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Deterring Dowry Deaths in India: Applying Tort Law to Reverse the Economic Incentives That Fuel the Dowry Market

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I. INTRODUCTION

Time did not stop on May 21, 2001, in Bangalore, India. But for Rinki, a newly-married nineteen-year-old housewife, this day was her last one alive.² Rinki had been married to a man named Anil for barely a month before she turned up dead. Rinki was allegedly tortured and set on fire by Anil's family.³ The circumstances surrounding this heinous murder were a familiar scene in rural India.

Soon after Rinki married Anil, Anil's father demanded that Rinki's family buy him a motorcycle and a color television to replace the black and white television set they provided as dowry.⁴ Rinki's family was unable to meet such demands. Consequently, Anil's family allegedly subjected Rinki to severe physical torture, and, on one Saturday morning in Bangalore, Rinki was found charred to death after having been doused with kerosene and set ablaze.⁵ It was another incident of a "dowry death."⁶

1. Elbow Law Clerk to the Honorable James J. Brady, District Judge of the Middle District of Louisiana, J.D., St. Louis University, 2004. I am indebted to Professor Constance Wagner for her initial review of and comments on this Article. Also, I owe my "mentor," Professor David Sloss, much thanks for his guidance and support. Elizabeth Kent, Matthew Tikonoff, and the entire Suffolk University Law Review staff deserve credit for bringing this Article to print. Finally, the analysis in this Article should in no way be construed to reflect the views of my boss, mentor, and friend, Judge James Brady, his staff, or the Middle District of Louisiana.

2. See Amanda Hitchcock, *Rising Number of Dowry Deaths in India*, WORLD SOCIALIST WEB SITE, July 4, 2001, <http://www.wsws.org/articles/2001/jul2001/ind-j04.shtml>.

3. *Id.*

4. *Id.*

5. *Id.* The use of burning by kerosene in dowry deaths is very common in India. See Meghana Shah, Note, *Rights Under Fire: The Inadequacy of International Human Rights Instruments in Combating Dowry Murder in India*, 19 CONN. J. INT'L L. 209, 213 (2003); see also Celia W. Dugger, *Kerosene, Weapon of Choice for Attacks on Wives in India*, N.Y. TIMES, Dec. 26, 2000, at A1.

6. See *infra* text accompanying note 73 (defining crime of "dowry death"). Judge Arijit Pasayat stated

Stories like Rinki's arise daily in India. Statistics indicate that about seventeen wives are killed every day in India because their families fail to pay dowry.⁷ The increasing trend in dowry violence and dowry deaths presents a troubling issue for India, and it correlates with other social ills that plague the ancient nation. For instance, "female infanticide, feticide, and high-risk abortions all stem from abuse of the institution of dowry."⁸ Thus, dowry deaths present a human rights concern that India must address properly.

In 1961, India enacted the Dowry Prohibition Act, its most important legislation aimed at curbing the problems dowry provokes.⁹ The Indian Parliament later amended its national penal code in 1983, and again in 1986, to proscribe the offense of dowry death.¹⁰ The government's attempt to cure the problem through criminal legislation, however, has been futile.¹¹ While some courts have upheld dowry death convictions, the government generally has not enforced the criminal laws and has failed to investigate potential dowry deaths properly.¹² Further, the Indian Supreme Court ruled recently that India's penal

eloquently that

[m]arriage[s] are made in heaven, is an adage. A bride leaves the parental home for the matrimonial home, leaving behind sweet memories therewith a hope that she will see a new world full of love in her groom's house She expects not only to be a daughter in law, but a daughter in fact. Alas! The alarming rise in the number of cases involving harassment to the newly wed girls for dowry shatters the dreams. In-laws are characterized to be outlaws for perpetrating a terrorism which destroys the matrimonial home. The terrorist is dowry, and it is spreading tentacles in every possible direction.

Hira Lal & Ors. v. State (Govt. of NCT) Delhi at ¶ 1, (2003) 8 S.C.R. 80.

7. See Shah, *supra* note 5, at 210. During the 1990s, India witnessed 5,800 reported dowry-related deaths. See Hitchcock, *supra* note 1. When taking unreported episodes into account, the incident rate rises dramatically: one study approximates that more than 25,000 young wives die or endure physical injury each year as a result of dowry-related violence. See *id.*; Barbara R. Hauser, *Born a Eunuch? Harmful Inheritance Practice and Human Rights*, 21 LAW & INEQ. 1, 31-32 (2003). The high incidence of dowry deaths suggests that existing Indian law does not seem to deter families from committing dowry murders. See Purna Manchandia, Comment, *Practical Steps Towards Eliminating Dowry and Bride-Burning in India*, 13 TUL. J. INT'L & COMP. L. 305, 320-21 (2005). Not only is bride-burning a growing problem in India, but the practice finds new homes in countries to which Indians immigrate. *Id.* at 322 (noting dowry deaths increasing in Britain, North America, and Mauritius).

8. See Shah, *supra* note 5, at 210.

9. See generally The Dowry Prohibition Act, No. 43 of 1961; INDIA CODE (2002).

10. See Dowry Prohibition Act § 304(B); *infra* text accompanying note 73 (defining dowry death offense).

11. See generally Shah, *supra* note 5.

12. However, the Indian Supreme Court in some cases has upheld dowry convictions. See, e.g., Dhain Singh v. State of Punjab, (2004) 7 S.C.C. 759; Nallam Vera Stayanandam v. The Public Prosecutor, High Court of A.P., 2004 S.C.A.L.E. 659; Moti Lal v. State of M.P. (Now Chhattisgarh), (2004) 2 S.C.C. 469; Vidhya Devi v. State of Haryana, (2004) 9 S.C.C. 476; Hira Lal and Ors. v. State (Government of NCT) Delhi, (2003) 8 S.C.C. 80; State of Karnataka v. M.V. Manjunathgowda, (2003) 2 S.C.C. 188; K. Prema S. Rao and State of Andhra Pradesh v. Yadla Srinivasa Rao and Yadla Ranga Rao, (2003) 1 S.C.C. 217; Alamgir Sani v. State of Assam, (2002) 10 S.C.C. 277; Satvir Singh and Others Tejinder Pal Kaur, (2001) 8 S.C.C. 633; Pawan Kumar v. State of Haryana, (2001) 3 S.C.C. 628.

code does not permit courts to compel dowry death perpetrators to pay compensation as a form of criminal punishment to their victims.¹³

The system's failure suggests India's government must seek a fresh solution. This Article argues that India should remedy the dowry death problem by enacting a national dowry tort statute. The statute would counter the groom's family's economic incentive to demand dowry by allowing victims of dowry-related violence to collect money damages.

Part II of this Article introduces the concept of dowry and its transformation from a benefit to the bride, in Vedic times, to a tool that furthers the greed of a groom's family in contemporary Indian marriages. Part II also examines dowry-related deaths and how they are carried out. Moreover, this Part analyzes India's socio-economic structure, which devalues Indian women's domestic productivity and, thus, perpetuates the dowry problem.

Part III highlights the severity of India's dowry death problem by analyzing the failure of India's current anti-dowry laws, such as the Dowry Prohibition Act of 1961 and its amendments. Although the Dowry Prohibition Act violations carry severe criminal penalties, this Part argues that a general lack of enforcement of the law, coupled with fraud-ridden investigations into dowry deaths, renders the law futile. To recognize that dowry death plagues nations other than India, Part IV discusses various international treaties and conventions that address the dowry death problem either explicitly or implicitly.¹⁴

In Part V, this Article looks at previously proposed remedies to the dowry problem. Such remedies include legislation, social reform movements, a due diligence standard requiring India to take "reasonable measures" in fighting dowry violence, and policies for educating society on the dowry issue.

