

DOWRY-MURDERS IN INDIA: THE LAW & ITS ROLE IN THE CONTINUANCE OF THE WIFE BURNING PHENOMENON

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This article highlights the role the law plays in the perpetuation of dowry-murders in India. Dowry-murders are legislatively defined as “the death of a woman caused by any burns...within seven years of her marriage and...she was subjected to cruelty or harassment by her husband or [her in-laws] for, or in connection with, any demand for dowry.”¹ Although hearing about the burning to death of one’s wife should shock the conscience, unfortunately, dowry-deaths are so prevalent in India that eyebrows rarely raise when it is revealed that a woman was murdered by her husband and/or her in-laws. This article examines the weaknesses in various laws in India that allow the victims’ murderers to continue to live freely. This article hopes to bring to light a human rights issue that is rarely discussed in American legal circles.

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¹ This is the definition provided in the Dowry Prohibition Act enacted by the Parliament of India in 1961. *Accord, e.g., Anshu Nangia, The Tragedy of Bride Burning in India: How Should the Law Address It?*, 22 BROOKLYN J. INT’L 637, 675 (1997).

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“[A]fter my husband once more tried to kill me with his bare hands, I wrestled myself free and ran . . . but was soon fetched by a contingent from my husband’s house and locked up. They had distinct plans to burn me to death . . . The old aunt had fetched the kerosene tin from the kitchen and ordered the servant to pour it [on me] and throw a lighted match in.”²

INTRODUCTION

Domestic violence is, regrettably, prevalent in many societies. This is especially true for India, where forty-five percent of its 496.4 million women are “slapped, kicked, or beaten by their husbands” and members of his family each year.³ Unfortunately, “[f]or many [Indian] women, violence may be normative because they have been socialized into believing that their husbands are entitled to power over them.”⁴ As a result, many of India’s women find their husbands’ decision to “discipline” them through physical and verbal abuse to be completely appropriate. Furthermore, these women sometimes consider it their duty to “exonerate their husbands” of any blame for the harm they face as a result of the abuse.⁵ It is under this norm of domestic violence that dowry-deaths⁶ have been cultivated and have thrived in Indian society. In India, dowry-murders are legislatively defined as

the death of a woman [] caused by any burns or bodily injury that occurs under otherwise 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.”⁷

² VEENA TALWAR OLDENBURG, *DOWRY MURDER 197-98* (Oxford University Press 2002)(excerpt taken from the author’s personal diary recalling her escape from being burned to death).

³ Swapna Majumdar, *In India, Domestic Violence Rises with Education*, WOMEN ENEWS, Nov. 6, 2003, <http://www.womensenews.org/story/domestic-violence/031106/india-domestic-violence-rises-education>.

⁴ Judith G. Greenberg, *Criminalizing Dowry Deaths: The Indian Experience*, 11 AM. U.J. GENDER SOC. POL’Y & L. 801, 821-22 (2003).

⁵ *Id.* at 823.

⁶ Because this phenomenon is often also called “dowry-murder,” “wife-burning,” and “bride-burning,” these terms will be used interchangeably throughout this paper.

⁷ This is the definition provided in the Dowry Prohibition Act enacted by the Parliament of India in 1961. *Accord, e.g., Anshu Nangia, The Tragedy of Bride Burning in India: How Should the Law Address It?*, 22 BROOKLYN J. INT’L 637, 675 (1997).

Thus, as seen in its definition, dowry death is a form of domestic violence geared specifically towards married women who are unable to meet the financial demands made by their husband and in-laws.

Often, when brides are burned to death, the government and society do little to address the abuse and murder of the victim. As noted by some scholars, “the harassment, beating and in some cases murder of women over dowry is both common or commonly ignored or even *tacitly condoned in official circles* – by the police, the courts, politicians, and media.”⁸ This paper argues that the acceptance of domestic violence against women is so deeply entrenched in India’s society that it has contributed to the inability (and perhaps unwillingness) of the government to effectively implement laws against bride burning.⁹ Part I examines the origin of wife burning and its connection to the cultural practice of dowry exchanges. The role of the family and the community in the perpetuation of the practice is explored in Part II. Part III discusses the ineffective legislative and judicial responses to dowry murders. Finally, Part IV explores possible remedies towards ending the continued acceptance of bride burning.

I. ORIGIN OF DOWRY AND DOWRY MURDERS

In India, it is estimated that on average five women face dowry-related torture and cruelty every hour.¹⁰ A study conducted in 2010 shows that an Indian woman is burned to death every 90 minutes.¹¹ This number does not account for the other methods used to murder women whose families fail to meet dowry demands. There were 8,391 *reported* incidents of dowry-motivated murders in 2010 alone.¹² This is a substantial increase from the 7,000 cases reported in 2003.¹³

⁸ 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>. (emphasis added).

⁹ It is important to note that this paper is, in no way, a critique of India, its people or its cultural values. Rather it is an analysis of the ways in which one society’s marginalization of women has led to the development of “blindness” as a way of ignoring the horrific abuses faced by many of its women.

¹⁰ Aysan Sev’er, *Discarded Daughters: The Patriarchal Grip, Dowry Deaths, Sex Ratio Imbalances & Foeticide in India*, 7 WOMEN’S HEALTH AND URBAN LIFE (May 2008) *available at* https://tspace.library.utoronto.ca/bitstream/1807/10365/1/Sever_discarded_daughter.pdf.

