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CRIMINALIZING DOWRY DEATHS: THE INDIAN EXPERIENCE

JUDITH G. GREENBERG*

Introduction.....	801
I. Background: The Anti-Dowry Violence Criminal Laws	805
II. Problem One: Enforcement Through a Criminal Justice System not Trained in the Dynamics of Domestic Violence...	809
III. Problem Two: Criminalizing only Dowry Violence Implies that other Forms of Domestic Violence Against Women are Acceptable.....	818
IV. Problem Three: Identifying the Evil Force Behind Criminal Activity	824
V. Problem Four: Criminal Law is Individualistic in Nature	836
Conclusion	840

INTRODUCTION

Violence among intimates is a major problem in India, as it is in the rest of the world including the United States. One common approach to this problem has been to look to criminal laws. Thus, women's advocates in both the United States and India have sought legislative and policy changes that criminalize such violence. In the United States, violations of civil protective orders are usually criminal offenses. Many states and localities have adopted policies that call for mandatory arrest of spousal abusers.¹ Prosecutors' offices have

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1. See Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 558 (1999) (responding positively to women's advocates, at least fifteen states and Washington, D.C., have adopted mandatory, or limited-discretion arrest policies). Mandatory arrest policies were not only a response to frustration with police officers who trivialized or ignored domestic violence, but also a means of deterring domestic abusers from committing new acts.

802 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

adopted “no-drop” policies that require prosecution of such cases regardless of whether the victim wishes to pursue judicial relief.² For the past several years, some of those most dedicated to improving the lives of battered women have started criticizing, and even opposing, this heavy reliance on the criminal system to deal with the problem of intimate violence.

One criticism of the impact of criminalization in the United States involves the potential result of benefits to white, middle class women at the expense of poorer women of color.³ Furthermore, criminalization of domestic violence increases the opportunities for state control over the same women who are routinely marginalized on account of their race, class or immigrant status.⁴ Others, claiming that mandatory state intervention risks replicating the abuse that victims experienced at the hands of their abusers, have criticized the reliance on criminal remedies to address the problems of domestic violence; this time however, the abuse is at the hands of the state.⁵ All of these indicate that we, as advocates of victims of intimate abuse, must reassess the reliance currently placed on criminal remedies.⁶

In India, women’s advocates succeeded in the 1980s in getting two important laws passed to make at least some forms of domestic violence criminal.⁷ An analysis of how these laws have worked in

Id. at 559.

2. See *id.* at 561 (explaining that mandatory prosecution is a natural extension of mandatory arrest and was created to solve the problem of battered women’s reluctance to testify against their batterers).

3. See Janell D. Schmidt & Lawrence W. Sherman, *Does Arrest Deter Domestic Violence?*, in *DO ARRESTS AND RESTRAINING ORDERS WORK?* 43, 49 (Eve S. Buzawa & Carl G. Buzawa eds., 1996) (suggesting that mandatory arrest policies may reduce domestic violence overall, but increase violence against its poorest victims).

4. See Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 *BUFF. CRIM. L. REV.* 801, 801 (2001) (recognizing that although the police, as agents of the state, are responsible for protecting citizens, often that responsibility is carried out in such a way that it reinforces disadvantages already experienced by women).

5. See Mills, *supra* note 1, at 551 (proposing that alternate measures must be taken to promote respectful relationships between battered women and state actors so that mandatory state interventions will not replicate the emotions that are endemic to abusive relationships).

6. See generally JEFFREY FAGAN, NAT’L INST. OF JUST., *THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS 1* (1996) (decrying the lack of reliable empirical studies of the effects of using criminal law to combat domestic violence), at <http://www.ncjrs.org/txtfiles/crimdom.txt>.

7. See *infra* notes 27-28 and accompanying text. Both sections 304B and 498A of the Indian Penal Code focus on dowry violence. *Id.* When section 304B was passed, section 113B of the Indian Evidence Code was also enacted, creating a presumption that a death under certain circumstances is a dowry death. *Id.* Both statutes only address marital violence; accordingly, this article also focuses solely on marital violence. This Article does not deny the existence of either heterosexual or homosexual non-marital couples’ violence in India. However, such non-marital

practice and how they have been understood reveals additional problems with the strategy of relying on criminal law to keep women safe from intimate abuse. These two Indian statutes have been problematic in four distinct, yet related, ways. First, they established statutory enforcement within the criminal justice system. The actors within the Indian criminal justice system, like those in criminal justice agencies worldwide, are not trained to recognize or be concerned with domestic violence.⁸ Traditionally, it has not been part of their agenda. As a result, courts, police and other actors have a distinct tendency to narrow the purview of the statutes and attempt to reconcile such practice under the statutes with the demands of dominant institutions.

Second, criminal law declares some conduct wrong without making any normative statement about other related forms. In India, criminal law has singled out dowry violence as the offending form of violence.⁹ Consequently, the two anti-domestic violence laws passed in the 1980s focus primarily on dowry violence and say relatively little in condemnation of other forms of domestic violence.¹⁰ Therefore, the police, courts and society may find other forms of intimate violence against women to be less objectionable or even legitimate. Women who are the victims of non-dowry forms of domestic violence are likely to be discouraged from pursuing actions against their abusers.

Third, the lines between legitimate and criminal conduct beg for explanations. The failure to place criminal sanctions on violence against women in the larger context of women's subordination makes it difficult to sustain the reformist ideology that initially generated the laws.¹¹ Instead of being seen as laws that were enacted to fight women's subordination in India, the evil at which they are aimed is variously redescribed as either colonialism or scheming mothers-in-law. Both of these are historic boogeymen (or women) in modern

familial settings are so far from the accepted norm in India that such violence has not yet been sufficiently discussed in literature about intimate violence.

8. See WOMEN'S STUDIES UNIT, TATA INSTITUTE OF SOCIAL SCIENCES, *RESPONSES TO DOMESTIC VIOLENCE IN INDIA: A STUDY IN MAHARASHTRA AND MADHYA PRADESH 3* (1999) [hereinafter *RESPONSES TO DOMESTIC VIOLENCE IN INDIA*] (pointing out that the state is reluctant to interfere in private matters because traditionally it has been responsible for monitoring only public acts of wrongdoing).

9. See *The Dowry Prohibition Act (India) (1961)* (imprisoning and/or fining a person for giving or taking dowry).

10. See *infra* notes 27-28, 73 (summarizing Indian Penal Code §§ 304B and 498A).

11. See ELIZABETH M. SCHNEIDER, *BATTERED WOMEN & FEMINIST LAWMAKING* 228-32 (2000) (arguing that until domestic violence is linked to gender roles and inequality, little will change).

India. One effect of blaming dowry violence on colonialism or mothers-in-law is that the attention is displaced from male dominance and control as the motive for the violence.

