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THE ESSENTIAL NEXUS BETWEEN TRANSFORMATIVE LAWS AND CULTURE: THE INEFFECTIVENESS OF DOWRY PROHIBITION LAWS OF INDIA

TARA S. KAUSHIK

I. Introduction

TIMES OF INDIA NEWS NETWORK [SUNDAY, MAY 27, 2001]

Young housewife burnt alive for dowry

UCKNOW: For nineteen-year-old Rinki dreams of a happily married life was never to be. Barely a month after her marriage, she was allegedly tortured and then set ablaze by her in-laws for dowry in Indiranagar [a suburb] in the small hours of Saturday. Daughter of late Gyan Chand, a fish contractor who expired a year ago, Rinki was married to Anil on April 19...However, soon after the marriage, Balakram [Anil's father] demanded a colour television instead of a black and white one and motorcycle as well. When Rinki's mother failed to meet their demands, the teenage housewife was subjected to severe physical torture, allegedly by her husband and mother-in-law...On Saturday morning she [her mother] was informed that Rinki was charred to death when a kerosene lamp accidentally fell on her and her clothes caught fire. However, prima facie it appeared that the victim was first attacked as her teeth were found broken. Injuries were also apparent on her wrist and chest.

TIMES NEWS NETWORK [WEDNESDAY, APRIL 17, 2002]

My daughter was killed for dowry, says father

BIJAPUR: Somashekar Gouda, father of Dr Shashikala Bentur who died under mysterious circumstances, has filed a complaint with the... police here alleging that his daughter was murdered by her husband and in-laws.

He said he had given Rs 2 lakh [200,000] as dowry along with 25 tolas of gold and four kg silver to Dr Sanjay Bentur

during marriage. But Shashikala was harassed to bring more dowry after the marriage and was told to get money from her father to complete her post-graduation in gynaecology.

"I sent Shashikala for post-graduation in Bapuji Medical College with the hope that my daughter would lead a peaceful life. But Sanjeev and his parents demanded Rs 3.50 lakh [350,000] to set up a clinic and a car. Even after I fulfilled all the demands, Sanjeev's demands increased especially after he sold all the gold ornaments," the bereaved father said and added that their greed for more money resulted in the murder of his daughter.

As incidents of dowry-related violence such as those described above increase every year in modern India, a lingering question arises as to why current Indian laws have not successfully deterred the cultural perpetuation of this practice (Hitchcock 2001, Newman 1992: 113). The following discussion will provide an understanding of the evolution of the dowry system into its current abusive practice, an analysis of India's dowry prohibition laws, and an analysis of the cultural notions that support the practice of dowry violence. These analyses suggest that Indian laws fail to eradicate dowry-related violence because the laws do not adequately address the fundamental notion of dowry exchange as a part of modern day culture in India.

Although dowry harassment and deaths occur among Hindus, Christians and Muslims in India, this discussion will focus on Hindus primarily since Hindus both compose the majority of India's population and most widely practice dowry exchange (Nangia 1997: 643; Banerjee 1997). Of course it would be oversimplistic to generalize that every Hindu family denigrates the women in each household by adhering to cultural notions such as the exchange of dowry before and after marriage. Indian cultural beliefs are complex regarding its treatment of women. On the one

hand, some women have developed a presence in the working world and enjoyed high level careers, such as former Prime Minister Indira Gandhi. More traditionally, goddesses are worshipped devoutly by scores of the population. (Interviews K.A., S.K., my personal knowledge as an Indo-American). On the other hand, as international and domestic social pressures on the government push for better treatment of women in India, and as the Indian government passes legislation aimed at improving women's social status, cultural antagonism against these laws continues to prevent any effective enforcement of them (see generally, Newman 1992: 113-116, Fahn 1990: 114).

This antagonism between patriarchal tradition and the laws attempting to change societal treatment of women is illustrated in the following analysis of dowry laws and the lack of their enforcement. The tension lies at the center of what one scholar (Krieger 1999: 89) calls a "captured" law -- that is, a law that tries to transform a cultural norm (transformative law) but fails to do so because the culture resists it. This categorization of captured law -- a law that seeks to displace or transform traditional norms -- is based on the historian Marc Galanter's analysis of Indian society. His observations note that modern Indian laws displacing traditional customs did not rid the culture of these customs (Krieger 1999: 89 quoting Galanter 1989: 15). As Galanter notes, society's traditional norms persist in influencing interpretation and enforcement of the modern laws. He observes, "[T]raditional notions of legality and methods of change still persist at a sub-legal level...traditional society is not passively regulated by the modern system; it uses the system for its own ends." (Galanter 1989: 33). This tension between the Indian modern legal system and cultural tradition is reflected in the tension between the dowry prohibition laws and traditional norms regarding women's role in society.

The following discussion will begin with a brief background on the meaning of dowry exchange as this notion has evolved in Indian history. It will then analyze the Dowry Prohibition Act of 1961 and other complementary laws that attempt to reform dowry practice, as well as the legal issues posed by these laws. The discussion will then illustrate the problems with laws that try to transform culture. The following is an examination of facets of culture that uphold dowry related violence and how these cultural facets resist enforcement of dowry laws. Finally, the analysis will end with a suggested cultural approach to structure and enforcement of dowry laws.

II. Background: What is dowry in Hindu culture?

Scholars have loosely defined today's notion of dowry to be "movable or immovable property that a bride's father or guardian gives to the bridegroom, his parents, or his relatives as a condition to the marriage, and under duress, coercion or pressure", or "cash, consumer goods, and jewelry that a wife brought with her to her husband's household." (Nangia 1997: 630; Sitaraman 1999: 287). The concept of dowry has evolved into a completely different notion than tradition once proscribed. A brief background on the evolution of dowry will help us focus on the modern status of women in Indian society and the society's efforts to control this status. This historical review will show us that its meaning today is a very modern concept.

A. Historical roots: dowry as protection for brides, and as gifts related to marriage

Scholars have debated as to the precise roots and meaning of dowry historically -- particularly over whether the old Vedic religious texts mention the exchange of dowry between bride and groom (Singh 1985: 11-16; Nangia 1997: 640-642; Umar 1998: 63-67). It is commonly recognized that historically, families exchanged gifts traditionally out of

affection in the course of arranging the marriage (Singh 1985: 17; Umar 1998: 66). Gifts were exchanged mostly to provide for the future of the couple, or as protection for the bride as her share of inheritance, since tradition followed a patrilineal line of inheritance (Umar 1998: 67; Nangia 1997: 640; Hitchcock 2001; Fahn 1990: 108).

It is important to note that these gifts were customary rather than ones of obligation, and that they were often referred to by religious texts as "stridhan," meaning, gifts to the bride (Singh 1985: 17; Umar 1998: 66; Nangia 1997: 640). The modern notion of dowry probably did not directly originate from this custom. Even today, families who exchange gifts do not all do so out of obligation (Umar 1998: 66; Nangia 1997: 641). However, as early as the medieval period, the aristocracy practiced dowry exchange because it allowed them to rise in social status, since the caste system only allowed a lower class woman to marry a higher class man as a result of hypergamous practices at the time (Umar 1998: 65). By the thirteenth or fourteenth century, he notes that dowry had become widespread among the higher classes.

Another scholar addresses a different historical interpretation in his account of dowry exchange in the region of Eastern Rajasthan from the eleventh century onwards (Dixit 1991: 342). As the caste system became rigid during the early eighteenth century in this region, the privileged higher castes sought to distinguish themselves from the lower castes, thus establishing the dowry exchange system as one of many ways to show "superior" social status. During this period, the need for upper caste women to be chaste, faithful, protected, and economically dependent was emphasized, and the dowry exchange system provided added support to these social norms (1991: 344). Indeed, the dowry system in its form today still illustrates Indian society's desire to keep women chaste and protected. (1991: 352).