¹¹ Rahul Bedi, *Indian Dowry Death on the Rise*, THE TELEGRAPH, Feb. 27 2012, <http://www.telegraph.co.uk/news/worldnews/asia/india/9108642/Indian-dowry-deaths-on-the-rise.html>.

¹² Subodh Varma, *Dowry Death: One Bride Burnt Every Hour*, THE TIMES OF INDIA, *available at* http://articles.timesofindia.indiatimes.com/2012-01-27/india/30670050_1_dowry-death-harassment-and-cruelty-section-498a.

¹³ Purna Manchandia, *Practical Steps Towards Eliminating Dowry and Bride-Burning in India*, 13 TUL. J. INT’L & COMP. L 305, 307 (2005).

Furthermore, because “the bride’s family simply does not publicize the death because they consider it shameful,”¹⁴ thousands of deaths remain unaccounted for.

Although many factors contribute to dowry deaths, the primary cause of such murders stems from the marital conflicts motivated by the irrational demands of the husband and his family for a larger dowry.¹⁵ This motive is further compounded by the fact that “[t]oday, Indian families use dowry as a quick way of accumulating wealth and raising their standard of living.”¹⁶ Because the dowry is perceived to have a large economic benefit, the husband and his family will stop at nothing to acquire the dowry, even if that means murdering the bride who appears to be a hurdle in preventing the husband from the economic gain. Before the concept of dowry burning can fully be understood, it is first necessary to review the historical tradition of dowry giving at the time of a woman’s marriage. It is also important to understand how the original purpose of the dowry has been transformed and molded by a different societal belief that a woman’s value corresponds with the financial rewards she can bestow on her husband’s family.¹⁷

In India, dowry giving is a tradition that has long been an expected exchange during the marriage process. Originating from 2500 to 1500 B.C., during the late Vedic period, a dowry traditionally symbolized the property that the bride brought into the marriage for her own use and benefit.¹⁸ Called *Kanyadaan*, dowries play a vital role in Hindu marital custom.¹⁹ Historically, the dowry was a wedding gift voluntarily bestowed on a bride as a form of economic protection since she had to leave everything behind to join her new family.²⁰ Given the social expectation that women should not work outside the household, the dowry represented the woman’s contribution to the start of a new marriage and family. At its conception, the *Kanyadann* that the bride brought into her marriage was considered sacred and gave her both

¹⁴ *Id.*

¹⁵ Oldenburg, *supra* note 1, at vii.

¹⁶ Laurel Remers Pardee, *The Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe?*, 13 ARIZ. J. INT’L & COMP. LAW 491, 498 (1996). *E.g.*, Nangia, *supra* note 6, at 643.

¹⁷ For the purpose of this paper, the concept of dowry giving in India will be examined to the extent necessary to provide adequate background information to facilitate understanding for the underlying cause of wife burning.

¹⁸ Namratha S. Ravikant, *Dowry Deaths: Proposing A Standard for Implementation of Domestic Legislation in Accordance with Human Rights Obligation*, 6 MICH. J. GENDER & L. 449, 454 (2000).

¹⁹ Shiva, *Bride Burning & Dowry*, INDIAFACTS, Dec. 21, 2008, <http://india-facts.com/news/women-abuse/2008122150/bride-burning-dowry/>.

²⁰ *See, e.g.*, OLDENBURG, *supra* note 1, at 32; Sunil Bhawe, *Deterring Dowry Deaths in India: Applying Tort Law to Reverse the Economic Incentives that Fuel the Dowry Market*, 40 SUFFOLK U.L. REV. 291, 297 (2007).

power and status within the marriage.²¹ However, as a result of the “growing consumerism and the increasing tendency to equate social status with marital objects,”²² the dowry tradition in India experienced a drastic transformation.

Today, the term dowry typically refers to any “unilateral transfer of resources from the bride’s family to the groom’s family for inviting her to their home permanently and...is, therefore, a *compensatory payment* to the family which agrees to shelter her hypothetically for the rest of her life.”²³ Although dowry exchanges were initially geared toward protecting the woman,²⁴ the contemporary definition demonstrates how women are presently not seen as equal to their husbands, but rather as a burden likely to be abhorred by the husband’s entire family. It is under this social construction of the dowry as a form of compensation for “putting up with” the bride that dowry deaths have emerged.

The transformation of the dowry practice into this current phenomenon has largely been shaped by the low status of women within Indian society.²⁵ Traditional inheritance laws, for example, prohibit the transfer of property and material assets to women. As a result, women are often viewed as a burden because valuable family resources, which would otherwise be inherited by the males, are used on their upbringing and dowry.²⁶ Also, because Indian women are expected to cut all ties with their family once married, they are theoretically unavailable to assist and support their parents in old age. Consequently, few families are willing to expend the limited resources they have on female children.²⁷

The tension between traditional family relations and expectations of women has caused other detrimental phenomenon as well. The low social status of women and the pressure to increase economic wealth has led to high rates of female infanticide, abortion of female fetuses, and maltreatment and malnourishment of female children.²⁸ In fact, it is estimated that “more than 50 million girls/women are ‘missing’ from Indian population” due to the abortion and infanticide of female

²¹ Purna Manchandia, *Practical Steps Towards Eliminating Dowry and Bride-Burning in India*, 13 TUL. J. INT’L & COMP. L. 305, 310 (2005).