In Part VI, this Article analyzes a civil tort law addressing dowry and dowry violence. This legislation must provide economic incentives in Indian society that modify the social and cultural patterns of its men and women in a way that eliminates the market for dowry transactions. Arguably, this law and its attendant economic inducements will bring about an end to dowry deaths.

II. THE PRACTICE OF DOWRY AND DOWRY DEATHS

A. Dowry: Origins and Modern Use

Defined simply, a dowry is the goods the bride's family gives the groom's family in consideration of the bride's marriage into the groom's family.¹⁵ The

13. See *supra* note 12.

14. See Manchandia, *supra* note 7, at 322-27.

15. See VEENA TALWAR OLDENBURG, DOWRY MURDER: THE IMPERIAL ORIGINS OF A CULTURAL CRIME 19 (2002); 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, 454 (2000); see also

giving of dowry, however, was intended originally to benefit the bride. Indian women in Vedic times, between 2500 B.C.E. and 1500 B.C.E., could not inherit real property.¹⁶ To counter this discriminatory policy, families in the upper strata of India's social structure devised a dowry system: the bride's family provided the groom with dowry to be registered in the bride's name. In the event of a divorce, annulment, or the husband's death, the dowry would revert to the bride.¹⁷

Comparatively, those situated in India's lower castes practiced "bride price."¹⁸ In this scenario, the groom's family would pay cash to the bride's family to compensate it for the bride's absence and the loss of whatever income the bride would have brought her family had she not married. With time, however, the "bride price" practice disappeared.¹⁹

Nevertheless, the notion of dowry as benefiting Indian women remained.²⁰ The goods registered in the brides' name at marriage were substantially under the women's direct control.²¹ In fact, dowry was usually the only resource over which most Indian women exercised control.²²

Unfortunately, modern Indians do not follow the traditional Vedic concept of dowry. Modern dowry practice requires the bride's family to transfer goods directly to the groom's family in exchange for the marriage.²³ Under this scheme, the bride no longer receives any property in her name and, thus, she remains financially dependent on her husband and his family.²⁴

According to one scholar, dowry practice evolved because of the Hindu caste system and its importance in Hindu marriages during India's

Rani Jethmalani & P.K. Dey, *Dowry Deaths and Access to Justice*, in KALI'S YUG: EMPOWERMENT, LAW AND DOWRY DEATHS 36, 38 (Rani Jethmalani ed., Har-Anand Publications 1995). The Dowry Prohibition Act defines dowry 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; or (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person

See The Dowry Prohibition Act, No. 43 of 1961; INDIA CODE (2002).

16. See SARA S. MITTER, *DHARMA'S DAUGHTERS* 112 (1991); see also Ravikant, *supra* note 15, at 454.

17. Ravikant, *supra* note 15, at 454.

18. Ravikant, *supra* note 15, at 454-55.

19. Ravikant, *supra* note 15, at 455.

20. Venna Talwar Oldenburg, *Dowry Murders in India: A Preliminary Examination of the Historical Evidence*, in *WOMEN'S LIVES AND PUBLIC POLICY: THE INTERNATIONAL EXPERIENCE* 148 (Meredeth Turshen & Briavel Holcomb eds., 1993).

21. *Id.*

22. *Id.* Professor Oldenburg notes that in the old Vedic practice of dowry, unlike the modern dowry custom, the groom's family never demanded goods from the bride's family. *Id.* at 150.

23. Ravikant, *supra* note 15, at 455; see also MITTER, *supra* note 16, at 112. Contemporary forms of dowry may consist of televisions, automobiles, household appliances, furniture, land, and computers. Ravikant, *supra* note 15, at 455.

24. Ravikant, *supra* note 15, at 455.

industrialization era.²⁵ In a Hindu marriage, a bride from a lower caste who marries a groom from a higher caste must pay a fee to the groom's family.²⁶ Thus, the dowry is the fee the bride must pay to be elevated into a higher social strata—a higher caste.²⁷ Further, the dowry concept transformed at a time when the “universal form of marriage [in India] . . . was marriage by purchase.”²⁸ The payment of dowry reflected the groom's caste status, educational level, and social position.²⁹ In essence, dowry became a means of competing for husbands.³⁰

The new dowry tradition has flourished in India because families are much too eager to release their daughters through marriage. Preferring sons over daughters, families view females as burdens on the household.³¹ Indian families often “sell” their daughters into a marriage to provide the daughter with what her family considers a better life.³² By marrying their daughter into a higher social caste, the bride's family can justify the payment of dowry.³³ These deep cultural roots of dowry, including Indian society's preference for

25. Partha Banerjee, *Bride Burning and Dowry Deaths: A Matter of Extreme Cruelty: Bride Burning and Dowry Deaths in India*, 1 INJUSTICE STUDIES No. 1 (Nov. 1997),

available at http://www.sikhspectrum.com/122002/partha_banerjee.htm. Some believe that dowry originated from ancient Hindu caste-based customs such as kanyadan and stridhan. *Id.* The practice of kanyadan consisted of the wife's father giving goods to the husband's father. Stridhan, on the other hand, involved the wife receiving jewelry and clothes. *Id.*

26. *Id.*; see also 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 101-02 (W. Menski, ed., 1998).

27. Chowdhary, *supra* note 26, at 101-02. Dowry is sometimes analyzed through an economic-market perspective. For example, it has been said that

[t]he amount of dowry is negotiated by the groom's family, based on their social and economic status, and it is elevated in terms of a total cash value. The physical appearance of the bride is also taken into account in determining the value of the dowry. Negotiations are often done through a mediator so the marriage does not appear to be simply a monetary transaction. The higher the socioeconomic status of the groom's family, the higher the demanded dowry will be. 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. To marry a businessman with an MBA, the cost of dowry is at least \$32,000 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.

Manchandia, *supra* note 7, at 312.

28. MONMAYEE BASU, HINDU WOMEN AND MARRIAGE LAW: FROM SACRAMENT TO CONTRACT 87 (2001). This time period included the nineteenth and early twentieth centuries, well after the Vedic Period. *Id.*

29. See OLDENBERG, *supra* note 15, at 39. Further, industrialization caused new products to flood the Indian economic market. *Id.* Demanding dowry at the time of marriage was one route through which a groom's family could gain access to these goods. *Id.*

30. Siwan Anderson, *The Economics of Dowry Payments In Pakistan* 4 (Ctr. for Econ. Research, Tilburg Univ., Working Paper No. 82, 2000), available at <http://arno.uvt.nl/show.cgi?fid=4124>.

31. See Manchandia, *supra* note 7, at 313-14 (noting “[t]he cultural attitude is that a female is considered a temporary visitor in her family's home and that once she marries, her family should break ties with her”).

32. See Manchandia, *supra* note 7, at 312 (explaining how families negotiate to wed bride with husband of high social status).

33. See Manchandia, *supra* note 7, at 312.

sons over daughters, explain India's modern dowry practices.

