

Practical Steps Towards Eliminating Dowry and Bride-Burning in India

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Her father protects [her] in childhood, her husband protects [her] in youth,
and her sons protect [her] in old age; a woman is never fit for
independence.

—The Laws of Manu (200 A.D.)¹

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1. VEENA TALWAR OLDENBURG, DOWRY MURDER: THE IMPERIAL ORIGINS OF A CULTURAL CRIME 20 (2002). Hindu law is based upon the Manusmriti or “The Laws of Manu,” of which Manu is the author. Archana Sridhar, *The Conflict Between Communal Religious Freedom and Women's Equality: A Proposal for the Reform of the Hindu Succession Act of 1956*, 20 BERKELEY J. INT'L L. 555, 557 (2002). According to the Manusmriti, a woman must obey and honor her husband. Judith G. Greenberg, *Symposium: Criminalizing Dowry Deaths: The Indian Experience*, 11 AM. U.J. GENDER SOC. POL'Y & L. 801, 822 (2003) (“A woman who treated her husband with disrespect would suffer in eternity. Her religious duty in this life was

After beating me senseless, my in-laws threw me out of the house for having argued with my husband who is a very *jealous* man. I dare not go back, I don't want to go back, but I want my dowry back. I have gold jewelry worth 40,000 of rupees, a sowing [sic] machine, utensils, furniture, a colour t.v. and 20,000 rupees in cash. I have found a job and I want to live independently without bothering my parents for long, but I must have my dowry back. Please get me help from a lawyer to get my dowry back; it is my right and I need my things desperately.

—Statement made by twenty-two-year-old Punjabi woman who came to a woman's resource center in New Delhi²

Today's marriage canceled due to heavy dowry demand. Inconvenience regretted.

—Notice posted at Indian wedding hall³

I. INTRODUCTION

Before her wedding, Nisha Sharma was a twenty-one-year-old college student studying computer programming in New Delhi.⁴ Nisha's marriage was arranged by her father, who placed an ad in the local paper.⁵ He negotiated a dowry with the groom's family following Hindu custom.⁶ Unlike a traditional dowry request, however, the groom's family demanded two sets of dowry items, one for the couple and the other for the groom's previously married brother.⁷ Nisha's father saved for ten years to pay for the dowry items and the wedding reception.⁸ This, however, was not enough.⁹ As flower girls were welcoming the 1500 guests attending the wedding, the groom's mother made a last-minute

devotion 'at his feet.')

(quoting Flavia Agnes, *Wife Beating—Changes in Social Structure Crucial to Combat the Problem*, in *VIOLENCE AGAINST WOMEN* 57, 58-59 (Sushima Sood ed., 1990)).

2. OLDENBURG, *supra* note 1, at 19.

3. Molly Moore, *Consumerism Fuels Dowry-Death Wave; Bride Burnings on the Increase in India*, WASH. POST, Mar. 17, 1995.

4. *60 Minutes: For Love of Money* (CBS television broadcast, Oct. 5, 2003), <http://www.closnews.com/stories/2003/10/03/60minutes/printable576466.shtml>.

5. *Id.*

6. *Id.*

7. *Id.* The items included expensive televisions, a washing machine, and a car. Shefalee Vasudev et al., *Dowry: Groom Showroom*, INDIA TODAY, June 9, 2003, at 64.

8. *60 MINUTES*, *supra* note 4.

9. *Id.*

demand of \$25,000 in cash.¹⁰ This resulted in a scuffle between the two families.¹¹

In an unusually bold move, Nisha then called off her wedding at the moment the ceremony had begun.¹² Nisha had her husband-to-be arrested and jailed for extorting a dowry.¹³ Women saw her as a hero, and she was venerated throughout India.¹⁴ Fortunately for Nisha, she later married another man—without a dowry.¹⁵ In another similar case, a woman who called off her wedding due to a last-minute dowry demand was unable to find another husband.¹⁶ In that case, her spontaneous actions “sullied the family’s name and jeopardized future marriage prospects.”¹⁷

Nisha Sharma’s situation actually could have been extremely different. If Nisha had married the first groom, she would have been regarded by her husband and in-laws as a means to an end, a device by which they could enrich themselves through the demand for dowry. Moreover, if her parents did not meet the wedding and any additional dowry demands, she would have been emotionally or physically harassed. But because Nisha would be expected to be an obedient wife, she would feel obliged to stay with her husband and her in-laws.¹⁸ Then, one evening, while Nisha dutifully labored over dinner in the kitchen, she could have been doused with kerosene, and a match struck could have touched her, causing Nisha to burst into flames.

This shocking and frightening experience is unfortunately a reality for many young women living in India today. Statistics indicate that in 2003, 7000 Indian women were killed from dowry-related violence.¹⁹ Human rights groups, however, claim this number is probably only half

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* In a similar case, however, a woman who called off her wedding due to a last-minute dowry demand was unable to find another husband. Moore, *supra* note 3. The bride’s spontaneous actions dishonored the family name and ruined her future marriage proposals. *Id.*

16. *Id.*

17. *Id.*

18. Kalpana Sharma, *Why Women Tolerate*, THE HINDU, Nov. 24, 2004.

19. Associated Press, *Attacks on Brides Rise with Dowry Demands*, L.A. TIMES, July 25, 2004, at A1 [hereinafter *Dowry Demands*]; see also Rahul Behdi, *Jail Crisis for Dowry Crimes*, BBC News (June 1, 2000), available at http://news.bbc.co.uk/2/hi/south_asia/772896.stm.

of the actual total.²⁰ In addition, it is estimated that 25,000 brides are injured every year as a result of bride-burnings and dowry abuse.²¹ It is impossible to determine exactly how many dowry deaths occur each year. This is because there is tremendous underreporting, and many of these cases are being labeled as suicides or as cooking accidents.²² In addition, sometimes the bride's family simply does not publicize the death because they consider it shameful.²³ Regardless of the actual number of dowry-related deaths, it is large enough to indicate that the law is not a sufficient deterrent for those who commit these crimes.²⁴

"Bride-burning" is the term used to describe these dowry murders.²⁵ The term is used because, in a majority of these cases, women are doused with kerosene and set on fire by their mother-in-law or husband.²⁶ Kerosene stoves are common in India, and many of these murders are staged to look like cooking accidents where the stove exploded.²⁷ The crime "occurs in the kitchen, where the lower middle-class housewife spends a large amount of time each day," and "a tin of fuel [for the kerosene stove] is always kept in reserve."²⁸ Kerosene can easily be poured over the victim, and "a lighted match will do the rest."²⁹ The surviving husband has now "equipped himself with a cast-iron alibi" and "is soon in the marriage market again looking for a new bride with perhaps an even handsomer dowry."³⁰ When the husband and his in-laws cannot claim an accident based upon the evidence, they simply change

20. *Dowry Demands*, *supra* note 19, at A1. Between 1998 and 1999, over 12,612 dowry deaths were recorded across India. Behdi, *supra* note 19.

21. Himendra Thakur, *Preface to SOUTH ASIANS AND THE DOWRY PROBLEM* at xiii, xiv (Werner Menski ed., 1998).

22. See Sharma, *supra* note 18; see also Parvathi Menon, *Dowry Deaths in Bangalore*, FRONTLINE, Aug. 14-27, 1999, at 64-73, <http://www.hsph.harvard.edu/grhf/SAsia/forums/dowry/articles/deaths.html>.

23. Menon, *supra* note 22.

24. *Id.*

25. Veena Talwar Oldenburg, *Dowry Murders in India: A Preliminary Examination of the Historical Evidence*, in *WOMEN'S LIVES AND PUBLIC POLICY: THE INTERNATIONAL EXPERIENCE* 145-46 (Meredeth Turshen & Briavel Holcomb eds., 1993).

26. *Id.* at 146.

