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## Dowry Deaths: Proposing a Standard for Implementation of Domestic Legislation in Accordance with Human Rights Obligations

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DOWRY DEATHS: PROPOSING A STANDARD  
FOR IMPLEMENTATION OF DOMESTIC  
LEGISLATION IN ACCORDANCE  
WITH HUMAN RIGHTS OBLIGATIONS

*Namratha S. Ravikant\**

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## INTRODUCTION

In 1996 in India, eighteen year old Tanvier Singh married Jinnah.<sup>1</sup>

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1. See Stephen Mansfield, *Dowries Still Life and Death for Indian Brides*, MAINICHI DAILY NEWS, June 12, 1997, at 13.

Jinnah received cash, a motor scooter, and jewelry from the Singhs worth in all over \$1,200.<sup>2</sup> In spite of this generous dowry, Jinnah and his family wanted even more.<sup>3</sup> They continued to harass Tanvier's parents for additional money and a color television.<sup>4</sup> When the Singhs did not reply, Tanvier suffered repeated beatings at the hands of her in-laws.<sup>5</sup> Eventually, Jinnah's family poured kerosene over her and watched her burn to death.<sup>6</sup> Neighbors who came forward to tell Tanvier's story were too late, as they had been silent prior to her death.<sup>7</sup>

Although initially shocking, Tanvier's tragedy is a commonplace occurrence in India. Dowry deaths result from the Indian marriage custom of dowry.<sup>8</sup> Among Hindus, who comprise approximately 80% of the Indian population, dowry is an expected part of the marriage.<sup>9</sup> In spite of India's Dowry Prohibition Act of 1961<sup>10</sup> and additional criminal and evidence statutes designed to prohibit dowry demands,<sup>11</sup> the practice of dowry continues to be widespread, which transcends all class, socioeconomic, and religious lines in India.<sup>12</sup> Domestic

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2. See Mansfield, *supra* note 1.
  3. See Mansfield, *supra* note 1.
  4. See Mansfield, *supra* note 1.
  5. See Mansfield, *supra* note 1.
  6. See Mansfield, *supra* note 1.
  7. See Mansfield, *supra* note 1.
  8. See R.K. Gupta & A.K. Srivastava, *Study of Fatal Burns Cases in Kanpur (India)*, 37 FORENSIC SCI. INT'L 81, 81 (1988) ("In most of the cases, dowry is the first and foremost motive behind this heinous crime."); see also, Molly Moore, *Consumerism Fuels Dowry-Death Wave: Bride Burnings on the Increase in India*, WASH. POST, Mar. 17, 1995, at A35 (noting that an average of 17 married women are burned, strangled, poisoned, or otherwise killed each day because of their family's inability to meet the dowry demands of the husband's family).
  9. See *Two Indian Men Sentenced to Death for Dowry Murder*, Reuters World Service, Jan. 23, 1996 (on file with author); see also, Moore, *supra* note 8 (noting dowry has become a legitimate way of improving one's life through marriage).
  10. Dowry Prohibition Act, No. 28 of 1961, 21 INDIA A.I.R. MANUAL 127 (5th ed. 1989) (as amended); see also, Melissa Spatz, *A "Lesser" Crime: A Comparative Study of Legal Defenses for Men Who Kill Their Wives*, 24 COLUM. J.L. & SOC. PROBS. 597, 608-10 (1991) (discussing government attempts to criminalize dowry deaths).
  11. See, e.g., INDIA PEN. CODE §§ 304B, 498A (Basu, 1998); Evidence Act § 113A & B, No. I. of 1872, 23 INDIA A.I.R. MANUAL 791, 794 (5th ed. 1989) (as amended).
  12. See Hema Shukla, *India Bride's Alleged Rape Symbol of Dowry Injustice*, CHATTANOOGA FREE PRESS, Aug. 2, 1997, at A3; *India Makes Demanding Dowry An Offense*, Agence France Presse, July 17, 1996, available in LEXIS, Nexis Library, AFP File.

legislation to prohibit and punish dowry-related violence has chilled neither the cultural practice of giving dowry nor the horrific related deaths.<sup>13</sup>

This article discusses the due diligence standard of governmental responsibility,<sup>14</sup> and measures the adequacy of India's implementation of its national dowry death legislation in accordance with its international human rights obligations. India has enacted legislation designed to combat dowry violence. Although India's laws seem to follow the letter of its international human rights obligations, the country violates the spirit of human rights by lacking an actual commitment to implement this legislation. This Article demonstrates and examines India's breach of its duty of due diligence. Such a breach constitutes government complicity in condoning and perpetuating dowry deaths, which violate women's human rights in India. Through this complicity, India dishonors its obligations under the Universal Declaration of Human Rights,<sup>15</sup> the International Covenant on Social, Economic, and Cultural Rights,<sup>16</sup> the International Covenant on Civil and Political Rights,<sup>17</sup> the Convention of Elimination of All Forms of Discrimination Against Women,<sup>18</sup> the Declaration on the Elimination

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13. *Indian Women Victims of Violence, Discrimination: UN Committee*, Agence France Presse, Aug. 1, 1997, available in LEXIS, Nexis Library, AFP File. The UN Human Rights Committee noted that India's legislative measures to stop violence and mistreatment of women were insufficient, and these abuses need to be stopped. The Committee discussed dowry deaths as an example of one of these severe abuses against Indian women. See Anshu Nangia, Note, *The Tragedy of Bride Burning in India: How Should the Law Address It?*, 22 BROOK. J. INT'L L. 637, 638 (1997). The author notes that India's current laws prohibiting dowry and dowry related violence are ineffective in curtailing the practice of dowry or the resulting violence.
  14. The scope of this article is limited to an in depth examination of the due diligence standard. Other standards of government responsibility will not be discussed here.
  15. *Universal Declaration of Human Rights*, G.A. Res. 217 (III), U.N. Doc. A/810 (1948) [hereinafter UDHR].
  16. *International Covenant on Economic, Social, and Cultural Rights*, opened for signature Dec. 19, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].
  17. *International Covenant on Civil and Political Rights*, opened for signature Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].
  18. *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature Mar. 1, 1980, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter Women's Convention].

of Violence Against Women,<sup>19</sup> and the Beijing Declaration and Platform for Action.<sup>20</sup>

Part I provides a cultural context in which to understand the practice of dowry and the phenomenon of dowry deaths. This section explores the link between the history and current meaning of dowry and the various economic and social factors which fuel dowry deaths. Part II proposes the standard of due diligence to establish the level of India's responsibility in preventing dowry deaths and in punishing those who commit them. The history and basic elements of due diligence are explored. Moreover, this section examines the role that a country's due diligence plays in fulfilling its international obligations under several international human rights instruments. Part III illustrates how India has failed to take reasonable measures under the circumstances to prevent and punish dowry deaths. Thus, India has failed to satisfy the due diligence standard.

Part IV illustrates how India's failure to exercise due diligence leads to its national participation in human rights violations. This section discusses five human rights implicated in the commission of dowry deaths: the right to freedom from discrimination,<sup>21</sup> equal rights in marriage,<sup>22</sup> the right to life, liberty, and security of a person,<sup>23</sup> the right to freedom from torture or cruel, inhuman or degrading treatment or punishment,<sup>24</sup> and the highest attainable standard of physical and mental health.<sup>25</sup> By violating these rights, India has failed to ensure the realization of human rights, which is required by the various human rights declarations and covenants discussed above.

Part V discusses potential constructive notice and cultural relativism problems in imposing a due diligence standard on India and suggests resolutions to these difficulties.

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19. *Declaration on the Elimination of Violence Against Women*, G.A. Res. 48/104, U.N. GAOR, 48th Sess., Agenda Item 111, U.N. Doc. A/RES/48/104 (1994) [hereinafter *Declaration on Elimination of Violence*].

20. *Report of the Fourth World Conf. on Women* at 4-8, U.N. Doc A/CONF. 177/20 (1995) [hereinafter *Beijing Declaration and Platform*].

21. See ICCPR, *supra* note 17, at 173-74; ICESCR, *supra* note 16, at 5; UDHR, *supra* note 15, at 72.

22. See ICCPR, *supra* note 17, at 179; UDHR, *supra* note 15, at 74.

23. See ICCPR, *supra* note 17, at 174; UDHR, *supra* note 15, at 72.

24. See ICCPR, *supra* note 17, at 175; UDHR, *supra* note 15, at 73.

25. See ICESCR, *supra* note 16, at 8.

This article concludes that by failing to exercise due diligence, India is complicit in the commission of dowry deaths and fails to foster the realization of human rights.

## I. PROVIDING A CULTURAL CONTEXT FOR THE PRACTICE OF DOWRY AND DOWRY DEATHS

### A. *The Origins of Dowry*

Dowry is the durable goods, cash, and real and movable property that the bride's family<sup>26</sup> gives to the bridegroom, his parents, or his relatives as a condition of the marriage.<sup>27</sup> Such a transfer is generally under duress, coercion, or pressure.<sup>28</sup> The practice of dowry originated in the late Vedic period, between 2500 B.C. and 1500 B.C.<sup>29</sup>

Originally, the upper castes used dowry to benefit the bride, who was unable to inherit land under the law.<sup>30</sup> To circumvent this discriminatory, gender-based law, a bride's family would give the bride a dowry that would be registered in her own name and would revert back to her in the event of divorce, annulment, or her husband's death.<sup>31</sup> The dowry was seen as *stridhan*, which literally means a woman's property.<sup>32</sup> Although no one concrete definition exists for *stridhan*, ancient Hindu law used this concept to recognize a woman's right to hold and dispose of property.<sup>33</sup> In the Muslim religion and culture, *mehr* was the equivalent of dowry.<sup>34</sup>

While the upper castes practiced dowry, the lower castes, particularly those concentrated in Northern India, practiced "bride

26. See SARA S. MITTER, *DHARMA'S DAUGHTERS* 110 (1991).

27. See Rani Jethmalani & P.K. Dey, *Dowry Deaths and Access to Justice*, in *KALI'S YUG: EMPOWERMENT, LAW AND DOWRY DEATHS*, 36, 38 (Rani Jethmalani ed., 1995).

28. See Jethmalani & Dey, *supra* note 27.

29. KAMALADEVI CHATTOPADHAYAY, *INDIAN WOMEN'S BATTLE FOR FREEDOM* 21 (1983).

30. See MITTER, *supra* note 26, at 112; see also, P. Govinda Reddy, *Consanguineous Marriages and Marriage Payment: A Study Among Three South Indian Caste Groups*, *ANNALS HUM. BIOLOGY*, July-Aug. 1988, at 263, 267 (noting the dowry system was more prevalent among higher castes).

31. See MITTER, *supra* note 26, at 112.

32. See PARAS DIWAN, *DOWRY AND PROTECTION TO MARRIED WOMEN* 114-15 (3rd. ed. 1995).

33. See DIWAN, *supra* note 32, at 114.

34. See MITTER, *supra* note 26, at 112.

price."<sup>35</sup> Bride price referred to the small amount of cash that the groom's family paid to the bride's family to compensate for the loss of their daughter and the loss of a labor source in the house and fields.<sup>36</sup>

### *B. The Contemporary Meaning of Dowry*

As time progressed, the practice of giving dowry became a widespread cultural practice among all castes,<sup>37</sup> and only tribal groups continued to practice bride price.<sup>38</sup> Today, a bride's family gives a dowry to the groom and his family, so the bride no longer receives the property for herself.<sup>39</sup> The groom's family is free to use the dowry as they wish, which leaves the wife with no financial security of her own.<sup>40</sup>

The concept of dowry evolved because of a few changes in Indian society. First, in an effort to emulate the upper castes, lower castes began to practice dowry.<sup>41</sup> Second, as Western consumer culture spread to India, families began to see dowry as a way to escape poverty and to accumulate wealth and material items quickly with little effort.<sup>42</sup> At one time, a bride's parents' gave a dowry of jewelry, saris, cash, and property.<sup>43</sup> Contemporary dowry no longer resembles this traditional and outdated version. Even for the poorest families, a typical dowry now consists of large lavish items, such as automobiles, big household appliances, furniture, large cash amounts, real property, and high-tech items, such as computers.<sup>44</sup> Thus, dowry has evolved as material acquisition has become increasingly important to all levels of society.<sup>45</sup>

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35. See ELISABETH BUMILLER, *MAY YOU BE THE MOTHER OF A HUNDRED SONS: A JOURNEY AMONG THE WOMEN OF INDIA* 48 (1990); Reddy, *supra* note 30, at 265 (noting that "bride wealth" payments are more common in a lower caste).