Finally, the use of criminal law emphasizes individual, rather than systemic, responsibility for domestic violence. This emphasis might seem counterintuitive because declaring a particular form of conduct criminal can be understood as a statement that a significant segment of society opposes such conduct and believes that social resources should be used to prevent it.¹² However, at a more practical, non-ideological level, criminal statutes focus on the injury done by one abuser, usually the husband or his family, to one victim. Individual women must plead their cases on their own. There is no mechanism within the criminal law system for aggregating these cases and bringing a “class action.” Criminal laws do not place intimate violence in a social context whereby women’s lives are subordinated to men’s and whereby the violence can occur or continue because women have very few alternatives to life with their husbands. Although the violence would not have been made criminal if it had not been communally identified as a wrong, the focus on individual cases and low conviction rates in these cases undercuts this message.

In short, the anti-dowry criminal statutes, enacted in the 1980s with the support of women’s advocates, have not provided a dramatic protective effect. Instead, they have been implemented narrowly. The underlying problem has been reinterpreted to maintain consistency with dominant institutional and ideological norms. The result is to de-emphasize the systemic subordination of women that was at the root of the original attack on dowry violence. Although this may generally be a problem of legal reformist efforts, it is especially a problem of reliance on criminal law where we must rely on enforcement by a limited cast of both the specialized institutional actors and preexisting systems of criminal justice. To the extent that law is to play a role in emancipating women, the experience in India indicates that we should enlarge the array of legal remedies to include civil remedies. Equally important, it shows the need to educate the institutional players involved in the criminal justice system and to resist explanatory systems that reposition the violence in ways consistent with continued male dominance and subordination of women.

12. See Dan M. Kahan, *The Secret Ambition of Deterrence*, 113 HARV. L. REV. 413, 414-17 (1999) (explaining that criminal law reflects deeply held commitments that define one’s political community).

I. BACKGROUND: THE ANTI-DOWRY VIOLENCE CRIMINAL LAWS

The modern women's movement in India took root in the late 1960s and early 1970s with the economic dislocations caused by severe drought, the Bangladeshi war and OPEC-induced inflation. These problems, together with claims of political corruption, precipitated widespread demonstrations against the government in 1974 and 1975 in the western state of Gujarat and the northern state of Bihar. When, in June of 1975, a court found Prime Minister Indira Gandhi guilty of corruption in connection with the 1971 Parliamentary elections, she declared a national emergency ("Emergency").¹³

Over the twenty-one months of the Emergency, more than 100,000 people were arrested and imprisoned without trial. Parliament passed a constitutional amendment that permitted the government to suspend civil liberties and that reduced the courts' power of judicial review. Freedom of the press was one of the civil liberties restricted during this period. One result of the Emergency was that conducting normal political discourse was extremely difficult, while movement politics could flourish.¹⁴

Both the underlying economic problems and the declaration of the Emergency contributed to the growth of women's activism.¹⁵ The drought, war and inflation resulted in significant increases in the prices of everyday goods like food and clothing. These price increases mostly affected the lives of women, who are usually in charge of the provision of these commodities for their families. The Anti-Price-Rise Movement of the early 1970s created the opportunity for women to build coalitions and organize around a set of issues.¹⁶ The movement originated in Mumbai, but spread from there to other

13. See LESLIE J. CALMAN, TOWARD EMPOWERMENT: WOMEN AND MOVEMENT POLITICS IN INDIA 25-32 (1992).

14. See *id.* at 32-37 (stating that at the end of the Emergency, there was an explosion of new movements dedicated to achieve human rights and economic progress).

15. See *id.* at 49 (explaining how international feminism may also have encouraged the development of the women's movement in India at this time). In 1967, the U.N. adopted the *Declaration on the Elimination of All Forms of Discrimination Against Women*, which called for member states to submit reports on the status of women in their own countries. *Id.* The Indian government released its report, *Toward Equality*, in 1971. *Id.* The report illuminated the poor conditions of women in India with regard to economics, education, family and legal rights and helped the more educated and politicized Indians to see that something needed to be done to achieve full equality in Indian society. *Id.*

16. See CALMAN, *supra* note 13, at 47 (explaining that the Anti-Price-Rise Movement was a gendered response to the decline of the country's economic condition).

urban areas, including New Delhi.¹⁷ It is clear from the form of the demonstrations that they were organized by women with women's concerns in mind. In one march, a thousand women carried small stoves to represent their need for food; in another they banged wooden spoons on metal plates; in yet a third, 20,000 women marched through the streets of Mumbai shaking wooden rolling pins.¹⁸

Just as women were beginning to organize around this new set of issues and create new coalitions, Gandhi declared the Emergency.¹⁹ This foreclosed normal political debate and party politics. The censorship made criticism of the government extremely difficult, although the Emergency itself heightened concern about human rights.²⁰ Leslie Calman, a political scientist who studies women in India, speculates, "as a result, dowry deaths became a topic of press coverage; human rights abuses could be covered if they were not explicitly concerned with government."²¹ Ironically, then, it was the "private" nature of violence against women that allowed it to move to the forefront of the nation's consciousness.

By the mid-1980s, Indian newspapers and feminist journals were full of stories similar to that of Shakuntala Arora, a lecturer at a women's college. At the time of her marriage, her future husband insisted on receiving a scotter as a dowry. If her parents did not comply, the wedding would be cancelled. Because a wedding cancellation would be a tremendous embarrassment for Arora's family, her parents met his demands. However, after the wedding, her husband made more demands for money and threatened to beat Arora if she failed to procure the money from her parents. The ensuing abuse was not only physical; it extended to other areas of her life. Although she was employed, he allowed her only a small amount of spending money. Over time, his violence toward her escalated. For instance, when she was pregnant with their second child, he kicked her in the stomach. Shortly after her delivery via cesarean section, he beat her while she was holding the baby. Two days before her death, ostensibly because she had failed once again to get

17. See *id.* (detailing the widespread effect of the Anti-Price-Rise Movement).

18. See *id.* at 47-48.

19. See *id.* at 32 (quoting Gandhi's reasons for issuing a national Emergency). Gandhi claimed that a "deep and widespread conspiracy . . . [had] been brewing" since the introduction of "certain progressive measures of benefit to the common man and woman." *Id.*

20. *Id.* at 63 (suggesting that censorship contributed to the developing outrage of "dowry murder").