27. *Id.* ("It is easy to pass off the event as an accident since these stoves are [indeed] prone to explode [as confirmed by consumer reports].")

28. *Id.*

29. *Id.* ("Signs of struggle do not show up on bodies with 90 percent or more third-degree burns.") Burning the wife is chosen over other methods of killing because of its "forensic advantage." *Id.*

30. *Id.* The in-laws can search for a more profitable bride for their son, without the stigma or expense of divorce. *Id.*

the story to one of suicide.³¹ They argue that the wife could not adjust to her new role in her husband's family and therefore took her own life.³² "Most often it is the mother-in-law, with or without her son as a direct accomplice," who commits the bride-burning.³³

"A matter of growing concern is that people of mainly North Indian origin have now carried the practice of dowry to their new homes in the UK and North America."³⁴ While dowry problems are also widespread among Indians living in Mauritius,³⁵ a notable exception is the Indians living in South Africa.³⁶ "Such evidence [will be explored], since the solutions to the problem of dowry murders may be hidden behind" the absence of the practice in certain geographic regions.³⁷

Part II of this Comment explains the traditional origins of dowry as well as the modern evolution of dowry. Part III discusses the causes and effects of the modern dowry system in India, as these may give light to part of the solution. Part IV analyzes relevant Indian laws currently in place to prevent dowry deaths, while Part V examines the reasons behind the unenforceability of these laws. Part VI covers possible reasons why the practice of dowry has not continued in certain countries where people of Indian origin have immigrated, and it uses such reasons to lead to a proposal of a remedy in Part VII. Part VIII concludes that, in order to effectively eradicate the modern practice of dowry, education, legislative reform, and international pressure will be insufficient. As will be shown, a simultaneous social movement aimed at changing the attitudes of Indian society will also be necessary.

31. Amanda Hitchcock, *Rising Number of Dowry Deaths*, World Socialist Web Site, at <http://www.wsws.org/articles/2001/jul2001/ind-j04.shtml>.

32. *Id.*

33. OLDENBURG, *supra* note 1, at xi; *see also* Greenberg, *supra* note 1, at 834 n.159 (citing *Aggarwal v. State of Bihar*, A.I.R. (1997) S.C. 1830 ("charging and convicting husband, brother-in-law, and mother-in-law for the death of twenty-eight year old Kiran Devi"); *Asokan v. State*, A.I.R. (2000) S.C. 3444 ("charging the husband, brother-in-law, mother-in-law and father-in-law for causing the murder of Porkodi, and convicting all but the brother-in-law, who was acquitted"); *Ravinder v. State of Andhra Pradesh*, A.I.R. (1991) S.C. 1142 ("charging and convicting husband, mother-in-law and father-in-law"))).

34. Thakur, *supra* note 21, at xiv.

35. *Id.*

36. Bisraam Rambilass, *Why Dowry Does Not Exist Among Indian South Africans*, in *SOUTH ASIANS AND THE DOWRY PROBLEM* 61 (Werner Menski ed., 1998); Thakur, *supra* note 21, at xiv.

37. Thakur, *supra* note 21, at xv.

II. EVOLUTION OF THE DOWRY MARRIAGE SYSTEM

The definition of “dowry” is commonly understood to mean the property that a bride brings with her at the time of marriage.³⁸ Although dowry is common throughout much of the world, it has taken on particular significance in India, where it has been practiced since ancient times.³⁹ Originally designed to be a gift given out of affection at the time of the daughter’s marriage, today the dowry has progressed to a form of monetary extortion demanded by the groom’s family.⁴⁰ Recently, dowry negotiations between the families of brides and grooms have escalated into continuing demands even after the agreed upon amount is given.⁴¹

A. Traditional Dowry Custom

Historically, dowry has been an integral part of a traditional, arranged Hindu marriage.⁴² Dowry originates from the term *kanyadana*, meaning “gift of the virgin,” and it initially symbolized the ceremonial and voluntary gift-giving of the bride to the groom’s family.⁴³ *Kanyadana* gave the bride power and status; both she and her dowry were considered a sacred gift.⁴⁴ *Kanyadana* consisted of *stridhan* and *dakshina*.⁴⁵ It is argued that the dowry problem that plagues India today is a completely new phenomenon and should not be mixed up with traditional ideas such

38. OLDENBURG, *supra* note 1, at 3.

39. *Id.*

40. Tonushree Jaggi, *The Economics of Dowry: Causes and Effects of an Indian Tradition*, at 3, available at <http://www.econ.ilstu.edu/UAUJE>; see also OLDENBURG, *supra* note 1, at 21.

41. OLDENBURG, *supra* note 1, at 21; see also 60 MINUTES, *supra* note 4; Moore, *supra* note 3.

42. Jaggi, *supra* note 40, at 3.

43. *Id.*; OLDENBURG, *supra* note 1, at 24-25. Parents of married daughters “do not expect any material reciprocity from their married daughters and will not accept even a meal at their daughter’s home.” *Id.* at 25. In addition, brothers “will not accept more than token gifts from their married sisters.” *Id.* *Kanyadana* included gifts “such as ornaments, expensive clothes and other precious items referenced in ancient texts on marriage ritual,” voluntarily presented to both the bride and groom’s families during the time of marriage. Jaggi, *supra* note 40, at 3. The practice of *kanyadana* was derived from the “high cultural and spiritual merit accorded to gift givers and gift giving in the *Vedas*,” an ancient Hindu text. *Id.* Therefore, dowry was originally used as a means to secure material wealth and enhance social status in marriage. *Id.* at 3-4

44. *Id.*

45. M.N. Srinivas, *Some Reflections on Dowry*, available at <http://www.hsph.harvard.edu/Organizations/healthnet/SAsia/forums/dowry/articles/reflect.html>.

as *kanyadana*,⁴⁶ but knowledge of the traditional forms of dowry is crucial to understanding the current dowry problem.

Stridhan is given directly to the bride and is supposed to be an asset to her in times of crisis.⁴⁷ Under Hindu law, *stridhan* is the bride's own property, as literally the word means the "sixfold property of a woman";⁴⁸ under *stridhan*, the woman had absolute ownership of the property.⁴⁹ It constituted those gifts given to the bride before or during the marriage that were specifically meant for her use.⁵⁰ Before the Hindu Succession Act of 1956 (Succession Act), Hindu women were not allowed to inherit immovable property such as land or buildings.⁵¹ Married women were only allowed to inherit the *stridhan* of their mothers.⁵² Section 14 of the Succession Act recognized an equal right of an Indian woman to inherit property and for the first time conferred absolute ownership to her.⁵³ It applied to property acquired by any means and decreed that women were entitled to inherit from their fathers.⁵⁴ It is believed that the Hindu inheritance law promotes the practice of dowry and dowry-related crimes.⁵⁵

Dakshina was a gift given out of affection from the family of the bride to the groom, and it included any continuous gifts made after the marriage.⁵⁶ *Dakshina* usually consisted of some gold or money that was given to the groom voluntarily.⁵⁷ The bride's family gave *dakshina* in relation to their financial ability to do so.⁵⁸ In exchange for the gifts or money, the bride's family received blessings, status, and the fulfillment of having arranged a secure future for their daughter.⁵⁹

46. *Id.*

47. *Id.*

48. *Id.*; OLDENBURG, *supra* note 1, at 19.

49. *See Hindu Women vs. Muslim Women*, at http://www.hinduweb.org/home/general_sites/hinduwoman/hinduWomenVsMuslimWomen.htm.

50. *Id.*

51. Hindu Succession Act, 1956, <http://www.indiacode.nic.in>. Section 14(1) states: "Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner." *Id.* § 14(1); *see also id.* § 14(1) (Explanation).

52. *See Hindu Women vs. Muslim Women*, *supra* note 49.

53. Hindu Succession Act, 1956 § 14(1) (Explanation).

54. *Id.* § 14.

