

RESPONSE TO ALRC Issues Paper 48 (IP 48)

Information about the Australasian Centre for Human Rights and Health (ACHRH)

The ACHRH was launched in September 2012.

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

ACHRH primarily works with and provides services to immigrants from the Indian Subcontinent and South Asia. ACHRH undertakes community research, and runs targeted evidence based programs designed to challenge entrenched cultural biases against women and girls. In addition, to its front line work, ACHRH is the only Australian based think tank which focuses on finding solutions to the problem of gender power imbalance, gender inequality, and domestic violence in the Indian and South Asian community. ACHRH regularly makes submissions to influence government policy. ACHRH commenced a campaign against dowry in Australia in 2012. In 2015 ACHRH made a submission in to the Victoria Royal Commission into Family Violence (**RCFV**). As a result of the work undertaken by ACHRH, the RCFV recommended that the definition of economic abuse under section 6 of the *Family Violence Protection Act 2008* (Vic) be expanded to include dowry related abuse.¹

ACHRH campaign against dowry related violence began in Victoria in 2012, and since then Brisbane and South Australia have joined the campaign. ACHRH hosted a National Anti-dowry Summit in 2017 that gained from input from experts, and community members from the South Asian/Indian community and African community from South Australia and Queensland (see attached Appendix 1). ACHRH recognising the need for Federal laws made a submission to the Federal Parliamentary inquiry led by Sarah Henderson MP to improve Family Laws. Their 2017 report titled 'Improving Family Law system to protect those affected by family violence' accepted the ACHRH recommendation that dowry extortion is noted as an example of family violence and extortion in the Family Law Act (see section 7.68, p 248).

¹ Recommendation 156 of the Royal Commission into Family Violence, March 2016.

ACHRH supports migrant settlement into Australia through cultural awareness and understanding. Further the ACHRH works to ensure that migrant communities have an appreciation of Australian mainstream cultural values. ACHRH has been funded by the Commonwealth of Australia to run an ACHRH designed Australian Culture Awareness course for migrants titled "*Mutual Cultural Respect*". In 2016, ACHRH received a Multicultural award for Innovation for the "*Mutual Cultural Respect*" program. And has been funded for the second time by the DSS to run the program with migrants of South Asian communities with a special focus on gender based relationships. A video-tape of community participatory theatre that explores solutions to family violence, an action research project with South Asian community using theatre titled *Natak Vihar* (Sanskrit for theatre space) completed in 2016 and can be viewed on the ACHRH website www.achrh.org OR <https://www.youtube.com/watch?v=Eunu-tUmFdw>

In 2018 ACHRH completed a primary prevention project focussing on gender based financial equality of South Asian families "*United we Stand*" funded by the Victoria Government. More information can be obtained by visiting www.achrh.org

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. 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 Jazeera) 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)
- and clinical data of its Founder and Director, Dr Manjula O'Connor, Psychiatrist.

Objectives and principles

Question 1 : What should be the role and objectives of the modern family law system?

Answer 1:

Family violence is a complex problem with multiple interacting factors at play leading to the development of an ecological model of family violence. The role of societal and cultural factors are considered important in genesis of family law (WHO 2012).

ACHRH considers that the Family law plays a significant role in maintaining the human rights of women and children by:

- acting as a deterrent to potential perpetrators of family violence; and
- reinforcing the benefits of law and order to the community as a whole.

Strong and responsive law and order structures ultimately reduces violence levels. This was highlighted in Steven Pinker's book 'The Better Angels of Our Nature', where he states that rates of family violence are lower in well-functioning states with strong law and order as opposed to states where law and order is not well maintained.

Primary prevention aims to lower the rate of partner violence at a community level and stop violence before it starts (WHO 2012) .

Secondary Prevention involves activities that focus on vulnerable groups for example pregnant women , aboriginal women , CALD women, women presenting to mental health settings, reducing the rate of repeat violence against women who have already experienced abuse. This could include for example screening women for partner violence in health care settings, to enable early identification and referral to support services.

Tertiary prevention programs are designed to mitigate the negative impacts of violence that has already occurred. A well-functioning Family Law system, acts as a tertiary prevention program, by giving women and children the means to escape family violence situations. Ensuring there is access to Family Law system protects women and

children and, accordingly, reduces the negative impacts of family violence.

Family law systems, also have a crucial role to play in lowering family violence across all communities including those that are culturally and linguistically diverse (**CALD**). By taking a strong stand against family violence, the family law system acts as deterrent by sending a positive message to the whole community of unacceptability of certain practices (STRIVE 2011) and helps play a role in Primary Prevention.

Recommendation 1- Legal and justice systems interventions are critical to violence reduction in immigrant communities and resources should be allocated accordingly.

Question 2: What principles should guide any redevelopment of the family law system?