21. *Id.*

additional money from her mother, he beat her again and prevented her from attending her brother's marriage. Ultimately, her husband burned Arora to death in a type of fire often set by husbands to rid themselves of unwanted wives.²²

As a result of stories like Arora's, one of the places that the newly-energized women's movement directed its attention was toward dowry-based violence against wives. One leading women's organization, the cooperative that publishes the women's journal *Manushi*, initiated a boycott of dowry weddings, in hopes that this trend would make dowry less socially acceptable.²³ Other organizations used mass demonstrations in front of abusers' homes in an effort to shame them into forswearing violence against their wives.²⁴ As part of their campaign against dowry-induced violence, women's organizations also argued in favor of making such violence criminal.²⁵

The lobbying of women's groups helped prompt the passage of two important pieces of legislation in the mid-1980s. Consistent with the public focus of the time, both specifically prohibit dowry violence, although the 1983 statute, colloquially known as the "Anti-Cruelty" statute or section 498A of the Indian Penal Code ("IPC"), also includes within its terms other forms of domestic violence.²⁶ The 1983 statute criminalized the act of cruelty toward a wife. It provided that if a husband or his relatives subjected his wife to "cruelty," he or

22. See MEETA RANI JHA, END ABUSE, INDIA; CHAPPAL, STICKS, AND BAGS (last visited Apr. 4, 2003) (recounting the story of a murdered wife who faced dowry harassment), available at <http://endabuse.org/programs/display.php3?DocID=102>; see also Deepti, *Women Lecturers Mobilize Against Dowry Death*, in IN SEARCH OF ANSWERS: INDIAN WOMEN'S VOICES FROM MANUSHI 213, 213 (Madhu Kishwar & Ruth Vanita eds., 1984) (describing the same story). See generally CALMAN, *supra* note 13, at 123 (listing dowry death headlines from a single week in 1986).

23. Madhu Kishwar, *Rethinking Dowry Boycott*, 48 MANUSHI 10, 10-13 (1988) (describing the history of the dowry boycott).

24. See Editorial, *Fight Against Dowry: Liberating Slaves of Money and Property*, MANUSHI July-Aug. 1979, reprinted in IN SEARCH OF ANSWERS: INDIAN WOMEN'S VOICES FROM MANUSHI 246 (Madhu Kishwar & Ruth Vanita eds., 1984); see also Diane Mitsch Bush, *Women's Movements and State Policy Reform Aimed at Domestic Violence Against Women: A Comparison of the Consequences of Movement Mobilization in the U.S. and India*, 6 GENDER & SOC'Y 587, 596-97 (1992) (recounting an instance in 1979 in which women's activists staged a demonstration outside of Tarvinder Kaur's in-laws' home after it was discovered she had died as a result of a kerosene fire set by them). There was also a march to Parliament. *Id.* at 597.

25. See Bush, *supra* note 24, at 596-97 (explaining how attempts to involve the police or court system in dowry-based violence often proved futile, and therefore, husbands were not being held accountable for their actions).

26. A 1961 statute, the Dowry Prohibition Act, had outlawed the giving or accepting of dowry. It proved extremely difficult to enforce, and was amended in 1985 and 1988. SHOBHA SAXENA, CRIMES AGAINST WOMEN AND PROTECTIVE LAWS 117-18 (1995).

the relatives would be subject to either imprisonment or a fine. The statute defines cruelty either as willful conduct likely to drive a woman to suicide or to cause her grave injury, or as harassment based on dowry demands.²⁷ The second criminal statute, the “Dowry Death” statute, section 304B of the IPC, was passed in its current form in 1986. It made it a crime attributable to the husband or his relatives if a woman died of non-natural causes within seven years of her wedding, and if just before her death she had been harassed for dowry by either her husband or his relatives.²⁸

Unfortunately, studies show that these statutes have not been successful in significantly reducing levels of violence against Indian wives.²⁹ In 1994, there were 4935 dowry deaths in India.³⁰ Since then, the reported incidence of such deaths has been rising. By 1998, the number was 6917.³¹ Cases involving cruelty toward wives have risen steadily from 21,916 reported cases in 1993 to 36,432 in 1997.³²

27. See V.K. DEWAN, LAW RELATING TO DOWRY PROHIBITION 184 (2000) (providing the text of section 489A of the Indian Penal Code).

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Id.

28. See *id.* at 182 (providing the text of section 304B of the Indian Penal Code).

Dowry Death–(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death,” and such husband or relative shall be deemed to have caused her death.

Id.; see also *id.* at 220 (noting that section 113B of the Evidence Act creates a presumption for use in connection with section 304B).

Presumption 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.

Id.

29. See RESPONSES TO DOMESTIC VIOLENCE IN INDIA, *supra* note 8, at 2 (theorizing that statutes have been ineffective due to a variety of factors, including police reluctance, emphasis on reconciliation, male bias in the police system, and lack of access to legal services).

30. See DEWAN, *supra* note 27, at vii (indicating there were 4935 dowry deaths in all of India in 1994).

31. Soma Wadhwa, *Fair Sex or Fair Game?* OUTLOOK, May 29, 2000 (reporting the last recorded figure for dowry deaths at the time of the article’s release), at www.outlookindia.com; see also DEWAN, *supra* note 27, at vii (noting that there were 5850 dowry deaths within the states of India in 1997, and 6006 dowry deaths in all of India).

32. See DEWAN, *supra* note 27, at vii.

Another study of 737 cases registered under the Anti-Cruelty statute in the 1990s shows that only 2.2% resulted in convictions, over 55% resulted in acquittals and 25% were withdrawn.³³ Complaints about the low number of arrests and the high number of acquittals are common.³⁴ These complaints highlight the problems with criminalization as a means of improving women's safety from violence in the home.

II. PROBLEM ONE: ENFORCEMENT THROUGH A CRIMINAL JUSTICE SYSTEM NOT TRAINED IN THE DYNAMICS OF DOMESTIC VIOLENCE

Many women's advocates understand domestic violence to be a means through which a man maintains control over his partner.³⁵ Constant violence is not necessary; rather, violence reinforces a set of rules that the abuser decrees. Mere references to a previous violent incident may be sufficient to keep the wife in line. This understanding of violence as a method of control means that violent incidents do not occur because the man lost his temper or drank too much. These are only the excuses that allow the man to be violent. The violence itself is a means of subordinating women.

This understanding, however, does not extend to much of the research community in India where spousal violence is attributed to many things, but rarely to male desire for control. Thus, one study of a sample of people imprisoned for family offenses concluded that the

33. See NISHI MITRA, UNIT FOR WOMEN'S STUD., TATA INST. FOR SOC. SCI., DOMESTIC VIOLENCE AS A PUBLIC ISSUE: A REVIEW OF RESPONSES 12 (2000) (surveying police cases in Yawatmal registered under Section 498A from 1990 to 1996).

34. See SAXENA, *supra* note 26, at 164 (discussing the low number of arrests); see also MITRA, *supra* note 33, at 12 (discussing the high number of acquittals and withdrawals); Wadhwa, *supra* note 31 (reporting that of the 577 cases in a recent three-year period in the state of Karnataka, only twenty-two ended with convictions); Geethadevi et al., *Getting Away with Murder: How Law Courts and Police Fail Victims of Domestic Violence*, 117 MANUSHI 31 (2000) (explaining that the amendments to criminal law have not increased the number of cases booked as penal offenses or of domestic violence convictions).