55. Sridhar, *supra* note 1, at 555 n.140.

56. *See* PARAS & PEEYUSHI DIWAN, DOWRY AND PROTECTION TO MARRIED WOMEN 27 (1987).

57. *Id.*

58. *Id.*

59. *Id.*

B. Modern Dowry Custom

The traditional ideology of the *kanyadana* marriage was practiced only among the wealthy upper castes of Indian society.⁶⁰ Modern dowry, however, is no longer a voluntary process, like *dakshina* was.⁶¹ Today, the bride's families are forced to meet dowry demands in the name of gift giving.⁶² One historian has proclaimed that dowry has been transformed from a "strongly spun safety net" into a "deadly noose."⁶³

The amount of the dowry is negotiated by the groom's family, based on their social and economic status, and it is evaluated in terms of a total cash value.⁶⁴ The physical appearance of the bride is also taken into account in determining the value of the dowry.⁶⁵ Negotiations are often done through a mediator so the marriage does not appear to be simply a monetary transaction.⁶⁶ The higher the socioeconomic status of the groom's family, the higher the demanded dowry will be.⁶⁷ To marry a woman to a banker, it is estimated that the woman's family must pay about \$15,000 to the groom's parents in cash and gifts.⁶⁸ To marry a businessman with an MBA, the cost of dowry is at least \$32,000.⁶⁹ For "a member of the Indian Administrative Service, the country's elite bureaucrats," dowry is estimated to be at least \$44,000.⁷⁰ Professionals such as doctors, engineers, and accountants expect the highest amount of dowry because they are considered to be of high social status and wealth.⁷¹

Modern dowry includes televisions, computers, washing machines, refrigerators, furniture, and sometimes even cars.⁷² In addition, the

60. Padma Srinivasan & Gary R. Lee, *The Dowry System in India: Women's Attitude and Social Change*, Center for Family and Demographic Research, Bowling Green State University, Working Paper, at 4, available at http://www.bgsu.edu/organizations/cfdr/research/pdf/2002/2002_15.pdf.

61. Jaggi, *supra* note 40, at 4.

62. *Id.*

63. OLDENBURG, *supra* note 1, at 10.

64. See Jaggi, *supra* note 40, at 3-5.

65. See MARGARET ABRAHAM, SPEAKING THE UNSPEAKABLE: MARITAL VIOLENCE AMONG SOUTH ASIAN IMMIGRANTS IN THE UNITED STATES (2000) (describing a perception of fair skin as beautiful and dark skin as unattractive).

66. Jaggi, *supra* note 40, at 4.

67. *Id.*

68. *Dowry Demands*, *supra* note 19.

69. *Id.*

70. *Id.*

71. Hitchcock, *supra* note 31.

72. *Dowry Demands*, *supra* note 19.

bride's family must pay all of the wedding expenses, including any travel and overnight accommodations of the groom and his party.⁷³ In India, "even the poorest Indian families often spend more than \$3,000 on a wedding—the equivalent of nearly 10 years' wages for the average worker."⁷⁴ "Often, the cost of the ceremony and gifts leaves families deep in debt into the next generation."⁷⁵ In comparison, in the United States, the average wedding costs \$7500, which is only about one-third of the average income for one year.⁷⁶

III. CAUSES AND EFFECTS OF THE MODERN DOWRY SYSTEM

The modern dowry system has advanced due to both the subordinate position of women in Indian society as well as the traditional patriarchal joint-family structure.⁷⁷ As a result of ancient laws and customs pertaining to family and property, Indian society confers power and status to males and their families.⁷⁸ From birth, a woman is viewed as a burden because her family will have to spend valuable resources on her upbringing, as well as on her dowry.⁷⁹ Social commentators say that Indian women, who are neglected from birth, expect little from life.⁸⁰ A senior editor with the *Times of India* noted, "[B]y the time she is an adult she has lost most of her self-respect and self-worth and is conditioned to accept humiliation heaped upon her."⁸¹ Indian men, however, "have an 'umbilical attachment' to their mothers that no society has."⁸² "From birth the boy child is conditioned to expect that his every wish will be fulfilled."⁸³ Furthermore, upon marriage, a woman will leave her family to become a member of her husband's family, and consequently, she will be unable to support her own parents as they reach old age.⁸⁴

The cultural attitude is that a female is considered a temporary visitor in her family's home and that once she marries, her family should

73. Srinivas, *supra* note 45.

74. Moore, *supra* note 3.

75. *Id.*

76. *Id.* This figure comes from the Association of Bridal Consultants. *Id.*

77. See Oldenburg, *supra* note 25, at 158.

78. See Jaggi, *supra* note 40, at 9-11 (describing human capital accumulation).

79. Tim Sullivan, *The World: Mothers of India Cry for Joy to Learn It's a Boy*, L.A. TIMES, Nov. 17, 2002, at 3; Oldenburg, *supra* note 25, at 156-57.

80. Behdi, *supra* note 19 (quoting Lalita Pannicker, Senior Editor, *Times of India*).

81. *Id.*

82. *Id.*

83. *Id.*

84. Sullivan, *supra* note 79.

break ties with her.⁸⁵ For these reasons, women in India are more likely to abort a female fetus and favor sons in terms of food, medical treatment, and education.⁸⁶ Therefore, female infanticide is another effect of the dowry system in India.⁸⁷ Medical clinics throughout the country provide amniocentesis tests to detect the gender of the fetus.⁸⁸ Female fetuses are often aborted because the eventual financial burden of a woman's dowry makes a female infant highly undesirable.⁸⁹

India's population of children under age six appears to be experiencing a minimal decline in the ratio of females to males.⁹⁰ The sex ratio in India has actually decreased from 972 females to 1000 males in 1901,⁹¹ to 962 females to 1000 males in 1981, to 945 females to 1000 males in 1991, to 927 females to 1000 males in 2001.⁹² "The statistics mean there are anywhere between 20 and 40 million 'missing' women in India," as a "result of girls aborted or killed in infancy."⁹³

If there are fewer women, it would seem to follow that the higher ratio of men to women would mean that there should be more of a demand for women and therefore less dowry extortion, especially in a society that considers marriage a religious obligation.⁹⁴ However, as the tradition of dowry has been distorted over the years and as women have become perceived as financial liabilities, many families have begun to prefer to have only boys.⁹⁵ Also, men having prestigious jobs and living in cities are considered to be in short supply, and thus they can command higher dowries, regardless of the shorter supply of women.⁹⁶ Another consequence of the dowry system is that families with several daughters

85. *Id.*

86. *Id.*

87. OLDENBURG, *supra* note 1, at 3.

88. Sullivan, *supra* note 79.

89. *Id.* A sex determination ultrasound can cost less than \$10 and an abortion only \$18.

Id. Until recently, billboard advertisements in Bombay urged pregnant women to spend 500 rupees now on a sex-determination test, in order to save 50,000 rupees on a dowry in the future. OLDENBURG, *supra* note 25, at 146.