Recommendation 2 : 43(1)(b) of the Family Law Act be amended to reflect the various meanings which 'family' may have in different cultures, particularly among culturally diverse communities, and to include the term extended family (meaning Father-in-law, mother-in-law , siblings of intimate partner and their partners and children living together or apart)

Question 6: How can the accessibility of the family law system be improved

Answer 6

In the CALD communities, there are a number of barriers which act to impede the lowering the rates of family violence. Vichealth (2013) research shows in CALD communities there is greater acceptance of practices which maintain attitudes that are supportive of violence against women, these include, a culture of male dominance, and gender inequality which in turn upholds societal expectation of male privileges (Pease 2012). This leads to higher probability of partner violence (WHO 2012). Migrant women may not have the information regarding their human rights in

Australia, especially around financial abuse.

Recommendation 3- ACHRH recommends that Pamphlets with information on Family Laws, and on their human rights to safety and well-being, is provided to migrant women along with their visa before departing their port.

Funding to community organisations to educate the communities about how best to understand and access the Family Law System to protect their human rights should be provided

Question 12 What other changes are needed to support people who do not have legal representation to resolve their family law problems?

Recommendation 4- Immigrant women victims of family violence who are on temporary visas such as student visa, partners of student visa, partners of 457 Visa, and bridging visa do not have access to legal aid. This acts as a barrier to access justice and should be amended to allow legal representation through legal aid.

Recommendation 5- CALD victims of Family violence are often underemployed women, earning less than the living wage . Poverty is the reality for many of Australia's lowest-paid CALD women. They struggle to make ends meet and go without basic necessities, such as meals and heating for themselves and their children . ACHRH recommends that the Women's qualifying annual income for legal aid support be raised from \$25,000 per annum to \$35,000 per annum.

Question 13: What improvements could be made to the physical design of the family courts to make them more accessible and responsive to the needs of clients, particularly for clients who have security concerns for their children or themselves?

Answer 13 : The court is another chance to demonstrate power difference between the perpetrators and his victims . It is important to segregate victims and perpetrators to protect the victims from unnecessary eye contact and threatening words in native tongue. ACHRH has heard from victims that such exchanges causes

distress and worsen mental health harm for victim, but often go unnoticed by authorities due to language barriers.

Recommendation 6- ACHRH strongly recommends segregation of parties for CALD families in FV related adversarial situation, and harsh punishment for perpetrators intimidating their victims in full view of the court .

Question 17 What changes could be made to the provisions in the Family Law Act governing property division to improve the clarity and comprehensibility of the law for parties and to promote fair outcomes?

Answer 17

Dowry demands are practices that strengthens patriarchy, by maintaining and perpetuating a groom's sense of entitlement over the bride, and her wealth (Bloch and Rao 2002). In the long run this practice contributes to a culture which devalues and demeans women.

Dowry is defined by the Merriam -Webster dictionary as money or property that a wife or wife's family gives to her husband when the wife and husband marry in some cultures. Based on published research with Victorian Indian population (Colluci and O'Connor et al, 2013; O'Connor and Colluci 2016, O'Connor 2017) ACHRH has refined the definition to include dowry as "substantial gifts" given in the context of a marriage for up to 7 years , where the value of "substantial gifts" is far above the net annual income of the giving family. Dowry gifts are not mutual gift giving. Dowry is given by one family to the other. It enhances gender inequality , and is not spontaneous giving. It is a patriarchal societal compulsion. Dowry therefore should not be included in a divorce property division for a period of seven years after the wedding ceremony (as per the Indian Statute).

The harmful impacts of coercive dowry demands by the groom and his family are well documented in the Indian academic and popular literature, with a year on year rise since 1961. Further, this archaic practice is also documented in other countries for example China, Pakistan, the Middle East and Africa , East Timor and Papua New Guinea.

There is evidence that dowry demands exist in Australia and is causing significant physical and mental health damage to women of certain ethnic groups (see Australasian Centre for human rights and health submission to the Victorian Royal Commission into Family Violence). Indeed there have been media reports of one suicide in Victoria (Times of India 25/6/2016), and two homicides which are linked to “inadequate dowry” – one of Indian and another of Chinese woman (Aragoon 2015), and a documentary on dowry titled “Australia’s Dowry deaths’ by Al Jazeera (2017).

International research on prevention of violence report by STRIVE(2011) cites research which shows that owning property acts as a protective factor against dowry related harassment in India.

In the African tradition dowry related violence generally takes a different form. The man pays bride-price also known as Lobola to her family before the marriage. The price is negotiated beforehand and depends on her education, and other characteristics. Unlike the Indian custom , in the African tradition the bride price does not escalate into ongoing coercive demands after the marriage. African dowry is paid in cows or \$1000 per cow to families back in Africa, usually countries from the horn of Africa , paid to the parents here or in Africa . The amount is negotiated between the two parties and can be anything up to \$100,000 or more. In the Indian /South Asian system extortion and coercive demands can go on for years after the wedding ceremony (see Appendix 2) .