35. See A. Mahajan, *Instigators of Wife Beating*, in VIOLENCE AGAINST WOMEN 1, 7 (Sushma Sood ed., 1990) (concluding that male respondents of a survey view wife-beating as a way to establish obedience); see also *Domestic Abuse Intervention Project: Power and Control and Equality Wheels*, in CLARE DALTON & ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND THE LAW 66-68 (2001) (showing, in addition to the "power and control wheel" and "equality wheel," the violent and controlling behaviors checklist that is used to help batterers identify and take responsibility for their behaviors); RICHARD J. GELLES, FAMILY VIOLENCE 139-48 (2d ed. 1987) (stating that rape is an attempt by a man to exercise power over a woman); SCHNEIDER, *supra* note 11, at 46-47, 66-67 (characterizing male control as "coercive control" and acknowledging that "issues of power and control are troubling characteristics of all intimate relationships"); Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 982, 1009-26 (1995) (framing battering in the context of "coercive control").

main cause of the offenders' violent behavior was maladjustment to marriage.³⁶ Reasons for maladjustment include immaturity and sexual jealousy.³⁷ At other points, the same study argues that social position makes a person more likely to be violent.³⁸ According to another study, husbands claimed that they beat their wives because the "wives were of bad temperament, shirkers of domestic work, did not look after the children properly and fought with their in-laws . . . [wives claimed that their husbands beat them] because of their [husband's] frustration due to poverty, suspicious nature, quarrelsome children, consumption of alcohol, and back-biting by in-laws."³⁹

In addition, many commentators blame intimate violence in India on the institution of the joint family and the bride's need to adjust to a new, extended family after marriage.⁴⁰ The stereotypical Indian family is thought of as multigenerational, where the bride moves from her parents' home upon marriage to live with the groom, his parents, and siblings, all of whom often reside in a distant community.⁴¹ Furthermore, within this family structure, the groom's loyalties are understood to lie with his mother and natal family, and not with his wife.⁴²

36. See RANJANA JAIN, FAMILY VIOLENCE IN INDIA 20 (1992) (resorting to family violence instead of redemption when people are unable to make marital adjustments); see also FRANCIS BLOCH & VIJAYENDRA RAO, POVERTY AND HUMAN RES., DEV. RESEARCH GROUP, TERROR AS A BARGAINING INSTRUMENT: A CASE-STUDY OF DOWRY VIOLENCE IN RURAL INDIA 22 (World Bank Group, Working Paper No. 2347, 2000) (concluding that violent behavior is strongly linked to economic incentives); Leela Visaria, *Violence against Women in India: Evidence from Rural Gujarat*, in A SUMMARY REPORT OF THREE STUDIES 9, 12 (Gujarat Inst. of Dev. Stud. ed., 1999) (attributing household mistakes as the major proximate cause for violent outbursts). *But see* Mahajan, *supra* note 35, at 7.

37. See JAIN, *supra* note 36, at 43-44, 60-62 (hypothesizing motives for violence).

38. *Id.* at 22 (suggesting more violence occurs in rural areas than urban areas).

39. Ranbir Singh Bhatti, *Socio-Cultural Dynamics of Wife Battering*, in VIOLENCE AGAINST WOMEN 45, 47 (Sushma Sood ed., 1990). See Visaria, *supra* note 36, at 12 (noting that violence is attributed to women's housekeeping, child care, and food preparation).

40. See JAIN, *supra* note 36, at 61 (stating females have to make more family adjustments than males).

41. See Sudhir Kakar, *Feminine Identity in India*, in WOMEN IN INDIAN SOCIETY 44, 61 (Rehana Ghadially ed., 1988) (noting that the exogamous nature of this arrangement may also contribute to continuing violence because new brides are often very isolated in their new communities); see also Michael S. Billig, *The Marriage Squeeze on High-Caste Rajasthani Women*, 50 J. ASIAN STUDIES 341, 346 (1991) (discussing long distances between natal and marital families).

42. See AMARJIT MAHAJAN & MADHURIMA, FAMILY VIOLENCE AND ABUSE IN INDIA 13-14 (1995); see also Kakar, *supra* note 41, at 64 (reporting that 56% of men felt closer to their mothers than their wives while only 20% reported the reverse); Mahajan, *supra* note 35, at 7 (noting that for those who participated in the study, wives claimed that their husbands followed the demands of their parents or siblings). Similarly,

When violence is seen as resulting from difficulties adjusting to married life or a new extended family, it is not surprising that the favored remedy, even within the criminal justice system, often focuses on conciliation and compromise. Instead of viewing the criminal justice system as a potential counter-balance to the husband's attempt at total control and subordination of his wife, courts and police often fear that intervention will exacerbate adjustment difficulties. They put the continuation of the marriage above the safety of the victim.⁴³ As is often the case elsewhere in the world, Indian judges are happy to dismiss criminal proceedings if the victimized wife requests it. As one Indian judge said, the "warring spouses came to terms" because the wife decided that she would prefer a "peaceful life" with her husband when compared to what she feared her life would have been if he served a two year sentence. Under those circumstances, the judge and the wife both worried that the "expected peace would elude the couple."⁴⁴ The judge reduced the husband's sentence to time served to allow the couple to reconcile immediately.

The police and the government have also established counseling centers to assist women who are the subjects of violence. The creation of these centers is consistent with a framing of the problem of violence as one of adjustment to marriage rather than one of control and subordination of wives. Many police stations set up special women's units, known as All Women Police Stations ("AWPS"), which are intended to handle women's issues. Although created in response to the problem of familial violence against wives, the AWPS frequently tries to conciliate domestic complaints, and ultimately often sends the women victims back to their abusive marital families.⁴⁵ Furthermore, the establishment of the AWPS may even contribute to the marginalization of women's complaints of domestic violence. Now, police officers at the main police stations often insist that women file domestic violence complaints at the AWPS. This allows the non-AWPS officers to avoid dealing with these

mothers see their sons as their "saviour and source of self-esteem." RANJANA KUMARI, BRIDES ARE NOT FOR BURNING: DOWRY VICTIMS IN INDIA 15 (1989).

43. See *infra* notes 137-41 and accompanying text (discussing the importance of marriage in Indian social life).

44. Raghumunda Satya Narayana v. State of Andra Pradesh, 2000 AIR SCW 1894 (2000), ¶ 3.

45. See Veena Poonacha & Divya Pandey, *Responses to Domestic Violence in Karnataka and Gujarat*, in A SUMMARY REPORT OF THREE STUDIES 31 (Res. Ctr. for Women's Stud. ("RCWS") & SNDT Women's Univ. eds., 1999) (stating that although All Women Police Stations ("AWPS") assume responsibility of domestic violence issues, the number of officially recorded and prosecuted cases remains low because of poor quality services and low rates of utilization).