36. See BUMILLER, *supra* note 35.

37. See Shukla *supra* note 12, at A3.

38. See BUMILLER, *supra* note 35.

39. See MITTER, *supra* note 26, at 112.

40. See MITTER, *supra* note 26, at 112.

41. See BUMILLER, *supra* note 35, at 48-49.

42. See MITTER, *supra* note 26, at 113; Moore, *supra* note 8.

43. See DIWAN, *supra* note 32, at 115.

44. See MITTER, *supra* note 26, at 110; Moore, *supra* note 8.

45. See BUMILLER, *supra* note 35, at 49.



### C. "Dowry Deaths" Defined

Dowry deaths are commonly defined as a bride's suicide or a bride's murder committed by her husband and his family soon after the marriage because of their dissatisfaction with the dowry.<sup>46</sup> Bride burnings are the preferred form of dowry deaths, where wives are doused in kerosene and set aflame.<sup>47</sup>

Bride burning is the chosen method for many reasons. Kerosene is inexpensive, unlike guns and knives, and is available in virtually every house.<sup>48</sup> It is easily accessible and unsuspecting.<sup>49</sup> Bride burnings are popular because they often leave behind insufficient evidence of murder.<sup>50</sup> Burning takes place in the home where no witnesses are present to disprove the in-laws' logical explanation of a kitchen accident or suicide.<sup>51</sup> A low survival rate ensures that the prosecution's chief witness is never available to convict her killer.<sup>52</sup> The burned bride usually dies immediately or succumbs to infection in the hospital.<sup>53</sup> Burning also masks any pre-death torture that may be identifiable during the post-mortem examination.<sup>54</sup> Bride burning is an especially expedient form of murder.

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46. See Lori Heise, *The Global War Against Women*, WASH. POST, Apr. 9, 1989 at B1; see also, A.J.F.M. Kerhof, *Suicide and Attempted Suicide: Causes of and Treatments for Suicide*, WORLD HEALTH, Mar. 1994, at 18, 19-20; Acts of Parliament (1986), Dowry Prohibition (Amendment) Act, No. 43, 8 Sept. 1986 (codified in part as INDIA PEN. CODE § 304B (Basu, 1998)). This Act supplemented the Indian Penal Code to include a legal definition of dowry death: "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 of 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' . . ." India Pen. Code § 304B(1) (Basu, 1998).

47. See BUMILLER, *supra* note 35, at 47; Spatz, *supra* note 10, at 608; Heise, *supra* note 46.

48. See BUMILLER, *supra* note 35, at 47; Spatz, *supra* note 10, at 608.

49. See BUMILLER, *supra* note 35, at 47; Spatz, *supra* note 10, at 608.

50. See BUMILLER, *supra* note 35, at 47; Spatz, *supra* note 10, at 608.

51. See BUMILLER, *supra* note 35, at 47; Spatz, *supra* note 10, at 608.

52. See BUMILLER, *supra* note 35, at 47.

53. See BUMILLER, *supra* note 35, at 47.

54. See Gupta & Srivastava, *supra* note 8, at 88.

### *D. Social and Economic Factors Surrounding Dowry Deaths*

Any study of dowry deaths requires an understanding of the social and economic factors surrounding the crime. Two phenomena that lurk behind dowry deaths in India are the inferior status of women<sup>55</sup> and consumerism.<sup>56</sup>

#### 1. Women's Inferior Status in Indian Society

Dowry deaths are consistent with the perpetuation of women's inferior status in Indian culture.<sup>57</sup> Women's inferior status in Indian culture cripples their lives from the moment that they are born. At birth, a girl's family blames her for not being an asset to the family, thus she either dies or receives inadequate care throughout her life. Coming full circle in a dowry death, the adult bride is blamed by the groom's family for bringing inadequate assets to his family. His family subsequently punishes her with repeated violence and often death. Thus, cultural beliefs implicitly sanction the dowry deaths as a perpetuation of women's inferior status in Indian society. The prayer of a late Vedic text reads: "The birth of a girl, grant it elsewhere, here grant a son."<sup>58</sup> The birth of a boy is often celebrated because he is an asset to the family. He can perform manual labor, perpetuate the family line, and provide economic security for the aging parent.<sup>59</sup>

By contrast, a female child is the object of discrimination even before she is born.<sup>60</sup> Middle and upper class women use selective amniocentesis to identify the sex of their child and then abort female fetuses.<sup>61</sup> When female children are not aborted, they often suffer

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55. See Heise, *supra* note 46 (noting that today's cultures have strong historical, religious, and legal traditions of female inferiority that reinforce the legitimacy of wife beating and discusses India as a cultural example).

56. See Moore, *supra* note 8 (discussing consumerism as the reason for the "dowry-death" wave).

57. See MITTER, *supra* note 26, at 113 (explaining that Indian culture sees females as inferior and expendable).

58. MITTER, *supra* note 26, at 113.

59. See Heise, *supra* note 46.

60. See MITTER, *supra* note 26, at 115.

61. See Heise, *supra* note 46 (noting that Indian women use amniocentesis as a sex identification method and selectively abort female fetuses). Before protests forced them to stop, Indian sex detection clinics advertised that it was cheaper to spend \$38 now on

systematic neglect,<sup>62</sup> inferior medical care,<sup>63</sup> poor nutrition,<sup>64</sup> and sub-standard education<sup>65</sup> in comparison to their male peers.

If a daughter lives to see her marriage, her dowry, in addition to her upbringing costs, becomes yet another financial burden for the family.<sup>66</sup> Indian society views the unmarried daughter as a financial drain on the family as well as a religious taboo.<sup>67</sup> Thus, the bride's family provides a dowry to disconnect themselves from the financial and social problems associated with an unmarried daughter. Conversely, the groom's family wants to find the bride who is most willing to support her husband's ambitions and lifestyle.<sup>68</sup>

A dowry is usually proportional to the husband's class, socioeconomic status, physical appearance and education.<sup>69</sup> Thus, a bride's parents could pay a dowry many times beyond their annual income to marry their daughter to a "suitable" boy.<sup>70</sup> Even for the poorest families, a groom's dowry demands can include tens of thousands of

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terminating a girl than \$3,000 later on her dowry. Out of 8,000 fetuses examined at six Bombay abortion clinics, 7,999 were female. See Heise, *supra* note 46, at B1.

62. See BUMILLER, *supra* note 35, at 105; Heise, *supra* note 46.

63. See Shushum Bhatia, *Status and Survival*, WORLD HEALTH, Apr. 1985, at 12 (noting that studies of Indian villages show that females receive medical attention less frequently before dying, and that care is provided by less competent practitioners). Health care is also delayed longer for females than for males. See Bhatia, *supra*, at 12; see also, BUMILLER, *supra* note 35, at 105; Heise, *supra* note 46 (stating that Punjabi parents spend more than twice as much on medical care for boy infants than for girls).

64. See Bhatia, *supra* note 63, at 12. Even though protein—calorie malnutrition (kwashiorkor) has been found to be four to five times more common among girls, boys outnumber girls among hospitalized children by approximately 50:1. Moreover, male calorie and protein consumption exceeds that of females during childhood, adolescence, and in the childbearing ages. See Bhatia, *supra* note 63, at 12; see also Heise, *supra* note 46.

65. See Bhatia, *supra* note 63, at 12. Parents invest more heavily in their sons' education versus that of their daughters, as reflected in the comparatively lower literacy rates for women. See Heise, *supra* note 46.

66. See Heise, *supra* note 46.

67. See MITTER, *supra* note 26, at 110; Himendra Thakur, *Practical Steps Towards Saving the Lives of 25,000 Potential Victims of Dowry and Bride-Burning in India in the Next Four Years*, in JOURNAL OF SOUTH ASIAN WOMEN STUDIES 1995–1997, at 79, 80 (Enrica Garzilli ed., 1997).

68. See MITTER, *supra* note 26, at 110.

69. See MITTER, *supra* note 26, at 110; Mansfield, *supra* note 1.

70. See Angela K. Carlson-Whitley, Comment, *Dowry Death: A Violation of the Right to Life Under Article Six of the International Covenant on Civil and Political Rights*, 17 PUGET SOUND L. REV. 637, 639 n.11 (1994).

rupees,<sup>71</sup> household appliances, cars, and other expensive items.<sup>72</sup> Furthermore, the groom and his family continue to extort money from the bride's family by requesting more dowry after the wedding.<sup>73</sup> Indian families often go into bankruptcy and debt<sup>74</sup> when trying to give a dowry to their son-in-law and host a wedding. Even the poorest Indian families spend more than \$3,000 on a wedding, which is the equivalent of nearly ten years' income for an average worker.<sup>75</sup> The price of having a daughter is debt and "economic bondage" for many Indian families.<sup>76</sup> Therefore, a dowry no longer augments a daughter's welfare but instead causes her family to lament her existence.

By the time Indian women are married, they are socialized to believe that they must unconditionally submit to their husbands' violent tendencies.<sup>77</sup> Dowries are given to a groom's family to assume the economic burden of caring for a woman.<sup>78</sup> A daughter is a *paraya dhan*, "someone else's wealth," because she eventually joins her husband's family.<sup>79</sup> Indian society conditions a wife to believe that her husband can abuse or murder her,<sup>80</sup> and that she must selflessly serve him and not retaliate.<sup>81</sup> Hindu religious texts also support this belief of a wife's unconditional devotion to her husband.<sup>82</sup>

A woman is the source of family honor and speaking out against her husband sullies that honor.<sup>83</sup> Even after a husband attempts to murder his wife, she may persist in maintaining her silence.<sup>84</sup> Moreover,

71. See, e.g., Ian Mackinnon, *Death by Fire Highlights the Bloody Cost of Dowries*, THE SCOTSMAN, Aug. 12, 1997, at 10. The family of a male doctor or lawyer can command up to 30,000 rupees, a new car, gold jewelry, and an array of household items. As of September 1999, one dollar was the equivalent of 40.24 rupees. See *Travel Watch: Cash Before You Go*, N.Y. TIMES, Sept. 27, 1999, at 25.

72. See, e.g., Mackinnon, *supra* note 71.

73. See Moore, *supra* note 8.

74. See Moore, *supra* note 8.

75. See Moore, *supra* note 8.

76. See Moore, *supra* note 8.

77. See Laurel Remers Pardee, Note, *The Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe?*, 13 ARIZ. J. INT'L & COMP. L. 491, 495 n.22 (1996).

78. See Moore, *supra* note 8.

79. See Amy Louise Kazmin, *They Put a Lock on My Mouth; Bias Against Indian Women Starts at Birth-But There Are Signs of Change*, 129 SCHOLASTIC UPDATE 7 (1997).

80. See Spatz, *supra* note 10, at 614-15 nn.117-18.

81. See Spatz, *supra* note 10, at 614.

82. See Spatz, *supra* note 10, at 615 n.119.

83. See Spatz, *supra* note 10, at 615.

84. See Spatz, *supra* note 10, at 615.

potential witnesses who could speak for the wife, such as neighbors, rarely intervene.<sup>85</sup> Parents are also hesitant to help their daughter in a violent marital situation because of the social stigma attached to a broken marriage.<sup>86</sup> Because of this socialization pattern, women rarely leave their husbands, accuse them of being violent, or receive outside assistance.<sup>87</sup>

## 2. Consumerism

Consumerism is also linked to the wave of dowry deaths that is sweeping the nation. India is currently experiencing numerous technological and economic advances.<sup>88</sup> Furthermore, India has one of the fastest-growing middle classes in the world.<sup>89</sup> This rise in consumerism among the middle class has caused the practice of giving dowry to spread nationwide as mens' families now use dowry as a way to quickly increase wealth and socioeconomic status and acquire modern technological conveniences.<sup>90</sup>

As consumer demands escalate, so does the number of dowry deaths.<sup>91</sup> When a bride's family cannot meet dowry demands, her groom and his family abuse her bride mentally, physically, and verbally and may even burn her alive.<sup>92</sup> Once a first wife is murdered, a

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85. See Spatz, *supra* note 10, at 614.

86. See Spatz, *supra* note 10, at 614 n.115; see also, Barbara Crossette, *India Studying 'Accidental' Deaths of Hindu Wives*, N.Y. TIMES, Jan. 15, 1989, at A10 (noting that girls are told from childhood that once they leave, they can only come back as a corpse).

87. See Spatz, *supra* note 10, at 614.

88. See Moore, *supra* note 8.

89. See Moore, *supra* note 8.

90. See Moore, *supra* note 8; see also, Heise, *supra* note 46 (noting that dowry is seen as a "get rich quick scheme" by prospective husbands and their families).

91. See Heise, *supra* note 46.

92. See *Preliminary Report Submitted by the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, Submitted in Accordance with Commission on Human Rights Resolution 1994/45*, U.N. ESCOR Special Rapporteur on Violence Against Women, 50th Sess., Agenda Item 11(a), ¶ 162, U.N. Doc. E/CN.4/1995/42 (1994) [hereinafter *Preliminary Report*]; see also, MITTER, *supra* note 26, at 112. One author recounts the following story: On a sweltering July day, fifteen year old Baskar married her conservative Muslim husband in Firozpur Namak, India. Baskar's family gave the groom a generous dowry, consisting of a refrigerator, furniture, and various domestic items. On Baskar's wedding night, she was forced to crouch on all fours and endure repeated brutal raping from her husband and his friends. Upset that his dowry did not include a motorcycle, Baskar's husband

husband is free to find a new bride who can fulfill his materialistic desires.<sup>93</sup> In a growing consumer culture, dowry deaths are an efficient way of disposing of female obstacles which hinder a groom and his family's rise to material wealth.

## II. PROPOSING A STANDARD OF GOVERNMENT RESPONSIBILITY WHEN PRIVATE PERSONS ACT: DUE DILIGENCE

India has enacted numerous pieces of legislation that are designed to prevent, investigate, and punish dowry deaths. In order to fulfill its duties under customary international law and under international human rights treaties, India must not only enact legislation but also enforce and implement this legislation. This section proposes due diligence as a standard by which to measure the adequacy of India's implementation of its body of domestic law prohibiting dowry deaths.