At the National Anti-dowry Summit hosted by ACHRH in Melbourne on 13/12/16 (Appendix 1 – ACHRH Newsletter. Report on the Summit attached) two prominent African leaders – one from Victoria and the other from Brisbane spoke about the harm caused by the sense of entitlement and ownership over the wife conferred by the payment of bride- price. The woman is unable to leave her husband as she has been “paid for.”

On the other hand SBS program ‘Wedding, dollars and dowries’ (17/4/2018) heard that many African women consider it an honour that her husband has paid respects to her parents by paying dowry or lobola, for her upbringing and are reluctant to give up the tradition. A breakup of marriage as a result of for example domestic violence can therefore be difficult as the woman has been “paid for” and usually has minimal

rights and choices .

The exact numbers of dowry related family Violence are unknown. It is widely recognised that dowry abuse is under reported by victims and ill understood by service providers. Victorian RCFV notes the need for data collecting system at all points of service delivery, with cross referencing. The Monash University report on CALD victims(Seagrave 2017) analysed 300 cases of women on temporary visas, of which 20% were from South Asia(India 16%, Sri Lanka 4%) . The authors declared that financial abuse against such women was neither occasional nor anecdotal rather it was systematic. In a published clinical audit , 50 cases of South Asian FV victims were analysed in depth by O'Connor and Ibrahim (Appendix 4) and compared with 25 Middle-Eastern FV victims. The South Asian victims of Melbourne Psychiatric practice demonstrated dowry related violence and associated financial extortion in 50% of cases (O'Connor's practice) whereas none of the Middle-Eastern women were subjected to dowry abuse.

The Victorian Royal Commission into Family Violence report (2016) observed that the dowry problem in Victoria is substantial, and evidence of its existence is to be found in South Asian, African and other ethnically diverse communities and made a recommendation (#156) to include dowry in the Family Violence Protection Act of Victoria 2008. Further, the Parliamentary Report into 'Improving Family Law system to protect those affected by family violence' also accepted the ACHRH recommendation to include dowry extortion as an example of extortion (section 7.68, p 248).

The deterrent effect of potential anti-dowry laws has an important role to play in prevention of such abuse.

Recommendation 7 – ACHRH recommends that Family Laws should be culturally sensitive to uphold immigrant women's rights and to include definitions of culturally harmful practices such as dowry demands as unlawful.

Question 19: What changes could be made to the provisions in the Family Law Act governing binding financial agreements to improve the clarity and comprehensibility of the law for parties and to promote fair outcomes?

Answer 19: The Australian system for dividing the matrimonial assets on divorce is a 'separate' property regime. On separation, the starting point when dividing property is that each spouse retains ownership of the property legally theirs (Australian Government, Australian Institute of Family Studies). All household goods, cash, gold etc. go into the pooled family wealth to be divided up. There are no specific protections in the law which address the issue of women who have provided dowry as gold, household items or cash. As a result the woman is unable to re-claim her dowry.

ACHRRH recommends that dowry like payment is classed as an "initial contribution" made by the wife. Those women who are victims of family violence have also been subjected to dowry demands and financial extortion for years, and that should be assessed during the determination of the parties' contributions.

In India, the law considers dowry as '*stridhan*' or '*woman's wealth*' and is the sole property of the bride. Upon breakdown of the marriage of up to 7 years or less the law dictates that all the dowry must be returned to her. The ACHRRH considers that such an approach is adopted by the Australian Family Law.

The ACHRRH recommends that the Family Law System needs to implement change to ensure that the plight of women who are victims of dowry demands and financial extortion is properly recognised for up to seven years (as accepted in Indian Law). Community and professional education and training is needed to show that "dowry" is a woman's inheritance, or at the very least a "gift from her family". It is a significant contribution and therefore should be retained by her as her property. (Appendix 2 – Academic paper by Dr Manjula O'Connor 2017. Complex PTSD associated with dowry extortion).

Recommendation 8 : ACHRRH recommends that Family property division should not include dowry gifts. They should always remain the property of the bride and not relegated to common pool.

Question 18 What changes could be made to the provisions in the Family Law

Act governing spousal maintenance to improve the clarity and comprehensibility of the law for parties and to promote fair outcomes?