Another scholar explains the origins of dowry exchange as a response to Muslim invasions and Muslim rule that occurred during the thirteenth and fourteenth centuries. Hindus among higher classes may have started to implement more customs protective of their culture such as the caste system, to keep marriage confined within their communities. During an economic downturn after invasions, it became difficult to find bridegrooms who were financially established. As a result, those who were well off were the object of a fierce bidding war by prospective brides' families. As a result, dowry became the dominant feature in negotiations of arranged marriages, because bridegrooms would demand them (Nangia 1997: 642).

These historical accounts generally agree that the dowry exchange system originated as an effort to distinguish social status from other members of society. Despite the dowry exchange system's prevalence among the higher classes in the eleventh to fourteenth centuries, the system did not spread to the middle and underprivileged classes until between the mid-eighteenth to mid- nineteenth centuries (Umar 1998: 66 quoting Altekar 1959: 62). The effects of colonialism during this era produced significant changes in the matrimonial systems of the middle and underprivileged caste societies. The British Empire stressed equality among people regardless of caste status. As a result, the underprivileged began adapting their social norms to those of the upper castes in an effort to defy caste stratification. The dowry exchange system provided an ideal to which the lower castes would aspire (Dixit 1991: 348). As the rejection and disintegration of the caste system expanded in the twentieth century, the possibility of upward social mobility became more attainable, allowing the underprivileged to practice dowry exchange widely (Dixit 1991: 350).

Various theories behind why modern dowry coercion has spread throughout Indian society are better understood when the social order supporting such a practice is considered.

B. Today's dowry: marriage becomes a business

Dowry harassment today has become a money making scheme for bridegrooms and their families. Modern urbanization, industrialization and consumerism have created a society where money and status have become central to the negotiations for marriage (Nangia 1997: 643; Umar 1998: 67; Hitchcock 2001). British rule introduced the concepts of monetization, and materialism to Indian society. Historians suggest that the introduction under British rule of a capitalist economy resulted in the imposition of heavy land taxes so that families were pressured to find large sums of cash or lose their lands. (Fahn 1990: 116). These pressures have only increased since the start of the twentieth century as the acquisition of technological goods became a means for attaining status. As India has opened up to foreign investment in technology since the 1990's, the gap between rich and poor has widened, resulting in greater economic uncertainty of the middle class (Hitchcock 2001).

The result of this phenomenon is reliance on dowry to meet economic and social obligations. The more dowry received by the groom's family, the better reputation they have in the community (Fahn 1990: 111). Similarly, the greater the status of the family that the bride marries into, the better her reputation and her family's reputation will be (Hitchcock 2001; Fahn 1990: 111). Indian marriages have been and are still commonly arranged by a series of negotiations between families, and the prevalence of dowry and social status has become such a focus now that marriage has become a business (Fahn 1990: 115). Young brides are vulnerable to this business because they are expected to live with their in-

laws along with their husband following their wedding -- so they have no support from anyone to oversee their treatment (same source).

The "market" for brides and grooms is often reflected in newspapers which abound with advertisements of potential spouses possessing "eligibility and social prowess, usually using their caste as a bargaining chip" (Hitchcock 2001). Professionals such as doctors, engineers and accountants, especially ones living abroad in developed countries, expect the highest amount of dowries because educated men are the ticket to high social status and wealth. (same source). Yet a paradox occurs when educated women are married. The more educated the woman, the more dowry the husband can extract from her because she is viewed as less able to focus on household matters. In many cases, she is expected to give her entire paycheck to her new family and to bring even more money from her parents as dowry. (Nangia 1997: 644, 648). This cultural paradox reflects the tension between patriarchal norms and the resistance to women's struggling rise in economic status.

Dowry demands from bride's families usually involve items such as cars, motorcycles, scooters, computers, televisions, refrigerators, and other electronic items. However, the demands can also include land, jewelry, and various other expensive items of property (Umar 1998: 67). Worst of all, these demands may continue for years, and the treatment of the wife in the household will depend on the extent to which these demands are met. When dowry demands are not met, the wife will be harassed, doused in kerosene and burned alive. The widower will then remarry and make a fortune on another wife (Hitchcock 2001). The in-laws will report to the police that the murder was a "stoveburst" accident while cooking. (In India, stoves with kerosene are often used due to a shortage of electricity/gas supply.) Usually no other witnesses will have seen the killing except the husband's family so it would be difficult to

prove otherwise (Hitchcock 2001). Even in their statements before dying, many wives refuse to incriminate their husbands or in-laws for fear of retaliation against their children in the household or stigma against their families. Further, a woman who goes back to her parents' house is considered to have failed as a wife in carrying out her household duties (Menon 1999). Indeed, the young wife's family will often send her back to her in-laws and husband telling her to try to satisfy their demands and compromise as much as possible, because the wife's family will be dishonored if she leaves her husband's household. (Nangia 1997: 649; Fahn 1990: 113). Consider the following wives who suffered because their families could not meet dowry demands:

"Meena Kumari was burned to death by her sister-in-law in collusion with Meena's mother in-law and husband. This happened when Meena's parents refused to meet the constant dowry demands. In her dying declaration, Meena indicated how she was mentally and physically tortured by her new family...Meena's new family has been acquitted for lack of sufficient evidence." Arveen Kaur was found dead in her room a few years after her marriage. Before her death, she wrote letters to her father describing the pain, torture, and humiliation she endured as a result of increasing dowry demands. She was deprived of food, clothing and money. After many years, the court has recently framed charges against Arveen's husband and in-laws." (Banerjee 1997).

Many women also commit suicide if unable to cope with the dowry harassment and abuse by their in-laws and husbands. (Menon 1999). Regardless of whether these wives are murdered or commit suicide, the lamentable fact remains that it is cheaper for a husband to kill his wife and remarry another one at another high dowry price, than to divorce her and pay for her support (Banerjee 1997, quoting Banerjee 1995).

Such are the cultural tensions between modern efforts to change gender roles and the extreme effort to preserve patriarchal tradition. As we analyze the dowry prohibition laws that have attempted to displace the practice of dowry in Indian culture, we will find that the patriarchal norms and the cultural attachment to social status have prevailed over enforcement of the law.

III. The Dowry Prohibition Act of 1961 and supporting laws

In 1961, the legislature responded to outcries from women's rights organizations and the international community by enacting the Dowry Prohibition Act. The purpose of the statute is to "prohibit the evil practice of giving or taking of dowry." (Achar and Venkanna 1986: 7). It soon became obvious that the Act would have little effect on dowry practice, so it was amended twice to impose stricter penalties and allow easier burdens of proof for victims. The passage of the Act and its amendments -- once in 1984 and again in 1986 -- exemplify a strong step towards a law banning dowry. (Nangia 652-653). Despite these strong efforts to eradicate dowry as an evil, we will find that the law has many legal loopholes.

A. The Dowry Prohibition Act as amended: a brief summary

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 parents of either party to a marriage or by any other person to either party to the marriage or to any other person; at or before any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law applies." (Dowry Prohibition Act, 1961).

Importantly, it provides that anyone who "gives or takes or abets the giving or taking of dowry, ...shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees, or the amount of the value of such dowry, whichever is more." (same source). Penalties are also provided for anyone who "demands directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom...any dowry" for whom punishment will be "imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which may extend to ten thousand rupees." (Dowry Prohibition Act 1961). In effect, this provision attempts to define dowry and the parties who will be held liable for its demand and receipt. Note that the parents or relatives of either party -- the woman's as well as the man's -- may also be criminally liable for giving or taking dowry. The woman and/or her relatives are susceptible to being penalized criminally for giving dowry, just as the man and his family would be liable for taking it. This provision is directed towards discouraging the cultural practice of dowry exchange more than it tries to protect the victim and her relatives from harassment.