812 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

complaints.⁴⁶ As a result, it is easy for the police, the victims, and their victimizers to view spousal abuse as less serious than other criminal acts.⁴⁷

The government has also funded family counseling cells to deal with domestic violence. These family counseling cells are often located in or near police stations.⁴⁸ Like the AWPS, they too have the goal of strengthening family ties as a means of eliminating the need for legal intervention.⁴⁹ In some counseling centers, the staff members do not see the problem as the assertion of male dominance and control over women, but rather as a problem of “women’s sharp tongues” and men’s tendency to “hit and beat” in response.⁵⁰ They see their own role as being non-judgmental.⁵¹ One women’s organization claims that in Bangalore, “counselling centres have today degenerated into a useful mechanism for sidetracking women who invoke the law to protect themselves against domestic battering.”⁵²

Similarly, the police themselves have traditionally understood problems of domestic violence, whether dowry-based or otherwise, as stemming from maladjustment on the part of the victim. The police often blame the woman’s immoral behavior, thinking “[o]therwise

46. Cf. Nishi Mitra, *Best Practices Among Responses to Domestic Violence in Maharashtra and Madhya Pradesh*, in A SUMMARY REPORT OF THREE STUDIES 22 (Women’s Stud. Unit, Tata Inst. of Soc. Sci. ed., 1999) (implying that AWPS were created to encourage and handle the reporting of crimes against women); Poonacha & Pandey, *supra* note 45, at 32 (noting that the displacement of gender related crimes onto AWPS prevents the rest of the police force from being informed about the sensitized nature and significance of domestic violence).

47. See RESPONSES TO DOMESTIC VIOLENCE IN INDIA, *supra* note 8, at 2 (indicating that the AWPS may also have the unfortunate effect of reinforcing the ideology of women’s inferiority to men because the female police officers assigned to the AWPS are usually undertrained and placed in poor facilities with poor equipment); see also Poonacha & Pandey, *supra* note 45, at 32 (stating that the AWPS officers face greater discrimination in receiving promotions and that their lack of training and isolation prevent policewomen from gaining necessary experience to transfer to other stations). Postings to the AWPS are often viewed as punitive, and under these circumstances it is hard to see how the presence of these special units for women can do much more than perpetuate women’s subordination. See Mitra, *supra* note 46, at 22.

48. See Poonacha & Pandey, *supra* note 45, at 32 (indicating that placement of family counseling cells near police stations was in response to increased family and marriage-related crimes and disputes).

49. *Id.* (stating that the goal of these cells was to strengthen and improve family ties with the help of community intervention); see also Geethadevi et al., *supra* note 34, at 32-33 (reporting that counseling centers measure success by the number of cases they succeed in reconciling).

50. See Poonacha & Pandey, *supra* note 45, at 33.

51. *Id.* at 32 (observing that counselors feel their job is to encourage women to speak up about their abuse and help them evaluate their options).

52. See Geethadevi et al., *supra* note 34, at 32.

no sane husband would do this,”⁵³ they may see the beating as a family quarrel in which they should not intervene,⁵⁴ or they may pressure the woman to return quietly to her husband.⁵⁵ One horrific example of misunderstanding the criminal nature of spousal abuse involved a case in which a woman was kicked in the stomach while in the late stages of pregnancy and then beaten immediately after the caesarian delivery. The woman’s neighbors even reported seeing her being beaten outdoors, yet the police refused to investigate and the district commissioner of police told a group of the woman’s colleagues, who had gathered to protest, that “this is not a case, it is an incident. . . . I have 5000 incidents like this. It is a very ordinary matter.”⁵⁶ To him, it was not a criminal matter at all, but just an “incident” in everyday life.

Reliance on the police as the first line of defense against domestic violence is also problematic because police themselves have long been a source of violence and hostility toward women. Two famous cases from the late 1970s and early 1980s initially sparked feminists’ outrage. In one, a fifteen year-old orphan girl was raped and fondled by two police officers who later claimed she consented to such treatment.⁵⁷ In another, a woman was gang raped by police. When her husband complained, they beat him to death.⁵⁸ Although these cases ultimately resulted in statutory changes, rape and harassment of women in police custody continue to be major problems in many parts of India.⁵⁹

The courts too have misunderstood the problem of dowry violence. They have not viewed it as part of the larger problem of violence aimed at controlling wives’ lives. The Dowry Murder Act creates a

53. See Alfie, *Was Her Death More Hurtful, or Her Life?*, in *IN SEARCH OF ANSWERS: INDIAN WOMEN’S VOICES FROM MANUSHI* 215, 216 (Madhu Kishwar & Ruth Vanita eds., 1984).

54. *Id.*

55. See MITRA, *supra* note 33, at 8 (noting that police often label victims of domestic violence as “quarrelsome, revengeful and ‘without family values’”).

56. Deepti, *supra* note 22, at 213-14.

57. See CALMAN, *supra* note 13, at 64-67.

58. *Id.* at 68 (summarizing the story of Rameeza Bee’s rape and her husband’s death).

59. See Svati Chakravarty-Bhatkal, *Who Will Wipe the Tears of Indian Rape Victims?*, NCAS ADVOCACY INTERNET (Apr. 1999) (stating that rape in custody is commonplace at police stations or government shelters for destitute women), at <http://www.hsph.harvard.edu/grhf/SAsia/suchana/1299/h042.html>; *Women Criticise Police Chief*, TIMES NEWS NETWORK, Sept. 5, 2002 (blaming the Delhi police chief for indirectly telling the police force that provocatively dressed women are asking to be raped), at <http://timesofindia.indiatimes.com/cms.dll/articleshow?artid=21200356&sType=1>.

814 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

presumption against spouses and in-laws in the case of a death “soon” after a dowry demand.⁶⁰ If these demands are not viewed as inextricably linked to other patterns of violence and repression within the family, relevant information will be excluded from evidence or underplayed by the courts. The result will be that the effectiveness of the statute will be undermined. One place that we see this occurring is in the interpretation of the evidentiary presumption that accompanies the Dowry Murder Act. Another is in the interpretation of the word “soon.”

Section 113B of the Evidence Code creates a presumption that the person who has harassed a woman for dowry is responsible for her death.⁶¹ It recognizes the disastrous effects that dowry abuse can have on a woman’s life. As one court understood, once the humiliation of dowry demands is shown, it can be assumed, even in a case that involves suicide, that the woman killed herself to avoid further humiliation.⁶² Other courts have, despite the mandatory presumption, been less willing to accept the connection between previous dowry abuse and a wife’s death. For example, in one case, in which there was evidence of earlier dowry demands, the woman died as a result of a fall into a well.⁶³ It was unclear if the fall was a homicide, suicide, or even an accident, but section 113-B should allow the courts to recognize that, in a case in which there have been previous dowry demands an accident or unrelated suicide is unlikely. In this particular case, the husband confessed guilt to the woman’s father, although this was later described by the court as merely an acknowledgment that he had “accidentally” assaulted her. Her body bore signs of injury. Despite all of this, the court did not invoke the presumption.