B. Dowry Deaths

While scholars debate why modern dowry practice deviated from the Vedic gift-giving ritual, they agree generally that dowry deaths result from greed: the groom's family continually demands a larger dowry, while the bride's family agrees to pay a dowry in order to relinquish the burden of caring for its unwed daughter.³⁴ The families' greed—and, thus, the “dowry death” threat—may persist during and after the marriage. For instance, the groom's family may demand dowry for years after the marriage takes place.³⁵ It may request further dowry during special occasions, such as religious ceremonies and the birth of children.³⁶ When the bride's family cannot—or will not—make good on its dowry obligations to the husband's family, the bride may endure physical violence and, many times, death at the hands of the groom's family.³⁷ The wife's death makes way for a new financial transaction—that is, another marriage opportunity for the former groom.³⁸

Women who fall victim to dowry death die in a gruesome fashion and leave behind few clues to implicate the perpetrators. In most instances, dowry death perpetrators douse the wife with kerosene gas and ignite her body.³⁹ This killing method lends itself well to being disguised as a kitchen accident.⁴⁰ Further, it leaves behind little evidence, and because the burning of the wife usually occurs in the home of the husband's family, typically no witnesses exist who can refute the “kitchen accident” explanation.⁴¹ The wife stands almost no chance of surviving a dowry death attempt, and thus the prosecution must

34. See OLDENBURG, *supra* note 15, at 39.

35. See Hitchcock, *supra* note 1.

36. See Hitchcock, *supra* note 1.

37. See Lori Heise, *The Global War Against Women*, WASH. POST, Apr. 9, 1989, at B1. See generally Shah, *supra* note 5.

38. See Hitchcock, *supra* note 1; Oldenburg, *supra* note 20, at 146.

39. Ravikant, *supra* note 15, at 456. Dowry-related bride burning should be distinguished from the practice of sati. Sati consists of a widow burning herself voluntarily on her husband's funeral pyre. See Oldenburg, *supra* note 20, at 145.

40. For instance, “of 550 [dowry death] cases reported between January and September 1997, 71 percent were closed as ‘kitchen/cooking accidents’ and ‘stove bursts.’” Hitchcock, *supra* note 1; see also Shah, *supra* note 5, at 213. The realities of many Indians' living conditions and culture support this excuse: most low-income residences in India are equipped with malfunctioning kerosene stoves, and many Indian women wear nylon saris that catch fire easily. See Shah, *supra* note 5, at 213; Oldenburg, *supra* note 34, at 146. Even if the bride-victim fights back against her attacker, little or no evidence of a struggle would be present after the killing because “signs of struggle simply do not show up on bodies with 90 or more percent third degree burns.” Oldenburg, *supra* note 34, at 146. When it is obvious that the death of the new bride was not a kitchen accident, the husband's family contends instead that the bride committed suicide because she could not conform to her new family's lifestyle. *Id.*

41. See Ravikant, *supra* note 15, at 456; see also ELISABETH BUMILLER, *MAY YOU BE THE MOTHER OF A HUNDRED SONS: A JOURNEY AMONG THE WOMEN OF INDIA* 47 (1990). It is interesting to note that the mother-in-law often burns the bride, even without the groom's help. Oldenburg, *supra* note 20, at 146.

proceed without its chief witness.⁴²

C. Socio-Economic Circumstances of Indian Women and the Economic Causes Leading to Dowry Deaths

Indian women's inferior socio-economic status promotes the dowry tradition and its sometimes fatal consequences. In India, sons are valued more highly than daughters.⁴³ Female children are often seen as financial burdens on their families. They are not considered able to provide manual labor for the family, furnish steady income for their parents, or carry on the family line.⁴⁴ Education and employment opportunities are usually never considered during a female's upbringing.⁴⁵ Instead, it is customary in India for a daughter to be raised knowing that her primary responsibility in adulthood is to get married and provide a family for her husband.⁴⁶ Marriage, and the attendant dowry agreements, rid the daughter's household of a financially-burdensome member.⁴⁷

Social pressures also promote the dowry tradition. An Indian woman in a rural community brings shame to her family if she is required to work outside of the home to support the family's income.⁴⁸ An unwed daughter who is older than twenty years and lives in her parent's home brings dishonor to her family.⁴⁹ These forces create a strong incentive for a family to marry its daughters off in order to preserve the family's reputation in the community.⁵⁰

Economically speaking, the wife's family incurs many benefits by consenting to a dowry transaction.⁵¹ By marrying the daughter, the family no longer has to care for a child. The cost to the wife's family in entering a dowry transaction is the costs of the goods it transfers to the husband's family. A wife's family will go along with a dowry transaction at marriage as long as the

42. See BUMILLER, *supra* note 41, at 47.

43. See Ravikant, *supra* note 15, at 457.

44. See Ravikant, *supra* note 15, at 457.

45. See Anshu Nangia, *The Tragedy of Bride Burning in India: How Should the Law Address It*, 22 BROOK. J. INT'L L. 637, 647 (1997).

46. See *id.* at 648.

47. See Ravikant, *supra* note 15, at 458. A family that houses an unmarried or divorced woman bears an extremely high social stigma. See Laura R. Pardee, *The Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe?*, 13 ARIZ. J. INT'L & COMP. L. 491, 495 (1996).

48. See Nangia, *supra* note 45, at 648.

49. See Nangia, *supra* note 45, at 647-48. Once a daughter is married, the family rarely wants her to return home because "[t]here is a high social stigma attached to both unmarried women and divorced women such that most parents would rather see their daughter dead than to have them get a divorce and return permanently to the natal home." Manchandia, *supra* note 7, at 321.

50. See Nangia, *supra* note 45, at 648.

51. A thorough economic background is not particularly necessary to understand why a dowry market exists. It is axiomatic to say that an actor will only make a decision that is in his or her best interest. A decision is in an actor's best interest when the expected benefits of making the decision exceed the expected costs of making the decision.

transaction's expected benefits exceed its expected costs. If the family places more value on marrying its daughter and moving her out of its house than the price of the dowry it must pay, the family will proceed with the dowry transaction.

Likewise, the husband's family enjoys benefits and incurs costs when it engages in a dowry transaction. From the husband's family's perspective, the benefits to a dowry transaction are mostly the value of gaining the dowry and the wife. The family values the wife because it desires to produce sons.⁵² The expected costs of engaging in a dowry transaction are the costs of taking care of the wife as a new member of the husband's family. However, this expected cost is often negligible because the husband's family may choose to provide the wife with a low quality of life.⁵³ Furthermore, the fact that the husband's family requests dowry suggests that it stands to gain economically from the marriage.

Because the dowry transaction betters both the husband's and wife's families, the economic market for dowry marriages remains strong. Often, however, the husband's family will take advantage of the bride's inferior status by extorting more dowry payments from her family after the marriage has taken place.⁵⁴ The husband's family threatens, and often commits, physical abuse toward the wife if her family cannot make additional payments. Many times, a family's effort to save the wife from such abuse throws the family into debt.⁵⁵

The economic analysis of dowry marriages overlooks the fact that the wife lacks a voice in the transaction. After a woman marries, her economic status makes leaving her new family difficult.⁵⁶ Most Indian women are not employed, and they are financially dependant on their new families.⁵⁷ The wife is often captive within her husband's home. Her old and new family may be too stricken with greed to resist the dowry temptation. Further, the wife will likely not report dowry-related abuse to the authorities because of fear of additional violence she may encounter in her husband's home.⁵⁸ Thus, socio-economic factors contribute to the dowry tradition and the violence it spawns.

52. See Nangia, *supra* note 45, at 647.

53. See Nangia, *supra* note 45, at 647. The wife's primary responsibilities to her husband's family include providing the birth of children and providing adequate dowry. *Id.* These duties and the physical and emotional abuse Indian women often endure at the hands of their husbands' families suggest that not much money is invested into the quality of life a wife enjoys in her husband's home.

54. See Molly Moore, *Consumerism Fuels Dowry-Death Wave: Bride Burnings on the Increase in India*, WASH. POST, Mar. 17, 1995, at A5.

55. See Ravikant, *supra* note 15, at 459.

56. Judith Greenberg, *Criminalizing Dowry Deaths: The Indian Experience*, 11 AM. U.J. GENDER SOC. POL'Y & L. 801, 839 (2003).