²² *Accord, e.g., Ahmad, infra* note 15, at 277.

²³ Dr. Nehaluddin Ahmad, *Dowry Deaths (bride burning) in India and Abetment of Suicide: A Socio-Legal Appraisal*, 2 JAEIL 275, 275 (2008), available at <http://www.yijuninstitute.org/yijun/publications/pdf/note1-1-2.pdf> (emphasis added). *Accord, e.g., Nangia, supra* note 6, at 639.

²⁴ Nangia, *supra* note 6, at 640.

²⁵ See Purna Manchandia, *Practical Steps Towards Eliminating Dowry and Bride-Burning in India*, 13 TUL. J. INT’L & COMP. L. 305, 313 (2005).

²⁶ *Id.*

²⁷ Laurel Remers Pardee, *The Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe?*, 13 ARIZ. J. INT’L & COMP. LAW 491, 493 (1996).

²⁸ *Id.*

children.²⁹ As a consequence of the low value placed on the woman's life, the woman is viewed as a burden to the husband and his family. This negative image of a woman perpetuates the norm that she can be easily disposed of the moment her family fails to supplement her dowry for the satisfaction of the husband and his family.

Another prevailing view that would explain the emergence of contemporary dowry practices and dowry-related deaths is the idea that the dowry death phenomenon was propelled by the integration of Western consumerism, which led Indian families "to see dowry as a way to escape poverty and to accumulate wealth and material items quickly with little effort."³⁰ This consumer greed has resulted in dowry demands that amount to a total of three to six times the annual male wage in villages.³¹ Consequently, the dowry demands far exceed the annual income of the bride's family, making it difficult for them to meet the husband's expectations and ensure that the bride is safe from dowry related violence.

Although both families participate in the dowry exchange, it is the husband's family who controls the process. This is because the man's economic value, which is directly measured by his education level, is deemed to be higher than that of the woman's.³² Thus, the tendency to place a son's education above the daughter's often positions women at a disadvantage.³³ Even in the rare instances where a woman is fortunate enough to have attained a high level of education, "the bride's level of education and earning potential are relevant only insofar as they make her a potentially better wife and mother."³⁴ As such, it is well understood that the woman's worth can be measured only after she is married and through her ability to bear male heirs for her husband.³⁵ Measuring the woman's value through her performance as a wife and a child-bearer means that the bridegroom and his family have uninterrupted power to demand a dowry as compensation for any perceived shortcomings of the wife throughout her marriage.

Occasionally, the bridegroom's family demands a dowry before the advent of the marriage. However, because the demand for dowry re-emphasizes the power of the man's family over that of the woman's,

²⁹ Aysan Sev'er, *Discarded Daughters: The Patriarchal Grip, Dowry Deaths, Sex Ratio Imbalances & Foeticide in India*, available at https://tspace.library.utoronto.ca/bitstream/1807/10365/1/Sever_discarded_daughter.pdf.

³⁰ Namratha S. Ravikant, *Dowry Deaths: Proposing A Standard for Implementation of Domestic Legislation in Accordance with Human Rights Obligation*, 6 MICH. J. GENDER & L. 449, 455 (2000); see also, Avnita Lakhani, *Bride-Burning: The "Elephant in the Room" is Out of Control*, 5 PEPP. DISP. RESOLUTION L.J. 249, 254 (2005).

³¹ Siwan Anderson, *The Economics of Dowry and Brideprice*, JOURNAL OF ECONOMIC PERSPECTIVES, available at <http://econ.arts.ubc.ca/asiwan/siwan-jep2.pdf>.

³² E.g., Nangia, *supra* note 6, at 644.

³³ See, e.g., *id.*

³⁴ *Id.*

³⁵ For the same reasons that the woman is seen as valueless and an inconvenience to her in-laws, so too is a female heir.

many often do not demand dowry until well after the marriage rites have been completed.³⁶ This is an exceptionally effective way to reinforce the bridegroom's power over his wife because the shame and dishonor associated with failed marriages³⁷ obligates the bride and her family to meet the dowry demands. And, as discussed in Part III, the shame associated with a failed marriage and the power allocated to the man's family makes it difficult for the woman to escape the abuse she faces when the dowry demands are not met.

II: THE FAMILY (AND COMMUNITY) AS THE PERPETRATOR OF VIOLENCE

As with any other form of domestic violence, a woman's ability to escape the abuse is largely dependent on the support systems and the resources available to her. This is especially true for victims of wife burning because they are often subjected to years of abuse before the husband's family makes the ultimate decision to burn her to death. This section explores the role of three groups in the perpetuation of wife burning.

A. *The Husband and the In-Laws*

As the actual perpetrators of the crime, the husband and in-laws play a central role in dowry deaths. Interestingly enough, there seems to be the least amount of information on this group and their role in dowry murders. This lack of information likely results from the tendency to blame the victim and her family in Indian society or because most of the abuse and the murders occur inside the husband's home. Regardless of the cause, the lack of scrutiny on the actions of the husband and his family is indicative of their power over the victim's family. Even when little doubt exists as to who murdered the woman, social and economic barriers diminish the likelihood of anyone voicing their suspicions.