### *A. Background of Due Diligence*

Due diligence has been a recognized state responsibility standard in international law since the nineteenth century. The Treaty of Washington Rules (1871) used "active diligence" to determine the responsibility of a neutral state for damages caused by its private citizens.<sup>94</sup> Under these Washington Rules, a neutral state owed a proportional "active diligence" to the emergency or dangers to which the respective victims were exposed.<sup>95</sup> The Hague convention of 1907 expanded on the concept by including a consideration of the "the means at [a country's] disposal" in evaluating a neutral state's duty of due diligence.<sup>96</sup> Thus, by the beginning of the twentieth century, due diligence had one definable and constant component: a requirement to take reasonable measures depending on the risk. Moreover,

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exclaimed, "Let's make her [Baskar] a motorcycle," as he continued to violate her. *See* Shukla, *supra* note 12.

93. *See* BUMILLER, *supra* note 35, at 47; Spatz, *supra* note 10, at 608; Heise, *supra* note 46.

94. *See* Horst Blomeyer-Bartenstein, "Due Diligence," in 1 *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* 1110, 1110 (Rudolf Bernhardt ed., 1992).

95. *See* Blomeyer-Bartenstein, *supra* note 94, at 1111.

96. *See* Blomeyer-Bartenstein, *supra* note 94, at 1111-12.

countries with insufficient and ineffective national legislation were expected to amend their laws to fulfill the duty of due diligence.<sup>97</sup>

Today, when private individuals' actions violate a State's international obligation, the State is liable for the lack of due diligence to prevent, investigate and punish its citizens' actions.<sup>98</sup> Through an analogy, the duty of due diligence can be applied in the broad area of human rights violations against women. A State has a duty of due diligence under international law to prevent injuries to aliens caused by private individuals.<sup>99</sup> Arguably, women are, in a sense, aliens because they are often excluded from providing input and formulating norms regarding their private domestic life, in which ordinary men systematically violate their rights.<sup>100</sup> Therefore, countries also have a duty of due diligence under international law to prevent human rights violations committed by private citizens against women.<sup>101</sup> India has a duty to use due diligence to protect women from private acts of violence by husbands and in-laws.

The meaning of due diligence varies with the specific context in which a breach of international obligation occurs.<sup>102</sup> It is, however, comprised of some universally accepted components. When a country has constructive notice of a human rights violation and the means to provide protection against the violation, it has a due diligence duty to take reasonable measures under the circumstances to prevent, investigate, and punish the violation.<sup>103</sup> In the following sections, this paper develops meaning for the due diligence standard in the specific context of dowry deaths.

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97. See Blomeyer-Bartenstein, *supra* note 94, at 1112.

98. See Blomeyer-Bartenstein, *supra* note 94, at 1112-13.

99. See Richard B. Lillich & John M. Paxman, *State Responsibility For Injuries to Aliens Occasioned by Terrorist Activities*, 26 AM. U. L. REV. 217, 245 (1977).

100. See Celina Romany, *State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 85, 102 (Rebecca J. Cook ed., 1994). ("Contextualization is crucial to understanding the nature of state responsibility for the violation of women's human rights. The systematic exclusion of women by international law structures becomes a normative link in bridging the gap between norms of state responsibility for redressing injury to aliens and human rights violations.")

101. See Romany, *supra* note 100, at 102; Kenneth Roth, *Domestic Violence as an International Human Rights Issue*, in HUMAN RIGHTS OF WOMEN, *supra* note 100, at 326, 330.

102. See Blomeyer-Bartenstein, *supra* note 94, at 1112.

103. See Lillich & Paxman, *supra* note 99, at 246-47.

## 1. Prerequisites to Due Diligence: Notice and Means

First, a nation must be presented with an opportunity to prevent a human rights violation.<sup>104</sup> This opportunity is referred to as notice. Due diligence assumes that the government has at the very least constructive notice of the violation. The basis of constructive notice is a government's prior knowledge,<sup>105</sup> which is evidenced by the sheer volume of reported cases of the violation.

Second, the nation must also have some means to provide protection from a human rights violation.<sup>106</sup> This Article proposes that a nation's means to protect is related to its means to deter. Arguably, the most practical form of deterrence is legislation because legislation defines specific recognized individual actions that will be legally condemned by the State. Therefore, this Article assumes that national legislation designed to prevent and punish dowry deaths constitutes means with respect to due diligence.

## 2. Due Diligence: Reasonable Measures Under the Circumstances

Once a nation has notice and means, the nation must take reasonable measures under the circumstances to prevent a human rights violation committed by a private actor.<sup>107</sup> Reasonable measures vary depending upon the severity of the crime.<sup>108</sup> In the case of dowry deaths, this reasonable measures standard has not been defined. In 1992, the Committee on the Elimination of Discrimination Against Women (CEDAW) recognized dowry deaths as a widespread traditional practice that deprived women of the ability to enjoy human rights and freedoms on an equal basis with men.<sup>109</sup> One year later, the

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104. See Lillich & Paxman, *supra* note 99, at 246–47.

105. See Lillich & Paxman, *supra* note 99, at 246–47.

106. See Lillich & Paxman, *supra* note 99, at 246.

107. See Lillich & Paxman, *supra* note 99, at 246.

108. See Lillich & Paxman, *supra* note 99, at 246–47. According to Romany, due diligence requires the existence of “reasonable measures . . . that a well administered government could be expected to exercise under similar circumstances.” Romany, *supra* note 100, at 102–03; see also, Blomeyer-Bartenstein, *supra* note 94, at 1112.

109. See Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19 (Eleventh Session, 1992): Violence Against Women, in Compilation of General Comments and General Recommendations Adopted By Human*



Declaration on the Elimination of Violence Against Women went further to include dowry-related violence<sup>110</sup> as part of the gender based violence, which *must be eliminated* to ensure the equal enjoyment of these rights and freedoms.<sup>111</sup> In 1993, for the first time, the U.S. State Department's human rights report focused on violence against women and expressed grave concern over dowry deaths as an extreme form of abuse against women.<sup>112</sup> In a section entitled "Early Marriage and Dowry Related Violence" of her 1994 Preliminary Report on Violence Against Women, U.N. Special Rapporteur Coomaraswamy stated that "[v]iolence related to the institution of marriage is of grave concern to those interested in women's rights as human rights."<sup>113</sup> Even more recently, in 1995, the Beijing Declaration and Platform for Action specifically targeted dowry related violence as a human rights violation against women.<sup>114</sup> Thus, within the last decade, the international human rights community has labeled dowry deaths as pernicious human rights violations. Any reasonable measures that India takes to address the issue must be commensurate with the severity of dowry deaths.

This article proposes that reasonable measures consist of components that allow the law a chance to achieve its purpose. Reasonable measures should consist of the following four components: evidence, ethics, police and judicial acknowledgment of the crime, and systematic enforcement of the law. First, the difficulty in obtaining evidence in dowry deaths should not excuse the lack of police efforts to pursue evidence.<sup>115</sup> Police should follow established House of Ministry investigation guidelines<sup>116</sup> when collecting and preserving evidence. Second, the simple ethics of law enforcement require that the police should not contribute to the denigration of the law. The police should not take bribes, tamper with evidence, and ignore opportunities to

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*Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1 at 62, 75 (1992) [hereinafter *General Recommendations*].

110. See *Declaration on Elimination of Violence*, *supra* note 19, at 3.

111. See *Declaration on Elimination of Violence*, *supra* note 19, at 4. The preamble of Article 4 states that "States should pursue by all appropriate means and without delay a policy of eliminating violence against women. . . ."

112. See *U.S. State Dept. Releases Annual Report*, FACTS ON FILE WORLD NEWS DIGEST, Feb. 17, 1994, available in LEXIS, Nexis Library, Iacnws File.

113. *Preliminary Report*, *supra* note 92, ¶ 164.

114. See *Beijing Declaration and Platform*, *supra* note 20, at 52.

115. See discussion *infra* Part III.C & V.A.

116. See S.K. GHOSH, *WOMEN IN CHANGING SOCIETY* 72 (1984).

evaluate any available physical evidence, which could be crucial to the investigation.

Third, the police, judiciary, and prosecution must acknowledge the crime as more than just a cultural misdemeanor. Police should not regard dowry deaths as "family matters," in which the law plays no role. Furthermore, the judiciary should place a priority on trying these cases in a timely fashion, and the prosecution should file charges in proportion to the number of reported cases. Fourth, systematic enforcement of India's dowry death laws is absolutely essential for the effective deterrence and punishment.<sup>117</sup> Partial enforcement weakens the nation's ability to address dowry deaths because it cultivates a disrespect and indifference for the crime amongst its citizens.

*B. Due Diligence: Essential For the Realization of Human Rights in International Human Rights Instruments*

Several international human rights covenants and declarations recognize that dowry related violence compromises women's ability to enjoy their human rights. The Committee on the Elimination of Discrimination Against Women recognized dowry deaths as a widespread discriminatory practice that hindered women's enjoyment of their human rights and freedoms.<sup>118</sup> The Declaration on the Elimination of Violence Against Women further declared that States must eliminate violence against women to ensure women's ability to enjoy their freedoms on an equal basis.<sup>119</sup> Moreover, the U.S. State Department condemned India for its failure to curb these dowry deaths.<sup>120</sup> The Beijing Declaration and Platform for Action also labeled dowry-related violence as a serious human rights violation against women.<sup>121</sup> Dowry deaths are clearly intolerable violations of women's human rights.

India must exercise due diligence to prevent, investigate, and punish dowry deaths in order to foster the realization of human rights in accordance with its obligations under six human rights instruments: 1) the Universal Declaration of Human Rights (UDHR), 2) the

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117. See Rhonda Copelon, *Intimate Terror: Understanding Domestic Violence as Torture*, in HUMAN RIGHTS OF WOMEN, *supra* note 100, at 116, 140.

118. See *General Recommendations*, *supra* note 109.

119. See *Declaration on Elimination of Violence*, *supra* note 19.

120. See U.S. State Dep't. *Releases Annual Report*, *supra* note 112.

121. See *Beijing Declaration and Platform*, *supra* note 20, at 52.

International Covenant on Economic, Social, and Cultural Rights (ICESCR), 3) the International Covenant on Civil and Political Rights (ICCPR), 4) the Convention on the Elimination of All Forms of Discrimination Against Women, 5) the Declaration on the Elimination of Violence Against Women, and 6) the Beijing Declaration and Platform.<sup>122</sup> To foster the realization of human rights, a State must take responsibility for the prevention, investigation, and punishment of human rights violations.<sup>123</sup> Moreover, the due diligence standard has been generally accepted as a measure of evaluating a State's responsibility for violation of human rights by private actors.<sup>124</sup> Nevertheless, the UDHR, the ICESCR, the ICCPR, and the Convention on the Elimination of all Forms of Discrimination all fail to explicitly instruct a State to exercise due diligence in the realization of human rights. This Article proposes that India's duty of due diligence is *implicit* in specific articles that outline required State efforts for the realization of human rights. The Declaration on the Elimination of Violence Against Women and the Beijing Platform for Action *explicitly* recognize India's obligation to exercise due diligence with respect to dowry deaths. Each of these covenants and declarations are discussed in this section.

The International Bill of Rights consists of the UDHR, the ICESCR, and the ICCPR.<sup>125</sup> Adopted in 1948, the UDHR embodies essential human rights principles.<sup>126</sup> As a resolution, the UDHR, much like the Declaration on the Elimination of Violence Against Women, is not technically legally binding on countries. However, this Article assumes that as the foundation for the International Bill of Rights for fifty years, the UDHR, through time, has become customary international law.<sup>127</sup> In accordance with customary international law, India must uphold human rights principles under the UDHR. However,

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122. See *supra* notes 15–20.

123. See *Preliminary Report*, *supra* note 92, ¶ 101.

124. See *Preliminary Report*, *supra* note 92, ¶ 103.

125. See LAWRENCE O. GOSTIN & ZITA LAZZARINI, HUMAN RIGHTS AND PUBLIC HEALTH IN THE AIDS PANDEMIC 3 (1997).

126. See LOUIS HENKIN ET AL., INTERNATIONAL LAW, CASES AND MATERIALS 598 (3rd ed. 1993).

127. See HENKIN ET AL., *supra* note 126, at 598, *discussed in* Pardee, *supra* note 77, at 504; see also THEODOR MERON, HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW 82 (1989); Pardee, *supra* note 77, at 504 n.105. Meron quotes international law scholar, Professor L. Sohn: "The Declaration, as an authoritative listing of human rights, has become a basic component of international customary law, binding on all states, not only on members of the United Nations."

the UDHR does not provide any guidance on what level of government action is necessary to ensure these human rights. India must exercise due diligence in the context of dowry deaths to uphold human rights under the UDHR.