An exception to the ban on dowry exchange allows for "presents which are given at the time of marriage to the bride without any demands having been made in that behalf" as well as "presents which are given at the time of marriage to the bridegroom without any demand having been made in that behalf" (Dowry Prohibition Act 1961). Such gifts should be customary, and their value must not be excessive in proportion to the financial status of the gift-giver (same source). The bride may maintain a list of presents given to her. Such a list must indicate a description, approximate value, the name of the giver, and the name of the relationship of the giver of each present. Finally, the lists must be signed by both

bridegroom and bride (same source). This provision attempts to mandate a way of recording gifts as evidence for proof purposes in dowry cases.

If an agreement has been made to exchange dowry, the law provides that this agreement is legally void. Advertising or soliciting dowries in any way is also forbidden. If a dowry has already been exchanged, the law proscribes a certain time frame within which the dowry amount or value must be reimbursed to the wife, or if the wife be deceased, to her heirs. Failure to do so meets with additional criminal punishment. Dowry related offenses are non-bailable, and the accused has the burden of proving innocence when prosecuted for taking or abetting the taking of any dowry (Dowry Prohibition Act 1961). A non-bailable offense is one where the accused does not have the automatic right to be granted bail, but must instead petition the court to grant him or her bail. (Nangia 1997: footnote 206). State governments are authorized to appoint Dowry Prohibition Officers who can enforce the provisions of the Dowry Prohibition Act.

In 1983 the Indian Penal Code was amended to add section 498-A. This section makes any demand for dowry punishable as an offense of cruelty to a wife, so that any husband or relative of the husband who is guilty of subjecting a wife to cruelty could be sentenced three years in prison and fined. This provision would supplement punishment set forth by the Dowry Prohibition Act. The definition of cruelty in the law includes any dowry harassment that may lead a wife to suicide. (Achar and Venkanna 1986: 179). The Penal Code was again amended in 1986 to add section 304-B which defined the crime of dowry death to be "where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband...in

connection with any demand for dowry..."; if such a crime were charged, "such husband or relative shall be deemed to have caused her death." (Indian Penal Code 1860 section 304-B from <http://indiacode.nic.in/>).

Another supplementary provision to the Dowry Prohibition Act was added as an amendment to section 174 of the Criminal Procedure Code in 1983 with the goal of punishing dowry harassers who drove a wife to suicide or to a suspicious death that appeared as if it was a suicide. Section 174 now provides that if a police officer is informed of a suicide, he must make an investigation and draw up a report of the apparent cause of death and injuries to the deceased. If the suicide is by a woman within seven years of her marriage, the officer must submit his report and the deceased body for further investigation. (Achar and Venkanna, 1986: 180).

These provisions in Indian Criminal law are further supplemented by the amendments made to the Indian Evidence Act of 1872 in 1983 and 1986. Section 113-A provides that if it is shown that a woman had committed suicide within the first seven years of her marriage and that her husband or his relatives had subjected her to cruelty, the court may presume that such suicide had been abetted by her husband or such relatives. Section 113-B provides an important presumption: where a woman's death has occurred, and evidence shows that soon before her death her husband or his relatives had subjected her to cruelty (as defined in the cruelty provision of the Penal Code) or in connection with dowry demands, the Court shall presume that the suicide was caused by such husband or relatives. (Indian Evidence Act 1872, section 113-B).

Clearly, the laws summarized above strive to cease dowry exchange, dowry harassment, and dowry deaths by allocating the burden of proof to the husband and his relatives in many instances. They provide several ways to prosecute a dowry case depending on whether it appears to

be a suicide related to dowry harassment or whether it rather appears to be a dowry death. The Dowry Prohibition Act makes the charge of dowry harassment or dowry death to be non-bailable. The Act does much to discourage dowry exchange by imposing criminal imprisonment, fines, and holding liable the husband or his relatives for even demanding for or advertising for dowry. Under the Indian Evidence Act and Penal Code, once the prosecution proves that there was a death due to dowry related causes, the defendant must prove by a preponderance of evidence that he or she did not cause the victim's death. Causation in fact is an essential element of the crime. (Krieger, 1999:100-101). Section 113-B in particular shifts the burden of persuasion to the defendant, since the Court must presume that the death was caused by defendant if the prosecution merely proves that dowry harassment or cruelty had occurred before her death. This mandatory burden shift is a presumption of law that deems proven the fact that the defendant caused the death. Such a powerful presumption indicates the high level of importance Indian legislators have given to targeting the practice of dowry deaths in Indian society. (Krieger 1999: 102, 105). These laws, in effect, make a strong effort to discourage dowry harassment and dowry death. In essence, the presumptions and liability they impose on the defendants involved in a dowry case reflect an enormous effort to transform a cultural practice retaliating to an extreme against the female sex.

Unfortunately, the laws still pose problems that inhibit the prosecution's ability to convict defendants in dowry cases despite overwhelming evidence suggesting guilt. These problems are examined as follows.

B. Legal Problems with the Act as amended

As written, the dowry prohibition laws outlined above pose many legal concerns. These include ambiguous definitions and terms,

evidentiary presumption problems, and other various loopholes that complicate the prosecution of dowry claims.

The amended Dowry Prohibition Act's definition of dowry remains ambiguous (Umar 1998: 273; Singh 1989: 124; Nangia 1997: 657). As mentioned above, the Act defines dowry to be "any property or valuable security" that is given "in connection with marriage." The problem is how to interpret "in connection with marriage." Courts in the past have interpreted this clause in favor of defendants when defendants claimed that any "gifts" exchanged were out of affection rather than as consideration for marriage (Nangia 1997: 657). Thus, defendants would often escape liability altogether solely based on classification of the property demanded. One commentator observes that "in many cases, dowry is not called dowry, but is given as a gift to a daughter when she marries" (Singh 1985: 21).

Even if her in-laws make no demands, it is understood that "they are prepared to take whatever is given pleasantly by the other side and, therefore, unless the desire of pleasant-taking is not stopped," there cannot be any relief for the victims' and their families. In light of the goals of the Dowry Prohibition Act to eradicate dowry harassment and dowry deaths, the loophole in the definition of "dowry" allowing expected gifts counteracts these goals. Furthermore, the Act imposes liability for givers as well as takers of dowry. This counteracts the Act's purposes of eradicating dowry exchange because it discourages the wife and her family from reporting dowry harassment, since by reporting that dowry harassment is taking place, the woman and her family may be subject to criminal liability themselves (Singh 1989: 125).

Most importantly, the requirement that dowry be defined as being "in connection with marriage" fails to recognize that most marriage negotiations are done confidentially and that any discussion about dowry

exchange will be covert. Defendants can easily be acquitted by arguing that gifts given during marriage over a period of years were voluntary, out of affection, or connected with events apart from marriage, such as childbirth or religious holidays (Nangia 1997: 658-659). Indeed, families who practice dowry exchange are often educated enough to know that such practices are illegal and so they adapt their marriage negotiations to avoid liability (same source). Mohammed Umar's study of 208 dowry cases revealed that although bride burning occurs in both rural and urban areas, families in both areas generally demand dowry soon after marriage rather than beforehand (1998: 266). This suggests that families avoid liability by demanding dowries after marriage and characterizing such demands later in court as "voluntary" since they occurred after marriage. Although the Dowry Prohibition Act addresses dowry demands after marriage, its exception allowing "voluntary" gifts made by "custom" allow perpetrators to merely reclassify their demands to fit the exception. (Nangia 1997: 659). Moreover, families that practice dowry exchange usually do so by custom -- so they can easily justify any lavish gift as customary and therefore within the exception of the Act.

The Dowry Prohibition Act's exception for "voluntary" gifts also fails to take into account the societal pressures that urge women to marry, and the pressures for families to move upward in social status in today's age of consumerism. These pressures operate to discourage parents of a daughter from refusing to cooperate with marriage related demands. Thus the prosecution in a dowry case will have an even harder time even proving that gifts were not voluntarily given before or after a marriage because the issue is whether "voluntary" gifts include "coerced" or "expected" ones. (Nangia 1997: 657).