57. See *id.*

58. See *id.* at 840.

III. FAILURE OF INDIA'S ANTI-DOWRY LEGISLATION

A. Legislation

India attempted to curb the use of dowries—the root of the dowry death problem—by enacting the Dowry Prohibition Act of 1961 (Act).⁵⁹ The Act, India's leading anti-dowry law, criminalizes the conduct of “any person [who] . . . gives or takes or abets the giving or taking of dowry.”⁶⁰ The Act defines dowry as

any property or valuable security given or agreed to be given either directly or indirectly (a) [b]y one party to a marriage to the other party to the marriage, or (b) [b]y the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person.⁶¹

Furthermore, under the Act, “[a]ny agreement for the giving or taking of dowry shall be void.”⁶² If the wife's family transfers any dowry in consideration for the marriage, the Act requires the husband's family to return to the dowry.⁶³

Not only does the Act prohibit the giving and taking of dowry, but it also outlaws the demanding of dowry, either directly or indirectly.⁶⁴ Any person who demands dowry from the bride's or groom's relatives may receive up to a two-year prison sentence.⁶⁵ If convicted of demanding dowry, the punishment may also include up to a 10,000 Rupee fine.⁶⁶ In addition, the Act proscribes any person from advertising dowry to be given in consideration of marriage.⁶⁷ The punishment for advertising dowry includes imprisonment ranging from six

59. See generally Dowry Prohibition Act, No. 43 of 1961; INDIA CODE (2002). The intention of the Dowry Prohibition Act, however, was not to eliminate the gift giving ritual at Indian wedding ceremonies, but instead to return the concept of dowry to the purpose it served during Vedic times. See Meredith Sherman Fahn, Comment, *Noncompliance with India's Dowry Prohibition Act of 1961: A Society's Reactions to Imposed Law*, 4 TEMP. INT'L & COMP. L.J. 101, 118 (1990).

60. Dowry Prohibition Act, No. 43 of 1961; INDIA CODE (2002), at § 3. Furthermore, “[i]f any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom,” that person is in violation of the Dowry Prohibition Act. *Id.* at § 4.

61. *Id.* at § 2.

62. *Id.* at § 5.

63. *Id.* at § 6.

64. Dowry Prohibition Act, No. 43 of 1961; INDIA CODE (2002), at § 4.

65. *Id.*

66. *Id.*

67. *Id.* at § 4(A). Specifically, a person violates the Act if he or she

(a) offers, through any advertisement in any newspaper, periodical, journal, or through any other media, any share in his property or of any money or both as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative; or (b) prints or publishes or circulates any advertisement referred to in clause (a).

months to five years, and up to a 15,000 Rupee fine.⁶⁸

In 1983, the Indian Parliament further strengthened legal protections for women when it amended the Indian Penal Code to include § 498(A). This section provides a punishment of up to three years in prison and a fine for “[w]hoever, being the husband or the relative of the husband of a woman, subjects such women to cruelty.”⁶⁹ The section defines “cruelty” to include “any willful conduct . . . likely to drive the woman to commit suicide or . . . grave injury or danger to [her] life.”⁷⁰ “Cruelty” also consists of any “harassment of the woman where such harassment is with a view to coercing her . . . to meet any unlawful demand for any property or valuable security.”⁷¹

Later, in 1986, the Indian Parliament amended the Indian Penal Code again to codify “dowry death” as a criminal offense.⁷² The section, § 304(B), defines “dowry death” as

[w]here the death of a woman is caused by any burns or bodily injury or occurs otherwise 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.⁷³

Notably, the section establishes that whenever the facts of a dowry death exist, the husband or husband’s family is presumed to have caused the wife’s death.⁷⁴

India’s government amended other existing legislation to confront the dowry death issue. It amended India’s Evidence Act in 1986 to establish a presumption that a husband’s family caused a dowry murder whenever a wife’s death was preceded by harassment or cruelty.⁷⁵ Additionally, it amended the Indian Penal Code to require criminal investigations whenever a woman dies of unnatural causes within seven years of her wedding.⁷⁶

These statutes and amendments illustrate the substantial steps India’s

68. *Id.*

69. INDIA PEN. CODE § 498(A) (1983).

70. *Id.* at § 498(A).

71. *Id.* at § 498(A)(b).

72. *Id.* at §304(B) (1986).

73. INDIA PEN. CODE §304(B)(1).

74. *See id.* at § 304(B)(2); *see also* Alizabeth Newman, *For Richer, For Poorer, Til Death Do Us Part: India’s Response to Dowry Deaths*, 15 ILSA J. INT’L & COMP. L. 109, 117 (1992).

75. The law, as amended, provides that

[w]hen the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for or in connection with, any demand for dowry, the Court shall presume that such person has caused dowry death.

India Evidence Act, 1872 § 113B (1986).

76. INDIA PEN. CODE § 304(B).

government has taken to curb the dowry death phenomenon through criminal legislation. Further, the various enactments have placed the dowry death problem on the national agenda. Nevertheless, these measures have proved ineffective in stemming the violence against women.

B. Lack of Enforcement of the Anti-Dowry Laws

Although the Act, along with other provisions of the Indian Penal Code, establishes tough punishments for dowry death perpetrators, India's laws offer more bark than bite. In fact, dowry-related violence and deaths are on the rise in India.⁷⁷

First, the Indian Supreme Court has held that courts may not sentence convicted dowry-death defendants to execution. Ironically, the Court cited the recent increase in dowry deaths to justify its decision in removing dowry deaths from the class of death-penalty-eligible cases. The Court reasoned that "dowry deaths . . . ceased to belong to that species of killing [rarest of the rare]."⁷⁸ Due to this ruling, any deterrent effect the death penalty may serve is lost in dowry death cases.

Second, the Act's scope presents problems. The Act "extends to the whole of India except the State of Jammu and Kashmir."⁷⁹ The text states blatantly that the Act does not apply to the entire nation. Unfortunately, the vast majority of dowry deaths occur in the lower income strata of Indian society, and Jammu and Kashmir are two of India's more impoverished states.⁸⁰ Thus, the Act's exclusion likely can only exacerbate India's dowry death problem.⁸¹

Third, even in states where the Act applies, lack of enforcement is rife. The failure begins at the investigative stage. Investigative reports usually deem dowry deaths family disputes unrelated to dowry.⁸² One study indicates that

77. See Ravikant, *supra* note 15, at 492, 496.

78. See Ravindra Trimbak Chouthmal v. State of Maharashtra, (1996) 4 S.C.C. 148. The Indian Supreme Court has held previously that only cases rising to the level of "rarest of the rare" justify capital punishment. See Bachan Singh v. State of Punjab, (1980) 2 S.C.C. 684 (stating "[a] real and abiding concern for the dignity of human life postulates resistance to taking life that ought not to be done save in the 'rarest of the rare' cases when the alternative option is unquestionably foreclosed"); see also Machhi Singh v. State of Punjab, (1983) 3 S.C.C. 470.

79. Dowry Prohibition Act, No. 43 of 1961; INDIA CODE (2002), at § 1-2.

80. See Hitchcock, *supra* note 1. One study indicates that "90 percent of the cases of dowry violence involve women from poorer families, who are unable to meet dowry demands." *Id.*

81. For an in-depth analysis of the failure of the Dowry Prohibition Act, see Fahn, *supra* note 59. In one sense, however, the Dowry Prohibition Act favors convictions because it requires the defendant to prove his or her innocence. This scheme contrasts with American criminal jurisprudence, which requires the government to prove the defendant's guilt "beyond a reasonable doubt." See Johnson v. Florida, 391 U.S. 596, 598 (1968); United States v. Lake, 482 F.2d 146, 148 n.3 (9th Cir. 1973) (noting "[t]he burden in a criminal case is never on the defendant").

