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Federation of Indian Associations of ACT Inc (FINACT)

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The practice of dowry and the incidence of dowry abuse in Australia

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Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600

Submitted via email to legcon.sen@aph.gov.au

Key Message

The aim of the submission is aligned with the senate enquiry aims and we are making an attempt to support the Senate Enquiry.

In response to the announcement on 26 June 2018, the Senate referred the practice of dowry and the incidence of dowry abuse in Australia to the Legal and Constitutional Affairs References Committee for inquiry. On behalf of all member associations of the Indian diaspora, FINACT organised a Public Consultation Workshop on 29 July 2018 to seek their views.

In times past, custom of dowry developed as a way of providing financial freedom for the girl when getting married. Abuse of this custom has made it a disgraceful tradition that can lead to domestic violence, and even death. Mostly women and children are vulnerable in this abuse.

Dowry is one of the contributing factors in multi-faceted causes of Domestic or Family Violence. Practice of dowry is a complicated social issue and difficult to isolate in family violence. Hence we suggest to bring some regulation to stop the issue in the future and mitigating strategies for the past issues.

Indian constitution prohibits dowry through Dowry Act 1961 and Article 498A of Indian Penal Code. This may be a good example to review to prepare the constitution amendments. Indian diaspora appreciates that it is being considered in the constitutional review on abuse (Annexure).

Federation of Indian Associations of ACT (FINACT) is the apex umbrella body of various member organisations representing Indian regional, linguistic, youth, women and senior citizens groups in the Australian Capital Territory (ACT). FINACT's main objective is to be the unified voice for the numerous and diverse Indian community groups in the ACT, as reflected in its slogan Coordination: Cooperation: Collaboration. FINACT and its members represent nearly 2.5 percent population in ACT, we make this submission on their behalf for the constitutional review.

Dowry Tradition

Dowry is meant to exchange of money or in-kind assets for the bride from either bride's family or groom's family. The practice has its ill effects when this had become a negotiating terms in match making.

Traditionally and socially, in many communities' women were mostly house wife and husband was the earner for the family. To ensure financial independence for their daughter, the bride's parents would provide some assets in their daughter's name as dowry. In some religions, the bridegroom make some commitment to transfer the assets to the bride at the time of the wedding. In both cultures, the aim is to give financial freedom to the bride. This supports the woman if she became a widow and in all other aspects.

Traditionally, dowry is an agreement before the marriage about the financial status of families. Some nations constitutionally gave equal rights on the parental properties for both genders and it has reduced the dowry tradition.

In many instances, the dowry received becomes the family asset. It was getting much more complex in a joint family system. It was very difficult in separation like divorce or death of one person. There is a social justice (community elder's intervention) in the communities in their own countries to resolve the issues.

In the modern world, both genders are earning to run the family, so asking dowry is felt as an insult by the bride and her family. It is FINACT's view that the practice of dowry in the Australian context exist in first generation migrants and negligible in second generation of migrants.

Summary of Public Consultation

FINACT had organised a public consultation workshop on 29 July 2018 at Labor Club, Belconnen in ACT. There were 40 participants represented by Federation of Ethnic Communities Council, Canberra Multicultural Communities Forum, Federation of Chinese Associations, Global Persons of Indian Origin, India Australia Association of Canberra, Initiatives of Women in Need, Canberra Punjabi Sports & Cultural Association, Telugu Association of Canberra, Australian Tamil Cultural Society of ACT, Australian Anglo-Indian Association, Rajasthan Sabha, Indian Senior Citizens Association, Indian Students Association and others. We have also consulted many individuals who are going through these issues to provide comprehensive and diverse views.

Abuse of Dowry in Australia

When the first generation migrants arrived to Australia, they come with plenty of both positive and negative history. Understanding the causes of Domestic/Family Violence is highly complicated and people bring past experiences into present leading to violence. It is difficult to see the abuse of dowry in isolation. There are many other factors such as immigration status or visa, power or blaming partners, stress due to being away from family, and lack of awareness of rights and knowledge that such violence towards spouse and children is a crime. Further, when any divorce issues reach to the courts, people bring abuse of dowry into the mix. Even though it is not happening in Australia, the cases are referring to the countries they migrated from.

Incidences as examples (No Names mentioned and they are not particular to one country)

1. Both boy and girl met in Australian university and fell in love. Because of cultural diversity, parents did not agree in the first place but later comprised and agreed for wedding. Marriage was held in 2013 in their country. Both of their parents live in their own country. There were minor issues started raising in the family and the girl reported them to her parents. On the girl parent's advice, the girl went to the parent's country and lodged a complaint against the boy and his family. An arrest warrant was issued against the boy and his parents. There was an outside court settlement was made to transfer a property on to girl's name and signed for the divorce. *In this instance, the strong prohibition of dowry law was misused.*
2. An arranged marriage was held in 2014. The boy and his parents are Australian citizens. The boy's family supported the girl very well in the transition and paid all the expenses for the girl for her professional exams. There was a impotent issue with the boy and no one was aware of this issue. The girl finally spoke out to family after two years and decided to move away. The girl's in-laws stopped supporting the girl for her exams and the boy asked her to leave the house. Even though the girl is eligible for Permanent Residency, the boy refused to sponsor. When community elders pursued, the in-laws said, we can pay the expenses of exams for my family member but when she is leaving why should we support. Then the girl has no place to go and it led to family violence. The girl's parents could not support financially and the girl can't return back and socially sustainable back in the family. The girl approached to the court and claimed dowry is an issue in the family violence and not mentioned the real issue. *In this instance, when approached the court, the facts take back seat and strong legal points will be brought forward.*
3. This boy and girl were in relation and the boy moved to Australia for studies. After the boy got the Permanent Visa, both of them convinced their parents and got married in 2009/2010. There was no dowry negotiated in this case at the time of the marriage. Then both moved to Australia and started working. When the girl was pregnant, boy's parents came here to help, when the family was getting ready for the delivery and girl stopped working. Some differences started in the family. All the properties are on the husband's name. After a year of the baby born, the husband asked her to leave the house and leave the baby back with his parents. She ended up in a refuge house. She explained to community elders that the boy's family is demanding for dowry and the finance is a central part of the violence. *In this instance, demanding dowry can come-up even after marriage and this can't be tolerated.*