Furthermore, there is no ceiling on the amount of gift expenses so that gifts of any value can be given whether or not the bride chooses to list

them. The problem is that the list may not very well be comprehensive; obviously if the husband's family demands a present not be listed, the woman and her family will most likely comply for fear of the woman remaining unmarried and thus frowned upon in society. Furthermore, the groom and his family can still justify demands for certain supposedly "household" items on the grounds that such items are really gifts to the bride from her parents. (Singh 1989: 127; Nangia 1997: 659). Additionally, the idea of listing gifts exchanged in a marriage conflicts with societal values of marriage, where trust, unity and harmony are the prevailing ideals. Families that insist on formal writing will hardly do well at the negotiating table. A bride or newlywed woman is under immense pressure to adjust and compromise with her new family because any maladjustment or even a prospect of divorce would stigmatize her and her immediate family in Indian society (Nangia 1997: 664). Furthermore, this provision still discourages gift giving in general by putting an extra burden on the bride to track gifts in writing. Most importantly, it assumes that the bride is literate, though many women (especially in rural parts of India) are not (Fahn 1990: 122).

The prohibition by the Act of demanding dowry "directly or indirectly" poses a problem of ambiguity as well. How should "indirectly" be interpreted? Does it include situations where wives are deprived of food and clothing until they provide their in-laws with a lavish gift? Does it include the in-laws' expectations that the a working wife's salary will fully go to the "household"? Nangia points out that leaving this term undefined leaves dowry victims and their families with the burden of proving that dowry was demanded in an "indirect" way. The interpretation of "indirect" has been left to courts to determine on an ad hoc basis, which results in inconsistent precedent at the trial court and appellate court levels (Nangia, 1997: 668-669).

While the Indian Penal Code amendment section 304-B strengthens dowry death prosecutions by allowing the Court to presume that the causation element of a dowry case is satisfied, the prosecution cannot take advantage of this provision unless it is proven that the husband or his relatives subjected the dowry victim to "cruelty." The question is how to interpret this term, because the Code's definition of cruelty is broad but difficult to prove. Since the husband and his relatives are the only witnesses to dowry deaths, they can and often do tamper with evidence so any little physical evidence left will be often insufficient to prove that a previous act of "cruelty" occurred (Nangia 1997: 677).

Another difficulty the prosecution faces is proving that such "cruelty" occurred "soon before" the victim's death. The Supreme Court has held that the victim's statement regarding her cause of death must be sufficiently or closely connected with the actual transaction of cruelty. Only if the defendant does not bring any evidence showing intervening circumstances that such cruel treatment did not occur, will a court deem the cruel act to have occurred "soon before death." (The Press Trust of India, 2000). This narrow interpretation forces the prosecution to show stronger evidence connecting acts of cruelty with the actual dowry death within a close time frame. Yet, the presumption was enacted to help the prosecution in these cases because evidence of cruelty in the home is so difficult to prove. Furthermore this ruling ignores the reality that cruel acts may not always precede a dowry death within a close time frame. Many families may simply wait years afterwards to implement a plan to burn the wife (Nangia 1997: 677).

Section 304-B of the Indian Penal Code and Sections 113-A and 113-B of the Indian Evidence Act pose an arbitrary seven year marriage limit within which the presumption that a dowry death was caused by the victim's husband or relatives can be inferred. Unfortunately, this seven

year limit is often taken advantage of by families who strategically plan dowry deaths in order to avoid criminal liability. In one case in 1995, a husband burned his twenty-two year old wife to death after waiting for seven years, even telling the victim he would kill her after the seven years were over. Despite evidence of this strategy, the police refused to charge him with any crime because the seven year limitation had ended. (*Indian Express* 1995: 2.) Furthermore, out of the 208 dowry cases that Umar studied, 6.9 percent of these cases involved deaths that occurred after the statutory seven year period (Umar 1998: 266). Clearly, the law does not meet its goal by imposing such an arbitrary statute of limitations mandating a certain time frame in which dowry claims may be brought. Such a ceiling creates a loophole allowing dowry perpetrators to merely postpone their planned killings and prolong their victims' suffering. Umar's findings also indicate that the statutory limit of seven years is not a long enough time frame to allow dowry death claims.

The other presumption created by section 113-A of the Indian Evidence Act is not a mandatory one of law. It provides that the court may presume that the husband or his relatives abetted the victim's suicide, thus making the presumption one of fact. Thus the burden of proof that the suicide was not abetted is on the defendant, who can rebut this presumption with any facts proving otherwise. However, if the presumption had been one at law, it would have allocated the burden of persuasion to the defendant. Thus, the court would have to infer that the husband or his relatives abetted the suicide (Kreiger 1999: 107). By giving the courts discretion on whether to infer the abetting of dowry suicides, the statute does not recognize the reality that victims commit suicide often after years of unbearable treatment by their husbands and in-laws. Given that the in-laws and husband are usually the only witnesses to such abuse and will refuse to implicate each other, the prosecution faces a formidable

burden in proving that acts of such cruelty occurred to the extent that the court must infer that the defendant abetted the victim's suicide (Nangia 1997: 679). Thus the presumption is weak and does not operate to fulfill the goals of punishing and eradicating dowry deaths from Indian society.

The issues that arise when these laws are examined closely reflect the tension in Indian society between a segment of the culture that wishes to eradicate dowry related violence in the interests of changing existing gender roles, and another segment of culture that wants to ensure patriarchal traditions prevail at any cost. Such is the conflict between the dowry prohibition laws that seek to transform a cultural phenomenon, and their enforcement which resists this transformation. We have seen that legal issues arising out of the structure of the dowry prohibition laws operate antagonistically against the goals of eradicating dowry violence. What remains to be discussed is the failure of these laws to fully address cultural beliefs supporting dowry related violence.

IV. Problems with Transformative Law: Cultural Resistance to Enforcement of the Dowry Law

It is questionable whether the dowry prohibition laws were enacted having fully taken into account the social customs, beliefs and values that would resist enforcement of these laws (Fahn 1990: 130). However, we cannot assume that the Indian Parliament innocently passed dowry prohibition laws expecting dowry violence to cease effectively (Fahn 1990: 130). As the Dowry Prohibition Act was amended, the legislature seemed to redress the ways in which defendants would escape criminal liability for dowry related violence, and yet acknowledge that dowry violence was a "deep-rooted social problem" (Fahn 1990: 130). The problem remains, as detailed above, that the amendments have only made perpetrators look for other legal loopholes to escape liability. This begs the

inquiry whether the laws would operate more successfully today if they would address the social norms and beliefs underpinning dowry related violence. This involves examining what cultural notions support the dowry system, and specifically how society prevents the laws from being enforced.

A. How Cultural Attitudes Affect the Law

Role of Women

Women have a second-class role in Indian society that underlies the cultural antagonism preventing laws from effectively changing women's social status. During the debate on the Dowry Prohibition Act before its enactment, a legislative member stated, "As soon as our women get economic opportunities and economic freedom, as soon as avenues of employment...are opened to them, as soon as they becomes independent of their families, possibly there would not be any occasion for this law to operate." (Hem Barua, 1959, 36 Lok Sabha Debates, Column 3476.) Ironically, Dr. S.L. Hooja notes that "it is unfortunate that the boy's side not only wants that the girl should be highly educated, should be long to a highly connected family and should be an earning member, but also demands dowry." (Hooja 1969: 212). Clearly, powerful cultural forces entrenching women in a patriarchal system resist the possibilities of women rising in socio-economic status.

As technological changes pervade India today -- the introduction of the Internet, digital technology, genetic engineering, and computer technology, women clearly remain entrenched in a status that remains unamenable to these changes. Technology, it seems, is used against them rather than as a tool to improve their status with communicative possibilities that could change their role in society. The discrimination against women begins from the time that parents become aware of the sex of a fetus in the womb. Girl babies are cause for sorrow, while male babies

are cause for celebration, since girls will belong to a different household after marriage and will be a heavy burden on family resources used to pay her dowry (Newman 1992: 111).