Cases such as this, which include other evidence of violence, illustrate the courts’ reluctance to view dowry violence as a particular manifestation of domestic violence in general. The court here did not recognize that the pattern of violence demonstrated by the husband’s confession and by the physical evidence that she had suffered recent injuries reinforced the evidence of the dowry demands. If the court does not see that physical assault and dowry demands are consistent with one another, and as reinforcing a

60. Dowry Death (India), INDIA PENAL CODE § 304B (1986).

61. See DEWAN, *supra* note 27, at 220.

62. A.N. SAHA, SUPREME COURT ON CRIMINAL LAW (1950-1999) 2172 (1999) (describing *Satpal v. State of Haryana*, 1999 Cr. L.J. 596, 597).

63. *State of Haryana v. Rajinder Singh*, Crim. App. No. 1574 of 1995 (27.02.1996).

2003]

CRIMINALIZING DOWRY DEATHS

815

pattern of subordination, then it is much less likely to hold that either one occurred. In cases like this, the court's misunderstanding of the dynamics of violence means that it is less likely to believe that there was familial violence in general or dowry violence in particular. The result is that the potential scope of the statute is narrowed and even cases that do involve dowry violence will not be seen as such.

Similarly, there is a question about how to interpret "soon" in the dowry death statute, section 304B of the IPC. The dowry death statute requires that the death occur "soon" after a threat connected with a dowry demand in order to invoke the presumption that the husband or in-laws caused the death. If "soon" is narrowly interpreted to mean that there cannot be much time between a demand in which dowry is mentioned and the death, then the statute is much less likely to be used effectively in cases in which dowry demands are part of a larger scheme of harassment that drives the woman to commit suicide or results in the defendant's killing her.

One common fact pattern involves husbands or their relatives who, after the wedding, harass the wives for more dowry. Eventually the women become so distressed that they leave their marital home and return to their parents' home. However, remaining with their parents is not a long-term option because it is socially stigmatized.⁶⁴ Thus, after varying periods of time the women return to their husbands. If the woman is killed by her husband or his relatives after returning to the marital home, the death can be treated as a homicide and the dowry death statute is not needed. On the other hand, if she commits suicide or if homicide cannot be proven, then the dowry death statute may be useful in obtaining a conviction since the court can then invoke the presumption that the husband or his family was responsible.

The interpretation of "soon" is of particular importance. If dowry demands are understood as part of a pattern of abuse directed at the wife to maintain the dominant position of the husband and his family, then it is unlikely to matter to the woman whether the husband has refrained from repeating his dowry demands since she returned to the marital home. He may well have been abusive or signaled his continuing power in other ways and she may have understood the message that she would be unable to escape from her unbearable position. Renewed non-dowry abuse or subtle reminders of his power to abuse may have the identical effect on her as renewed

64. See *infra* notes 141-45 and accompanying text (explaining that married daughters' parents do not usually permanently welcome married daughters at their home).

816 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

dowry-related abuse would. Indeed it may be indistinguishable. It may be this overall message that has caused her suicide. For her, these later threats were connected to the dowry demands because she understands that they are all part of an effort to indicate her subordinate position within the family. Whether they explicitly referred to dowry, or even, whether there are later explicit threats of any type, would not matter.⁶⁵

The Indian Supreme Court has not been clear as to how the word “soon” in the dowry death statute should be interpreted. In one case, *Kans Raj v. State of Punjab*,⁶⁶ the wife’s death occurred approximately one month after she had spent the night at her brother’s house, complaining that she did not feel safe at her own.⁶⁷ The prosecution proved that she had been the subject of numerous demands for dowry prior to visiting her brother, but none were in evidence after that time. Despite that, the Court held that, although there was a lapse of just over a month between the most recent dowry demands and the woman’s death, this was still “soon” after the demands because there were no intervening events that would show the termination of the dowry harassment. This is an example of a very desirable interpretation of the statute. It recognizes the continuing effect that earlier threats will have on a woman’s subsequent understanding of her position in the family.

In contrast, in another similar case, the Indian Supreme Court found that the dowry death statute could not be used to convict the husband because the dowry demands had sent the wife to her father’s house where she had stayed, in fear for her life, for eighteen months.⁶⁸ In this case, a local *panchayat*⁶⁹ had tried to smooth over the situation before the woman returned to her husband’s house. The Indian Court found that intervention to be significant. It refused to find the husband guilty under the dowry death statute on the

65. See Karla Fischer et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. REV. 2117, 2117-18 (1993) (recognizing that women subjected to abuse are often able to interpret danger signs of a batterer’s conduct that might be meaningless to those not involved in an intimate relationship with the batterer); Kathleen Waits, *Battered Women and Their Children: Lessons from One Woman’s Story*, 35 HOUS. L. REV. 29, 37 (1998) (describing one woman’s response to “the look” from her abusive husband).

66. *Kans Raj v. State of Punjab*, 556 LRI 3 (2000).

67. *Id.* ¶ 5.

68. Saha, *supra* note 62, at 2174 (discussing *Sham Lal v. State of Haryana*, 1997 Cr. L.J. 1927).

69. See generally Kimberly A. Klock, *Resolution of Domestic Disputes Through Extra-Judicial Mechanisms in the United States and Asia*, 15 TEMP. INT’L & COMP. L.J. 275, 276 (2001) (describing *panchayat* as a type of village council that exists in several forms with each having different responsibilities).

2003]

CRIMINALIZING DOWRY DEATHS

817

grounds that there were no events demonstrating dowry harassment in the two weeks or so between when the victim left her parents' house and when she died. This is unfortunate because the fact that the woman was sufficiently frightened to remain away from her marital home for a year and a half probably indicates a very serious level of violence given the social stigma attached to such a long stay. Furthermore, it is not uncommon for someone to try to patch up the situation between the woman and her husband before she returns home.⁷⁰ If the *panchayat's* efforts are seen as negating the continuing harassment, it will be impossible to prosecute many serious cases.

The Court's failure here to understand the eighteen months that the woman stayed away from her marital home as indicative of the danger attached to her situation and its willingness to see outside intervention as protective of the victim display a fundamental misunderstanding of the dynamics of the woman's relationship with her husband and in-laws. The Court, like the police, appears to believe that the dowry violence is a superficial problem perhaps due to maladjustment or differing understandings of a marriage contract. Time and the local *panchayat* might be able to resolve these. Time and the local *panchayat*, however, will do little to change the woman's position in the family or her husband's power and control over her. Unlike the decision in *Kans Raj*, the Court here is not recognizing the dowry violence as part of a system of behaviors aimed at maintaining the woman's subordination within the family.

These misunderstandings of the dynamics of family violence and of the role that dowry violence plays undermine the efforts to eliminate the violence through the use of the criminal justice system. Even well-meaning police may recommend to victims that they undergo counseling and return to the family. If the misogynist attitudes of some police have not changed, reliance on the criminal justice system for protection may actually further endanger some women. Finally, if the courts continue to believe inaccurately that dowry violence is not connected to larger patterns of mental and physical abuse of women, they will miss dowry violence even when it is actually occurring. This will significantly reduce the potential for the statutes to protect victims of domestic violence.