82. See Melissa Spatz, A 'Lesser' Crime: A Comparative Study of Legal Defenses for Men who Kill Their Wives, 24 COLUM. J.L. SOC. PROBS. 597, 613 (1991); see also Barbara Crossette, India Studying 'Accidental' Deaths of Hindu Wives, N.Y. TIMES, Jan. 15, 1989, at A10.

the government investigates fewer than one in ten dowry deaths.⁸³ Furthermore, police investigations into potential dowry deaths are usually conducted poorly.⁸⁴ Police officers rely on statements made by the husband's family because few witnesses to the killing exist.⁸⁵ The wife's family will not speak out about the killing because of the shame and dishonor the family would shoulder for its failing to make good on dowry payments.⁸⁶ When the police conduct investigations, they often do not even attempt to lift fingerprints or take photographs of the wife's body and the crime scene.⁸⁷

Even when a dowry death case reaches the prosecutorial stage, studies show that prosecuting attorneys rarely invoke the Act. A study analyzing data from 1961 to 1975 found that Indian prosecutors filed just one case under the Act.⁸⁸ Prosecutors who proceed to trial usually possess insufficient evidence to prove the family's guilt. In addition, police often conspire with the accused to falsify dowry death cases as suicides. This conspiracy may even involve the altering of a wife's dying declaration, often the prosecution's only evidence of the husband's and his family's wrongdoing.⁸⁹ One police officer in Bangalore stated that about ninety-five percent of potential dowry death cases in 1990 resulted in acquittal because of police corruption and evidence tampering.⁹⁰ Further, an official report observed that "[l]awyers note that judges and prosecutors, usually men, are uninterested in cases of domestic violence and susceptible to bribes."⁹¹ Consequently, conviction rates in dowry death cases are very low.⁹² According to one source, only two percent of persons prosecuted under §498(A) are convicted.⁹³

C. *Arun Garg v. State of Punjab and Another*:⁹⁴ Victims Cannot Receive Compensation Through Dowry Death Prosecutions

Even if a dowry death case is investigated properly and prosecuted successfully, the Indian Supreme Court in *Arun Garg v. State of Punjab and*

83. 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, 646 (1994).

84. *Id.* at 647; *see also* Spatz, *supra* note 82, at 611.

85. *See* Carlson-Whitley, *supra* note 83, at 647.

86. *See* Spatz, *supra* note 82, at 614-15.

87. *See* Carlson-Whitley, *supra* note 83, at 647.

88. *See* Carlson-Whitley, *supra* note 83, at 646-47.

89. *See* Carlson-Whitley, *supra* note 83, at 647.

90. U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1992 1144.

91. *Id.*

92. US DEPARTMENT OF STATE REPORT, INDIA HUMAN RIGHTS PRACTICES 1995 (Mar. 1996), available at http://dosfan.lib.uic.edu/ERC/democracy/1995_hrp_report/95hrp_report_sasia/India.html.

93. *See* NRIinternet.com, http://www.nriinternet.com/Marriages/Dowry/2005/Gope_Lalwani/3_Gope_Lalwani.htm (last visited Dec. 14, 2006).

94. *Arun Garg v. State of Punjab and Another*, (2004) 8 S.C.C. 251.

*Another*⁹⁵ ruled that victims may not receive compensation. Arun Garg married Seema Bansal in 1996. Just over three years after the marriage, Seema died an unnatural death. Significant evidence showed that Seema's in-laws made dowry demands both at the time of Seema's marriage and in subsequent years. Further, they harassed her, kept her from seeing her family, and planned to kill her. The evidence supported a finding that Seema's in-laws poisoned her with aluminum phosphide. The government prosecuted Arun, his mother, and his father, but the trial judge acquitted the mother and father. The government was successful in securing the conviction of Arun Garg for the crime of dowry death. The trial court sentenced Arun to ten years imprisonment, and fined him 2,000 Rupees. The intermediate appellate court affirmed the trial court's prison sentence but enhanced the fine to 200,000 Rupees.

On appeal to the Supreme Court, Arun Garg argued the law did not allow the Court to impose a fine in dowry death cases. The Court agreed with the argument. The Court noted first that under Indian law, a court imposing a criminal sentence may impose a fine to be recovered and applied in payment to any person as compensation for any loss the crime caused. However, the court may impose this fine only in cases where compensation is recoverable in a civil court. The Court observed that the order imposing the fine was based "on the assumption of basic civil liability on the part of [the] person who committed the offen[s]e to redress the victim or his dependents by payment of compensation."⁹⁶ The Court observed, though, that Indian law does not entitle a dowry victim to file a civil suit to recover damages for the dowry because the payment of dowry itself is illegal, and therefore the victim would be barred from recovering compensation. The Court reversed the fine imposed by the High Court, but not based on this argument. Instead, it interpreted the dowry death law, § 304(B) of the Indian Penal Code, to prevent a fine from being imposed as a form of punishment.

The Court's ruling prohibits compensation for a dowry death through criminal prosecution, but it did not conclude that a plaintiff may not recover damages in a civil suit. Arguably, the Court, in dicta, limited its holding to recovery in criminal prosecutions. The Court stated one "could not have filed a civil suit for *recovery of the dowry amount*, if any, as the payment itself was illegal and prohibited under law."⁹⁷ Thus, if the Indian Parliament enacts a dowry-specific tort law, it may enable victims of dowry violence to seek compensation through civil suit. The Court did not address this possibility directly because doing so was not necessary to resolve the case.

95. *Id.*

96. *Id.*

97. *Id.* (emphasis added).

IV. INTERNATIONAL LAW INSTRUMENTS ADDRESSING DOWRY DEATHS

India's failure to combat the dowry phenomenon effectively conflicts with international law provisions regarding violence against women.⁹⁸ In fact, several human rights instruments to which India is a party address the issue of dowry deaths both explicitly and implicitly. These instruments include the Universal Declaration of Human Rights⁹⁹ (UDHR), the International Covenant on Civil and Political Rights¹⁰⁰ (ICCPR), the Convention of the Rights of the Child¹⁰¹ (CRC), the Declaration on the Elimination of Violence Against Women¹⁰² (DEVAW), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁰³

The UDHR, ICCPR, and CRC address human rights issues generally. The UDHR is recognized as the first official declaration of international human rights. While the UDHR makes no explicit mention of dowry-related violence constituting human rights abuse, it does state that "[n]o one shall be subjected to torture,"¹⁰⁴ and that "[e]veryone has the right to life."¹⁰⁵ The ICCPR expands on the rights encoded originally in the UDHR by providing all people the "right to life," regardless of gender.¹⁰⁶ The ICCPR contains other provisions relevant to dowry-related violence. These include the right to be free from torture, the freedom of movement, the right to equality within marriage, and the responsibility of state parties to ensure the equal treatment of men and women.¹⁰⁷ Dowry-related murder and harassment violate these provisions. The CRC encodes two specific rights relevant to the discussion of dowry-related violence: the right to life, and the right of each child to be afforded the rights contained in the CRC indiscriminately.¹⁰⁸ The CRC is particularly relevant to India's dowry problem because Indian families, facing the prospect of a burdensome dowry payment, may choose instead to abort

98. For a more thorough examination of the dowry death problem within the framework of international human rights, see Pardee, *supra* note 47.

99. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810 (Dec. 10, 1948), available at <http://www.un.org/Overview/rights.html> [hereinafter UDHR].

100. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (Dec. 16, 1966), available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm [hereinafter ICCPR].

101. Convention on the Rights of the Child, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989), available at <http://www1.umn.edu/humanrts/instrree/k2crc.htm> [hereinafter CRC].

102. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. GAOR, 48th Sess., Supp. No. 49, at 217, U.N. Doc. A/48/49 (Dec. 20, 1993), available at <http://www.un.org/documents/ga/res/48/a48r104.htm> [hereinafter DEVAW].

103. The Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979), available at <http://www.un.org/womenwatch/daw/CEDAW> [hereinafter CEDAW].

104. See UDHR, *supra* note 99, at art. V.

105. See UDHR, *supra* note 99, at art. III.

106. See ICCPR, *supra* note 100, at pt. III, art. VI.

107. See ICCPR, *supra* note 100, at pt. II, art. III; pt. III, art. VII; pt. III, art. XII; pt. III, art. XXIII(4).

108. See CRC, *supra* note 101, at pt. 1, art. II, VI.

their female fetuses or murder female infants.¹⁰⁹

The DEVAW and the CEDAW confront women's issues directly. The DEVAW defines violence against women as acts of "gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to the women . . . whether in public or private life."¹¹⁰ This declaration states that "violence against women" encompasses "[p]hysical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation."¹¹¹ While the DEVAW focuses on violence issues, the CEDAW protects women from discrimination.¹¹² Article 18 requires members of the CEDAW to report to a committee on the measures their governments are taking to comply with the provisions of the convention.¹¹³ Arguably, the social institution that spawns the dowry market may be a form of gender-based discrimination subject to the CEDAW's provisions. In its first report to the committee, the Indian government addressed its attempts to deal with dowry deaths.¹¹⁴ It reported that the newly-enacted Dowry Prohibition Act criminalized dowry transactions and dowry deaths.¹¹⁵ Beyond legislation, though, the report stated no other measures the government took to end the dowry death problem. In light of the law's failure, the Indian government may not be taking the steps necessary to comply with the CEDAW's anti-discrimination provisions.

In 1992, the Committee on the Elimination of Discrimination Against Women (Committee) issued its General Recommendation No. 19.¹¹⁶ The Committee acknowledged that gender-based violence is a form of discrimination.¹¹⁷ It observed further that

[t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence

109. Carlson-Whitley, *supra* note 83, at 646.

110. See DEVAW, *supra* note 102, at art. I.

111. See DEVAW, *supra* note 102, at art. II (emphasis added).

112. See Lisa M. Taylor, Note, *Saving Face: Acid Attack Laws After the U.N. Convention on the Elimination of All Forms of Discrimination Against Women*, 29 GA. J. INT'L & COMP. L. 395, 409-10 (2001). For a "short history" of CEDAW, see Short History of CEDAW Convention, <http://www.un.org/womenwatch/daw/cedaw/history.htm> (last visited Dec. 16, 2006).

113. See CEDAW, *supra* note 103, at art. XVIII.

114. See GOVERNMENT OF INDIA: MINISTRY OF HUMAN RESOURCE AND DEVELOPMENT, CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: INDIA'S FIRST REPORT ¶¶ 45, 115, 154, 367, 369, available at <http://wcd.nic.in/CEDAW4.htm> (last visited Dec. 14, 2006).

115. *Id.* at ¶ 369.

116. See Committee on the Elimination of Discrimination Against Women, *General Recommendation 19: Violence Against Women*, ¶ 24(t)(i), U.N. Doc. HRI/GEN/1 (1993), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> [hereinafter U.N. Committee Report].

117. See U.N. Committee Report, *supra* note 116, at ¶ 1.

or coercion, such as family violence and abuse, forced marriage, *dowry deaths*, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.¹¹⁸

While this comment addresses mainly actual or threatened violence, the underlying consequences of these forms of gender-based violence perpetuate women's subordinate societal roles, and contribute to their lower levels of political participation, and educational and work opportunities.¹¹⁹

The Committee provided the CEDAW's signatory states with general recommendations about ending gender-based violence.¹²⁰ While many of the recommendations state little more than mere conclusions as to what member states should do, with little guidance as to how to accomplish these conclusions, paragraph 24(t)(i) to General Recommendation No. 19 is of particular relevance to India's dowry death problem.¹²¹ This recommendation puts forth,

[s]tates . . . should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia . . . [e]ffective legal measures, including penal sanctions, *civil remedies and compensatory provisions to protect women against all kinds of violence*, including, inter alia, violence and abuse in the family.¹²²

Providing the families of wives killed in a dowry death with civil remedies and compensatory damages will help to modify the social and cultural patterns of men and women in a way that diminishes the dowry death problem.

The above declarations and conventions address the dowry problem either explicitly or implicitly. The problem under international law, however, is not whether instruments exist that address the dowry issue. Instead, the concern should focus on their lack of remedies. While India agreed to the terms of these international instruments, the instruments do not provide remedies that private individuals victimized by dowry violence may invoke. Instead, private

118. See U.N. Committee Report, *supra* note 116, at ¶ 11 (emphasis added).

119. See U.N. Committee Report, *supra* note 116, at ¶ 11.

120. Unfortunately, these recommendations are just that—recommendations. Signatory states are not obligated to adhere to them. Furthermore, many of the recommendations state the obvious and do not provide member states with much guidance. For example, some recommendations from No. 19, which the Committee issued, include, among others: (1) “parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act,” (2) “[s]pecific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation,” (3) “[e]ffective complaints procedures and remedies, including compensation, should be provided,” and (4) “parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence.” *Id.* Such recommendations do little more than move the issues to be addressed from pen to paper.

121. See U.N. Committee Report, *supra* note 116, at ¶ 24(t)(i).

122. See U.N. Committee Report, *supra* note 116, at ¶ 24(t)(i) (emphasis added).

actors evade punishment and, instead, India as a whole is reprimanded for violations of international law.

The Optional Protocols to international instruments provide potential remedies to *individual women* alleging their human rights have been violated as a result of dowry violence.¹²³ India, however, will not sign these Optional Protocols.¹²⁴ One author argues that signing on to certain international Optional Protocols is not a realistic option for India at this time.¹²⁵ Even if an Optional Protocol is available to redress individual human rights violations, social pressures may force families of slain wives to not litigate the cases.¹²⁶ Moreover, successful criminal prosecutions, unlike a possible civil lawsuit, will not yield damages. Without a financial incentive, few poor victims would pursue litigation under an Optional Protocol.¹²⁷

V. PREVIOUSLY PROPOSED REMEDIES TO THE DOWRY PROBLEM

Although there has not been serious consideration given to applying tort law in solving the dowry problem, other reform movements and standards have been introduced and analyzed. While these proposed measures are helpful, adding tort law to the arsenal of tools combating dowry violence is crucial.

A. *The Domestic Legislative/Social Approach*

One approach to deterring dowry violence involves legislative action coupled with a public awareness movement.¹²⁸ On the legislative side, it has been suggested that “special courts” be created in order to exclusively litigate dowry cases.¹²⁹ These courts would move dowry cases through the system more quickly and, therefore, provide for quicker trials.

123. Optional Protocols recognize the ability of committees, set up under international instruments, to receive and consider petitions alleging human rights abuses by individual citizens of nation states. See OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, available at http://www.unhcr.ch/html/menu3/b/a_opt.htm (last visited Dec. 14, 2006).

124. India is not a member of the Optional Protocols of the ICCPR or CRC. See generally OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES (2004), available at <http://www.unhcr.ch/pdf/report.pdf>. India has likewise not joined the Optional Protocol for CEDAW. See Shah, *supra* note 5, at 223. Although an Indian victim may file a grievance with the CEDAW Committee, much of the evidence the Committee uses to determine whether a violation occurred is based on India’s reports on CEDAW violations. See Kerri L. Ritz, *Soft Enforcement: Inadequacies of Optional Protocol as a Remedy for the Convention on the Elimination of All Forms of Discrimination Against Women*, 25 SUFFOLK TRANSNAT’L L. REV. 191, 210-11 (2001).