The cultural pressure on families to bear male children has resulted in a high rate of abortions of female babies after amniocentesis results display the sex of fetuses. Sadly, this practice has now begun to affect the ratio of women to men in the Indian population (Newman 1992: 111). Indeed, girls are often neglected so much that they are given less education and medical care than boys (Newman 1992: 112). Female infant mortality in India remains the second highest in the world -- infant mortality rates according to the UN Population Fund report for the year 2000 are forty percent higher for female infants than male. (Hitchcock 2001, citing United Nations Population Fund Report of 2000). If the infant is actually born, mothers breast-feed infant girls much less than boys to start ovulating quickly and conceive again to hopefully conceive a boy. (Singh 1989: 138).

Unfortunately, life after marriage for many women worsens, and they have little choice in tolerating the lifestyle in store for them. It is culturally mandatory for women to marry if they are to live without being stigmatized and ostracized by their communities (Fahn 1990: 107). Once married, new wives are the lowest-ranking members of a household and are thus treated as servants (Fahn 1990: 114). Indeed, the amount of dowry a new wife brings with her reflects the quality of treatment she will receive in her new family (Fahn 1990: 112). Women's lives in rural India are often divided into two stages that deny her adolescence: pre-puberty, which is pre-womanhood, and post-puberty, which is womanhood (Singh 1989: 138-139). From around the time she is five years old, she is prepared for womanhood, being taught how to run a household and be a mother. After puberty, she is thrust into a world where she may no longer

play freely in sports, and must face the humiliation of being treated as "impure" whenever she menstruates. In rural areas her education usually ends after puberty begins so that she may concentrate on household matters in further preparation for marriage. Because she now has the ability to bear children, fathers are pressured to marry her quickly -- and this pressure induces many vulnerable families with daughters to give dowry to a demanding family that will accept the daughters in an arranged marriage (same source). Clearly, there is no opportunity for women to be educated in this system or to foster personal growth. Thus they remain at the mercy of their new husbands and in-laws as newlyweds -- a prime position to be in to be harassed for dowry.

In urban areas where women may receive more of an education and may be employed, they are still confined as the supplier of income for their husband and in-laws. A woman is encouraged to receive an education only sufficient to make her an attractive marriage candidate to men with social status who would consider this trait a desirable one. (Nangia 1997: 648). However, she cannot be too educated -- that is, more educated or intelligent than her partner -- otherwise she would be an undesirable candidate for marriage since she would be considered less likely to be humble, chaste and obedient. A woman who wishes to pursue education as a priority over marriage would be considered selfish and arrogant. (same source).

Women who are educated and marry are still vulnerable to abuse, as is illustrated by the story of Sangeeta Goel. Although she was a Ph.D. graduate of physics and earned a good amount of income, her salary was nevertheless inadequate for her in-laws. Though economically self-sufficient, she felt pressured to please her in-laws having grown up in a society that frowned upon newlywed women who could not adjust to new family life. She worked harder but found it increasingly difficult to meet

her in-laws' demands. As a "dutiful" daughter, she assured her parents that she would continue to try and please her in-laws but hardly five months after her marriage, she was found poisoned in her in-laws' house (Agrawal 1995).

Since most marriages in India are still arranged by families, women do not interact much with men until the time of their marriage. Women are taught from childhood to emulate the goddess Sita, who was chaste, shy and obedient to her husband in the religious epic Ramayana. Goddesses in Hindu mythology such as Kali and Durga who show strength and power take on supportive roles as consorts next to their god-husband, Shiva. (Banerjee 1997; Nangia 1997: 647). Given the joint family system prevalent in Indian society, women are expected to live with their husbands and his relatives in the same house and to respect the elders in the new household. Consequently, the newlywed woman is vulnerable to abuse in several respects: she is sexually naive, taught to sacrifice her self over family, pressured to compromise and responsible for adjusting to her new family. Any abuse by her new family is considered her fault. Indeed, if she returns to her immediate family or calls on them for help, she and her family will be socially stigmatized. Thus, a woman's family will often send her back to her in-laws telling her to adjust to them and try to please them. (Nangia 1997: 649).

This social system is a supportive network to nurture the dowry system because the newlywed woman is vulnerable to abuse. Statistics show that half of 10,000 Indian women find violence to be a normal part of married life. (Hitchcock 2001). Statistics also show that the main reasons domestic abuse occur are because the wife has not prepared meals on time, not prepared meals to the husband's liking, not cared well for children and not managed the household to the in-laws' liking (The Statesman, 2000).

It must be noted that dowry related violence in India is not completely perpetrated by one sex. It is directed at young, vulnerable newly married women and brides, but the in-laws who participate in dowry harassment and dowry deaths often involve mother in laws and sister in laws -- women who have themselves been treated with violence in their earlier days of marriage. Some of these women view the system as one in which their ultimate survival depends on the amount of money they can extract from others. Others view the system as perpetuating violence; if violence was done to them when they were vulnerable, then they will have the power to inflict the same violence one day on another vulnerable woman (author's personal knowledge of relatives' experiences, Fahn 1990: 104). Those Indian wives who survive daily mistreatment by in-laws go on to find life bitter, depressing, helpless, and often not worth living. (Interview K.A.; *The Statesman* 2000). Social affairs writer Lalita Pannicker notes that by the time a girl becomes an adult "she has lost most of her self-respect and self-worth and is conditioned to accept humiliation heaped upon her" (Behdi 2000).

Similarly, the psychology with which men are raised feed this system of disparaging young wives. Social commentators have observed that men often view their wives' roles as that of their mother; Lalita Pannicker observes that "from birth the boy child is conditioned to expect that his every wish will be fulfilled and the very status of parents depends on how many sons they have" (same source). Given these cultural attitudes with which men and women are raised, it is not so surprising that dowry exchange is accepted as yet another way for newlywed Indian women to be confined in a subservient role.

A patriarchal social system, however, is not the only means by which dowry related violence persists in India. Of importance is the obsession with social status and reputation in Indian society.

Importance of Social Status

Dowry is sought after and given mainly to move up the social ladder (Hitchcock 2001; Singh 1985: 27; Umar 1998: 39). As the Indian economy has opened up to foreign investment and technology booms in the 1990s, the gulf between rich and poor has widened, resulting in greater economic uncertainty among all social classes. India's fast growing middle class wrestles with satisfying consumer lusts for the latest technology and social comforts in order to move up in social status. The ability to obtain technology and domestic comforts is considered an important goal. Consumer advertising and programming on television in recent decades serve to show families what modern conveniences they ought to covet. (Hitchcock 2001). Indeed, Umar found that 40.6 percent of the dowry cases he studied involved demands for electronic gadgets and domestic goods (1998: 266). Thus the dowry related violence relegating newlywed women to a slave status stems mainly from the desire for economic gain and social mobility.

Progressing in social status has become so crucial that those who do not obtain coveted items are ridiculed by friends and colleagues (Umar 1998: 39). Thus the pressure to keep up with the wealth of others in the community drives many families to seek such wealth through marriage. Marriage becomes a tool for wealth in such a situation. As a result, fathers of brides and newlywed wives steep their families in debts to pay dowries to those who want to keep up their reputation. This social norm encourages fathers to seek dowries for their sons so that they can pay for their daughters' dowries.

The desire for keeping up reputation is so great that families are willing to accept the abuse of wives who do not give enough dowry to their in-laws liking. Worst of all, reputation dictates that wives' families "pay" for their failure to give enough dowry with the death of their

beloved daughters (Umar 1998: 39). Social reputation has been taken to such an extreme that in some cases, the parents of a dowry death victim may request the perpetrating family to marry the victim's sister. Though such a request may be shocking, society often views a dowry death as a tarnishment to the victim's and her family's reputation, and therefore the victim's family will find it difficult to find bridegrooms for other daughters in their household. Given the social pressures for a girl to marry as soon as possible, the victim's family may negotiate for a lower dowry amount and send remaining daughters to yet another unhappy fate (Banerjee 1997). Unfortunately social status has such an importance that families would be willing to sacrifice their loved ones for social survival.