There are many instances demonstrate, it is very difficult to prove the abuse of dowry in Australia and is subject to testing. There is a need to protect the innocent vulnerable persons and be cautious about the misuse of law. More general issues outlined below to look at the issue in a holistic way.

Issues identified to consider

- The tradition of dowry is in many migrant communities. Dowry-related abuse is one of many contributing factors in Domestic/Family Violence.
- Immigration laws should be reviewed in the context of the abuse of dowry in Australia as a matter affecting many communities across the world from where people migrate to Australia. For example:
 - Processing of spouse VISA takes for more than one year in many genuine cases. This is putting lot of stress on the newly wedded couple at their prime period of understanding each other.
 - Current process of visitor visa, temporary visa, permanent visa and citizenship is a long process. It is creating an opportunity for the primary applicant of Permanent Residency (PR), or Citizen to bully the spouse.
 - There are some instances that new migrants exploiting the system of marrying Australian citizens for PR. The rules need to be crafted carefully so that the genuine marriages should not be affected in visa processing.
- Education or raising awareness on the rights and responsibilities of Australian system to the new migrants particularly to the dependant spouses is highly recommended.
- Many of the problems were solved by the community leaders traditionally back in their original countries. The Australian system deals with family violence however it is not taking into account of the cultural diversity. The Mediators and Marriage Counsellors need to be educated about cultural diversity and provide resources to connect with the community leaders to enable reconciliations or harmonious separation. The community leaders must be given training in the Australian law system to assist in such matters in association with Marriage Counsellors and Mediators.
- The review outcomes should not be too complicated, and gender biased. For example, India has prohibited the dowry with a strict constitutional amendment of Article 498A of Indian Penal Code. This has given the women rights to lodge a case against the spouse and their relatives. As per this Article, asking for dowry is a criminal conviction and no bail is to be given. This has led to instances of abuse of the Article by some married women against their husband and in-law family as a means of making financial profit and/or revenge.
- In court settlements, valuables and assets given as dowry are generally not located in Australia but a way needs to be created to enable their consideration.
- In general, family violence begins with emotional abuse and reaches the physical state with lack of intervention. Early intervention and education program to balance the family is important. Courses like Art of Living or Landmark Education could be considered before family counselling.
- In any court system, cultural diversity should be taken in consideration before giving a verdict.
- Relationship Australia does not fully understand the cultural aspects behind the violence, in general, the counsellors come to a quick conclusion for separation where senior community persons can facilitate and resolve the issues. 8
- More funding channels to be provided to facilitate the prevention services through organisations like Art of Living and peak community organisations like FINACT.
- Children are highly vulnerable in any family violence. Courts need to consider safety and well-being of children above all including their emotional needs based on their parents' cultural background.

The Domestic and Family Violence legislation in Australia covers emotional, physical, mental and also financial abuse through coercion, deception, or controlling another person without their consent. As

the legislation already covers these issues there is no need to make new ethnic-specific dowry legislation and make matters complex. Instead of duplicating legislation it would be better to invest in educating communities about respectful and healthy relationships about existing laws that provide safeguards, about resources, and options available to couples and families, educating Marriage Counsellors, Mediators, the Court and community leaders.

Suggestions

We propose the government to make a regulation for marriage registration. The applicants should declare and sign with the marriage registrar that “there is no dowry is sought or asked for in the future in any shape or form”. This will help to eradicate participation of dowry in Australia.

We propose the government to make a regulation for Spouse VISA. The spouse VISA applicant and sponsor should declare and sign the statement that “there is no dowry is sought or asked for in the future in any shape or form”. This will help to eradicate participation of dowry by Australian citizens outside Australia.

Anti-dowry laws already exist in countries from where the migrants come from. The current Australian legislation of Domestic and Family Violence already deals with emotional, financial and physical abuse. Participation and abuse of dowry to be considered as part of financial abuse in family violence.

The culturally relevant examples of violence resulting from dowry demand to enable law enforcers to capture such abuse and educating Marriage Counsellors, Mediators about cultural sensitivity, and community Creating new anti-dowry laws will be a duplication, set an unnecessary bad precedent, and make law enforcement further onerous.

ANNEXURES:

Indian Penal Code: Dowry Act

Dowry act 1961 prohibits any person to either take or give dowry in any form. Dowry is considered as the valuable assets, properties etc. which are demanded or asked for by the husband or his relatives while marrying a girl.

Indian Parliament has passed the Article 498A in 1983 for safeguarding women from these issues, The article is a criminal law (not a civil law) and defined as “Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The offence is Cognizable, non-compoundable and non-bailable”.

Article 498A has been misused by supposedly vengeful wives and daughter in laws. The misuse of this particular section became so prevalent that the Supreme Court issued an order in July 2014 saying that without any strong evidences and sufficient reasons husband and their relatives cannot be detained immediately on the basis of the wife’s complaint. No arrest should be done by police unless and until there is a nod from the magistrate side which was also ordered by the Supreme Court regarding such cases.