The United Nations also passed the ICESCR and ICCPR in 1966 to protect economic, social, cultural, civil, and political freedoms.<sup>128</sup> Having ratified both of these covenants, India must fulfill its obligations under each.<sup>129</sup> Unlike the UDHR, these covenants try to define the required State efforts for the realization of rights. Still, the "realization" articles articulated in the ICESCR and the ICCPR are ambiguous and still open to interpretation.<sup>130</sup> The ICESCR requires that each member state, individually and with international cooperation, take steps to the "maximum of its available resources" to achieve progressively the rights embodied in the Covenant by all appropriate means, including national legislation.<sup>131</sup> Moreover, the ICCPR declares that each member state must "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy . . ." <sup>132</sup> The ICCPR's language implies that member states have an affirmative obligation to effect the individual rights recognized in the Covenant.<sup>133</sup> One commentator suggests that a state's affirmative obligations under the word "ensure" include improving criminal justice administration,<sup>134</sup> which is also a part of reasonable measures under due diligence.<sup>135</sup>

Another commentator notes that the Human Rights Committee should consider complaints of state failure to fulfill its obligation to ensure the freedom from domestic torture where it is not prosecuted

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128. See Pardee, *supra* note 77, at 506.

129. See *Consideration of Reports Submitted by States Parties Under Article 40 of the ICCPR, Third Periodic Reports of States Parties Due in 1992: India*, at 3, U.N. Doc. CCPR/C/76/Add.6 (1996) [hereinafter *ICCPR Third Periodic Report*].

130. See ICESCR, *supra* note 16, at 5; ICCPR, *supra* note 17, at 173. These two articles broadly define the level of responsibility that a State government must exercise when protecting and fostering the realization of human rights.

131. See ICESCR, *supra* note 16, at 5.

132. ICCPR, *supra* note 17, at 174.

133. See ICCPR, *supra* note 17, at 174; see also, Thomas Buergenthal, *To Respect and to Ensure: State Obligations and Permissible Derogations*, in *THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS* 72, 77-78 (Louis Henkin ed., 1981).

134. See Buergenthal, *supra* note 133, at 77.

135. See discussion *infra* Part III.C.

with due diligence.<sup>136</sup> The Inter-American Court of Human Rights applied this due diligence approach with respect to torture in *Velásquez Rodríguez v. Honduras*.<sup>137</sup> The Inter-American Court interpreted the “respect and ensure” language in the American Convention, which is similar to that of the ICCPR ¶ 2(1), to make Honduras responsible, not only for active participation in the death squads, but also for its failure to investigate and prosecute violations that were carried out by private actors.<sup>138</sup> The *Velásquez Rodríguez* case thus uses due diligence as a standard for private citizens’ actions in the same way this paper proposes to do. This paper supports the Inter-American Court’s decision to impose liability on Honduras for its lack of due diligence in preventing unexplained “disappearances,” whether caused by State or private actors. States were held responsible for the organization of the government apparatus and structures of public power in order to make them capable of juridically ensuring free and full enjoyment of human rights. Much like the Honduran government, the Indian government should be held responsible for the implementation of its dowry death legislation to ensure women’s freedom to enjoy their human rights and freedoms on an equal basis. Thus, the duty of due diligence may be implicit in a State’s obligations under the ICCPR. With no United Nations’ guidance on interpreting these articles, India’s due diligence in preventing, investigating, and punishing dowry deaths is assumed to be necessary to realize human rights under the ICESCR and ICCPR.

The Convention on the Elimination of All Forms of Discrimination Against Women was adopted in 1979 and became effective as of September 3, 1981.<sup>139</sup> India signed the Convention in 1980<sup>140</sup> and ratified it on July 9, 1993.<sup>141</sup> As a State party to the Convention, India is bound to uphold the Convention’s tenets. The Convention contains internationally accepted principles on the rights of women and seeks to prohibit all forms of discrimination against women. The

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136. See Copelon, *supra* note 117, at 140–41.

137. *Velásquez Rodríguez v. Honduras* 28 ILM 291 (1988) (discussed in Copelon, *supra* note 117, at 140–41).

138. See *Velásquez Rodríguez*, 28 ILM at 328; see also, Copelon, *supra* note 117, at 140; *Preliminary Report*, *supra* note 92, ¶ 104.

139. See *Women’s Convention*, *supra* note 18, at 13–14.

140. See *Women’s Convention*, *supra* note 18, at 96.

141. See *Meeting of States Parties to the Convention on the Elimination of All Forms of Discrimination Against Women*, 9th mtg. at 19, U.N. Doc. CEDAW/SP/1996/2 (1996)[hereinafter *CEDAW States Meeting*].

document's specific provisions outline broad efforts that States must take to eliminate discrimination against women.<sup>142</sup> However, this language is vague at best and does not define any level of State responsibility in fulfilling its obligations under the Convention.

Although the Convention fails to explicitly mention due diligence, the Committee on the Elimination of Discrimination of Women (CEDAW) has alluded to this standard's importance in upholding the Convention's principles.<sup>143</sup> A General Recommendation adopted by CEDAW notes that under international law, member States, such as India, may be responsible for private acts if they do not act with due diligence to prevent and investigate human rights violations against women.<sup>144</sup> Furthermore, in 1992, CEDAW recommended that State parties take appropriate and effective measures to overcome gender based violence, whether committed by public or private act, and attitudes, customs, and practices that perpetuate violence against women.<sup>145</sup> Thus, effectiveness of India's legislation is crucial in evaluating whether this nation fulfilled its obligations under the Convention and similarly, under the reasonable measures component of due diligence.<sup>146</sup> Arguably, India's exercise of due diligence with respect to dowry deaths is necessary to fulfill its Convention obligations.

On December 24, 1993, the United Nations General Assembly adopted without a vote the Declaration on the Elimination of Violence Against Women.<sup>147</sup> Unlike The Women's Convention, the Declaration applies to all United Nations members including India.<sup>148</sup> While the Declaration, as a resolution, is not technically legally binding on a State, the Declaration was adopted unanimously by United Nations member States and is thus increasingly being regarded as

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142. See *infra* Parts III.C, III.D; Women's Convention, *supra* note 18, at 21. Article 17 created the Committee on the Elimination of Discrimination of Women (CEDAW). The Committee settles disputes between State parties regarding the Convention and analyzes their periodic reports, required by Article 18(1), to see if they are meeting the Convention's goals.

143. See *General Recommendations*, *supra* note 109, at 75.

144. See *General Recommendations*, *supra* note 109, at 75 (emphasizing that discrimination under the Convention is not restricted to action by or on behalf of governments).

145. See *General Recommendations*, *supra* note 109, at 77.

146. See discussion *infra* Part III.C.2. Reasonable measures allow legislation an opportunity to be effective. Without these measures, dowry death laws are ineffective in achieving their goals.

147. See *Declaration on Elimination of Violence*, *supra* note 19.

148. See Hillary Charlesworth, *The Declaration on the Elimination of All Forms of Violence Against Women*, AM. SOC'Y NEWSL., available in LEXIS, Nexis Library, ABI File.

customary international law.<sup>149</sup> Therefore, India is bound to uphold its principles.

The Declaration recognizes a State's duty of "due diligence to prevent, investigate, and in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons."<sup>150</sup> Moreover, the Declaration on the Elimination of Violence Against Women highlights dowry-related violence in its definition of violence against women.<sup>151</sup> Therefore, India should exercise due diligence in regard to dowry deaths to comply with this Declaration.

Held in Beijing in 1995, the Fourth World Conference on Women adopted the Beijing Declaration and Platform for Action as a plan for women's empowerment.<sup>152</sup> Under this document, a State must also exercise due diligence to prevent, investigate, and punish, in accordance with national legislation, private or State acts of violence against women.<sup>153</sup> Moreover, the Declaration and Platform calls on nations to enact and enforce legislation against perpetrators of practices and acts of violence against women, such as "dowry-related violence."<sup>154</sup> Accordingly, India must meet its duty of due diligence to prevent, investigate, and punish dowry deaths to fulfill its obligations under the Beijing Declaration and Platform. India must exercise due diligence with regard to dowry deaths to ensure the realization of human rights under various covenants and declarations.

### III. HOW INDIA FARES IN MEETING THE DUTY OF DUE DILIGENCE

#### *A. Constructive Notice*

For at least the last thirty-nine years, India has been aware of dowry death crimes, as evidenced by its enactment of the 1961 Dowry Prohibition Act.<sup>155</sup> The subsequent 1984 and 1986 amendments to

149. See Pardee, *supra* note 77, at 508.

150. *Declaration on Elimination of Violence*, *supra* note 19, at 4.

151. See *Declaration on Elimination of Violence*, *supra* note 19, at 3-4.

152. See Beijing Declaration and Platform, *supra* note 20, at 4.

153. See Beijing Declaration and Platform, *supra* note 20, at 54; see also, *Women's Rights Are Human Rights Commitments Made by Governments in the Beijing Declaration and the Platform For Action*, Amnesty Int'l Rep. IOR 41/05/96 (Mar. 1996).

154. Beijing Declaration and Platform, *supra* note 20, at 55.

155. Acts of Parliament (1961), Dowry Prohibition Act, No. 28, May 20, 1961.

the Dowry Prohibition Act, the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act further underscore India's knowledge of an increasing scourge.<sup>156</sup> Increasing incidence of dowry deaths long after this legislation continued provided constructive notice of these human rights violations.<sup>157</sup>

The Parliament released statistics in the 1980s showing 999 reported dowry deaths in 1985, 1,319 in 1986, and 1,786 in 1987 nationwide.<sup>158</sup> The number of reported dowry deaths continues to increase in the 1990s.<sup>159</sup> The Indian Government reported over 7,000 dowry deaths for 1996.<sup>160</sup> In the year 2000, an estimated total of 25,000 women will suffer dowry deaths.<sup>161</sup> This figure is higher than deaths caused by Punjab terrorist activity, "which is considered the most serious threat to Indian national unity."<sup>162</sup> Dowry deaths pit men against women, which may pose an even greater peril to the fabric of the nation.

### B. Means

Means can take the form of legislation. India's legislation targeting dowry and dowry deaths constitutes appropriate means to prevent dowry deaths. The country has acted to deter, investigate, and punish dowry deaths with a two-tier approach. First, the country sought to prevent dowry deaths *indirectly*, by enacting national legislation against the root cause of dowry deaths: the practice of giving dowry.<sup>163</sup> This legislation took the form of The Dowry Prohibition Act of 1961.<sup>164</sup> Second, when this statute failed to effectively curb the motivation for the crime, India sought to deter, investigate, and punish dowry deaths *directly*, by enacting legislation to prohibit dowry related

156. Acts of Parliament (1984), Dowry Prohibition (Amendment) Act, No. 63, May 20, 1961; Acts of Parliament (1986), Dowry Prohibition (Amendment) Act, No. 43, Sept. 8, 1986.

157. See Shireen J. Jejeebhoy & Rebecca J. Cook, *State Accountability for Wife-Beating: The Indian Challenge*, THE LANCET, Mar. 1997, at s110.

158. See BUMILLER, *supra* note 35, at 48.

159. See Mansfield, *supra* note 1, at 13.

160. See *Two Indian Men Sentenced to Death for Dowry Murder*, *supra* note 9.

161. See Thakur, *supra* note 67, at 80.

162. BUMILLER, *supra* note 35, at 48.

163. See Gupta & Srivastava, *supra* note 8, at 88-89.

164. Dowry Prohibition Act, No. 28 of 1961, 21 INDIA A.I.R. MANUAL 127 (5th ed. 1989) (as amended).



violence and deaths. In 1984 and 1986, India amended the Dowry Prohibition Act of 1961.<sup>165</sup> Furthermore, in 1983 and 1986, the national legislature amended the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act.<sup>166</sup> A summary of each of the laws' significance in punishing dowry deaths is briefly explored in the following sections.

### 1. Indirect Means: The Dowry Prohibition Act, 1961

India recognizes that dowry causes dowry deaths and related violence.<sup>167</sup> In an effort to prohibit the giving or taking of dowry, the Indian Parliament enacted the Dowry Prohibition Act, 1961.<sup>168</sup> This principal act defined the practice of dowry and established the penalty for giving, taking, or demanding dowry.<sup>169</sup> This Act contained a "contractarian" definition of dowry. Gifts or presents made to either party at marriage were not considered dowry unless they were made "as consideration for the marriage of said parties."<sup>170</sup> Indian families escaped prosecution under the Act by developing an innocent synonym

165. See Acts of Parliament (1984), Dowry Prohibition (Amendment) Act, No. 63, Sept. 11, 1984; Acts of Parliament (1986), Dowry Prohibition (Amendment) Act, No. 43, Sept. 8, 1986; DIWAN, *supra* note 32, at 3.

166. Acts of Parliament (1986), Dowry Prohibition (Amendment) Act, No. 43, Sept. 8, 1986 (codified in part as INDIA PEN. CODE § 304B (Basu, 1998); Evidence Act, § 113B, No. I of 1872, 23 INDIA A.I.R. MANUAL 794 (5th ed. 1989) (as amended); India Code Crim. Proc. § 174 (Sohoni, 1991)); Acts of Parliament (1983), Criminal Law (second amendment) Act § 7, No. 46, Dec. 25, 1983 (codified as Evidence Act § 113A, No. I of 1872, 23 INDIA A.I.R. MANUAL 791 (5th ed. 1989) (as amended)).