90. Sullivan, *supra* note 79.

91. Oldenburg, *supra* note 25, at 149.

92. Sullivan, *supra* note 79.

93. *Id.*

94. Jaggi, *supra* note 40, at 7.

95. Sullivan, *supra* note 79.

96. See Hitchcock, *supra* note 31 ("The price of the Indian groom astronomically increased . . . based on his qualifications.").

have begun marrying all of their girls to sons in a single family to help reduce the wedding costs and dowry payments.⁹⁷

The contemporary dowry system is also the result of the structure of the Indian family, which features the extended family living together in the husband's home.⁹⁸ When a woman marries, she leaves her natal family to move into her husband's home, and she is expected to behave in a more subservient manner than her husband.⁹⁹ In fact, the wife is viewed as a servant, and she does not have any special relationships with any members of her new household.¹⁰⁰ The woman has no basis for support, and therefore, the extended family feels justified to assert control over the bride's portion of the dowry, the *stridhan*.¹⁰¹ An Indian mother's long-term status and financial security in the joint family depends on her son, because it is he who will provide for her when her husband dies.¹⁰² As a result, when the son marries, the mother may feel threatened.¹⁰³ Therefore, the relationship between a daughter-in-law and mother-in-law is strained because of the mother-in-law's need to protect her own source of security and power.¹⁰⁴

As a result of the hierarchical structure of the joint family, one way a mother-in-law asserts her power is through the dowry process.¹⁰⁵ If she is unhappy, she can harass her daughter-in-law, and her son, the bride's husband, will harass his wife out of loyalty to his mother.¹⁰⁶ It seems odd that the dowry system is maintained through these relationships between the daughters-in-law and mothers-in-law because one day the daughter-in-law will likely be in the position of the mother-in-law, and she could, therefore, be able to change the system.¹⁰⁷ Nevertheless, it appears that women in India end up supporting a system that has and continues to oppress them.¹⁰⁸ One day the daughter-in-law may be the beneficiary of the dowry system, in a position to negotiate a dowry for her own son.

97. Moore, *supra* note 3.

98. OLDENBURG, *supra* note 1, at 9.

99. *Id.*; Hitchcock, *supra* note 31.

100. Hitchcock, *supra* note 31.

101. *See id.*

102. *See* OLDENBURG, *supra* note 1, at xi.

103. *See id.*

104. *Id.*

105. Jaggi, *supra* note 40, at 17-18; Srinivasan & Lee, *supra* note 60, at 8.

106. Srinivasan & Lee, *supra* note 60, at 8.

107. *See id.* at 8, 15.

108. *Id.* *But see id.* at 18 ("Finally, having more unmarried sons does not significantly increase a married woman's support for the dowry.").

Another reason for the contemporary dowry system is that class division has replaced the caste system as the measure of social status in modern India.¹⁰⁹ Many scholars argue this is the result of British colonization.¹¹⁰ When the British colonized India, they introduced a higher standard of living and a more materialistic way of life, and Indian people soon became more class conscious and materialistic in their lives.¹¹¹ Marriage became more of an economic union instead of a spiritual union during this time.¹¹² To this day, “[n]ewspapers are filled with pages of women seeking husbands and men advertising their eligibility and social prowess, usually using their caste as a bargaining chip.”¹¹³ “A ‘good’ marriage is often seen by the wife’s family as a means to advance up the social ladder.”¹¹⁴ The downside is that the wife’s family must pay the price in the form of an extravagant dowry.¹¹⁵

It is often proposed that increasing education for women would reduce the effect of the dowry,¹¹⁶ but this is not always the case.¹¹⁷ Families of higher-educated girls seek higher-educated boys, and the higher education adds value to the boy’s worth as a market commodity.¹¹⁸ Thus, families are faced with an even greater financial burden because they not only have to pay for the daughter’s education, but the educated groom can also command a higher dowry. In fact, an educated woman is viewed as being less able to fulfill her duties as a housewife, which gives the husband and his mother a reason to ask for more dowry.¹¹⁹

109. *Id.* at 7.

110. OLDENBURG, *supra* note 1, at 73-98; *see also* Srinivas, *supra* note 45.

111. *See* OLDENBURG, *supra* note 1, at 73-98 (describing the “steps taken by the colonial government to eradicate . . . dowry” and stating that “[a]s the British faltered on causes, their experiments to fix Hindu upper-caste behavior were bound to be experiments in futility”).

112. *Id.*

113. Hitchcock, *supra* note 31.

114. *Id.*

115. *Id.*

116. Srinivasan & Lee, *supra* note 60, at 9, 16.

117. *See, e.g.*, Anshu Nangia, *The Tragedy of Bride Burning in India: How Should the Law Address It?*, 22 BROOK. J. INT’L L. 637, 647-48 (1997) (“[A] woman’s education may actually increase the dowry rate instead of reducing or eliminating it.”).

118. *See* Hitchcock, *supra* note 31; Thakur, *supra* note 21; ELISABETH BUMILLER, MAY YOU BE THE MOTHER OF A HUNDRED SONS: A JOURNEY AMONG THE WOMEN OF INDIA 49 (1990) (“A college boy, instead of adopting what the West would call an enlightened view, came to see his diploma as a sign of increased worth, enabling his parents to demand more dowry for him.”).

119. Hitchcock, *supra* note 31; Jaggi, *supra* note 40, at 12 (describing “education of the wrong king”).

IV. INDIA'S LAWS PROHIBITING DOWRY

In response to complaints by women's organizations and to international pressure, the Indian Parliament passed legislation explicitly prohibiting the giving and taking of dowry in the Dowry Prohibition Act of 1961 (Act).¹²⁰ In analyzing the dowry prohibition laws enacted in an attempt to end the practice of dowry in India, it is apparent that an attachment to social status has prevailed over enforcement of the Act. In order to make the Act more effective and to reduce the dowry murders by criminalizing dowry-related violence against women, India enacted amendments to the Act, as well as amendments to the Indian Penal Code, the Indian Evidence Act, and the Code of Criminal Procedure.¹²¹

The Act's current version outlaws the giving, taking, or demanding of dowry, which the Act defines as "property given or agreed to be given by the parents of a party to the marriage at marriage or before marriage or at any time in connection with marriage."¹²² Demanding a dowry is punishable under the Act by imprisonment for up to two years, plus a fine; and giving or taking, or abetting the giving or taking of, a dowry is punishable under the Act by imprisonment for at least five years, plus a fine.¹²³

The Dowry Prohibition Amendment Act of 1986, introduced as section 304B in the Indian Penal Code, also defines "dowry death."¹²⁴ According to this law, if a woman's death is "caused by any burns or bodily injury" or occurs in any circumstances which are not "normal" within seven years of marriage, and "it is shown that soon before her

120. Dowry Prohibition Act, 1961.

121. Mandhu Kishwar, *India's New Abuse Laws Still Miss the Mark*, HINDUISM TODAY, Sept.-Oct. 2001, http://www.hinduismtoday.com/archives/2001/9-10/44-47_dowry.shtml (citing INDIA PEN. CODE, 1860; Dowry Prohibition Act, 1861; Indian Evidence Act, 1872).

122. Dowry Prohibition Act, 1961. "[T]wo other amendments to the Dowry Prohibition Act of 1961, enacted in 1984 and 1986, made dowry giving and receiving a cognizable offense." Kishwar, *supra* note 121. Dowry has been defined in Section 2, paragraph 2 of the Act

as any property or valuable security given or agreed to be given either directly or indirectly—

- (a) by one party to a marriage to the other party to the marriage;
- (b) by the parents of either party to a marriage or by another person, to either party to the marriage or to any other person;

at or before or after the marriage [in] consideration for the marriage of the said parties.

Dowry Prohibition Act § 2.2.

123. Dowry Prohibition Act, 1961.

124. *Kaliyaperumal v. Tamil Nadu*, 2003 SOL Case No. 481 (India), <http://www.supremecourtonline.com/cases/7964.html> (quoting INDIA PEN. CODE, 1860, § 304B, 1986).

death she was subjected to cruelty and harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death.'"¹²⁵ A violation of section 304B is punishable by imprisonment for at least seven years and can extend to life imprisonment.¹²⁶ "Prior to 1983, there were no specific provisions to deal with marital abuse and violence, even though husbands could be prosecuted and punished under the general provisions of the Indian Penal Code dealing with murder."¹²⁷

In another attempt to increase the effectiveness of the law, the Indian government passed the Indian Evidence Act Amendment (Evidence Act) of 1983.¹²⁸ Under the Evidence Act, if a woman has committed suicide, and it is shown that her husband or one of his relatives had subjected her to cruelty, the court may presume that the suicide had been abetted by her husband or the relative in question.¹²⁹ "Since marital violence took place in the privacy of the home, behind closed doors, a woman could not call upon independent witnesses to testify in her favor . . . as was required by law."¹³⁰ "Therefore, women's organizations lobbied to have the law tilted in women's favor by bringing in amendments which shifted the burden of proof away from the accused," as was done with the Evidence Act.¹³¹ Since then, the Indian

125. *Id.* Section 304B states:

- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death.
- (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

INDIA PEN. CODE § 304B.