Because "the joint family system is predominant" in India, it is typical to find the husband's extended family all living in the same household.³⁸ In addition, "the choice of spouse remains very largely a matter for negotiation and decision by the family elders."³⁹ Thus, it is not atypical to find that a man did not marry for love, but for "other considerations such as [the woman's material] possessions."⁴⁰ Consequently, because of the family's influence and the lack of love

³⁶ A study conducted in Delhi, India, reported that, sixty percent of the time, no demands were made for dowry before the marriage occurred. Nangia, *supra* note 6, at 645.

³⁷ The dishonor associated with a failed marriage is seen in the fact that, until 1956, divorces were illegal for the Hindus of India. Oldenburg, *supra* note 1, at 193.

³⁸ MOHD. UMAR, *BRIDE BURNING IN INDIA* 80 (A.P.H. Publishing Corp., 1998).

³⁹ Umar, *supra* note 23, at 80.

⁴⁰ Ahmad, *supra* note 15, at 275.

between the couple, the husband is often not a source of protection against the abuses doled by the in-laws. In fact, even when the husband may not agree with the in-laws' assessment of his wife, he is expected to participate in the abuse. For example, in the case of Meera Srivastava's⁴¹ death, the husband was pressured to participate in her murder even after he initially left the room. Meera's father-in-law and sister-in-laws were dissatisfied with Meera's father's inability to meet their dowry demands. Amid the heated argument that ensued between Meera and her in-laws, Meera's husband left the room. However, after Meera fled to her husband's room, her in-laws followed her. There, with the in-laws urging, the husband joined in pouring kerosene on Meera and lighting her on fire.⁴² Sadly, the circumstances in Meera's case are not unique.

B. The Wife's Own Family

Perhaps most disheartening is the role the woman's own family plays in enabling the abuse to escalate until the woman is burned to death. Once a woman is married, societal notions of shame and family honor dictate that she cannot return to her parents' home.⁴³ In a majority of the cases, even after dowry-related abuse escalates, a woman in India is made aware that her father's home has been forever closed once she enters her marriage. The importance placed on family honor and the taboo against failed marriages makes it so that "her own parents [are obligated to] refuse to take her back."⁴⁴ In fact, the "social stigma attached to unmarried women and divorced women is so strong that most parents would rather see their daughters dead than to have them get a divorce."⁴⁵ In the case of nineteen-year-old Santara Singh, in an effort to prevent a "stain on her [daughter's] honor," Santara's mother "went so far as to file a case of desertion against [Santara's] husband" to force Santara to leave the sanctuary she found in her parents' home after she narrowly escaped being burned to death. For Santara's family, it was better to face the possibility of Santara's death than to face the possibility of "more and more dishonor for [the family]."⁴⁶ As a result, many Indian brides cannot expect any protection from members of their families; indeed, even when it is evident that the abuse may lead to dowry murder, it is these relatives, lead by her parents, who persuade the bride to return to her husband.

⁴¹ *State of U.P. v. Ashok Kumar Srivastava*, A.I.R. 1992 SC 840.

⁴² Facts of this case are also discussed in: Umar, *supra* note 23, at 69.

⁴³ See, e.g., Parvathi Menon, 'Dowry Deaths' in Bangalore, 16 FRONTLINE, Aug. 14-27, 1999, available at <http://hindu.com/fline/fl1617/16170640.htm>.

⁴⁴ Shiva, *supra* note 12.

⁴⁵ Robin Greenhalgh, *Dowry Deaths in India*, ESSORTMENT, 2002, http://www.essortment.com/all/dowrydeathsind_rgcg.htm.

⁴⁶ Laurel Remers Pardee, *The Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe?*, 13 ARIZ. J. INT'L & COMP. LAW 491, 491 (1996).

However, even after a bride is burned to death, the family continues to play a prominent role in the perpetuation of dowry murders as a whole. Typically, the victim's family, fearing harassment and abuse from the husband's family, refuses to raise any doubts about the unusual circumstances surrounding the bride's death. This reluctance deprives the victim of any administration of justice on her behalf. Furthermore, the family's reluctance also ensures that the groom is able to re-marry without any legal ramifications, thus providing him with another potential victim.

In some cases, it is the victim's own family who provides the murderer with another potential victim. As the Special Prosecutor of Bangalore noted, although legal suits against perpetrators of dowry death are rare, in eight of the cases that reached his court, the victims' parents chose to settle out-of-court and "gave their second daughter in marriage to the same person after the case was filed!"⁴⁷ Unfortunately, in those instances, there is almost a hundred percent guarantee that the second daughter would also fall victim to bride-burning, because she is from the same family that was unable to meet the dowry demands that resulted in the death of the first daughter.