167. See Gupta & Srivastava, *supra* note 8, at 81; Mackinnon, *supra* note 71, at 10.

168. Acts of Parliament (1961), Dowry Prohibition Act, No. 28, May 20, 1961.

169. Under the original act, dowry is defined as:

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) 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 or after the marriage *as consideration* for the marriage of said parties.

Acts of Parliament (1961), Dowry Prohibition Act § 2, No. 28, May 20, 1961 (emphasis added); see also, DIWAN, *supra* note 32, at 296.

170. DIWAN, *supra* note 32, at 296. The penalty for giving, taking, or asking for dowry, directly or indirectly, was punishable by imprisonment for six months, and with a fine at a maximum of 5,000 rupees. See Acts of Parliament (1961), Dowry Prohibition Act § 3-4, No. 28, May 20, 1961.

for dowry. A groom's family would request a dowry, and the bride's family would oblige but would label the dowry as expected "gifts" or "presents" to circumvent the "consideration" requirement.<sup>171</sup>

In 1984, an amendment broadened the original statutory definition of dowry to prevent gifts "in connection with marriage."<sup>172</sup> However, this revised definition was not any more successful in hindering people from using the loopholes associated with the older language of the law. Moreover, the explanation of the Amendment shows that Parliament did not intend to totally outlaw individual or collective presents to either wedding party.<sup>173</sup> Therefore, the Act still allowed "expected gifts," such as a color television or a refrigerator, a rather transparent synonym for a dowry.<sup>174</sup>

In 1986, India amended numerous provisions of the original law in a last attempt to strengthen the legislation's effect. In addition to other changes, this recent amendment provides states with the option of appointing specialized dowry prohibition officers and further broadens the definition of dowry.<sup>175</sup> Like its 1984 predecessor, this amendment has been unsuccessful in eradicating dowry as the root cause of dowry deaths. The 1986 language is underinclusive and ambiguous.<sup>176</sup> The present dowry definition still excludes post-marriage dowry demands, "expected gifts," and "small gifts."<sup>177</sup> Thus, the underinclusive language encourages Indian families to be creative in how they package and label a dowry. Furthermore, dowry prohibition officers are optional in the law, and few states have chosen to adopt them.<sup>178</sup> The law constructed a means in the form of an organizational framework designed to provide protection against these offenses, although it was less than effective. India recognized the flaw in its approach and changed its means to fight dowry deaths directly.

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171. See Spatz, *supra* note 10, at 611.

172. Acts of Parliament (1984), Dowry Prohibition (amendment) Act § 2, No. 63, Sept. 11, 1984); DWAN, *supra* note 32, at 34.

173. See DWAN, *supra* note 32, at 34.

174. See Spatz, *supra* note 10, at 611.

175. See Acts of Parliament (1986), Dowry Prohibition Act, No. 43, Sept. 8, 1986; DWAN, *supra* note 32, at 261.

176. See Spatz, *supra* note 10, at 611.

177. See Spatz, *supra* note 10, at 611.

178. See Kirti Singh, *Obstacles to Women's Rights in India*, in HUMAN RIGHTS OF WOMEN, *supra* note 100, at 375, 392.

## 2. Direct Means: The Indian Penal Code, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872

Amendments to three criminal statutes are means designed to prevent and punish perpetrators of dowry violence and dowry deaths. First, the Indian Penal Code deals specifically with dowry related violence: cruelty and dowry deaths. Because dowry deaths are often preceded by some physical or mental cruelty, the Code recognizes the role dowry plays in cruelty by creating a cruelty offense.<sup>179</sup> The Indian Penal Code also creates the "dowry death offense" and its penalty.<sup>180</sup> Second, the Code of Criminal Procedure recognizes suspected dowry deaths by giving magistrates the power to investigate suspicious deaths.<sup>181</sup> Third, the amended Indian Evidence Act creates a presumption of abetted suicide, which is a form of dowry death,<sup>182</sup> and a separate presumption of dowry death.<sup>183</sup> Thus, India has designed means to protect against dowry deaths through continuous legislation against the practice of dowry and the resulting dowry deaths.

### *C. India Fails to Take Reasonable Measures Under the Circumstances*

When India fails to take reasonable measures to prevent, punish, and investigate dowry deaths committed by private citizens, the country's inaction implicates the country in human rights violations through a lack of due diligence.<sup>184</sup> India is tacitly condoning dowry

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179. See INDIA PEN. CODE § 498A (Basu, 1998); see generally, DIWAN, *supra* note 32. Because the details of these laws are outside the scope of this paper, it does not contain an in-depth discussion of the legislation. Diwan does provide an comprehensive discussion of the law.

180. See INDIA PEN. CODE § 304B (Basu, 1998).

181. See India Code Crim. Proc. § 174 (Sohoni, 1991).

182. See Evidence Act, § 113A, No. I of 1872, 23 INDIA A.I.R. MANUAL 791 (5th ed. 1989) (as amended).

183. See Evidence Act, § 113B, No. I of 1872, 23 INDIA A.I.R. MANUAL 794 (5th ed. 1989) (as amended) (creating the "[p]resumption as to dowry death": "When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.").

184. See Rebecca J. Cook, *State Accountability Under the Convention on the Elimination of All Forms of Discrimination Against Women*, in HUMAN RIGHTS OF WOMEN, *supra* note 100, at 228, 237.

deaths, and its complicity transforms a private act into a constructive act of the country.<sup>185</sup> India has created two governments: (1) the surface government which enacts legislation to prevent and punish the practice of dowry, dowry violence, and dowry deaths; and (2) the parallel government, which fails to implement legislation, systematically denying women's human rights.<sup>186</sup> Through state complicity, India fails to carry out international human rights obligations.<sup>187</sup>

The increase in the incidence of dowry deaths in the last two decades put India on constructive notice regarding this human rights violation. India enacted and then amended national legislation as a means to combat dowry and to combat dowry deaths.<sup>188</sup> On the surface, India seems to be acting reasonably to protect against dowry deaths. With numerous means at its disposal, India has little excuse for not using them. In spite of its positive laws, government agents' inaction surrounding these laws constitutes a failure to take reasonable measures to combat these human rights violations.

This paper proposes reasonable measures in the context of dowry deaths: collection of evidence, police ethics, judicial and police acknowledgment of the crime, and systematic enforcement of dowry death laws. The following sections show that Indian police, prosecutors, and judges fail to take these necessary measures. India manifests its failure to take reasonable measures in several different ways: state failure to investigate, state failure to prosecute, and state failure to convict.<sup>189</sup> The dowry death laws exist in theory but not in reality. Without this systematic implementation, India violates its duty of due diligence.<sup>190</sup>

### 1. State Failure to Investigate

Indian police's systematic disregard for investigation guidelines and lack of systematic effort in collecting evidence in dowry death

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185. See Roth, *supra* note 101, at 330.

186. See Romany, *supra* note 100, at 99.

187. See Romany, *supra* note 100, at 100 (stating that a country's failure to carry out international obligations can be attributed to state complicity).

188. See Gupta & Srivastava, *supra* note 8, at 88; *supra* Part III.B.

189. See Romany, *supra* note 100, at 100.

190. See Singh, *supra* note 178, at 376. Lack of implementation of laws by states has adversely affected women's rights in India.

crimes constitute a lack of reasonable measures.<sup>191</sup> India's Ministry of Home Affairs has issued specific investigation guidelines for the crime of dowry deaths.<sup>192</sup> However, these guidelines, much like the dowry death legislation, are insufficient in punishing dowry deaths because they are systematically ignored by the majority of Indian police and not systematically enforced by the Indian government.<sup>193</sup>

India is notorious in the international human rights community for its incomplete investigations of dowry deaths.<sup>194</sup> The police investigate less than 10 percent of dowry deaths and often report the deaths as "kitchen accidents."<sup>195</sup> For example, New Delhi police dismissed 63 percent of 109 first information reports and police diaries concerning women burned in Delhi as accidents without any investigation.<sup>196</sup>

When police do investigate, they rarely make efforts to collect objective evidence and thus do not investigate in accordance with Ministry guidelines.<sup>197</sup> The police rarely take fingerprints or photographs but instead base much of their investigation on statements of relatives, which are far less objective than physical evidence.<sup>198</sup> Although guidelines require postmortem examinations of victims, postmortem examinations are not conducted in 22 percent of cases.<sup>199</sup> When police cannot label the death as accidental, they postpone filing charges for months or even years until evidence disappears. Police are responsible for the incomplete investigations which provide judges with reasons to acquit in dowry death cases.<sup>200</sup>

Moreover, investigation is hampered by police unwillingness to acknowledge dowry death as a crime. Police often consider dowry related disputes to be "private affairs" which they are reluctant to

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191. Cf. *UN Human Rights Committee Concludes Sixtieth Session in Geneva*, M2 Presswire, Aug. 6, 1997, available in LEXIS, Nexis Library, Iacnws File (noting Committee's concern for women's rights in India).

192. See GHOSH, *supra* note 116, at 72. The guidelines require that all cases should be investigated by officers not below the rank of Deputy Superintendent of Police. Postmortem examinations should be done on the victims by a team of two doctors, and disposal of such bodies is not allowed until the postmortem is completed.

193. See Spatz, *supra* note 10, at 611.

194. See Spatz, *supra* note 10, at 611; Singh, *supra* note 178, at 392.

195. See Spatz, *supra* note 10, at 611.

196. See Spatz, *supra* note 10, at 612.

197. See Spatz, *supra* note 10, at 611-12.

198. See Spatz, *supra* note 10, at 612.

199. See Spatz, *supra* note 10, at 612.

200. See Spatz, *supra* note 10, at 612.

investigate.<sup>201</sup> The police believe that these are family disputes.<sup>202</sup> Hence, the police are not invested in investigating these crimes.

Additionally, police delay investigations, fail to investigate according to Ministry guidelines, and label deaths as accidental because the husband and his family bribe the police.<sup>203</sup> As a result of bribes, police work with the husband's family to tamper or destroy crucial physical evidence, evidence which may be the only means of differentiating between homicide, suicide, and an accident.<sup>204</sup> For example, police and husbands' families create false postmortem examination reports and physical evidence.<sup>205</sup> Police can also alter the dying declaration of a woman to erase any involvement of her husband and in-laws in her death.<sup>206</sup> In 1990, an Indian policeman on the Union Public Service Commission stated that approximately 95 percent of reported dowry death cases result in acquittal because corrupt police and medical officers disturb the evidence.<sup>207</sup> Thus, police's systematic unwillingness to follow investigation guidelines, to make an effort to collect evidence, to acknowledge dowry deaths as a legal crime, to ethically uphold the law, and to enforce the law constitute a lack of reasonable measures on India's part. Through its police, India is complicit in the commission of dowry deaths.

## 2. State Failure to Prosecute and to Convict

The unwillingness of prosecutors and judges to acknowledge dowry death as a serious crime and to systematically enforce dowry death laws constitutes a lack of reasonable measures. Prosecutors fail to give this crime priority; they rarely file charges in proportion to the number of reported cases even when a complete investigation is conducted.<sup>208</sup> Between 1961 and 1975, Indian prosecutors filed only one dowry death case under the Dowry Prohibition Act.<sup>209</sup> Moreover, in

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201. See Spatz, *supra* note 10, at 613; Reena Shaw, *India's Invisible War Against Women*, ST. PETERSBURG TIMES, Mar. 13, 1992, at 10A.

202. See GHOSH, *supra* note 116, at 165.

203. See GHOSH, *supra* note 116, at 165.

204. See Gupta & Srivastava, *supra* note 8, at 88.

205. See J.R. Gaur, *Forensic Examinations in Two Cases of Alleged Dowry Deaths*, 33 MED. SCI. L. 269, 271-72 (1993).

206. See Spatz, *supra* note 10, at 612.

207. See Carlson-Whitley, *supra* note 70, at 648.

208. See Spatz, *supra* note 10, at 613.

209. See Spatz, *supra* note 10, at 613 n.110.

1987, when reported dowry deaths numbered 1,786,<sup>210</sup> only 35 people were charged in dowry death cases in the first 10 months of that year.<sup>211</sup> The prosecution's failure to file charges commensurate with the number of reported cases results in a disregard for the seriousness of this crime, where many dowry death cases are not investigated or punished.

Although the judiciary should not be blamed for acquittals that arise from the police's faulty investigation or insufficient evidence,<sup>212</sup> the judiciary fails to acknowledge the serious criminal nature of dowry deaths and thus creates impediments to the systematic enforcement of dowry death laws. The judiciary regards dowry death complaints as a low priority in prosecution.<sup>213</sup> If and when charges are filed, it can take up to a year before a hearing is granted.<sup>214</sup> Between 1983 and 1990 in New Delhi, the government obtained three convictions, while more than 220 cases waited for some resolution.<sup>215</sup>

When judges do hear dowry death cases, the cases rarely result in conviction.<sup>216</sup> Judges suppress crucial evidence, such as suicide letters or dying declarations, on technical grounds.<sup>217</sup> Furthermore, judges do not issue warrants in these serious cases when key witnesses fail to testify the first or second time.<sup>218</sup> Dowry death cases can drag on for years without any resolution or punishment for this intolerable human rights violation.<sup>219</sup> Judicial backlog also results from interrupted testimony followed by numerous adjournments and several months of delay.<sup>220</sup>

With only a handful of dowry death convictions, the Indian judiciary is reluctant to send a strong message that the judiciary is opposed to dowry deaths.<sup>221</sup> In the 1983 landmark case of *Sudha Goel*, the High Court overturned New Delhi Justice Aggarwal's un-

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210. See BUMILLER, *supra* note 35, at 49.