126. *Id.*

127. Kishwar, *supra* note 121.

128. *Id.* (citing India Evidence Act, 1872).

129. India Evidence Act, 1872, § 113A, 1983 (amending the Indian Evidence Act, 1872).

Section 113 states:

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

130. Kishwar, *supra* note 121.

131. *Id.* (citing India Evidence Act, 1872).

Supreme Court, which has been supportive of oppressed women,¹³² declared in a landmark decision that, when an abused woman commits suicide, there is a presumption that it is a dowry death, as envisaged under Indian Penal Code 304B.¹³³

In a final attempt to curb the rising dowry deaths, the Indian government amended the Code of Criminal Procedure to include a section which requires an investigation whenever a woman dies under suspicious circumstances within seven years of marriage.¹³⁴ Nevertheless, “[d]espite the Indian government’s efforts, the practice of dowry murders” is still uncontrolled.¹³⁵

V. THE INEFFECTUALITY OF INDIA’S DOWRY LAWS

Although the changes in Indian criminal law reflect a serious effort by legislators to put an end to dowry-related crimes, and although they have been in effect for a number of years, they have been highly ineffective. India’s laws are ineffective in part because of their vagueness and in part because of Indian society’s acceptance of the subordinate status of women.¹³⁶ Many women are simply afraid to implicate their husbands in a dowry crime.¹³⁷ One judge said that “even if a husband has tried to kill his wife, she may still feel it is her duty ‘to serve him, and not cause him any harm.’”¹³⁸ Indian society tolerates a certain amount of domestic violence.¹³⁹ “Indian society has conditioned women to expect abuse and endure it,” as there is a strong conviction that Indian women are “their husband’s property.”¹⁴⁰

132. Partha Banerjee, *A Matter of Extreme Cruelty: Bride Burning and Dowry Deaths in India*, 1 INJUSTICE STUD. 1 (Nov. 1997), http://www.geocities.com/indiafas/Hindu/Bride_Burning.htm.

133. *Id.* (citing Andhra Pradesh High Court v. T. Punniah, CrI. L.J. 2330 (1989)).

134. INDIA CODE CRIM. PROC. § 174, 1973. “Section 174(2) of the Code of Criminal Procedure requires that, in cases of death of a woman within seven years of marriage, the police has [sic] to send the dead body to a civil surgeon for examination.” K.N. Chandrasekharan Pillai, *Women and Criminal Procedure*, in *ENGENDERING LAW: ESSAYS IN HONOUR OF LOTIKA SAKAR* 161-72 (Amita Dhanda & Archana Parashar eds., 1999) (citing INDIA CODE CRIM. PROC. § 174, 1973), available at <http://www.hsph.harvard.edu/Organizations/healthnet/SAsia/forums/crimes/articles/procedure.html>.

135. Laurel R. Pardee, *The Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe?*, 13 ARIZ. J. INT’L. & COMP. L. 491, 501 (1996).

136. *Id.*

137. See BUMILLER, *supra* note 118, at 59.

138. *Id.*

139. See Pardee, *supra* note 135, at 502.

140. *Id.*

In addition, the laws are not always enforced by the courts and police departments.¹⁴¹ All of the laws give the police great power without providing for adequate protection against the abuse of such power.¹⁴² “In many cases where wives had been murdered, the police were found to play an active role in destroying evidence and registering the cases as suicides or accidental deaths unless, of course, they had been suitably bribed.”¹⁴³ Police, too, are a product of a society that believes women are subordinate, despite the fact that they have a legal duty to alleviate such a situation.¹⁴⁴

Even when police gather evidence and “charges are filed, the law is not much help for women.”¹⁴⁵ “It can take eight to 10 years for a case to go to court.”¹⁴⁶ And once in court, husbands and in-laws end up getting away with extortion or even murder “because the women and their families cannot ‘prove beyond doubt’ that they are [the] victims” of such crimes, as there are rarely any outside witnesses.¹⁴⁷ Moreover, when the deaths occur through burning, evidence is usually lost in the flames themselves.¹⁴⁸

In addition, the language of the Dowry Prohibition Act is vague and can be read to cover only expected gifts at the wedding and to prohibit only collective presents to the groom’s family.¹⁴⁹ “Indian families [still] expect certain gifts at an Indian wedding,” and “investigators do not consider these gifts to be dowry.”¹⁵⁰ Therefore, this serves as a loophole, and grooms can continue to request dowry without fear of punishment even with the Act in place.¹⁵¹ In addition, the Act does not cover post-

141. *Id.* at 501-02.

142. *See id.* at 501.

143. Kishwar, *supra* note 121.

144. Menon, *supra* note 22 (noting, however, that “the old mind-set of the police force is changing”).

145. Moore, *supra* note 3.

146. *Id.*

147. Kishwar, *supra* note 121.

148. *See* Menon, *supra* note 22 (describing cases called “accidents” that are “closed for want of evidence”).

149. Pardee, *supra* note 135, at 501; Namratha S. Ravikant, *Dowry Deaths: Proposing a Standard for Implementation of Domestic Legislation in Accordance with Human Rights Obligations*, 6 MICH. J. GENDER & L. 449, 473 (2000) (“Parliament did not intend to totally outlaw individual or collective presents to either wedding party . . . the Act still allowed ‘expected gifts.’”).

150. Pardee, *supra* note 135, at 501; Ravikant, *supra* note 149, at 472-73.

151. Pardee, *supra* note 135, at 501; Ravikant, *supra* note 149, at 472-73.

wedding dowry demands, which have also become outrageous.¹⁵² It is when these post-wedding dowry demands are not met that the violence usually takes place.

There are many justifications for dowry-related crimes. Monetary greed is the major force behind dowry-related violence and deaths, and this encourages a groom and his family to consider multiple dowries from multiple brides.¹⁵³ It is easier for men and their families to kill the bride than it is to divorce the wife and pay maintenance.¹⁵⁴ Moreover, most parents of brides do not want to take their daughters back.¹⁵⁵ There is a high social stigma attached to both unmarried women and divorced women such that most parents would rather see their daughters dead than to have them get a divorce and return permanently to the natal home.¹⁵⁶ In one case, a mother pressured her daughter to return to her husband, who had previously attempted to burn her.¹⁵⁷ The mother even filed a case of desertion against her daughter's husband so that the court would force his family to take her back.¹⁵⁸ It would be a disgrace to the natal family to have the daughter move back in.¹⁵⁹ Many times women have no place to go if they leave their husbands, and "[d]aughters are sensitive to their parents' economic and social constraints and often do not tell them of their marital difficulties."¹⁶⁰ Therefore, many times the brides do in fact take their own lives.¹⁶¹

In essence, Indian society is plagued by a very complex psychological arrangement in the minds and attitudes of its people.¹⁶² One historian calls the dowry problem a "pathology or a syndrome rooted in history and gender inequality in a patriarchal society."¹⁶³ To

152. Pardee, *supra* note 135, at 501. Gift-giving has become an issue at postwedding events such as the birth of children, naming ceremonies of children, and special holidays. Oldenburg, *supra* note 25, at 151; Hitchcock, *supra* note 31.

153. See Siddhartha D. Kashyap & Rahul Mahajani, *Dowry Harassment Peaks During Diwali*, THE TIMES OF INDIA, Nov. 3, 2004.

154. See Moore, *supra* note 3.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. OLDENBURG, *supra* note 1, at 224.

161. *Id.*

162. See Preet Mohan S. Ahluwalia, *Women Rights in India*, <http://ds.dial.pipex.com/town/square/ev90495/women.htm> ("It is evident that there exist deep rooted prejudices against women in India.").