125. Shah, *supra* note 5, at 223.

126. Shah, *supra* note 5, at 223.

127. Shah, *supra* note 5, at 223.

128. See Archana S. Kella, *The Chill of Kerosene: The Ineffectuality of India’s Dowry Prohibition Act of 1961* 57 (unpublished note, Case Western Reserve University), http://law.case.edu/student_life/journals/jil/Notes/Kella.pdf (last visited Dec. 14, 2006).

129. *Id.*

However, moving cases more swiftly through the judicial process may not be such a wise solution. After all, a case would not reach the courts until the government nearly completed its investigation. Therefore, the government would be ready to litigate the case while the defendant may not. Although the special courts may enable the government to secure convictions more swiftly, the possibility of innocent people being convicted for lack of time to examine evidence or gather witnesses will rise.

Requiring the registration of all Indian marriages and the creation of a special dowry-prohibition investigative unit have also been cited as legislative solutions.¹³⁰ It is urged that marriage registrations would keep better track of dowry victims.¹³¹ Moreover, a dowry-investigation branch, consisting of government officials investigating only dowry cases, would provide a more focused avenue for dowry victims to make allegations and provide evidence.¹³²

Indeed, securing better marriage records will allow government officials to more easily locate dowry offenders and victims, but locating such people has never presented a problem. Instead, the problem is ineffective enforcement of the anti-dowry laws by the Indian government. Indian police know who commits dowry harassment and dowry deaths. They do not get involved in the cases until allegations are made. It is the corruption at the investigative level that makes enforcement of dowry violations futile. These officials are prone to taking bribes¹³³ and conducting incompetent investigations.¹³⁴ A special investigative dowry-unit would not solve this issue.

Instead, an effective fight against dowry abuse requires private investigators that have an incentive to perform good, honest work. To incentivize investigators, India may offer money payments. As for allocating resources to hire good investigators, the money to pay can come from the judgment the wife's family recovers from the husband's family in civil court. India should therefore not focus on amending or reforming the current anti-dowry laws, but instead consider legislating a new tort law that provides for civil remedies in the form of money damages.

The second prong of the solution demands a social movement that provides the Indian community with greater knowledge about the horrors of dowry.¹³⁵ As of today, Indian women still have very few options in the areas of employment and education.¹³⁶ The financial dependency that results from their lack of educational or employment opportunities forces Indian women to enter

130. *Id.* at 58.

131. *Id.*

132. Kella, *supra* note 128, at 58.

133. *See* Kella, *supra* note 128, at 44 n.251.

134. *See* Pardee, *supra* note 47, at 501.

135. *See* Kella, *supra* note 128, at 59-62.

136. *See* Kella, *supra* note 128, at 59.

into arranged marriages and endure dowry-related harassment.¹³⁷ The social argument is that the cultural and social patterns of men and women must be reshaped to acknowledge a female's value to Indian society.¹³⁸ If Indian society were to treat women as human beings and not merely as commodities to be exchanged for dowry,¹³⁹ dowry-related harassment and violence would cease.

For the social reform movement to work, however, Indian society must rid itself of a deeply rooted belief system that has treated women as less superior to men.¹⁴⁰ Educating society as to the horrors of dowry violence is, of course, needed in the schools and at home. Money can, however, also modify the cultural and social patterns as to how Indian society views dowry. If India enacts a tort law providing for monetary relief in cases of dowry demands, harassment, or death, a husband's family that may have otherwise moved forward with its dowry demands may refuse to do so because of the prospect of losing money in a lawsuit filed by the wife's family.

B. Education

It has been suggested that educating not just the masses of India, but also the police and the judiciary, about dowry violence and deaths would combat the problem.¹⁴¹ These officials "need to be educated on the importance of enforcing existing laws and on how they should go about doing so."¹⁴² In addition, publication of dowry death cases is vital to exposing the public to the problem's severity.¹⁴³ Using the media to sensationalize the dowry problem may have the effect of causing societal attitudes to change, or at least make many less apathetic to proposed solutions.¹⁴⁴ It is also suggested that education reform include: (1) educating females to provide them with greater financial opportunities in life; (2) educating citizens about the economic system that renders women dependent on their families; (3) encouraging the media to inform the public at large about the dowry problem; and (4) educating citizens to encourage a reform of India's legal structure in order to provide greater rights for women.¹⁴⁵

There is no doubt that education is an important tool in fighting the dowry problem. An educated public will lead to a future of educated leaders that will

137. See Kella, *supra* note 128, at 59-60.

138. See Kella, *supra* note 128, at 60. Kella states that the socio-economic status of women lead many "men [to] regard women as unequal to them . . . [and] women themselves [to] not [realize] that they are equal to men." *Id.*

139. See S. KRISHNAMURTHY, *THE DOWRY PROBLEM: A LEGAL AND SOCIAL PERSPECTIVE* 8 (1981).

140. See Jethmalani, *supra* note 15, at 39.

141. See Manchandia, *supra* note 7, at 328.

142. See Manchandia, *supra* note 7, at 328.

143. See Manchandia, *supra* note 7, at 328-29.

144. See Manchandia, *supra* note 7, at 329.

145. See Manchandia, *supra* note 7, at 329.

be more sensitive to the issue of dowry deaths. A civil tort statute giving the family of the wife the option of pursuing money damages would not interfere with an educational reform movement. Instead, the law would strengthen the movement by showing that real monetary consequences can lie if a husband chooses to engage in dowry-related harassment or murder.

C. *The Due Diligence Standard*

Another proposed measure to fight the dowry problem is to bind India to what is known as the “due diligence” standard of government responsibility.¹⁴⁶ This approach uses a standard of due diligence “to measure the adequacy of India’s implementation of its body of domestic law prohibiting dowry deaths.”¹⁴⁷ The standard boils down to requiring nations to take “reasonable measures” based upon the risks associated with combating a particular problem.¹⁴⁸ A static principle to the due diligence standard is that “countries with insufficient and ineffective national legislation [are] expected to amend their laws to fulfill the duty of due diligence.”¹⁴⁹ A nation has a duty of due diligence when it has the means to combat human rights violations under international laws.¹⁵⁰

The due diligence requirement imposes several prerequisites. First, the nation must have notice of human rights violations.¹⁵¹ This requirement is surely met here because India has enacted criminal legislation in recognition of the dowry death problem.¹⁵² With dowry death estimates at nearly five thousand per year, India is on actual and constructive notice that a human rights violation is occurring.¹⁵³ Second, the nation must have the ability and resources to protect its residents from human rights atrocities.¹⁵⁴ Scholars agree that “the most practical form of deterrence [of human rights violations] is legislation because legislation defines specific recognized individual actions that will be legally condemned by the State.”¹⁵⁵ India has the ability to deter dowry deaths and dowry violence by enacting national legislation providing for

146. See Ravikant, *supra* note 15, at 461-70.

147. See Ravikant, *supra* note 15, at 461. The concept of due diligence dates back to the nineteenth century. *Id.* (noting “[t]he Treaty of Washington Rules (1871) used ‘active diligence’ to determine the responsibility of a neutral state for damages caused by its private citizens”).

148. See Ravikant, *supra* note 15, at 461.

149. See Ravikant, *supra* note 15, at 462.

150. See Ravikant, *supra* note 15, at 462.

151. See Ravikant, *supra* note 15, at 463.

152. Dowry Prohibition Act, No. 43 of 1961; INDIA CODE (2002), at §§ 304(B), 498(A).

153. See Hitchcock, *supra* note 1; Ravikant, *supra* note 15, at 463 (explaining “[d]ue diligence assumes that the government has at the very least constructive notice of the violation. The basis of constructive notice is a government’s prior knowledge, which is evidenced by the sheer volume of reported cases of the violation”). It cannot be seriously questioned that dowry deaths constitute a “human rights” violation. See U.N. Committee Report, *supra* note 116, at ¶ 11.

