000 plus litigation costs. In that case the husband was also physically and emotionally abusing the wife before he divorced her. It would be useful if the enforceability of contracts for payment of Dowry is recognized under Australian Law as a matter of right so that the wife who is subjected to DV can leave her abusive husband without having to worry about financial security.

### **Findings and Recommendations**

**Recommendation #1-** Our findings confirm Dowry is a significant problem, associated with violence and death for many CALD communities of Victoria, Australia. Dowry is defined as substantial gifts in the context of a marriage. Substantial is defined as "out of proportion to the level of income of the parties involved". Our findings show that coercive Dowry demands associated with violence are found in other communities, other than Indian, for example Bangladeshi, Sri Lankan, Pakistani, Chinese, Sudanese and Muslim communities.

We recommend the Royal Commission accepts Dowry is a significant contributor to the problem of Family Violence perpetrated against CALD women by multiple perpetrators-husbands and their families.



**Recommendation #2** -- As the problem is far more common in the Indian community ,ACHRH recommends the Indian Family Court Judgments and divorce settlements should be taken note of and have some influence on legal judgments in Victoria

**Recommendation #3**-Victorian Government to speak with Federal Government to consider changes in Australian law whereby

(3.1). Judges to make a note of dowry contribution and whether the dowry is held by the husband and his family here in Melbourne or overseas , for example in India.

(3.2) Receiving or giving of Dowry by Australian residents be made illegal

(3.3) Also dowry related offences be made illegal with punishment to be prescribed.

(3.4) **Amend Family Violence Protection Act 2008 - SECT 6 titled “Meaning of Economic Abuse, Examples” as soon as possible to add the words ‘Dowry or coercive demands for substantial gifts , cash material goods in the context of a marriage.**

**Recommendation #4 - Victorian Government to speak with Federal Government to highlight the potential to stop the problem of dowry abuse at the point of Spousal Visa application by an Australian resident.**

**The application should include an affidavit to state all gifts received at the wedding and declare substantial gifts and cash.**

**Recommendation #5 - Greater awareness of avenues for help for women**

Our findings indicate ethnic women do not know their rights, ways and means of accessing legal help . Community based education and raising awareness for CALD women is required on an on-going basis and should be supported and funded by the Government . For example ACHRH supports women empowerment groups and connects women with each other to create Support networks.

**Recommendation #6 . *It is important that the Judiciary and the Police are educated regarding dowry and its role in FV.***

**Recommendation #7. Early intervention can be made through education of the young betrothed couple through Pre -Marital counseling and on the illegal nature of dowry in**

**Australia. This can be achieved through spreading awareness at the educational institutions where international students are enrolled, through community organization and through Faith Leaders who conduct marriage ceremonies .**

### **SUMMARY**

The Victorian Action plan makes a special mention of the role of the community “ A shared responsibility across the community. The Victorian Government cannot end violence against women on its own. We need change across our community to stop violence against women and children. We need the community talking about this issue and rejecting violence against women and children. ACHRH, a not-for profit organization has been working with the Indian and the South Asian community to prevent FV and raise awareness.

At least two deaths in Victoria can be connected with insatiable greed associated with dowry – one in the Indian community in 2014 and the other in Chinese community in 2013. Our findings indicate that the historic tradition of dowry is a contributory factor towards DV in significantly large numbers of victims seen by Dr Manjula O’Connor. The cases originated from especially from the Indian community of Victoria but also from other countries belonging to the South Asia .

Our findings suggest one harm minimization strategy in the CALD communities and in particular the Indian community is to make Dowry demands (defined as substantial gift demands in the context of a marriage) by Australian Indian residents illegal , both at the State and the Federal levels .

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