163. Oldenburg, *supra* note 25, at 151.

make matters worse, consumerism has now taken over, as is substantiated by the large number of dowry demands for material goods.¹⁶⁴ Therefore, some members of society benefit greatly and are reluctant to eradicate the dowry system. Understanding that the dowry problem is an immensely complex phenomenon in Indian society is the crucial first step to finding a practical solution.

VI. WHY DOWRY AND DOWRY-CRIMES HAVE IMMIGRATED TO CERTAIN COUNTRIES AND NOT OTHERS

One of the most worrisome aspects of the dowry problem is that dowry murders and dowry-related violence have been on the increase and now occur no longer only in India, but also in London and other British cities, as well as in the urban centers of North America.¹⁶⁵ As people from India have emigrated, they have generally carried the dowry practice to their new homes, but not always.¹⁶⁶ While dowry problems are also widespread among Indians living in Britain, Mauritius, and Canada, the Indians living in South Africa have not continued a similar practice.¹⁶⁷ Also, as seen in India's Assamese community, there is no dowry and bride-burning but the subordination of women and male supremacy exist.¹⁶⁸ "Such evidence [will be explored], since the solutions to the problem of dowry murders may be hidden behind" the absence of the practice in certain geographic regions.¹⁶⁹

A. *United States*

"[T]here are many attempts to deny the existence of dowry-related problems among South Asians in Britain today and the picture would not be much different for North America."¹⁷⁰ "This highlights a major problem for researchers: detailed evidence on current dowry problems outside India is virtually unobtainable."¹⁷¹ "[M]any members of the Asian communities do not wish to talk about it."¹⁷² However, there is evidence

164. Moore, *supra* note 3; Ravikant, *supra* note 149, at 460-61.

165. See Werner Menski, *New Research Agenda on Dowry Problems Among South Asians*, in *SOUTH ASIANS AND THE DOWRY PROBLEM* 222, 230 (Werner Menski ed., 1998).

166. *Id.* at 224.

167. *Id.* at 222; Rambilass, *supra* note 36, at 61; Thakur, *supra* note 21, at xiv-xv.

168. Thakur, *supra* note 21, at xv.

169. *Id.*

170. Menski, *supra* note 165, at 230.

171. *Id.*

172. *Id.*

that professionals such as doctors, engineers, and accountants living abroad in developed countries expect a high amount of dowry to be paid to them because educated men are the ticket to high social status and wealth.¹⁷³

It is likely that there are many Indian women living in the United States who have suffered from some form of dowry extortion.¹⁷⁴ Dowry harassment and murder, however, may simply be reported as domestic violence or domestic violence murders, and therefore specific information is not obtainable on the extent of dowry-related crimes being committed in the United States.¹⁷⁵ The U.S. Federal Bureau of Investigations has estimated that roughly 1400 women in the United States are killed annually as a result of domestic violence.¹⁷⁶ The problem with this number is that it reflects only those cases where the surviving spouse has been convicted of the crime.¹⁷⁷ Using this estimate, however, one researcher predicts that the proportion of women in the United States who are victims of “domestic-violence murder” seems roughly similar to the proportion of women in India who are victims of dowry-murder.¹⁷⁸

An interesting point, of course, is that dowry murders are cast in Western media as an Indian or Hindu cultural practice, whereas domestic violence murders in the United States are specifically not cast as practices of American culture.¹⁷⁹ In India, “[c]ulture [is] blamed . . . but so [is] Westernization, which brought in gross materialism, greed, and a desire for consumer goods and modernization.”¹⁸⁰ One historian asks, “Was this violence against women related to the ancient custom of dowry or was it a product of acculturation to Western and modern culture?”¹⁸¹

173. Hitchcock, *supra* note 31.

174. For example, a report will simply state that “there are many girls [in the U.S.] who are undergoing inhuman treatment . . . by their husbands for various reasons including dowry.” Asitha, *Indian Evils on American Soil*, www.geocities.com/Athens/Academy/9576/asita.htm.

175. UMA NARAYAN, *DISLOCATING CULTURES: IDENTITIES, TRADITIONS, AND THIRD-WORLD FEMINISM* 98 (1997).

176. *Id.*

177. *Id.* Narayan points out that the “Indian figures seem to reflect ‘suspected dowry murders’ rather than ‘legal convictions,’ while the U.S. figures seem to reflect the opposite.” *Id.* at 98-99.

178. *Id.* at 99.

179. See Michelle R. Adelman, *International Sex Trafficking: Dismantling the Demand*, 13 S. CAL. REV. L. & WOMEN’S STUD. 387, 398-99 (2004) (“Racist portrayals of women in other . . . ‘third world countries’ are rampant in U.S. media, and are rarely accompanied by any suggested parallel of such conditions in American society.”).

180. Oldenburg, *supra* note 25, at 147.

181. *Id.*

“But why then in the West, where dowries were once common, had the practice all but disappeared?”¹⁸² U.S. case law on the enforceability of foreign dowry agreements shows that the dowry agreements generally will not be enforced if they violate public policy.¹⁸³

B. Britain

Many of the Indians who have settled in Britain have abandoned the use of the word “dowry” over generations, as it has acquired a strong negative connotation among the general public.¹⁸⁴ Nevertheless, the institution itself is still in practice.¹⁸⁵ It is argued that the desire for material wealth is responsible for increasing dowry demands among some Indian subgroups.¹⁸⁶ “The bride’s parents are largely responsible for the escalation of dowry because most give over-large dowries because of increasing and conscious competition amongst Sikhs to out-do relatives and friends and raise their social status.”¹⁸⁷

Similar to India, where women themselves seem to contribute to the problem, women in Britain “who are aware of the problems caused by dowry payments at the time of their own or a daughter’s marriage, sometimes argue that the practice should be abolished, yet it is clear that most women do nothing to stop the practice when their sons get married.”¹⁸⁸ Furthermore, it is “argued that in-laws do not confiscate their daughter-in-law’s property in Britain due to the greater affluence of most immigrants, which means that the property rights of brides are respected, but this is not always the case.”¹⁸⁹ There have been a number of court cases where in-laws confiscated a daughter-in-law’s dowry, but these cases “have been kept well hidden to protect the *izzat* of the family concerned, and the community as a whole.”¹⁹⁰

182. *Id.*

183. *See, e.g., In re Marriage of Dajani*, 204 Cal. App. 3d 1387, 1390 (Cal. Ct. App. 1988) (finding that Jordanian dowry agreement requiring payment of husband’s dowry contribution to wife upon dissolution of the marriage was unenforceable because it violated California’s policy against “profiteering by divorce”).

184. Rohit Barot, *Dowry and Hypergamy Among the Gujuratis in Britain*, in SOUTH ASIANS AND THE DOWRY PROBLEM 163, 173 (Werner Menski ed., 1998).

185. *Id.*

186. *See* Jagbir Jhutti, *Dowry Among Sikhs in Britain*, in SOUTH ASIANS AND THE DOWRY PROBLEM 191 (Werner Menski ed., 1998).

187. *Id.* (“The increasing prosperity of many Sikh families has exacerbated matters.”).

188. *Id.* at 190.

189. *Id.* at 197.

190. *Id.*

Unlike India, where the practice of dowry is prohibited by law, in England, “[i]f the dowry contract is valid in the other country or jurisdiction, an English legal remedy can be sought which has to harmonise with the right according to its nature and extent as fixed by the foreign law.”¹⁹¹ The legal effect of dowry is such that the “ownership of items or monies bestowed pass[es] individually to the bride or groom.”¹⁹² In other words, in England, the wife’s property is her absolute property, and if the dowry has been withheld, it is recoverable.¹⁹³ However, any involuntary payments—that is, money given under compulsion—are recoverable through an action for restitution.¹⁹⁴ “Financial pressure on the plaintiff to coerce her or any person related to her to meet any unlawful demand of money or goods constitutes a criminal offense or at least unenforceable and unconscionable attempts.”¹⁹⁵ India could benefit from similar rules.