In addition to the social pressures of family honor and shame, several other factors influence a family's decision not to pursue justice for the murdered bride. In most cases, because of their ignorance of the law and a lack of resources, "families of the victims . . . get demoralized with the long wait before a case can be decided."⁴⁸ Even when families do not get deterred by the long waiting time to have their cases heard, they are often discouraged by the inadequate representation of their case by prosecutors burdened with more cases than they can handle.⁴⁹ Another reason contributing to the family's unwillingness to prosecute is economic handicap. Often, the brides' families are in such dire economic straits that they are forced to accept bribes offered by the husband and his family.⁵⁰ Thus, even in the rare instances where families are willing to tarnish their honor to defend their daughters, other factors prevent them from offering any help to the dowry victims.

C. The Community

The community also plays a prominent role in the perpetuation of dowry murders. As noted, social pressures often compel individuals to equate the woman's value with the economic rewards she can offer her in-laws. Thus, because social norms are created and sustained within the community-at-large, members of the community have tremendous power

⁴⁷ Menon, *supra* note 28.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

in creating change that will positively impact the lives of women, especially with regards to dowry murders.

Frequently, those within the bride's community "pressure[] women to conceal the truth about what happened to them even when they know they are dying."⁵¹ In response to these pressures, brides often passively accept the abuse they suffer so as not to tarnish both their own reputation and that of their parents, who would then be blamed as not having raised their child "properly." These social pressures also make it clear to the victim that her neighbors' homes are not to be used as a refuge to escape from the abuse. Thus, in addition to knowing that she cannot run back to her family, the victim is constantly aware of the fact that she has no place to escape within her community.

In addition to making the victim feel trapped in her relationship, several behaviors engaged in by members of the community allow the husband and his family to feel justified in their treatment of the victim. For instance, members of rural communities believe that an Indian woman "brings shame to her family if she is required to work outside of the home to support the family's income."⁵² This principle makes the bride and her family more susceptible to the belief that she must pay a dowry because she cannot provide any other financial income. Furthermore, the community plays a role in the ability of the perpetrators of the dowry murders to avoid legal ramifications. In a majority of the instances of wife burning, "there are rarely any eyewitnesses who are prepared to give evidence against the murderers."⁵³ Through their willingness to feign ignorance, the community members assist the husband in hiding evidence that the police may have been able to gather against him.

The lack of social outrage against these violent murders is the most telling way in which the community-at-large assists in the continued perpetuation of dowry murders as an appropriate course of action when the bride's family cannot pay her dowry. This lack of social outrage allows the perpetrators of the wife burning to avoid legal ramifications because the community places no "pressure [on the] government and its law-enforcing machinery [to] act[] swiftly and firmly in enforcing the law."⁵⁴ Thus, as discussed in Part III, the legislative remedies for dowry murders are rendered ineffective because the community does not hold its government and law enforcement officials accountable.

⁵¹ *Ibid.*

⁵² Bhave, *supra* note 13, at 297.

⁵³ Menon, *supra* note 28.

⁵⁴ *Id.*

III. DOWRY PROHIBITION ACT: ITS INEFFECTIVENESS AND POSSIBLE REMEDIES

There has been a general consensus among scholars that, due to the vagueness and inadequacy of India's dowry prohibition laws, these prohibitions have been primarily ineffective in preventing dowry-related violence.⁵⁵ Part III of this paper explores the variety of ways in which the vagueness of the Dowry Prohibition Act ("Act") has rendered the Act ineffective.

A. Creation of the Dowry Prohibition Act of 1961

Despite the long-standing practice of dowry murders, the Indian government did not address this form of terror until the mid-1950s.⁵⁶ Although two state governments enacted dowry prohibition acts in 1950 and 1958,⁵⁷ respectively, it was not until a few years later that India's federal government followed suit. Although a non-official bill addressing dowry crimes was introduced in the Parliament in 1953, "the Government felt that a separate legislation to prohibit dowry was not a matter of urgency."⁵⁸ Finally, in April of 1959, the Indian government began the process of turning the dowry prohibition bill into legislation.⁵⁹ Despite some disagreements between the two Houses of Parliament, The Dowry Prohibition Act was enacted on May 20, 1961.⁶⁰ The Act was twice amended, in 1984 and once again in 1986, "in order to rectify several inherent weaknesses and loopholes in the Act."⁶¹ However, these amendments did little to address the weakness in the Act's clarity and enforcement mechanisms.⁶²

As discussed,⁶³ India's parliament provided a legal definition of dowry deaths, which set the criteria for determining what type of domestic violence and homicide can be considered a dowry death. A woman's murder at the hands of her husband and his family is classified as dowry death only in instances where it meets the requirements as set forth in the Act. Under the Act, there are five criteria that must be met before a woman's murder is investigated as a dowry death. The Dowry

⁵⁵ Nangia, *supra* note 6, at 638.

⁵⁶ Dowry Prohibition Act, No. 28, 6 India Code 40E (1961)(hereinafter *India Code 40E*). Prior to its independence, there was an anti-dowry Act passed by the then Provincial Government of the State of Sind; however, this act did little to address the issue of wife burning. *E.g.*, Umar, *supra* note 23, at 166.

⁵⁷ India Code 40E at pmbl. However, it is important to note that both acts were ineffective and failed to achieve their intended objectives.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Nangia, *supra* note 6, at 653.

⁶² Nangia, *supra* note 6, at 653. See Lakhani, *infra* note 49, at 9.

⁶³ See page 2.