211. See Spatz, *supra* note 10, at 613 n.110.

212. See Spatz, *supra* note 10, at 612-13.

213. See Carlson-Whitley, *supra* note 70, at 648.

214. See Carlson-Whitley, *supra* note 70, at 648.

215. See Carlson-Whitley, *supra* note 70, at 648 n.80.

216. See *Treatment of Women Monitored World Wide*, Information Access Company, Mar. 22, 1994, at 30, available in LEXIS, Nexis Library, L.F. Medline File.

217. See Carlson-Whitley, *supra* note 70, at 648.

218. See BUMILLER, *supra* note 35, at 59.

219. See BUMILLER, *supra* note 35.

220. See BUMILLER, *supra* note 35.

221. See Spatz, *supra* note 10, at 613-14 n.111.

precedented death sentence<sup>222</sup> for a dowry death in spite of overwhelming evidence<sup>223</sup> and a legitimate dying declaration that supported conviction.<sup>224</sup> While Justice Aggarwal's decision communicated that dowry deaths would not be tolerated, the High Court's reversal sent the opposite message: men who commit dowry deaths will be shielded by the judiciary.<sup>225</sup> Confident in this idea that dowry deaths are not punished in India, Goel's husband remarried and took another dowry when his case was on appeal.<sup>226</sup>

In 1986, the Supreme Court overturned the High Court's decision. Although the Court was careful to denounce dowry deaths and affirm the defendant's convictions, the Court refused to reinstate the original death sentences for such a horrific crime.<sup>227</sup> Again, the government sent out conflicting messages.

By placing a low priority on dowry death cases and letting them linger unpunished in the legal system, the judiciary has failed to recognize dowry deaths as a serious national problem and to systematically enforce legislation designed to punish them. Citizens will take the crime as seriously as the legal system does. Thus, the judiciary's actions contribute to India's lack of reasonable measures to facilitate the prosecution of dowry deaths.<sup>228</sup>

#### *D. Summing Up India's State Complicity*

India has violated its duty of due diligence to prevent, investigate, and punish dowry deaths by failing to take reasonable measures to protect against this human rights violation. Specifically, Indian police, prosecutors, and judges have failed to take the reasonable measures that this paper formulated for the context of dowry deaths. Thus having condoned dowry deaths through its failure to take reasonable

222. See Spatz, *supra* note 10, at 614 n.111.

223. See BUMILLER, *supra* note 35, at 55. Sudha's neighbors testified that Sudha's parents could not afford to give the additional cash, motor scooter, and refrigerator requested by her husband's family. Thus, Sudha's husband, brother-in-law, and mother-in-law allegedly dragged the screaming Sudha, who was nine months pregnant, into the garden and set her aflame.

224. See BUMILLER, *supra* note 35, at 55. In her dying declaration, Sudha said her mother-in-law had ripped off her jewelry before she burnt to death.

225. See Spatz, *supra* note 10, at 613-14 n.111.

226. See Spatz, *supra* note 10, at 613-14 n.111.

227. See A.I.R. 1986 S.C. 250.

228. See *Treatment of Women Monitored World Wide*, *supra* note 216.



measures, India bears state complicity in the commission of dowry deaths.<sup>229</sup>

#### IV. WHY INDIA'S FAILURE TO EXERCISE DUE DILIGENCE RESULTS IN HUMAN RIGHTS VIOLATIONS

India must exercise due diligence in the prevention, investigation, and punishment of dowry deaths to ensure the realization of human rights and to thus fulfill its obligations under the International Bill of Rights (UDHR, ICESCR, and ICCPR), the Women's Convention, the Declaration on the Elimination of Violence, and the Beijing Declaration and Platform.<sup>230</sup> Instead, India has failed to exercise due diligence.<sup>231</sup> Although bound to ensure the realization of human rights, India violates the specific rights implicated in dowry deaths.

Dowry deaths violate several human rights contained in the International Bill of Human Rights. Three areas will be discussed in the following sections: the right to freedom from discrimination, and equal rights in marriage; the right to life, liberty, security of a person, freedom from torture or cruel, inhuman or degrading treatment or punishment; and the right to the highest attainable standard of physical and mental health.

##### *A. The Right to Freedom from Discrimination and Equal Rights in Marriage*

As a State party to the UDHR, ICESCR, and the ICCPR, India has not ensured its citizen's right to be free from discrimination. India has failed to ensure that all people are able to enjoy the rights contained in these documents<sup>232</sup> without distinction of any kind.

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229. See Roth, *supra* note 101, at 329. The human rights community has gradually accepted that a state can be held responsible under international human rights law for its inaction as well as action. To hold the state responsible for private violence, the author highlights the state's systematic failure to enforce criminal laws against private violence. A state's failure to fulfill its duty to protect its citizens from violence equals a State endorsement of that violence. This complicity provides the requisite governmental dimension to consider violence a human rights issue.

230. See discussion *supra* Part III.C; see also, *supra* notes 15–20.

231. See discussion *supra* Part III.C.

232. See ICCPR, *supra* note 17, at 173; ICESCR, *supra* note 16, at 5; UDHR, *supra* note 15, at 72.

Moreover, with respect to gender, India has not ensured that men and women are able to enjoy the rights set forth in each covenant and declaration<sup>233</sup> on an equal basis. The right to be free from gender discrimination includes equal rights in marriage. Hence, India also fails to protect women's entitlement to equal rights as to marriage, during marriage, and at its dissolution.<sup>234</sup>

### 1. How Dowry Deaths Violate These Rights

The Convention on the Elimination of All Forms of Discrimination Against Women defines "discrimination against women" as any distinction, exclusion, or restriction made on the basis of sex that impairs or nullifies the recognition, enjoyment, or exercise of any human rights by women.<sup>235</sup> Gender-based violence is a form of "discrimination against women" since the violence targets women because they are women or because of its disproportionate effect on women.<sup>236</sup> The Beijing Declaration and Platform also recognizes this gender based violence as an obstacle to the achievement of equality for women.<sup>237</sup> Moreover, gender based violence, which occurs in the home or in the community and is condoned by the state through its complicity, instills fear and insecurity in women. CEDAW, the Declaration on the Elimination of Discrimination Against Women, Special Rapporteur Coomaraswamy, the Beijing Declaration and Platform, and the U.S. State Department have all recognized dowry related violence as a form of gender-based violence,<sup>238</sup> which interferes with women's ability to enjoy, exercise, or know their human rights on an equal basis with men.<sup>239</sup>

### 2. How India Fails To Ensure These Rights

India dishonors its obligations to ensure the right to be free from discrimination and equal rights in marriage through its complicity in

233. See ICCPR, *supra* note 17, at 174; ICESCR, *supra* note 16, at 5.

234. See Women's Convention, *supra* note 18, at 20; ICCPR, *supra* note 17, at 179; UDHR, *supra* note 15, at 74.

235. Women's Convention, *supra* note 18, at 16.

236. *General Recommendations*, *supra* note 109, at 74.

237. Beijing Declaration and Platform, *supra* note 20, at 52.

238. See *supra* text accompanying notes 109–114.

239. See *General Recommendations*, *supra* note 109, at 74.

the commission of dowry deaths. In its most recent report on ICCPR compliance, India states that enactment of the Dowry Prohibition Act tackles “the root cause of violence against women” and thus ensures equality for women under ICCPR article 3.<sup>240</sup> Additionally, India declares that amendments to the Dowry Prohibition Act and further criminal legislation<sup>241</sup> were enacted to ensure equal marriage rights under ICCPR article 23.<sup>242</sup> Enacting legislation is necessary but not sufficient to ensure these rights. By failing to take reasonable measures to allow its legislation to work, India has perpetuated discrimination against married Indian women in the form of dowry deaths.

This national endorsement of discrimination violates specific articles of human rights instruments which seek to eliminate discrimination and ensure equal rights in marriage. India has violated its duties to realize equal rights in marriage and a women’s right to be free from discrimination under the Convention on the Elimination of All Forms of Discrimination Against Women. On July 30, 1980, India signed the Women’s Convention but only ratified the document on July 9, 1993.<sup>243</sup> India’s reluctance to become a party to the Women’s Convention, and its subsequent receipt of ratification thirteen years after signing the document, emit signals of a half-hearted commitment to the Convention and its goals. Dowry deaths, as a form of gender based violence, may breach specific Convention articles, regardless of whether these provisions mention violence.<sup>244</sup>

India has violated several Convention articles, which strive to protect women’s right to freedom from discrimination and ensure equal rights in marriage. First, India violates Article 2(a),<sup>245</sup> which directs India to implement the equality principle contained in its national constitution<sup>246</sup> and its other anti-dowry laws.<sup>247</sup> Although Parliament has enacted legislation to effect the theoretical realization

240. *ICCPR Third Periodic Report*, *supra* note 129, at 15.

241. *See* discussion *supra* Part III.B.

242. *See ICCPR Third Periodic Report*, *supra* note 129, at 35.

243. *See Convention on the Elimination of All Forms of Discrimination Against Women States That Have Signed, Ratified, Acceded or Succeeded to the Convention*, 5 Jan. 1998 (visited Oct. 6, 1999) <gopher://gopher.un.org:70/00/gal/cedaw/RATIFICA>.

244. *See General Recommendations*, *supra* note 109, at 74.

245. Women’s Convention, *supra* note 18, at 16.

246. *See* INDIA CONST. art. XIV. Article XIV guarantees equal rights for all citizens, irrespective of sex or creed.

247. *See* Dowry Prohibition Act, No. 28 of 1961, 21 INDIA A.I.R. MANUAL 127 (5th ed. 1989) (as amended).

of equality, the government has failed to ensure the practical realization of the equality principle through the actual implementation of that legislation. Second, India violates Article 2(d)<sup>248</sup> because Indian public authorities and institutions, such as police and the judiciary, continue to engage in discriminatory practices. When police, prosecutors, and the judiciary fail to take reasonable measures to implement dowry death legislation, they have tacitly condoned and participated in discrimination against women in the form of dowry deaths. Third, India violates Article 2(e)<sup>249</sup> by failing to take appropriate reasonable measures to stop private citizens, such as husbands and in-laws, from discriminating against women through the commission of dowry deaths.

Fourth, India violates Article 28(2) of the Convention by making a declaration which is "incompatible with the object and purpose of the present Convention."<sup>250</sup> With regard to Articles 5(a) and 16(1), India declares its commitment to following these provisions in accordance with its policy of "non-interference in the personal affairs of any Community without its initiative and consent."<sup>251</sup> Article 5(a) of the Convention,<sup>252</sup> Article 4(j) of the Declaration on the Elimination of Violence Against Women,<sup>253</sup> and Paragraph 124(k) of the Beijing Declaration and Platform<sup>254</sup> all require India to take all appropriate measures to modify social and cultural patterns of conduct of men and women with a view to eliminating prejudices and practices, such

248. The language of the article is as follows:

Article 2: State Parties condemn discrimination against women in *all its forms*, agree to pursue by all *appropriate means* and *without delay* a policy of eliminating discrimination against women, and to this end, undertake:

...

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that *public authorities and institutions shall act in conformity with this obligation*.

Women's Convention, *supra* note 18, at 16 (emphasis added).

249. "To take all appropriate measures to *eliminate discrimination* against women by any person, *organization, or enterprise*." Women's Convention, *supra* note 18, at 16 (emphasis added).

250. Women's Convention, *supra* note 18, at 23.

251. MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL at 172, U.N. Doc. ST/LEG/SER.E/15, U.N. Sales No. E.97.V.5 (1997).

252. Women's Convention, *supra* note 18, at 17.

253. *Declaration on Elimination of Violence*, *supra* note 19, at 5.

254. Beijing Declaration and Platform, *supra* note 20, at 55.

as dowry deaths, based on the superiority or inferiority or stereotyped roles of either of the sexes. Article 16(1)(c) of the Women's Convention requires India to take all appropriate steps to ensure equal rights and responsibilities during and at the dissolution of a marriage.<sup>255</sup>

India's non-interference declaration is not only inconsistent with Articles 5(a) and 16(1) but also with the entire spirit and goals of the Convention.<sup>256</sup> The common cultural practice in India is to discriminate against women throughout their lives.<sup>257</sup> Indian culture perpetuates the discrimination against women through the social practice of giving dowry; husbands and their families are paid to take on the economic burden of a female.<sup>258</sup> Moreover, Indian culture dictates that wives should be selfless and obedient, while their husbands are "justifiably" abusive regarding inadequate dowries.<sup>259</sup> Consequently, married women are often deprived of equal rights by their husbands and in-laws. For many years, Indian culture has placed this marital power inequity in the community's hands as a "private affair."<sup>260</sup> Thus, police, the government, and members of the Indian community are reluctant to interfere and enlist in any fight against dowry deaths.