Regarding the exact extent of the dowry problem among Indians who have established themselves in Britain, it is noted that “there are no published statistics on dowry abuse.”¹⁹⁶ It is argued that the present dowry problems in Britain are being uncovered in depth for the first time right now.¹⁹⁷ To date, the “official legal system has shied away from taking formal notice of the dowry problems among [the Indian population],” and coverage “has been left to the ethnic minority press or some local papers.”¹⁹⁸

C. *South Africa*

While the practice of dowry is present in North America and Britain, “it is not practiced and often not even heard of, among the present generation of Indian South Africans.”¹⁹⁹ The “exchange of gifts,” however, is common, and it is “an important aspect of the wedding

191. Usha Sood, *The Legal Context of Dowry in Britain*, in *SOUTH ASIANS AND THE DOWRY PROBLEM* 199 (Werner Menski ed., 1998) (citing *Phrantzes v. Argenti*, 1 All E.R. 778 (1960) (Eng.)).

192. *Id.* at 200 (citing *Samson v. Samson*, 1 All E.R. 654 (1960) (Eng.)).

193. *Id.* at 204.

194. *Id.* at 200 (citing *Maskell v. Horner*, 3 K.B. 106 (Eng. C.A. 1915); *N. Ocean Shipping Co. v. Hyundai Construction Co.*, 3 All E.R. 1170 (1978) (Eng.)).

195. *Id.*

196. *Id.* at 205.

197. *Id.*

198. Menski, *supra* note 165, at 230.

199. Rambilass, *supra* note 36, at 61.

ceremony.”²⁰⁰ The gifts, though, are given fairly evenly by both sides.²⁰¹ A survey of four language groups of Indian South Africans indicated that “[t]he groom’s parents usually bought a set of jewellery [sic] and clothes for the bride,” including the bride’s wedding outfit.²⁰² “The bride’s parents gave the groom a set of clothes which the groom would perhaps wear for the wedding,” and “[t]he parents of the bride also buy jewellery [sic] for the bride.”²⁰³ Thus, the exchange of gifts among Indians in South Africa is actually quite even between the families.

One probable reason is that “Indian South Africans, through exposure to Western influences . . . are not governed by rigid orthodox Hindu Laws.”²⁰⁴ Indian South Africans have become affected by modernization and inheritance laws that allow “daughters [to] inherit as much as sons do.”²⁰⁵ “Daughters have occasionally been sole beneficiaries in the father’s estate” because they were the family member who cared for the parents in their old age.²⁰⁶ Sons still are, however, the sole inheritors of property sometimes.²⁰⁷ The crucial difference between Indian South Africans and Indians living in India is that “the question of inheritance is . . . relatively fluid and is determined by the circumstances of a case rather than by any general norm.”²⁰⁸

Another reason why dowry may not exist among Indian South Africans is because the Indians who first arrived in South Africa did so as indentured laborers.²⁰⁹ Because they arrived during the indenture years, “their ancestors had been forced into co-existing with people from whom caste or tradition would have kept them apart in their earlier Indian environment . . . result[ing] in forging for their descendants a new identity.”²¹⁰ In addition, the Indians who migrated were mainly farmers and were extremely poor.²¹¹ Therefore, “[i]t is difficult to imagine that they brought along with them a tradition of dowry practice, given the

200. *Id.* at 64.

201. *See id.*

202. *Id.*

203. *Id.*

204. *Id.* at 65.

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.* at 68.

210. Report of the High Level Committee on the Indian Diaspora, *South Africa* 85 ¶ 7.31, at <http://indiandiaspora.nic.in/diasporapdf/chapter7.pdf>.

211. *See Rambilass, supra* note 36, at 69.

poverty in the areas from which they emigrated.”²¹² In comparison with modern India, the problem of dowry is more a middle-class phenomenon, driven by the desire to attain material wealth and consumerism.²¹³ When India’s economy boomed between 1990 and 2000, there was a thirty-eight percent rise in dowry deaths, and “a tripling in harassment complaints,” as “[w]ealth has only compounded the problem.”²¹⁴

Similar to the Indian community in the United States and Britain, the Indians who have settled in South Africa are also usually wealthier than the average member of the population.²¹⁵ But the wealth in South Africa is comparatively less than that in India, the United States, or Britain,²¹⁶ and therefore the consumerism that has been blamed for an increase in dowry abuse in other countries is absent in South Africa. Another interesting point is that while, as a whole, there is no preference for having a son over a daughter among the Indians in South Africa, there still is a preference for having a son.²¹⁷ Yet, one study found that “Indian women significantly favour their daughters,” and “Indian men significantly favour their sons.”²¹⁸ Again, this is an area where Indian South Africans seem to be less rigid in their beliefs and more accepting of differences in cultures, and this has likely played a role in curbing the amount of dowry abuse.

212. *Id.*

213. *Id.*

214. *Dowry Demands*, *supra* note 19.

215. See Lata Gangadharan & Pushkar Maitra, *Testing for Son Preference in South Africa*, 12 J. AFR. ECONOMIES 371, 373 (2003) (“[T]he Indian community in South Africa forms the core of a rich, urban and professional upper-middle class.”); Report of the High Level Committee on the Indian Diaspora, *The United Kingdom*, 127 ¶ 10.26, at <http://indiandiaspora.nic.in/diasporapdf/chapter10.pdf> (“The Indian community[’s] . . . per capita income . . . is among the highest earning groups in the UK. Its per capita income is higher than the national average.”); Report of the High Level Committee on the Indian Diaspora, *The United States*, 169 ¶ 13.2, at <http://indiandiaspora.nic.in/diasporapdf/chapter13.pdf> (“The per capita income of the community is currently estimated at US\$60,093 compared to the average per capita income of US\$38,885.”).

216. The per capita income in South Africa is only \$3,000. Gangadharan & Maitra, *supra* note 215, at 373.

217. *Id.* at 371.

218. *Id.* at 373.

VII. REMEDIES FOR DOWRY AND DOWRY-RELATED VIOLENCE

A. *A National Response*

According to one historian, it is useless to focus on eradicating dowry as “this would disempower women still further.”²¹⁹ He suggests allowing the custom of dowry, but protecting women from dowry-related violence.²²⁰ To halt the practice of dowry, India should improve its legislation and eliminate the current loopholes.²²¹ In addition, a social reform movement is necessary.²²² The police and the judiciary need to be educated on the importance of enforcing existing laws and on how they should go about doing so.²²³ Also, the general public needs to be educated to understand how dowry is an institution that causes hardships to the very families that practice it.²²⁴ The public should be made aware of how dowry degrades those who receive it while it impoverishes those who pay it and that it results in a destruction of a family’s life-savings and hard-earned wealth, all in the name of maintaining or improving status.²²⁵

In order to effectively enforce legal reform, a change in the fundamental perception of the status of women is also necessary. This includes a change in societal values, as well as undoing the complex cultural habits that allow this kind of violence.²²⁶ A change in the status of women can be brought about by an increase in the education and the equal opportunities for women.²²⁷ Women need to be educated and then given aid in finding employment so that they can become and remain economically independent from their husbands or their natal families.²²⁸ Furthermore, it is just as essential to publicize the horrible stories that

219. Menski, *supra* note 165, at 229.

220. *Id.*

221. See Ravikant, *supra* note 149, at 472-73.

222. In the dowry context, “[l]egislation by itself cannot normally solve deep-rooted social problems.” Devaki Monani Ghansham, *Female Foeticide and the Dowry System in India* (July 2002) (unpublished paper for Townsville International Women’s Conference), at http://www.austdvclearinghouse.unsw.edu.au/TIWC_confpapers.htm.