Prohibition Act states that the murder of one's wife constitutes dowry death only if:

- (1) the death is caused by burns or bodily injuries
- (2) or occurs under abnormal circumstances
- (3) and the death occurs within 7 years of her marriage
- (4) and she was harassed or subjected to cruelty by her husband or her in-laws
- (5) and the underlying cause of the death is connected to demands made by the husband or his relatives for dowry.⁶⁴

At face value, the Act appears to embrace a comprehensive approach to combating dowry murders. However, the prominence of dowry murders forty-nine years after the Act was established demonstrates how ineffective it has been in combating such detrimental behavior. In fact, the number of dowry-related murders has increased since the Act was enacted.⁶⁵

B. When Does the Transfer of Material Possession Between the Families Constitute Dowry?

One of the most prominent failures of the Act is to recognize that the term "dowry" is subjected to multiple interpretations. The Act narrowly defines dowry as "a demand for property of valuable security having an inextricable nexus with marriage."⁶⁶ On its face, this definition appears to encompass the general consensus on what constitutes dowry. However, as case law illustrates, such a narrow definition is ineffective because: (1) there are variations in the dowry giving tradition across stateliness, (2) the general belief that men have a right to discipline their wives causes reluctance to prosecute them, and (3) a majority of the judges are men, who may, themselves, demand dowry from their wives' families. The combination of these factors has resulted in a stringent application of the definition of dowry as provided by the Act.

Often, cases get dismissed because judges find that the demands made by the husband are not "dowry" demands under the Act. For example, in a decision rendered in January 2007, the Indian Supreme Court set aside a conviction in a dowry murder case because it held that "'a demand for money on account of some financial stringency or for meeting some urgent domestic expenses . . . cannot be termed as a demand for dowry."⁶⁷ In that case, the victim's family testified that her husband had demanded money for domestic expenses and for purchasing

⁶⁴ KAMAKSHYA PRASAD, ET AL., *DOWRY DEATH* 6 (Modern Law Publications 2000).

⁶⁵ Avnita Lakhani, *Bride-Burning: The "Elephant in the Room" is Out of Control*, 5 PEPP. DISP. RESOL. L.J. 249, 258 (2005).

⁶⁶ India Code 40E (comment 1).

⁶⁷ T.K. Rajalakshmi, *Dowry in Disguise*, 24 FRONTLINE, Feb. 24- Mar 09, 2007, available at <http://www.hindu.com/fline/fl2404/stories/20070309001909200.htm>.

manure.⁶⁸ However, the court found that this demand did not have the “inextricable nexus with the marriage” requirement of a dowry as defined by the Act.

The ambiguity of the definition of “dowry” is further complicated by the requirement that the gift exchange be made “in connection with the marriage.” Thus, the Dowry Act allows the exchange of gifts between the bride and husband’s families. Although the prohibition of gift exchanges would be too broad a restriction, the precise construction of the “in connection with the marriage” allows many perpetrators of dowry murders to walk free. As noted by numerous legal scholars, the “problem posed by the ‘in connection with the marriage’ requirement is that offenders can maneuver around this technicality,”⁶⁹ since it is expected that, once married, the woman’s family will continue to provide gifts to the husband’s family. Consequently, when a woman is burned to death because her family failed to provide her husband with a “gift,” this does not constitute a crime under the Act.

Although the ideal remedy to judicial misinterpretations of the term “dowry” is to provide a more concrete definition, a change in the definition of the term will be ineffective so long as the social attitudes towards dowry murders remain the same. Therefore, a more effective remedy would be to place the burden of proof on the husband and his family, rather than on the victim’s family. Currently, the Act places “an immense burden” on the victim’s family “to prove that the gifts were extorted by the in-laws and not voluntarily given.”⁷⁰ However, this burden of proving that the gifts were given “in connection with the marriage” is extremely difficult to meet because there is never any written proof of the transactions.⁷¹ Thus, in recognition of this difficulty, the Act should be amended so as to create an automatic presumption that any gift reported by the victim’s family as a dowry demand is indeed a dowry demand. This automatic presumption then places the burden on the perpetrators to show that the gift was not a dowry made “in connection with the marriage.” In addition to reducing the ability of the judge to misconstrue the Act in favor of the man, an automatic presumption that a dowry demand was made also reduces the power the husband has over his wife’s family. This automatic presumption will thus serve as a deterrence that keeps the husband from making dowry demands.

C. Loopholes Created by the Act’s Time Requirements

The time requirements incorporated within the Act also provide loopholes through which perpetrators can escape criminal conviction.

⁶⁸ *Id.*

⁶⁹ Nangia, *supra* note 6, at 659.

⁷⁰ *Id.* at 657.

⁷¹ *Id.* at 658.