Indian society's hunger for social status, coupled with its relegation of young women to subservient roles together form a fertile ground on which the dowry system continues to flourish.

Indifference to the occurrences of dowry harassment and deaths

Due to the societal structure supporting dowry harassment and dowry deaths, it is not surprising that people are indifferent to news regarding dowry related violence. Among the news articles researched for this comment (mostly from The Deccan Herald and Times of India), none publicized dowry deaths on their front pages; the articles were usually relegated to a brief paragraph among the local city news pages. In these news articles, "[o]ne cannot help but be struck by the offhand way in which a young woman's life and death is summed up, matter of factly...as one would report a traffic accident or the death of a cancer patient -- tragic certainly, but such things are to be expected" (Hitchcock 2001).

The presumption that people are not aware of the daily occurrences of dowry harassment and dowry deaths is untenable. On the contrary, when asked about their knowledge of dowry cases all interviewees stated that dowry violence was an unfortunate recurrence. (Interviews K.A.,

S.K., S.R., J.S.). Interestingly however, nearly all commented that dowry cases occur only in a certain region of India, or among low income families, or among certain rich families, or among certain castes. (same sources). Some had no knowledge that taking or giving dowry was illegal (Interview J.S.). This suggests there may be a lack of knowledge among Indians that dowry violence encompasses every social class and most regions of India (Banerjee 1997). It appears that "public acknowledgement of the unnatural deaths of young women... is restricted to perfunctory two-line news items in the daily newspapers... thereafter they drop from public consciousness into the anonymity of a police or court case" (Menon 1999).

Indeed, few know the exact statistics because they are often contradictory; though some point to a sharp increase in dowry related violence, such statistics could just be indicative of an increase in reporting dowry related crimes. (Hitchcock 2001; The Press Trust of India 2000; The Statesman 2000; Menon 1999). Additionally, statistics that deem most violence in households to be related to dowry demands may be false because policemen and lawyers often encourage battered women to add dowry harassment to their complaints in order to receive more money and more easily obtain a divorce. (Kishwar 2001). Regardless, there seems to be general agreement among researchers that dowry related violence has risen (Hitchcock 2001; Newman 1992: 113; Menon 1999).

What complicates tracking dowry related crimes is that police often classify such incidents as "accidents" or "suicides" for reasons we shall observe below (Menon 1999). Sadly, this may mean that the statistics showing a rise in dowry deaths are actually much higher but go unreported. Estimates have been made as high as 15,000 for dowry deaths having occurred nationwide every year since the late 1990's (Banerjee 1997).

Clearly, a transformative law such as the Dowry Prohibition Act cannot work alone to transform a society structured in favor of the very evil the law attempts to eradicate. Having failed to take into account these cultural emphases on the patriarch's supremacy, social status, and indifference to dowry related violence, the Dowry Prohibition Act cannot possibly be implemented effectively. Yet, the factors listed above are not all that needs to be considered in enacting a law eradicating dowry related violence. Having taken cultural norms into consideration, the problems with enforcing dowry prohibition laws must now be examined. Based on this analysis, the culture's resistance to this law enforcement reflects the failure of Parliament to legislate using a socio-economic perspective.

B. Cultural Resistance: lack of enforcement

Husband and family altering evidence

As mentioned above, since most dowry related crimes occur within the household of the victim's in-laws and husband, the in-laws and husband are in a perfect position to alter or destroy evidence of the crime. Of course, none in the household will be willing to testify against one another (Menon 1999; Nangia 1997: 679). They may not have to, since by the time the police arrive the body may be burned to ashes along with any evidence of murder. And if the family has connections to high ranking government officials or politicians to whom they can ask for favors, it is highly unlikely the matter will ever heard of again (Umar 1998: 273). This is an example of the failure of the dowry prohibition laws to consider providing for obstructions of evidence in response to this cultural resistance to the law. Rather than fearing criminal liability, the perpetrators merely find another way to cover up the crime. The law clearly does not deter them.

Police accepting bribes, altering evidence and reclassifying dowry crimes

Police officers play a crucial role in reporting and investigating dowry related crimes. The dowry prohibition laws have given them the wide discretion in filing dowry harassment and dowry death claims, reporting these complaints, and investigating them with minimal supervision. (Dowry Prohibition Act 1961). What the dowry prohibition laws have failed to take into consideration is that police officers have long considered any type of domestic violence to be "household matters" that are better left to be privately resolved (Nangia 1997: 690). Nangia (same source) observes that police officers "frequently fail to register offenses and carelessly or dishonestly investigate and prosecute cases." In addition, social pressures to accumulate wealth and move up in social status result in a regular acceptance of bribes to either register a dowry case, or to dismiss one. Depending on the amount of money the victim's family or the perpetrator's family can pay, law enforcement officers will be negotiable in seeking justice (Menon 1999; Banerjee 1997; Kishwar 2001). In many cases, police officers have used dowry crimes as a tool for their own economic gain. These officers threaten to arrest the husband and his family to extort money from them, or they threaten the family to oppose bail unless the accused family pays a certain sum of money to the officer (Kishwar 2001).

The frequent alteration of evidence may also occur. Cases have occurred where dying declarations recorded by law enforcement differ from other witness recollections. Delaying investigations also allows an arrested husband to remarry while out on bail where police have failed to charge a husband for abetting in his wife's murder though evidence showed he watched her burn to death (Nangia 1997: 690-691). Police are often bribed by perpetrators to alter evidence in ways such as producing false post-mortem and forensic reports, and destroying circumstantial

evidence (Kishwar 2001). Indeed, it is no surprise that the majority of defendants in dowry cases are acquitted, and that the usual basis for acquittal is "insufficient evidence" (Fahn 1990: 121).

Police officers' obvious disregard for filing dowry related complaints has been best documented by Parvathi Menon's analysis of two public reports on the high rate of unnatural deaths of women in the city of Bangalore. These reports illustrate that many cases of unnatural deaths have been reported as "accidents" or "suicides" although the causes of death seem suspiciously coincidental and akin to dowry related violence. One report tracked from 1997 to 1999 the unnatural deaths of young women in Bangalore and then compared statistics with the police records.

This report found that a high number of cases were closed as "accidents" for want of evidence. Out of 550 cases in 1997, the report found 71 percent closed by police as "kitchen/cooking accidents" and "stove bursts" after investigation. Such a high rate of this particular kind of accident is very suspect, particularly since most of the accidents involve daughter-in-laws and occur at very late times of the night, usually long after the last meal of the day would be cooked. Most of the victims' deaths leave behind small children. Women's rights organizations such as Vimochana, who authored the report comparing statistics with the police, attribute the law enforcement failure to classify dowry deaths to a temptation to reduce workload. (Menon 1999).

However, a contributing factor may also be the inconsistent dying declarations given by victims shortly before their death. Dying declarations are admissible evidence of statements made by a victim who subsequently dies from his or her injuries. Such evidence is admissible usually on the ground that a dying person is unlikely to speak untruthfully (Nangia 1997: footnote 255). Members of Vimochana, have observed dying declarations at Bangalore's Victoria Hospital since 1997 (Shivaram

2000). Since dying declarations are public procedures, the dying woman's first declaration always reflects fears of mistreatment of her children or immediate family after death; thus she declares her cause of burns as being a "stoveburst." The police merely record this declaration and do not bother to investigate into the questionable circumstances.