70. See *Balram Prasad Agrawal v. State of Bihar*, A.I.R. (1997) S.C. 1830, 1832-33 (describing how a wife's father may intervene to encourage her to return to her husband). Often the wife's father or brother will try to effect a compromise that allows her to return to her marital home because her remaining in her natal home for a length of time is often economically difficult and socially stigmatizing. *Id.*

III. PROBLEM TWO: CRIMINALIZING ONLY DOWRY VIOLENCE IMPLIES THAT OTHER FORMS OF DOMESTIC VIOLENCE AGAINST WOMEN ARE ACCEPTABLE.

Both the dowry murder statute and the cruelty statute have been understood as focusing on the horror of dowry violence.⁷¹ Judicial interpretations of these statutes have frequently been narrow so as to make criminal only forms of violence that are clearly identifiable as dowry violence. This simultaneously allows the courts to express their moral outrage at the injuries of dowry violence without having to think about the other forms of violence toward women that are endemic in the society. Narrow interpretations of the statutes leave the impression that only dowry violence matters. For example, one incensed court wrote, "Every time a case relating to dowry death comes up it causes ripples in the pool of conscience of this court. Nothing can be more barbarous, nothing could be more heinous than this sort of a crime. . . ." ⁷² "This sort of a crime" refers back only to deaths caused by dowry demands. It implies that other forms of domestic violence are not equally heinous. Thinking about violence in this way allows a court to consider only a very narrow slice of the domestic violence women face and yet to believe it is doing something to improve the situation of women. Similarly, a focus on dowry violence means that in cases in which a wife is physically abused and treated in a generally demeaning manner, only the demeaning comments about the paltriness of her dowry and only the physical violence connected to the insufficient dowry will matter. Non-dowry violence is rarely even discussed in the cases. It is as if this problem does not exist.⁷³

The courts' handling of cases under the Anti-Cruelty statute, section 498A, illustrates this tendency to focus on dowry violence to the exclusion of all other forms of violence against wives. By its terms, section 498A applies to situations involving either grave injury to the wife or dowry demands. Both are not necessary. One would

71. See SAXENA, *supra* note 26, at 188-89 (criticizing statutory focus on dowry violence as opposed to all forms of cruelty and abuse of a wife).

72. See D.N. Sandanshiv & Jolly Mathew, *Legal Reform in Dowry Laws*, in KALI; YUG 84 (Rani Jethmalani ed., 1995) (discussing domestic violence as a concept confined within the walls of the home and India's inability to deal with this social problem with any specificity). This article is also available at <http://www.hsph.harvard.edu/grhf/SAsia/forums/dowry/articles/reform.html>.

73. See VEENA TALWAR OLDENBURG, *DOWRY MURDER: THE IMPERIAL ORIGINS OF A CULTURAL CRIME* 219 (2002) (arguing that the focus on dowry-related violence makes it difficult for victims of domestic violence to focus on the other painful aspects of violence, such as violation of oneself, subordination, harassment, and suffering).

therefore expect some cases prosecuted under this statute to involve claims of dowry violence, but others to simply involve showings of cruelty in other forms. Most convictions over the years, however, have been in cases of deaths that involved dowry demands.⁷⁴ In another case in which the victim died by falling into a well, the court recounted the numerous ways in which, over the years, the husband had treated the wife cruelly.⁷⁵ These included beatings, expressions of the husband's continuing desire to be married to another woman, and ridicule during the early years of the marriage because she had not yet produced any male heirs. The abuse had been so bad that the woman had tried to commit suicide at least once previously. The night before the woman's death, neighbors had heard a fight going on in her house during which she was assaulted by her husband. The court found the husband and some of his relatives guilty of cruelty under the "grave injury" definition, not under the dowry demands section. Despite all of this, when the court recounted the reasons for finding the defendants guilty, it specifically mentioned the demands for increased dowry.⁷⁶ It is as if, without these demands, even the level of abuse displayed here would have been insufficient for a finding of cruelty.

Given the "grave injury" language of section 498A, a tie to dowry violence should not be necessary. Nor should a wife's death be required to bring a case. Although the Supreme Court in a recent case ruled that a case of cruelty could be based solely on "mental torture or abnormal behaviour,"⁷⁷ the courts have repeatedly found no liability for abuse that does not involve the wife's death and does not include allegations of dowry violence.⁷⁸ One commentator has noted that "stray incidents" of violence are insufficient.⁷⁹ Section 498A tends to be used as a back-up in dowry death cases which for a variety of reasons cannot be prosecuted under section 304B. This

74. See MITRA, *supra* note 33, at 9 (indicating that "there is a tendency to identify Section 498A with dowry related crime," and stating that "it was customary for the police to add charges of dowry to Section 498A to make the case strong"); SAXENA, *supra* note 26, at 181 (stating that such statutory provisions are intended to deal with dowry deaths and bride burning instead of ordinary domestic violence).

75. See Balram Prasad Agarwal v. State of Bihar, A.I.R. (1997) S.C. 1830, 1834, ¶ 8 (discovering that cruel acts ranged from beatings to threats to kill).

76. *Id.* ¶ 12.

77. See Gananath Pattnaik v. State of Orissa, 2002 SCCL.COM 081 (2000).

78. See MITRA, *supra* note 33, at 8 (highlighting that only 5% of mental cruelty cases even get booked).

79. See SAXENA, *supra* note 26, at 183 (1995) (stating that stray incidents do not constitute cruelty); see also Asokan v. State, A.I.R. (2000) S.C.W. 3444, 3447, ¶ 5 (acquitting brother-in-law who threw hot coffee at victim).

820 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

means that once again, the focus is on the dowry offense, and other forms of abuse are often ignored or minimized in importance.

The police also tend to view dowry violence as criminal while other forms of domestic violence are considered less serious. Remember, for example, the case discussed above in which a woman was kicked in the stomach while pregnant and then brutally beaten immediately after the cesarean section, and of which the police official had said, "This is not a case, it is an incident. . . . It is a very ordinary matter."⁸⁰ He was signaling his refusal to recognize brutal domestic violence as being criminal. Instead, this type of non-dowry violence was so ordinary in the official's mind that the police would not even investigate the events as a crime. Although that case took place before the Anti-Cruelty statute was enacted, commentators continue to report that the police still do not take non-dowry violence seriously.⁸¹ Nishi Mitra, a well-known researcher in the field, reports that the police, and even lawyers, sometimes think domestic violence cases cannot be prosecuted under the statutes without proof of dowry demands. They often advise women to add allegations of dowry demands to their reports so that the cases can be moved forward. This well-meaning advice is unfortunate because the cases are then likely to be thrown out when it becomes apparent that the claims cannot be proven.⁸²

This tendency of criminalization to legitimate activities that are not the focus of explicit criminal statutes is particularly problematic because, not surprisingly, there is plenty of non-dowry violence in India, as there is in the rest of the world. Overall statistics for violence against wives vary from 22% to 60%, depending on the study