154. Ravikant, *supra* note 15, at 463.

155. Ravikant, *supra* note 15, at 463.

a civil remedy in tort in the form of money damages.

Because these two prerequisites are satisfied, India must take “reasonable measures” to prevent the dowry problem.¹⁵⁶ A quick problem arises at this juncture, however, because of the vagueness of the term “reasonable measures.”¹⁵⁷ One reasonable measure should be requiring a nation such as India to enact further legislation after its initial legislation fails. Simply enacting measures such as the Dowry Prohibition Act without imposing a tough enforcement policy is futile and unreasonable in attempting to end human rights violations. India must do more. The “due diligence” standard is useful in holding India to its human rights obligations. This standard can be satisfied more fully if India takes measures to enact a civil law anti-dowry statute.

VI. CIVIL REMEDIES IN DOWRY CASES

India has no tort cause of action that is dowry-specific. A legal tort system provides economic incentives for participants in a society to refrain from partaking in proscribed actions. A tort system that provides sufficient expected monetary benefits to a wife’s family, and sufficient expected costs to a husband’s family should it demand dowry, will provide economic incentives to both families to refrain from engaging in a dowry transaction. Currently, India supports a dowry market in which marriage and dowry are exchangeable goods.¹⁵⁸ India’s primary, and really only, solution to gutting the devilish dowry market is criminal legislation. Unfortunately, such legislation has proven ineffective. Instead, in a country ridden with poverty, money, or the expectation of losing it, may be the key to preventing dowry deaths.¹⁵⁹

It is an economic principle that the expected benefit one receives from a transaction must be greater than or equal to the expected cost of the transaction for the participant to actually transact. A dowry transaction occurs when both the husband’s and the wife’s families expect to yield a positive net benefit in going through with such a transaction. This is because both families stand to be better off after exchanging dowry for marriage. A civil remedy in tort that provides money damages to a wife’s family when a husband’s family demands dowry will increase the husband’s family’s expected costs of entering the dowry transaction. As long as the husband’s family can recognize the potential loss of wealth should it lose a civil suit, and such loss of wealth exceeds any benefits the family can realize from a dowry trade, the husband’s family will

156. Ravikant, *supra* note 15, at 463.

157. Ravikant, *supra* note 15, at 463 ((asserting “[i]n the case of dowry deaths, this reasonable measures standard has not been defined”).

158. See Kella, *supra* note 28, at 27-30; GREENBERG, *supra* note 56, at 828 (stating “the dowry form of marriage can also be understood as the sale of a bride”).

159. UNICEF pegs India’s 2003 gross national income per capita at \$530 US and reports that between 1992 and 2002, thirty-five percent of Indians earned less than \$1 US per day. UNICEF, *At a Glance: India*, http://www.unicef.org/infobycountry/india_statistics.html (last visited Jan. 11, 2007).

not demand dowry. More critically, the statute would lower the number of dowry deaths by relieving Indian marriages of the pressures dowry imposes.

A legal remedy in tort may prove to be more effective than the existing criminal law. By moving dowry cases from the criminal courts to the civil courts, the government would enable the wife's family to hire private investigators who might represent the family more vigorously than government police officers. Moreover, the wife's family will be represented by a private attorney, as opposed to a government prosecutor who may be less apt to fight zealously for the wife's family's interests. The expectation of winning a money judgment against the husband's family will make the wife's family more willing to expend valuable resources. A similar tort-based solution has been proposed to remedy the problem of acid attacks in Bangladesh and India. It has been suggested that the United States' Violence Against Women Act¹⁶⁰ be used as a model in those cases.¹⁶¹ Under U.S. law, "[a] person that commits a crime of violence motivated by gender and thus deprives another of the right [to be free from crimes of violence motivated by gender] shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages."¹⁶²

What India must do is codify a civil tort law that punishes any person who demands dowry at any time before, during, or after a marriage has taken place. The tort statute could employ the same definition of "dowry" that India has already adopted in its criminal legislation. Further, the dowry tort statute should feature a shifting burden of production. Throughout the case, the burden of proof should remain on the wife's family because it filed the lawsuit. However, after the wife's family produces sufficient evidence of dowry demands, the husband's family should shoulder the burden of producing evidence to rebut the prima facie case that it demanded dowry. Finally, the amount of money damages the wife's family stands to gain under this proposed civil tort law must be high enough to raise the husband's family's expected costs of a dowry transaction above the transaction's expected benefits. If this happens, the husband's family will then have an economic incentive to refrain from demanding dowry because it will stand to lose more than it stands to gain by pursuing a dowry transaction. If India can modify the social and cultural pattern of dowry transactions by enacting such a tort statute and creating economic incentives to render dowry trades financially unattractive, the nation may witness the end of the dowry death crisis.

160. 42 U.S.C. § 13981 (2000).

161. Taylor, *supra* note 112, at 423.

162. 42 U.S.C. § 13981(c) (2000). This civil remedy provision, however, has been held unconstitutional under *United States v. Morrison*, 529 U.S. 598 (2000). *Morrison* held that the U.S. Congress lacked constitutional authority under both the Commerce Clause and § 5 of the Fourteenth Amendment. *Morrison*, 529 U.S. at 619, 627. However, *Morrison*, of course, was an analysis under U.S. constitutional law, not Indian law.

VII. CONCLUSION

This Article has examined India's dowry problem as not merely a cultural phenomenon, but as an economic problem. India has attempted to rid dowry from its culture through modifications to its criminal law, namely the Dowry Prohibition Act of 1961 and amendments to the Indian Penal Code. These laws, however, rarely yield prosecutions, and law enforcement authorities fail to conduct meaningful investigations into potential dowry deaths. Consequently, the criminal law alone cannot solve the dowry problem.

The government must use monetary incentives to terminate the economic market that fuels dowry transactions. A civil tort law that awards money damages to plaintiffs who can prove a defendant demanded dowry would steer families away from dowry transactions. Theoretically, the tort system would create an economic disincentive to demand dowry because the anticipated costs of doing so would exceed the dowry's expected benefits. By removing dowry from the marital equation, the dowry death problem would inevitably dissipate.

Quantifying the expected costs, in the form of money damages through a lawsuit, may pose some difficulties. The Indian government must propose solutions to overcoming the difficulty in determining damages before a lawsuit is filed because calculations of actual damages at that time will be speculative. Perhaps the Indian Parliament could set a minimum presumed damage award that exceeds any probability of returning the economic incentives in the dowry market. The economics profession is best suited to more fully discuss this admittedly arduous task and, therefore, this Article does not provide such an analysis.

In addition, India must consider the issue of access to the judicial system before it enacts an anti-dowry statute. India's poorer citizens may not have the knowledge or resources required to litigate dowry death lawsuits. The government must consider these deficiencies when it calculates the wife's family's expected benefits and the husband's family's expected costs of litigating a dowry death case. For example, under the present criminal law, the wife's family must allege merely that the husband's family committed dowry violence. After making the allegation, the costs to the wife's family are near zero because India's taxpayers will fund the investigation and trial. A civil tort law would shift the cost burden to the wife's family and, thus, disadvantage poor families. Policymakers and economists should be aware of these realities when determining the amount of money a tort law must award to eliminate the dowry market.

No matter the means, India must take *all* appropriate measures to end the horrific problem of dowry deaths. A civil law tort statute that is specific to dowry demands and dowry deaths is an appropriate measure that India must consider.