What complicates evidence further is that the dying woman may then revise her statement in an attempt to admit what really happened. In one reported case, a woman gave three dying declarations; one saying she was burned in a kitchen accident, another saying she attempted suicide, and a final one admitting that her mother-in-law set her on fire (Menon 1999). Although meant to be recorded privately, such declarations are often given in front of the husband and his relatives. Clearly, the Indian Evidence Act has failed to take the fears instilled by dowry related violence into account with victims' dying declarations. Police officers thus resist the purpose of the presumptions in the Act by failing to investigate the real cause of death of these burned victims. Furthermore, the Dowry Prohibition Act has failed to take into consideration law enforcement's resistance because it has given law enforcement nearly full discretion to seek justice for dowry crime victims.

Encouragement for profitable settlements

Police corruption is not the only contributive factor to the problem of dowry prohibition law enforcement. Advocates for victims have been known to entice victims and their families into settling dowry cases for high sums of money in order for the advocates to help themselves to a healthy portion of the money (Kishwar 2001).

Even worse, the victim's immediate family may encourage the victim to enter into a settlement asking for more money than the amount of dowry that was demanded, in order for the victim's family to profit and accumulate more wealth. In the end, the young wife's immediate family

may receive some money, and the young wife is left to return to her in-laws and husband where the cycle of dowry harassment and violence will continue, possibly until her death. In the alternative, the exaggerated claim for return of dowry will be withdrawn (Kishwar 2001). In short, the dowry prohibition laws have not taken away the prospects of economic gain by parties to a criminal lawsuit that were never intended to be protected in these cases. The social pressure to accumulate wealth and social status leaves young women devoid of support from anyone. When it comes to their future, their advocate, immediate family and members of society will ultimately turn on them for the sake of economic gain.

Abuse of the dowry prohibition laws by false complaints

Among the outcries against improper implementation of the Dowry Prohibition Act are criticisms that the Act allows false accusations to torment in-laws and husbands for money or divorce (Kishwar 2001). Such abuse of the laws only weakens their enforcement and makes it even more difficult to enforce the law for honest victims of dowry related violence.

Critics of dowry related prosecutions have referred to numerous cases where families have filed dowry harassment suits out of sheer retaliation against disliked in-laws, for monetary gain, or to more easily gain a divorce since India's divorce laws make it difficult to divorce. Sadly, since crimes under the Dowry Prohibition Act are non-bailable offenses, many elderly relatives or members of the husband's family who are completely innocent of any wrongdoing end up in prison and are refused bail. In addition, women's rights organizations find themselves helping such false complainants in their profiteering endeavors by showing their support in court. In one case referred to by an interviewee, his friend's wife charged the interviewee's friend, the friend's parents and the friend's relatives with dowry harassment and these parties were arrested in the middle of the night. The friend's frail elderly parents were

jailed without bail along with the interviewee's friend and despite the friend's connections with the best advocate possible, he and his family were delayed bail. The family settled, and the friend and his family were finally released, traumatized by this experience (Interview K.A.).

The question in regard to these false accusations is whether they are as rampant as some critics assert they are (Kishwar 2001). Madhu Kishwar, among many anti-dowry activists, appeals to society to recognize that there are genuine cases which need to be separated from the false ones in order to carry out the purposes of the dowry prohibition laws (2001). Regardless, we must note that abuse of the dowry prohibition laws is yet another form of cultural resistance to them. False complaints for monetary gain are yet another reflection of the high value for accumulation of wealth in Indian society.

Judicial interpretation of dowry prohibition laws

The judicial system in India, as in many other countries, is handicapped by a backlog of cases. It frequently takes months for a dowry case to be heard and tried, and the average time for a case to be fully adjudicated is six to seven years (Menon 1999). Those cases that do not end up in a settlement and do make it to be fully adjudicated have a high rate of acquittals. Out of 381 dowry cases pending in one Special Court in Bangalore at the end of June 1999, only eight resulted in convictions. There were 51 acquittals. The Public Prosecutor of Bangalore attributed in part the low rate of convictions to dishonest or incompetent police investigations, overburdened prosecutors who would be trying ten to twelve cases at a time, and the effects of having to wait years to fully adjudicate a case. Over time, witnesses become hostile, and settlements are made because the parties run out of money. Most importantly, he stated that the main reason for a low rate of convictions was the liberal view of dowry cases taken by the judiciary (Menon 1999).

Case law interpreting the Dowry Prohibition Act shows a prime illustration of this liberal view. In *Arjun Dhondiba Kamble v. State of Maharashtra*, the High Court of the state held that the defendants' demands for valuable presents on holidays did not satisfy the "in connection with marriage" definition of dowry (1995 AIHC 273). Thus any harassment of the victim or her family for monetary gain may be criminally liable depending on what time of the year such harassment is done. This view is clearly contrary to dowry prohibition law goals that seek eradication of the financial strain and violence inflicted by such monetary demands.

In yet another case, the High Court of the state held that the facts that the victim was a young woman and that her death was not accidental were not enough to establish under section 113-B of the Indian Evidence Act that the death must have occurred otherwise than under normal circumstances (Chandhoke 2001). The case of *Sudha Goel*, however, is a prime illustration of cultural attitudes shaping the rulings of courts at the lower, appellate and Supreme Court levels. Goel was twenty years old and was tortured by her husband, his mother and his brother for bringing insufficient dowry during the first month of her marriage. Pregnant and due for childbirth in one week, she was set on fire by her husband and in-laws. Neighbors heard her screams and found her aflame. In her dying declaration, she orally told witnesses and police that her mother-in-law and husband were responsible for the crime; but the police officer's written declaration reflected the incident as an accident. Presented with this evidence, the trial court convicted the husband. The High Court reversed this decision relying on the written declaration of the investigation officer though it was unsigned. Finally, the Supreme Court reversed the High Court's decision relying on the witnesses of Goel's oral statement, and

convicted the husband and mother-in-law. (Banerjee 1997; Nangia 1997: 691, footnote 254; State v. Kumar, 1986: 250, 253-254).

Lower courts tend to rule more narrowly than the appellate and Supreme Court when interpreting the dowry prohibition laws. In Delhi, a Municipal Court held in 1990 that expensive presents given to the bride did not constitute dowry; dowry only encompassed presents given to the bridal couple and others (Hakam Singh v. State of Punjab, 1990: 343). The problem with this is that, as mentioned above, parents of a bride will often give valuable gifts to the bride in her name, knowing that the husband and in-laws will use them after the marriage, and to ensure that the marriage takes place smoothly since such gifts are expected in the first place (Nangia 1997: 658). Lower courts also frequently grant bail for defendants though dowry related crimes are non-bailable offenses that the Supreme Court scrutinizes very carefully. In Amarnath Gupta v. State of Madhya Pradesh, the state court issued an order granting bail because the victim's diary stated that no one was to blame for her suicide (Crim. L. J. 2163 1990). The Supreme Court wasn't convinced and reversed. Although the Supreme Court has made efforts generally to adjudicate dowry cases more fairly with a goal towards eradicating dowry related violence, the ways in which other court levels interpret evidence are clearly inconsistent, suggesting a cultural bias by decision makers in the judiciary generally regarding dowry crimes.

Coupled with dishonest police investigations, alterations of evidence by perpetrators, numerous dying declarations by victims, and false complaints, these ominous court rulings are the final card stacked against enforcement of the dowry prohibition laws. The stricter the amendments to these laws have become, the more the culture has found ways to resist them. Indeed, judges who adjudicate dowry cases that appear in courts are themselves subject to gender biases either consciously

or subconsciously -- a mindset that plays a role in the precedent that they set (Sitaraman 1999: 290). Indeed, many published opinions reflect an acceptance of joint family structures, traditional expectations of housewife duties, and lack of state intervention regarding "family" matters (Sitaraman 1999: 292). The Kumar opinion (see *supra*) at the High Court level reflects prevailing legal attitudes (same source). He looked anecdotally to a judge who opined that expectations of gifts from a wife's family to her in-laws are legitimate when a male child is born, and that therefore the evidence was not sufficient that the wife was ill-treated in the household by her in-laws (1999: 300). Clearly, the fact that neighbors found Goel aflame while her household members watched her burn silently was not a significant fact for the judge to consider when determining whether she underwent dowry harassment.