Many Australian-Indian residents will return to India to have an arranged marriage. These grooms are able to command big dowries, due to their residency status in Australia - a first world country. After the new wife's arrival in Australia, a substantial percentage of men start to make further demands (RCFV Report 2016) that are often coercive. When they are rejected violence against the new bride begins, followed by the breakup of the marriage with significant financial loss for her and mental health damage. (See Appendix 3 -Letter from a victim of dowry abuse)

The cultural tradition holds that the daughter-in-law's gold jewellery and other material wealth such as a car, white goods, furniture etc. is kept in India by the mother-in-law, while substantial cash given as dowry is transferred into the groom's hands. In many instances the young women bring bed linen, kitchen utensils, furniture etc. from their country to furnish the groom's home. The amount of dowry paid can run into upwards of hundred thousand dollars, and more than the annual income of the bride's family (Bloch and Rao 2002).

The RCFV, also observed that the problem of dowry demands is "exacerbated" by the fact the women are often dependent on their husband's for their Australian visas or residency. Even in circumstances, where women do try to seek help, they are unsuccessful due to cultural and linguistic barriers, and a lack of mainstream awareness about dowry demands. Some women have complained that "they were made to look foolish when they made a request to commence legal proceedings to reclaim their dowry and/or been suspected of making false claim of permanent residency status. Spousal maintenance is denied to victims by the perpetrators often citing lack of adequate finances, short marriage or blaming the victim for marrying on false pretences for example to obtain permanent residency of Australia. The dowry contributions whether made in India or in Australia should be recognised by the courts in spousal maintenance. Often the husband has lived in Australia for a longer period of time and, as a result, has more assets than the wife.

Recommendation 9 : ACHRH recommends that Immigrant women on partner visas who have been abandoned by their husbands, being often

unemployed, under employed , and struggling to make ends meet , often with no access to Centrelink support, are routinely awarded spousal maintenance .

Question 23: How can parties who have experienced family violence or abuse be better supported at court

Clinical cases seen in Dr. Manjula O'Connor's Psychiatric Practice have revealed serious difficulties encountered by majority of victims when reclaiming dowry gifts , that include financial gifts given at the time of wedding , and on-going financial extortion after the wedding (culturally construed as dowry and accepted in Indian law as dowry for up to 7 years), , in part due to straightforward denial by husbands of ever taking any dowry .This problem of denial needs to be tempered by the knowledge that arranged marriages held in India are most often held in strong traditional custom and dowry gifting is an inevitable part of such marriages. Societal compulsions to give extravagant dowry adds up to social shame for the bride's family for not complying with the tradition. Alternatively the greater the dowry given the higher the social status of the bride's family and the groom's family(Bloch and Rao 2002). For example a young man who refused to sign the ACHRH anti-dowry petition in 2015 stated "*it will be an insult to my family if I do not receive dowry*"(Personal Communication Dr Manjula O'Connor 2017). Dowries are given overseas , e.g. in India but the marriage break down occurs in Australia. There needs to be recognition that this practice is inevitable and Indian reports should have influence in Australia.

Recommendation 10- ACHRH recommends a strongly worded statement clearly stating the penalty for making false statements in relation to taking dowry gifts and property division. ACHRH strongly recommends that perjury, like any other criminal offence, should have ramifications for Australian permanent residency status.

Recommendation 11- ACHRH recommends that Indian reports should be taken into consideration by Australian courts when dowry related issues and maintenance is being considered .

Question 41: What core competencies should be expected of professionals who work in the family law system? What measures are needed to ensure that family law system professionals have and maintain these competencies?

Answer 41- Australia is a land of immigrants and we are a multi-cultural society. South Asian migrants are now the 3rd largest migrant group after the English and the Chinese (ABS 2013). The ancient cultural tradition of dowry taking and giving is not likely to disappear, it may however change over time. We believe that a clear guidance from the Family Law to return dowry to the payer following break up of marriage will assist in lowering violence related to this practice in diverse communities.

Recommendation 12- Judicial training and Police officers training into

- ***cultural significance of the role of dowry demands and ongoing dowry financial extortion in starting and maintaining family violence is crucial to uphold the human rights of CALD women***
- ***significance of the practice of dowry being a manifestation of financial abuse in an unequal power relationship, and a manifestation and maintainer of the patriarchal system***
- ***vulnerability of abandoned immigrant women on temporary or permanent visas and need to protect their rights to live with adequate spousal maintenance***

Appendices attached

- Appendix 1- ACHRH Special Anti-dowry Summit Newsletter
- Appendix 2- Academic paper 'Dowry related domestic violence and complex PTSD'. 2017
- Appendix 3- Letter from a victim of dowry abuse
- Appendix 4- Suicidality and family violence in Australian immigrant women presenting to out-patient mental health settings. 2018

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ACHRH thanks the Indian community, the African community and survivors of family violence who bravely share their stories so other lives may improve

Contact Person

For Further information please contact

Dr. Manjula O'Connor on manjud@bigpond.com.

Mobile Telephone -0419354482