For a dowry murder to constitute a crime under the Act, it must occur “within [the first] 7 years of the girl’s marriage.”⁷² This limitation was included under the assumption that seven years is “ample time to manage and ascertain a potentially abusive relationship.”⁷³ However, as statistics have shown time and time again, this is a dangerous assumption to make. Under this seven-year limitation, the in-laws can simply milk the girl’s family for money until the eighth year of their marriage, and then kill her without facing any legal ramifications. This is evidenced in the case of 22-year-old Vimala Devi’s death. During the first seven years of their marriage, Vimala’s husband continuously threatened to kill her once the seven-year limitation was up. Despite the fact that her husband intentionally waited seven years to commit her murder, no charges were brought against him because the seven-year limitation imposed by the Act had expired.⁷⁴

The Act places a second timing requirement in that the death must occur “‘soon’ after a threat connected with a dowry demand.”⁷⁵ The requirement that the death occur “soon” after the threat has created great confusion among the courts. In *Kans Raj v. State of Punjab*, the Indian Supreme Court held that a one-month time lapse between the threat and the murder fell within the “soon” requirement.⁷⁶ However, in another case, the Court found that a two-week lapse between the threat and the dowry murder was too long to meet the “soon” requirement.⁷⁷ In both instances, the Court looked to whether a third party attempted to reconcile the couple. However, considering that families work hard to avoid the negative stigma associated with a failed marriage in India, this method is problematic because it creates a standard where the “soon” requirement will rarely be met.

The most straightforward way to combat the loopholes created by the time requirements in the Act is to remove them. The Indian government must recognize that domestic abuse does not have an expiration date. The assumption that seven years is enough time to ascertain whether a relationship is abusive ignores all the societal pressures on the woman to maintain her marriage. In addition, both time requirements provide the perpetrators an escape from the criminal charges by allowing them the luxury of taking their time to create elaborate plans to murder their wives. Thus, removal of the time requirements will deter those who choose to wait until after the time limitation expires because, like Vimala’s husband, they are afraid of criminal prosecution.

⁷² Section 304B.3 of The Indian Penal Code, 1860.

⁷³ Nangia, *supra* note 6, at 678.

⁷⁴ *Id.* at 677-78.

⁷⁵ Greenberg, *supra* note 3, at 815.

⁷⁶ *Id.* at 816 (citing *Kans v. State of Punjab*, 556 LRI 3 (2000)).

⁷⁷ *Id.* at 817 (discussing *Sham Lal v. State of Haryana*, 1997 Cr. L.J. 1927).

D. Cruelty or Mere Misfortune?

The Act also requires proof that the woman was subjected to cruelty by her husband or her in-laws prior to her murder. Although the Act defines cruelty broadly to include both physical and mental abuse, the requirement that the prosecution must show that the woman was subjected to cruelty at the hands of her husband and in-laws creates a heavy burden of proof.⁷⁸ This burden is often hard to meet because, as a majority of the abuse occurs in the home, the only witnesses to the cruelty are the perpetrators themselves.⁷⁹ And because the woman has been burned to death, any marks on her body that may have provided evidence to physical abuse cannot be recovered. The cruelty requirement is also problematic in that it provides an escape for those who assisted in, but did not actually commit, the murder. For example, in *Babu Ram v. State of Punjab*, the Indian Supreme Court held that the husband's act of locking the door to prevent the wife's escape as she is being burned by her in-laws is insufficient cruelty to be convicted under the Act.⁸⁰ In another case, the Delhi High Court acquitted all four individuals accused of dowry murder on the grounds that the victim never discussed the harassment and torture she endured in the numerous letters she wrote to her mother.⁸¹

As with the "dowry" requirement, the most effective way to combat the difficulty created by the cruelty requirement is to place the burden of proof on the husband and his family. By creating a rebuttable presumption that cruelty existed prior to the woman's murder, there is less of a chance that the murderer will walk free, since the victim's family will no longer be faced with the impossible task of proving what happened right before a murder they did not witness. A rebuttable presumption that cruelty occurred will also ensure that all those who assisted in the murder will be penalized, not just those who actually committed the murder; this is because they too will then have to show that their assistance in the woman's murder does not constitute cruelty under the Act.

E. Criminalization of the Victim and her Family

Section 3 of the Act states that any individual who "gives or takes or abet the giving or taking of dowry" shall be subjected to "imprisonment for a term which shall not be less than six months."⁸² Although Section 3 intended to discourage dowry exchanges in its entirety, the

⁷⁸ Nangia, *supra* note 6, at 677.

⁷⁹ *Id.*

⁸⁰ Prasad, *supra* note 48, at 23.

⁸¹ Staff Reporter, *Four Accused Acquitted in "Dowry Murder" Case*, THE HINDU, May 9, 2010, <http://www.thehindu.com/2010/09/05/stories/2010090555120400.htm>.

⁸² India Code 40E, *supra* note 40, § 3.

criminalization of both the giver and the taker of the dowry has been a paramount hurdle in the effective enforcement of the Act. By criminally penalizing the victim and her parents, the Act has allowed for the continued perpetuation of dowry abuse because the victims' in-laws know that the fear of criminal penalty "discourages [the] women and their parents from reporting"⁸³ dowry demands. Thus, even in instances where a woman may be willing to defy social norms by reporting dowry-related domestic violence, Section 3 of the Act hinders her from doing so.

In December 1980, recognizing the deterrence the penalization of the victims' parents causes, the Joint Committee of the Indian Parliament submitted a recommendation for an amendment to the Act. In their recommendation, the Committee argued that "the woman's parents should not be equated with the takers of the dowry because they 'do not give dowry out of their own free will but are compelled to do so.'"⁸⁴ As the Committee correctly noted, so long as the Act continued to penalize the victims' parents, "no giver can be expected to come forward to make a complaint."⁸⁵ Despite the accuracy of the Committee's report, the Indian Parliament elected not to amend the Act. However, such an amendment is necessary in order to promote a more efficient enforcement of the Act. Until this amendment is made, families will continue to be deterred from seeking justice for their daughters because of their fear of being subjected to criminal prosecution.