While the Supreme Court fortunately reversed this decision, justice did not prevail in the case of *Sharad Birdhi Chand Sarda v. State of Maharashtra* (1984 SCC (Cr.) 487). In this case, the Supreme Court reversed the High Court's decision and ruled the death of Manju a suicide on the grounds that she suffered from "deep depression, a spirit of revenge and unreasonable expectations" when she died only four months after her wedding from cyanide poisoning (Sitaraman 1999: 304). The judge's examination of the victim's state of mind before her death was based on the victim's letters to family and friends (though these letters expressed her unhappiness), and a quote from a psychiatrist's book that argued that suicide is caused by "shattered expectations" (Sitaraman 1999: 306). Clearly, the Court did not even bother to rely on any expert opinion (the judge never had the letters read by a psychiatrist or other expert witness); the judge preferred to play a psychiatrist's role himself based on a single quote in a book.

When judges themselves use their authority to interpret laws against the laws' purposes, there is little possibility that the laws will ever effect changes in cultural belief systems. It is apparent that the very enforcers of this legislation participate in resisting against it from the police officer level to the judiciary level. Based on these observations, it naturally follows that the dowry prohibition laws must be reformed to address the cultural aspects fostering dowry violence.

V. Possible Solutions: A Socio-Legal Perspective

Studies of comparative law are best focused not only on the laws explicitly expressed by a nation, but on the tradition behind it reflecting cultural values regarding the role of law in society. (Merryman 1969: 2). Similarly, transformative legislation, when enacted, must focus not only on ways of changing specific social norms but also ways of changing the cultural values that feed those norms. Dowry prohibition laws must address the prevalence of law enforcement corruption, hunger for monetary gain, importance of social status and attitude towards women in order to effectively curtail the violence related to dowry.

The following suggestions on improving dowry prohibition law implementation are based on my personal ideas and scholars' research-based conclusions. These suggestions are thoughtful insights based on my experience and observations as an Indo-American, and the research done by the scholars referenced in the following discussion.

A. Strengthening the law as written

One of the major legal drawbacks affecting enforcement of the dowry prohibition laws is the flawed definition of dowry. Scholars agree that the definition of dowry should be reformed to include "expected" gifts and further clarify the "in connection with marriage" requirement. (Nangia 1997: 656-661; Umar 1998: 273; Banerjee 1997; Hitchcock 2001). As mentioned in our analysis above regarding problems with the dowry

prohibition laws, this requirement has ambiguities as to how much a "connection with marriage" is needed to satisfy the definition of dowry. The issue that arises is whether a coerced or "expected" valuable gift would satisfy this requirement. By revising the statute to include a ceiling on the amount that can be spent on gifts, a large loophole currently taken advantage of by dowry perpetrators would be possibly eliminated. (same sources). Perhaps this ceiling could be determined by a certain percentage of gift value in proportion to a family's income.

Another major area of dowry law that needs reform is the seven year marriage limit for dowry death claims to benefit from the presumption that the defendant caused the death. Section 113-B of the Indian Evidence Act will only allow this presumption if evidence of cruelty is shown, and only if an unnatural death occurred within the first seven years of the marriage (Indian Evidence Act, section 113-B). We have established above that the definition of cruelty remains ambiguous and underinclusive of various forms of abuse. (See the analysis above describing problems with the law.)

Scholars have called for the removal of this requirement as an obstacle to proving that an unnatural death related to dowry was caused by the defendant (Nangia 1997: 677-78; Umar 1998: 266; Banerjee 1997). The seven year limit must be reassessed and eliminated because the reasoning for its existence is flawed (Nangia 1997: 677-78) . It was thought by legislators that seven years would be ample time to calm an abusive relationship because children and time would work together to harmonize a household. But as we hear about cases where criminals are waiting until the seven years are over to kill their victims, it becomes clear that the abuse will not stop as long as there is economic gain from it. Scholars agree that the seven year limit only postpones murder (Umar 1998: 266; Banerjee 1997). Since demands for dowry recur throughout a

marriage, time should not be a determining factor for when claims may be brought. As long as the abuse continues, it should be punishable by law. These and many more reforms are needed for the law to work effectively. Cultural reforms, however, are of utmost importance as well.

B. Strengthening enforcement of the law culturally

Women's rights organizations in India have accomplished quite a bit by lobbying to implement the dowry prohibition laws and continuing to support women victims who file complaints under these laws. (Kishwar 2001; Butalia 1997). By providing them with even more funding to support programs publicizing dowry related issues, the public can be given the opportunity to reassess their current cultural values. These organizations could participate in arranging marriages suitably without dowry exchanges (Hooja 1969: 218). Other programs that could be implemented include providing more shelters for abused women, and employment training for women to seek self-sufficiency. To avoid supporting false claims, funding should also be available to organizations to investigate dowry complaints and ensure that they are genuine (Kishwar 2001).

Many scholars agree that greater education for women, children and the public are needed regarding dowry's social evils and the rights that can be sought under the dowry prohibition laws. (Singh 1985: 2; Umar 1998: 278; Hitchcock 2001; The Press Trust of India 2000). Children who learn from an early age that dowry violence is not tolerated could start a generation of people who will be discouraged from continuing such abuse. Media publicizing the social harms dowry violence causes may very well create a disparaging outlook to dowry exchanges and thus no longer will reputation be based on how much wealth one can obtain through marriage.

Most importantly, women must learn about what alternatives are available to them should abuse in their marriages occur; and their fears of societal stigma for leaving abusive households should be addressed.

These suggestions are few among numerous ways of resolving cultural conflict with transformative laws. The essential idea to note is that whichever way reforms take shape, they must address cultural features of Indian society in order to effectively change it. Such a cultural reform will not be easily or quickly done of course, but I assert that it may be the most efficient way for any legal system to progress.

VI. Conclusion

Recognizing the connection between laws and the cultural traditions behind them can enable legislators to effectively govern society. As the historian Marc Galanter and other scholars have suggested, laws that do not address this socio-legal connection become "captured" law -- law that is captive to a societal interpretation that conflicts with the law's goals (Krieger 1999: 89 quoting Galanter 1989: 15). This concept has been illustrated by our analysis of dowry prohibition laws and their interaction with Indian society. We have seen how the failure to recognize this concept has impaired the implementation of the dowry prohibition laws in India. At the heart of this cultural resistance to the laws are deeply rooted beliefs confining young women to patriarchal ideals.

First, we have observed how ancient Indian traditions of gift-giving have evolved into coerced dowry practices feeding consumer lust. An examination of this history has provided us with the background necessary to examine the ways in which the dowry prohibition laws seek to counteract the monetary greed that the dowry system represents. Having analyzed the law as written and the problems with its application, we have next observed some cultural features of modern Indian society that contribute to a social structure supporting dowry related activities. These

include the public's patriarchal attitudes shaping women's role in society, the public's importance of social status in an economically uncertain society, and the social indifference to reports of dowry related violence. Next, we noted the cultural features of monetary gain, social status and indifference reflected in the specific obstacles preventing enforcement of the dowry prohibition laws. These specific obstacles include tampering with evidence, police corruption, false complaints, and judicial incompetence. With this analysis in mind, we have finally examined a few possibilities that would possibly ameliorate the current situation over time.

This paper analyzes law in the context of cultural attitudes and beliefs. Research has shown that there are numerous social issues to be resolved in order to curb dowry related violence. At the same time, the amount of analysis being done on this issue by the international community, schools, Indian courts and Indian government officials suggests that there is a growing desire to put an end to dowry violence. It is my hope that Indian leaders will increase efforts to fulfill this desire in tribute to the young women who have suffered.

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