Through its policy of non-interference, the Indian government can enact dowry death legislation without taking reasonable implementation measures because dowry matters are "personal affairs." The non-interference policy does allow government involvement if the community consents.<sup>261</sup> Even so, the Indian community is unlikely to give its consent. Most of the Indian community has a vested interest in the perpetuation of dowry and dowry deaths and is unlikely to lobby for the implementation of the law. An Indian husband and his family depend on dowries to elevate their economic status and quickly amass material wealth.<sup>262</sup> Dowry deaths allow a husband to dispose of

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255. See Women's Convention, *supra* note 18, at 20.

256. See CEDAW States Meeting, *supra* note 141. During this meeting, the Government of the Kingdom of the Netherlands stated that India's declaration, with respect to Article 5(a) and 16(1) of the Convention, is a declaration that is incompatible with the object and purpose of the Convention under Article 28(2).

257. See BUMILLER, *supra* note 35, at 105; MITTER, *supra* note 26, at 113.

258. See Moore, *supra* note 8.

259. See Spatz, *supra* note 10, at 614.

260. See Spatz, *supra* note 10, at 613.

261. See U.N. MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL, *supra* note 251.

262. See Moore, *supra* note 8.

his wife with the inadequate dowry and thus free himself for a new wife with a more lucrative dowry.<sup>263</sup> Thus, husbands and their families are unlikely to call for reasonable measures to implement anti-dowry and dowry death laws. Families of brides often want to marry off their daughters, and it appears they also accept the Indian culture's silent sanctioning of women's inferiority. Police also seem reluctant to refigure their outlooks to take a more active role in Indian family matters.<sup>264</sup> Therefore, India disavows its obligations under Article 5(a) and Article 16(1) to the extent that they involve any dowry related issues. The Indian government uses the community's lack of initiative and consent as a justification for its failure to take more aggressive steps to curtail dowry deaths.

India is unwilling to interfere in a community which normalizes the commission of dowry deaths. Moreover, this unwillingness is evidenced by its failure to take reasonable measures to implement its dowry death legislation. Thus, India has failed to fully meet its obligations under Article 16(1) of the Convention to ensure equal rights in a marriage. India has failed to take appropriate measures to eliminate the discriminatory practice of committing dowry deaths. Thus, India has additionally violated Article 5(a) of the Convention, Article 4(j) of the Declaration on the Elimination of Violence Against Women, and Paragraph 124(k) of the Beijing Declaration and Platform.

Lastly, India has not diligently honored its reporting requirement under the Convention. For approximately the last four and a half years, India violated Article 18 of the Convention,<sup>265</sup> which requires India to submit to the United Nations Secretary General reports on the legislative, judicial, administrative, or other means used to achieve compliance with Convention provisions and on the nation's current progress in eliminating discrimination against women. Each country must submit reports for review by CEDAW one year after the entry into force of the Convention and every four years thereafter. India's initial report was due on August 8, 1994. CEDAW did not receive this report until February 2, 1999. CEDAW had not reviewed this report as of May 10, 1999.<sup>266</sup> In spite of its ratification of the

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263. See Spatz, *supra* note 10, at 608.

264. See Spatz, *supra* note 10, at 613.

265. See Women's Convention, *supra* note 18, at 22.

266. See U.N. Doc. CEDAW/C/1999/II/2 (Visited Sept. 27, 1999). <<http://www.un.org/womenwatch/daw/cedaw/21status.htm>>.

Convention, India has not complied with Article 18. Therefore, India has failed to ensure equal rights in marriage and the right to be free from discrimination for Indian women who are victimized by dowry deaths.

*B. The Right to Life, Liberty, and Security and The Right to Freedom From Torture, Inhuman, or Degrading Treatment or Punishment*

Article 4.2 of the ICCPR labels the right to life and right to freedom from torture as non-derogable rights.<sup>267</sup> Presumably, these rights are too important to allow for violations of them in any circumstances.<sup>268</sup> The UDHR recognizes the "right to life, liberty, and security of person."<sup>269</sup> Similarly, Article 6.1 ICCPR notes that no one shall be arbitrarily deprived of the inherent right to life, and the law will protect this right.<sup>270</sup> Article 6.1 does not define an arbitrary deprivation of life, but one commentator states that "deprivation of life" means homicide.<sup>271</sup> In drafting Article 6, the majority of States felt that a state should be responsible for protecting against the deprivation of life committed by official authorities, as well as by private actors.<sup>272</sup> Dowry deaths are homicides committed by private actors, such as husbands and in-laws, and thus are deprivations of life. Thus, dowry deaths are arbitrary deprivations of life and violate ICCPR article 6.1.

In addition, both UDHR article 5 and ICCPR article 7 state that "no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment."<sup>273</sup> Torture is not defined in the UDHR or the ICCPR. However, the UN Human Rights Committee has treated death threats or grave physical harm as torture under the ICCPR.<sup>274</sup> Dowry deaths are actual murders and could constitute torture by the UN Human Rights Committee Standards.

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267. See ICCPR, *supra* note 17, at 174.

268. See Buergenthal, *supra* note 133, at 83.

269. UDHR, *supra* note 15, at 72.

270. See ICCPR, *supra* note 17, at 174.

271. See Yoram Dinstein, *The Right to Life, Physical Integrity, and Liberty*, in *THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS* 114, 116 (Louis Henkin ed., 1981).

272. See Dinstein, *supra* note 271, at 119.

273. ICCPR, *supra* note 17, at 175; UDHR, *supra* note 15, at 73.

274. See Copelon, *supra* note 117, at 126.

## 1. How Dowry Deaths Violate These Rights

Torture usually involves four elements: 1) intentional infliction of 2) severe physical and/or mental pain and suffering 3) for specified purposes 4) with some active or passive form of official involvement.<sup>275</sup> First, upset and dissatisfied with an inadequate dowry, a husband and his immediate family kill the bride intentionally. Second, dowry death victims often suffer some form of physical beating before dying<sup>276</sup> and are often burned alive.<sup>277</sup> Such physical suffering is intertwined with mental anguish,<sup>278</sup> which results from threats of murder and verbal abuse from the husband's family.<sup>279</sup> Third, the husband tortures his wife for specific purposes. Initially, he wants to punish her<sup>280</sup> for bringing an inadequate dowry<sup>281</sup> or to intimidate her family<sup>282</sup> into providing more money.<sup>283</sup> Ultimately, he kills his wife so that he can marry a new wife who will bring a more valuable dowry.<sup>284</sup> Fourth, Indian police, prosecutors, and judiciary's failure to exercise due diligence in the investigation and prosecution of these crimes renders India complicit in the commission of dowry deaths.<sup>285</sup> India plays a passive role in letting these crimes go unpunished and uninvestigated. Thus, dowry deaths constitute torture and violate UDHR article 5 and ICCPR article 7.

## 2. How India Fails to Ensure These Rights

Under ICCPR article 2.1, India must "respect" and "ensure" the right to life, and the right to be free from torture, inhuman, or degrading treatment or punishment.<sup>286</sup> India has fulfilled its obligation to "respect" these rights because government authorities do not commit

275. See Copelon, *supra* note 117, at 122.

276. See *Preliminary Report*, *supra* note 92, ¶ 162; Gupta & Srivastava, *supra* note 8, at 81, 88; Moore, *supra* note 8.

277. See BUMILLER, *supra* note 35, at 47; Spatz, *supra* note 10, at 608.

278. See Copelon, *supra* note 117, at 123.

279. See *Preliminary Report*, *supra* note 92, ¶ 162.

280. See Copelon, *supra* note 117, at 131.

281. See Moore, *supra* note 8.

282. See Copelon, *supra* note 117, at 133.

283. See Moore, *supra* note 8.

284. See Spatz, *supra* note 10, at 608.

285. See discussion *supra* Part III.C.

286. See ICCPR, *supra* note 17, at 173.



dowry deaths in the their official capacities in the name of the nation.<sup>287</sup> Nevertheless, India fails to ensure these rights. "Ensure" means that a State must make sure that private individuals do not interfere with the other individuals' exercise of their rights under the ICCPR.<sup>288</sup> "Ensure" implies an affirmative obligation by India to take all necessary measures to enable individuals to enjoy the rights guaranteed in the Covenant.<sup>289</sup>

Article 6.1 guarantees that "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."<sup>290</sup> India fails to exercise due diligence to apprehend and prosecute murderers as a deterrent to the future commission of dowry deaths.<sup>291</sup>

Under ICCPR article 7, "[n]o one shall be subjected to torture or to cruel, inhuman, or degrading treatment."<sup>292</sup> Therefore, India must condemn and effectively enforce sanctions against torture committed by private individuals or State actors.<sup>293</sup> Dowry death crimes are not prosecuted or investigated with due diligence,<sup>294</sup> which is necessary to "ensure" freedom from torture.

### *C. The Right To The Highest Attainable Standard of Physical and Mental Health*

Article 12.1 of the ICESCR requires that States "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."<sup>295</sup> The promotion and protection of women's health is inextricably linked to other human rights.<sup>296</sup> Dowry deaths seriously jeopardize Indian women's health, and this threat to women's health is a component of the violation of numerous other rights.

287. See Buergenthal, *supra* note 133, at 77.

288. See Dinstein, *supra* note 271, at 119.

289. See Buergenthal, *supra* note 133, at 77.

290. ICCPR, *supra* note 17, at 174.

291. See Dinstein, *supra* note 271, at 119.

292. ICCPR, *supra* note 17, at 175.

293. See Copelon, *supra* note 117, at 140 (discussing the absence of state intervention as a basis for state accountability).

294. See discussion *supra* Part III.C.

295. ICESCR, *supra* note 16, at 8.

296. See Jonathan M. Mann et al., *Health and Human Rights*, 1 HEALTH & HUM. RTS. 6, 19 (1994).

## 1. How Dowry Deaths Violate This Right

Dowry deaths violate the right to health under ICESCR article 12.1. Gender based violence, such as dowry violence, is one of the least recognized human rights issues in the world, and also a serious health problem, draining women's physical and emotional strength.<sup>297</sup> Worldwide, violence against women affects women's health to a similar degree as more conspicuous conditions, such as HIV infection and tuberculosis.<sup>298</sup> Dowry related violence puts women's health at risk and consequently jeopardizes their ability to participate equally in their private and public lives.<sup>299</sup> A woman's lack of health can contribute to the impairment of her equal rights in marriage and her right to be free from discrimination. The deprivation of an Indian woman's right to health, as a result of dowry violence, is related to the deprivation of her ability to enjoy her rights and freedoms on an equal basis with men.

The World Health Organization defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."<sup>300</sup> Escalating dowry-related violence, and ultimately dowry deaths, compromises the well-being of Indian women. The failure of the bride's family to furnish sufficient dowry could mark the beginning of familial violence.<sup>301</sup> The husband and his family may verbally abuse the wife and threaten her life,<sup>302</sup> causing her mental anguish. The wife may also suffer some sort of systematic or episodic physical torture, such as starvation,<sup>303</sup> and murder by fire,<sup>304</sup> clearly violating an Indian woman's right to health. Arguably, protecting a woman's right to health against dowry deaths also protects her right to equal rights in marriage, her right to freedom from discrimination, her

297. See Heise, *supra* note 46.

298. See Jejeebhoy & Cook, *supra* note 157, at s111 (citing L. HEISE ET AL., VIOLENCE AGAINST WOMEN: THE HIDDEN HEALTH BURDEN (World Bank Discussion Paper No. 255, 1994)).

299. See Jejeebhoy & Cook, *supra* note 157, at s111-12.

300. WORLD HEALTH ORGANIZATION, CONSTITUTION OF THE WORLD HEALTH ORGANIZATION (1946) (as amended), reprinted in BASIC DOCUMENTS 1, 1 (42nd ed. 1999).

301. See *Preliminary Report*, *supra* note 92, ¶ 162.

302. See *Preliminary Report*, *supra* note 92, ¶ 162.

303. See *Preliminary Report*, *supra* note 92, ¶ 162; Gupta & Srivastava, *supra* note 8, at 88; Moore, *supra* note 8.

304. See BUMILLER, *supra* note 35, at 47-48; Spatz, *supra* note 10, at 608.

right to life, liberty, and security, and her right to be free from torture, inhuman, or degrading treatment or punishment.

## 2. How India Violates This Right

Although India is not a guarantor of women's right to health, arguably, the country should not be complicit in a practice, such as dowry deaths, that blatantly violates this right and other related human rights. Dowry deaths impair women's health, and the government is implicitly consenting to this destruction of women's health by failing to curtail these crimes.

### *D. India Fails to Foster the Realization of Human Rights*

By violating the various human rights discussed above, India has violated its obligations under various human rights instruments to foster the realization of human rights. India's failure to exercise due diligence in the implementation of its dowry death laws has caused these violations. First, although the UDHR contains no clear "realization" language, India has failed to use due diligence to adequately protect human rights under the UDHR.<sup>305</sup> Second, India violates ICESCR realization requirements that a State must achieve "progressively the full realization of the right[]" to health.<sup>306</sup> In spite of its dowry death legislation enacted in 1961, 1984, and 1986, India has not taken reasonable measures to enable this legislation to actually succeed in curbing dowry deaths.<sup>307</sup> Thus, thirty-nine years after the enactment of the Dowry Prohibition Act, India continues to allow the widespread commission of dowry deaths and is nowhere near the full realization of women's right to health.