IV. IS THE END OF WIFE-BURNING IN SIGHT?

Upon learning of the ineffectiveness of the Dowry Prohibition Act, one must wonder: "is the end of wife-burning in sight?"⁸⁶ Although this is a question that, as seen in both the legal and social responses to wife-burning, may not be answered in the affirmative during the author's lifetime, more effective measures can be taken to drastically reduce the number of married Indian women that end up as another statistic. In addition to the legal arguments made in Part III, this section looks at social changes that can lead to the eradication of dowry murders.

A. Changing Cultural Attitudes Towards Acceptability of Dowry Giving

The first step towards a more effective legal response to dowry murders is, arguably, changing the cultural acceptance and attitudes surrounding the tradition of dowry giving. It is undeniable that dowry

⁸³ Nangia, *supra* note 6, at 665.

⁸⁴ *Id.* at 666.

⁸⁵ *Id.*

⁸⁶ Please note that there have been a multitude of arguments made as to how to amend the Dowry Prohibition Act as to make it more effective. For the purpose of this paper, this author has chosen to address those she finds most relevant to her argument.

murders are a direct consequence of the belief that the woman is a burden on her in-laws and that this burden can only be relieved through dowry payments. Thus, to eliminate dowry murder, it must be attacked at its roots.

It has been argued that the best approach to reducing the number of dowry-related deaths is to “ensur[e] that women have control over the[ir]...dowry” because “gift-giving by the bride’s family is so deeply entrenched that simply prohibiting dowry does not allow the conclusion that it will not be practiced”⁸⁷ However, this argument fails to attack dowry-related violence at its roots; continued adherence to the dowry-giving practice allows for the continued belief that the wife is nothing more than a burden to her husband. Although it is true that the dowry giving is a long standing tradition in India, allowing women to obtain control over their dowry is unlikely to serve as a permanent deterrent from wife-burning. As history clearly indicates, although women initially had control of their dowries, they were soon stripped of this control.⁸⁸ With the currently inadequate state of legal responses to the murder of one’s wife, there is nothing to indicate that any legal sanctions would prevent history from repeating itself. Because complete removal of the dowry practice will be met with immense resistance, the most effective way to combat this resistance is changing the social belief that a woman’s worth is measured by the dowry she can bring her husband. An effective removal of the dowry tradition in India requires

a social movement that provides the Indian community with greater knowledge about the horrors of dowry . . . the cultural and social patterns of men and women [in India] must be reshaped to acknowledge a female’s value to Indian society. If Indian society were to treat women as human beings and not merely as commodities to be exchanged for dowry, dowry-related harassment and violence would cease.⁸⁹

Thus, for the dowry-giving tradition to be completely eliminated, India’s women must be given a tool to use as leverage against an abusive husband. One such proposed tool is the enactment of “a tort law providing for monetary”⁹⁰ damages against any individual who makes a dowry demand. Such a law would deter individuals from making dowry demands “because of the prospect of losing money in a lawsuit filed by the wife’s family.”⁹¹ Thus, a tort law minimizes the importance of the dowry because family honor and wealth has always been deemed more important than dowry rewards. Of course, as with the Act, its

⁸⁷ Nangia, *supra* note 6, at 637-38.

⁸⁸ See Oldenburg, *supra* note 1, at 32.

⁸⁹ Bhave, *supra* note 13, at 308-09.

⁹⁰ *Id.* at 309.

⁹¹ *Id.*

effectiveness is dependent on whether the government enforces the tort law.

B. Threaten What Matters the Most to the Murderer: Family Honor

Currently, the Indian government does not publish a list of men whose wives suffered dowry-related death. However, such a list may be one of the most effective deterrence tools available to the government. As family honor is of great importance to Indian families, the threat of a tainted family honor serves as a great disincentive. By publishing a list of men whose wives have died dowry-related deaths (even if these men were never convicted), the government sends a message that these men have failed to protect their wives. Since social status is important in India, the shame associated with being a failure will provide an incentive for men to ensure that their wives are not abused by their in-laws.

Such a list also serves another purpose: it will ensure greater hesitation before these men are offered another wife. Although some parents currently marry their daughters to men who are suspected of burning their wives to death, such a list will create greater misgivings about doing so because the man's social status will have been jeopardized once his name is on the list.

CONCLUSION

Wife burning is a cultural problem that cannot be effectively combated by a simple declaration of its illegality. Unless the Indian government proactively takes measures to remedy the inherent weaknesses within the Dowry Prohibition Act, dowry murders will continue to be a prevalent occurrence within Indian society. Rather than excusing dowry violence as a private family matter, the government must execute its responsibility to the female citizens of India with precise measures designed to combat dowry crime at its root. Regardless of whether the government chooses to implement the above suggestions, it is clear that appropriate measures must be taken to eradicate the ambiguities that render the Act ineffective. Unfortunately, until the Act is strengthened to afford the victim the protection it was meant to provide, Indian women will continue to be victims in their own homes.