223. See Ravikant, *supra* note 149, at 475-80.

224. See Thakur, *supra* note 21, at xv; Jaggi, *supra* note 40.

225. See, e.g., Oldenburg, *supra* note 25, at 158.

226. See Jaggi, *supra* note 40.

227. See Pardee, *supra* note 135, at 503.

228. See Manjaree Chowdhary, *Miles to Go: An Assessment of the Enforcement Hurdles in the Implementation of the Anti-Dowry Law in India*, in *SOUTH ASIANS AND THE DOWRY PROBLEM* 151, 162 (Werner Menski ed., 1998) (“The continued increase in dowry crimes heightens the need to reinforce and expedite efforts towards securing educational and economic independence of women, creating gainful employment opportunities.”).

exist regarding dowry-related violence, as it is to try and solve the problem through legislative means. The media should publicize the problems caused by dowry and dowry-related crimes.²²⁹ According to one expert, long-term solutions to eradicating the dowry system and eliminating the spread of dowry violence include: enforcing mandatory education policies for females so that they have greater financial independence; overhauling the economic system to eliminate the dependence of parents; promoting research and media programs to educate the public about the evils and consequences of dowry; reforming the Indian legal system to allow greater rights for women and greater preventative measures; and constructing dignified and protected shelters and job centers with qualified counselors, medical personnel, and religious support for victims of dowry-related violence.²³⁰

B. *An International Response*

Dowry violence and related deaths are an expression of extreme gender violence and can be compared to human rights violations²³¹ such as honor killings in the Middle East and female genital mutilation in Africa. It has been argued that “[t]he Indian government’s failure to enforce laws prohibiting dowry deaths violates both customary international law as well as India’s obligations under certain International Human Rights Agreements to which it is a party.”²³² In particular, dowry violence is a violation of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.²³³ It is also a violation of the Convention on the Elimination of Discrimination Against Women (CEDAW).²³⁴

229. See Srinivas, *supra* note 45, ch. IX.

230. Menski, *supra* note 165, at 221-29.

231. Andreea Vesa, *International and Regional Standards for Protecting Victims of Domestic Violence*, 12 AM. U. J. GENDER SOC. POL’Y & L. 309, 312-13 (2004).

232. Pardee, *supra* note 135, at 503.

233. *Id.* at 503-07 (citing Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948); International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (entered into force Mar. 23, 1967)); see also Angela K. Carlson-Whitley, *Dowry Death: A Violation of the Right to Life Under Article Six of the International Covenant on Civil and Political Rights*, 17 U. PUGET SOUND L. REV. 637, 638 (1994) (discussing the failure of Indian law to effectively address the problem of dowry deaths); Ravikant, *supra* note 149, at 449 (discussing India’s failure to enforce dowry death laws and prevent dowry death).

234. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., at 193-98, U.N. Doc. A/RES/34/180 (1979), <http://www.un.org.documents/ga/res/34/ares34.htm>; Ravikant, *supra* note 149, at 463-64 (citing

Recently, the United Kingdom has acceded to the optional protocol to CEDAW which would allow the CEDAW Committee to investigate the practice of bride-burning in the United Kingdom and issue comments and recommendations.²³⁵ India, however, which is obligated under CEDAW to work to remove traditional practices that subordinate women, has not been successful in doing so.²³⁶ This may be in part because the socioeconomic status of women in India is very low in comparison with other countries.²³⁷ Therefore, as the socioeconomic status of women in the United Kingdom is higher, the United Kingdom may be more inclined and capable of studying the problem of dowry-violence, as well as proposing solutions to combat the problem.

Given the rate of escalation of dowry murders in the last decade alone, the United Nations, international organizations, and other countries should take an active position on combating dowry-related crimes. They should not take the position that dowry murders are a private family matter and thereby evade their responsibilities for enforcing domestic and/or international law.

VIII. CONCLUSION

Although in much of the world, dowry is a common institution understood to mean gifts of money or items that a bride brings with her at the time of marriage, in India it has taken on a particular importance in that it has become a form of extortion and a cause for violence. While it is easy to link dowry to ancient Indian custom and culture, it has been proven that dowry today is more a product of greed for material wealth. Dowry had a social purpose at the time of its inception.²³⁸ *Stridhan* was

Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 (Eleventh Session 1992): *Violence Against Women*, in COMPILATION OF GENERAL COMMENTS AND GENERAL RECOMMENDATIONS ADOPTED BY HUMAN RIGHTS TREATY BODIES, U.N. Doc. HRI/GEN/1, at 62, 75 (1992) (noting that in 1992, CEDAW “recognized dowry deaths as a widespread traditional practice that deprived women of the ability to enjoy human rights and freedoms on an equal basis with men” and that in 1993, CEDAW included dowry-related violence as part of gender-based violence “which must be eliminated to ensure the equal enjoyment of these rights and freedoms.”).

235. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 54/4, U.N. GAOR, 54th Sess., arts. 2, 5, U.N. Doc. A/RES/54/4 (1999), <http://www.un.org/Depts/dhl/resguide/r54.htm>.

236. Ahluwalia, *supra* note 162.

237. *Id.* Compared to 130 other developing countries, India ranks 99th in “women’s life expectancy, literacy, and real income, in comparison with that of the men.” *Id.*

238. Srinivas, *supra* note 45, ch. II.

given to the bride as an asset for her in times of crisis, and *dakshina* was a gift given out of affection from the family of the bride to the groom.²³⁹ Over the years, however, both *stridhan* and *dakshina*, and even the bride herself, became the property of the husband.²⁴⁰ Unless measures are taken to curb the problems related to dowry, dowry will lose its traditional meaning altogether.

Research has shown that there are numerous social issues to be resolved in order to curb dowry-related violence. Education about the disadvantages of dowry or increasing the economic worth of women through education is part of the solution, but it is not a complete remedy. This is evidenced by the fact that dowry abuse and violence is unfortunately widespread among highly educated families.²⁴¹ In addition, “[e]fforts to combat dowry by making women economically valuable have not succeeded so far” in India.²⁴² “A significant example is the death of Sangeeta Goel, who had a PhD in solid waste physics and was employed as a highly paid scientist.”²⁴³ She obviously should have been “valuable to her husband economically.”²⁴⁴ But her father failed to meet dowry demands, and Sangeeta was found dead in her marital home—barely five months after her marriage.²⁴⁵

Similarly, the research available proves that criminal legislation alone is insufficient in deterring those who demand dowry and those who are guilty of bride burning.²⁴⁶ It is widely recognized that increased enforcement of the Dowry Prohibition Act and its amendments is part of the solution in combating the domestic violence, bride burning, and female infanticide which result from the dowry tradition.²⁴⁷ By vigorously prosecuting and convicting perpetrators of dowry violence and increasing the expected punishment of such crimes, society may finally become deterred from committing dowry-related crime.

While stringent laws, increased police enforcement, and a more responsive judiciary are necessary to the process of eradicating dowry abuse, these reforms alone cannot get rid of it. The complete eradication

239. *Id.*

240. *See id.*

241. Thakur, *supra* note 21, at xv.

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. Jaggi, *supra* note 40, at 15-18.

247. *See, e.g.,* Ravikant, *supra* note 149, at 496-97.

of dowry abuse can only be attained when the social attitude that accepts dowry is finally changed. Unless equal rights for women are made a reality through a change in social attitude, unless alternatives are found to dowry-based marriages, and unless men cease to consider women as their property, there will not be any change in the status of women in India. Deterrent legislation is not sufficient, and nothing less than a powerful social movement will be adequate in eradicating the modern dowry system in India.

Fortunately, there is a growing desire to curb dowry violence, as evidenced by the amount of analysis being done by international organizations, Indian government officials, and members of Indian society who are concerned about the problem. The fact that Nisha Sharma, unlike her predecessors, was made a hero last year after she walked away from her wedding because of a high dowry demand is evidence that India may be ready to implement this great social change.