Third, India does not give dowry death victims an effective remedy, as required by the ICCPR.<sup>308</sup> India takes no reasonable measures to implement its dowry death legislation, and legislation that does not deter, investigate, or punish dowry deaths is not an effective remedy for victims. Furthermore, India has not "ensured" ICCPR rights under Article 2.1 because of its failure to take reasonable measures to

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305. See discussion *supra* Parts II.B, III.C.

306. ICESCR, *supra* note 16, at 4, 8.

307. See discussion *supra* Part III.B.1.

308. See ICCPR, *supra* note 17, at 174.

implement dowry death legislation, which is required in its duty of due diligence.<sup>309</sup> During its August 1997 meeting, the UN Human Rights Committee examined India's latest ICCPR compliance report and concluded that legislative measures to combat dowry deaths were insufficient and urged authorities to stop these abuses.<sup>310</sup> Thus, India has failed to fulfill its obligations to foster realization of human rights under the International Bill of Rights.

India also disregards additional explicit mandates requiring the country to exercise due diligence in the prevention, investigation, and punishment of human rights violations in accordance with national legislation. India violates Article 4(c) of the Declaration on the Elimination of Violence Against Women<sup>311</sup> and paragraph 124(b) of the Beijing Declaration and Platform,<sup>312</sup> which require India to use "due diligence to prevent and investigate" dowry deaths in accordance with national dowry death legislation. India also dishonors its obligation under the Beijing Declaration and Platform to enforce national dowry death legislation.<sup>313</sup> Thus, although bound by various human rights documents, India has not fulfilled its obligations to foster the realization of these rights under a due diligence standard.

## V. PROBLEMS WITH IMPOSING A DUE DILIGENCE STANDARD

This paper proposes a due diligence standard to measure the adequacy of India's response to the national phenomenon of dowry deaths. This section will discuss and attempt to resolve several potential impediments.

### *A. Notice*

Notice is a necessary prerequisite to the duty of due diligence.<sup>314</sup> India does not have an opportunity to prevent dowry deaths if the

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309. See Dinstein, *supra* note 271, at 119–20. (“[Article 2(1)] would seem to require that the state make certain that private individuals . . . do not interfere with the enjoyment of the right to life by other individuals.”)

310. See *Indian Women Victims of Violence, Discrimination: UN Committee*, *supra* note 13.

311. See *Declaration on Elimination of Violence*, *supra* note 19, at 4.

312. See Beijing Declaration and Platform, *supra* note 20, at 54.

313. Beijing Declaration and Platform, *supra* note 20, at 55; *Declaration on Elimination of Violence*, *supra* note 19, at 5.

314. See discussion *supra* Part II.A.1.

country is not aware of the increase in these crimes.<sup>315</sup> The Indian government could claim a lack of constructive notice of increasing dowry deaths because this human rights violation is notoriously underreported.<sup>316</sup>

However, several official actors contribute to the under reporting of dowry deaths. True, brides' families fail to report these murders because of the cultural stigma associated with a broken marriage,<sup>317</sup> and guilty in-laws report the murders as "kitchen accidents,"<sup>318</sup> but the police are also implicated in this under reporting. Police sentiments regarding non-interference with "family affairs"<sup>319</sup> cause them to investigate less than 10 percent of reported dowry deaths and often to classify the crimes as stove accidents.<sup>320</sup> Moreover, police may be motivated to misreport because of bribes offered by the guilty husband and his family.<sup>321</sup>

In addition, in spite of underreporting, the Indian government still has notice of the increasing prevalence of dowry deaths. The Indian Parliament's own statistics show a rapid rise in dowry deaths in spite of the enactment and augmentation of dowry death legislation.<sup>322</sup> These statistics become even more disturbing when the issue of underreporting is considered because the numbers may underestimate what is, in fact, an ancient and commonplace practice in India.<sup>323</sup>

### B. Means

Due diligence requires that India have means to protect against dowry deaths.<sup>324</sup> Without means, India will not be held responsible for these rights violations.<sup>325</sup> Because means are not defined in the context

315. See Lillich & Paxman, *supra* note 99, at 719.

316. See Carlson-Whitley, *supra* note 70, at 642; see also, Mansfield, *supra* note 1; *Indian Bridegroom in Trouble over Dowry Demand*, Reuters North American Wire, Jan. 7, 1997 (on file with author).

317. See Spatz, *supra* note 10, at 615; see also, Carlson-Whitley, *supra* note 70, at 642-43.

318. See Spatz, *supra* note 10, at 611; see also, *Indian Bridegroom in Trouble*, *supra* note 316; Mansfield, *supra* note 1, at 13; Pardee, *supra* note 77, at 499.

319. See Spatz, *supra* note 10, at 613.

320. See Spatz, *supra* note 10, at 611.

321. See Spatz, *supra* note 10, at 612.

322. See discussion *supra* Part IV.A.2.

323. See Carlson-Whitley, *supra* note 70, at 643.

324. See discussion *supra* Part II.A.1.

325. Cf. Lillich & Paxman, *supra* note 99, at 246 (discussing state duty to prevent injuries to aliens inflicted by terrorism).

of dowry deaths, India's government could define means in a variety of ways, such as resources or capital. India could potentially argue that the country lacks resources and money, and that its legislation is not a form of means at all. India could then utilize this reasoning to shirk responsibility for this horrific crime.

Nevertheless, dowry death legislation qualifies as a viable form of means. With proper implementation under a due diligence standard, these laws will deter the future commission of these crimes by sending the nation a message: dowry deaths will not be tolerated by the State but will instead be investigated and prosecuted. Dowry death officers, specialized units, funding for legislation and anti-dowry death campaigns only reinforce and augment the legislation. Thus, resources and capital are not means to protect but rather strengthen the real means, which is legislation.

This paper seeks to create an objective due diligence standard. India must have *some* means to protect against dowry deaths.<sup>326</sup> The quality of the legislation's content is not an issue because quality is a subjective factor. Thus, under the *means* component of the proposed due diligence standard, the mere existence of the laws is both necessary and sufficient.

### *C. Reasonable Measures Under The Circumstances*

To fulfill its duty of due diligence, India must take reasonable measures to allow dowry death legislation an opportunity to achieve its purpose.<sup>327</sup>

#### 1. A Cultural Relativism Argument

Cultural relativism assumes that culture determines rights, social practices, values, and moral rules.<sup>328</sup> People should be able to exercise cultural rights without any sort of official intervention.<sup>329</sup> The UHDR and the ICCPR both recognize the freedom to enjoy and exercise

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326. Cf. Lillich & Paxman, *supra* note 99, at 242–43, 246. The authors do not require that the means meet a certain quality standard.

327. See discussion *supra* Part II.A.2.

328. See, e.g., Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 HUM. RTS. Q. 400, 401 (1984).

329. See, e.g., Pardee, *supra* note 77, at 510.

cultural rights. The UDHR declares that “[e]veryone . . . is entitled to realization . . . of the economic, social and cultural rights indispensable for [individual] dignity.”<sup>330</sup> Article 27 of the ICCPR further states that everyone has a right “to enjoy their own culture, to profess and practise their own religion, or to use their own language.”<sup>331</sup>

In its declaration to the Convention on the Elimination of All Forms of Discrimination Against Women, the Indian government presents a cultural relativist defense.<sup>332</sup> The declaration states that the Indian government will support equal rights in marriage and eliminate cultural discriminatory practices against women in accordance with “its policy of non-interference in the personal affairs of any community.”<sup>333</sup> Personal affairs of the community arguably encompasses cultural issues. The practice of giving dowry is an accepted and ancient part of Indian culture.<sup>334</sup> Moreover, dowry deaths are legitimized by this culture, which systematically subjugates women and places a higher value on consumerism.<sup>335</sup> Thus, India can argue that dowry and dowry deaths are cultural community issues, with which India and other outside authorities should not interfere without community consent, which is unlikely.

## 2. Rebutting the Cultural Relativism Argument

Cultural relativism does not justify India’s failure to take reasonable measures for several reasons. First, dowry deaths are human rights violations, which violate a universal standard of morality. Because moral norms differ between cultures,<sup>336</sup> one must establish an objective moral truth to defeat a cultural relativism argument.<sup>337</sup> Arguably, a universal standard of morality exists for the acceptance of human rights. International law scholar Lea Brilmayer states that “[m]ost human rights abuses involve the perpetration of harms that are undeniably wrong in the eyes of all parties to the dispute.”<sup>338</sup> Moreover,

330. UDHR, *supra* note 15, at 75.

331. ICCPR, *supra* note 17, at 179.

332. See *CEDAW States Meeting*, *supra* note 141, at 19–20.

333. *CEDAW States Meeting*, *supra* note 141, at 19–20.

334. See Heise, *supra* note 46, at B4.

335. See discussion *supra* Part I.D.

336. See Pardee, *supra* note 77, at 514.

337. *But cf.*, LEA BRILMAYER, AMERICAN HEGEMONY 148 (1994) (arguing that there are other “ways to undercut the cultural relativism argument”).

338. BRILMAYER, *supra* note 337, at 149.

"widespread ratification of the International Covenants throughout the world suggests a certain level of acceptance of the universal system."<sup>339</sup> Few countries would support the morality of cannibalism, slavery, or genocide today.<sup>340</sup> In the case of human rights violations, countries cannot use cultural relativism to justify actions that universal morality proscribes<sup>341</sup> and to evade their international obligations under human rights.<sup>342</sup>

Second, countries that ratify the UDHR, the ICCPR and ICESCR accept the rights contained in these documents as universal human rights and cannot invoke cultural relativism to avoid their legal obligations under these documents.<sup>343</sup> Thus, India cannot use cultural relativism as an excuse for its failure to protect human rights and punish dowry deaths.

Third, dowry deaths are not essential to the Indian culture. The Indian government proves this non-essential quality by enacting laws designed to deter and punish people who commit these crimes.<sup>344</sup> The government must be aware that the presence of these laws, which focus on a cultural practice, will inevitably interfere to some extent with the community's actions. Thus, the Indian government is either renouncing its own non-interference policy, or the government does not view dowry deaths as integral to the national fabric.

Fourth, although they are committed in the home, dowry deaths are not a private cultural practice. "Violence against women is a political act, which communicates a message of domination: 'Stay in your place or be afraid.'"<sup>345</sup> By failing to take reasonable measures to combat violence against women, governments participate in this violence. Through complicity, nations maintain their patriarchal power structures, which condone private actors' systematic deprivations of women's human rights.<sup>346</sup> The United Nations General Assembly recognized that gender specific violence must be eliminated in both the public and private realms.<sup>347</sup> Furthermore, the United Nations ratification of the Declaration on the Elimination of Violence Against

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339. GOSTIN & LAZZARINI, *supra* note 125, at 40.

340. See BRILMAYER, *supra* note 337, at 148-49.

341. See GOSTIN & LAZZARINI, *supra* note 125, at 40.

342. See BRILMAYER, *supra* note 337, at 148.

343. See GOSTIN & LAZZARINI, *supra* note 125, at 40.

344. See Spatz, *supra* note 10, at 609.

345. Romany, *supra* note 100, at 100.

346. See Romany, *supra* note 100, at 102.

347. See Pardee, *supra* note 77, at 517.



Women<sup>348</sup> is a manifestation of the United Nation's commitment to gender based violence as a political issue. Therefore, if the United Nations recognizes violence against women as a political issue, India should prevent, investigate, and punish dowry deaths at the very least, because of its ICCPR obligations.<sup>349</sup> India cannot shirk its responsibilities to combat dowry deaths under the ICCPR by mislabeling them as a private family affair.<sup>350</sup>

### CONCLUSION

Through its complicity in the commission of dowry deaths, India has jeopardized and violated women's human rights. This Article proposes that India must exercise due diligence in the prevention, investigation, and punishment of dowry deaths in order to protect and ensure human rights under various covenants and declarations. Initially, India took positive steps to fulfill its duty of due diligence. Aware of the increase in the dowry deaths, the country created legislative means in 1961 to prohibit the root cause of dowry deaths: dowry. Additionally within the last two decades, India has enacted legislation to target dowry deaths directly. However, the incidence of dowry deaths continues to rise throughout India.

Although the existence of dowry death legislation is necessary, it is not sufficient to prevent the national practice of dowry deaths. While these laws form the framework for eradicating dowry deaths, implementation of these laws is crucial to promoting women's human rights.<sup>351</sup> India violates its duty of due diligence when its State agents, such as police, prosecutors, and judges, fail to take reasonable measures to implement dowry death legislation. Implementation is crucial to fight what has become a national epidemic. Thus, Indian state officials' inaction amounts to state complicity in the commission of these senseless murders. Through its passive participation in these crimes, India has ignored its obligations to protect women's rights to freedom from discrimination, equal rights in marriage, right to life, liberty, and security, rights to freedom from torture, inhuman, or degrading treatment or punishment, and right to the highest attainable standard

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348. *Declaration on Elimination of Violence*, *supra* note 19.

349. *See Pardee*, *supra* note 77, at 517.

350. *See Pardee*, *supra* note 77, at 517.

351. *See Preliminary Report*, *supra* note 92, ¶ 164.

of physical and mental health. Instead of fostering the realization of human rights, the Indian government violates women's rights by silently condoning dowry deaths in its parallel pseudo-government. ❀