80. See Deepti, *supra* note 22, at 214.

81. Divya Pandey, *Bride-Burning: Waheeda*, in *WOMEN'S OPPRESSION IN THE PUBLIC GAZE: AN ANALYSIS OF NEWSPAPER COVERAGE, STATE ACTION AND ACTIVIST RESPONSE* (Meera Kosambi ed., 1994); SHOBHA SAXENA, *CRIMES AGAINST WOMEN AND PROTECTIVE LAWS 186-87* (1995). One women's organization discovered that its own records included at least 800 cases of domestic violence in the Bangalore area. The police only had 100 of these cases in their records. The discrepancy was ultimately explained by the fact that the police confined their records in domestic violence situations to cases that could be booked under the two anti-dowry statutes, Sections 304B and 498A. They considered all other cases to be "accidental" deaths and closed them without much investigation. *Report: Getting Away with Murder*, 117 *MANUSHI* 31, 34 (2000); Kanhaiah Bhelari, *Peanuts for the Bihar Judge*, *WEEK*, Jan.13, 2002 (describing the story of police delay in acting on a domestic violence case), available at <http://www.the-week.com/22jan13/events3htm>.

82. See MITRA, *supra* note 33, at 9 (stating that the truth is difficult to prove in a court of law, but also questioning whether lies can be proven); see also Poonacha & Pandey, *supra* note 45, at 31 (asserting that the AWPS frequently has to be dowry-related to be taken seriously).

and the area being studied.⁸³ One study estimated that 15% of the cases involving violence against wives was attributable to only dowry demands.⁸⁴ According to the same study, 72% of first person accounts of the violence and its causes do not even mention dowry.⁸⁵ Similarly, a feminist activist in India says, "I have not come across a single case amongst the hundreds I have heard, read of or dealt with, where the husband and in-laws harassed the woman because of dowry alone. . . . Dissatisfaction is expressed not only with the quality and quantity of the dowry but equally with the woman herself."⁸⁶ The focus on dowry violence in the criminal laws has made other violence appear less criminal and more part of everyday life.

In many areas of India, domestic violence in one form or another is indeed part of everyday life.⁸⁷ Although rates of violence vary tremendously by geographic area, in some areas of India they are as high as 75%.⁸⁸ In addition, rates of physical violence against low caste or scheduled caste women are higher than against high caste women, although the latter report significant levels of verbal and emotional abuse.⁸⁹ For many women, violence may be normative because they

83. See BLOCH & RAO, *supra* note 36, at 2, 20 (discussing a study of three villages in rural southern India that showed that 23% of the women have been beaten by their husbands); see also *Introduction*, in A SUMMARY REPORT OF THREE STUDIES 1 (1999) (citing the overall rates of violence to be between 22% and 60%).

84. See *Is Dowry the Real Killer?*, 53 MANUSHI 5 (1989).

85. *Id.*; see KUMARI, *supra* note 42, at 58 (discussing another study that found 50% of dowry victims attributed the violence to causes other than dowry demands).

86. See Kishwar, *supra* note 23, at 12.

87. See SAXENA, *supra* note 26, at 187 (emphasizing broad social acceptance of wife beating).

88. See Visaria, *supra* note 36, at 10 (stating that significant rates of violence range from 36-38% in Tamil Nadu and 28-42% in Uttar Pradesh). The two western states of Madhya Pradesh and Maharashtra account for nearly one-third of the total registered crimes against women, despite the fact that they account for only about 15% of India's population. See RESPONSES TO DOMESTIC VIOLENCE IN INDIA, *supra* note 8, at 1; CENSUS OF INDIA (last visited Mar. 5, 2003), available at <http://www.censusindia.net>.

89. See Visaria, *supra* note 36, at 9, 11 (showing overall rates of wife abuse to be between 74-80% for low caste women from rural Gujarat, 56% for Muslim women from the same area, and 45% for high caste women from the same region). The report also shows that only 17% of high caste women encounter physical abuse, as compared to 57% of the low caste women. *Id.*; see also Mahajan, *supra* note 35, at 5 (showing violence against high caste women at 13-22% but violence against low caste women at closer to 75%). Furthermore, a woman's individual characteristics also correlate with the level of violence. *Id.* It may be that women who have higher status because of their education, ability to earn money in the market or current ability to bear children are less likely to be abused. See Vijayendra Rao, *Wife Abuse, its Causes and its Impact on Intra-Household Resource Allocation in Rural Karnataka: A 'Participatory' Econometric Analysis*, in GENDER, POPULATION AND DEVELOPMENT 103-04, 113 (Maithreyi Krishnaraj et al. eds., 1998) (arguing that wives who have not borne male children, possibly because of age, or where sterilization has ended their reproductive careers, are more likely to be abused, and that wives who earn outside income or are

822 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

have been socialized into believing that their husbands are entitled to power over them. The character of Sita in the well-known Indian epic, the *Ramayana*, exemplifies the selflessness and dedication to husband to which women are to aspire.⁹⁰ When her husband, Lord Rama was banished to the forest, Sita accompanied him, making his path comfortable by stamping down the sharp grass in front of him so that she, not he, would be cut by it. While in the forest, she was kidnapped by Ravana who tried to seduce her, but she remained faithful to Rama. Eventually, Rama rescued her, but after he heard rumors that she had not been faithful, he banished her once again. Despite this, she remained devoted only to him. Like Sita, an Indian bride is supposed to be faithful and devoted to her husband, regardless of the adversities she may face and how he has treated her.⁹¹

The ancient Indian Code of Manu also calls for women to honor and obey their husbands. “[T]he wife should subject herself to the authority of her husband. She should never do anything that might displease him, whether he is alive or dead.”⁹² A woman who treated her husband with disrespect would suffer in eternity. Her religious duty in this life was devotion “at his feet.”⁹³ Another ancient authority says that a wife should act like a slave in relation to her husband, the master.⁹⁴ A husband’s “discipline” of his wife is not only permissible, but to be expected. It serves as a means of establishing his power over her. As with domestic violence elsewhere in the world, the precipitating causes of the beating might be trivial, perhaps because the wife acted insufficiently graciously toward him or had not adequately performed her household duties.⁹⁵ Under traditional rules, the husband was allowed to beat her with a rope or a thin stick of bamboo.⁹⁶

more educated are less likely to be beaten). However, the higher the husband’s level of education, the greater the likelihood that the wife will be beaten. *Id.* at 113.

90. See Kakar, *supra* note 41, at 54 (retelling the legend of Sita); see also Jean Johnson, *Rama and the Ramayana: Lessons in Dharma* (last visited Jan. 17, 2003) (describing Sita as a continuing role model for young girls), available at <http://askasia.org/frclasrm/lessplan/1000054.htm>.

91. See MAHAJAN & MADHURIMA, *supra* note 42, at 5; see also Vidhu Mohan, *Is There a Hope for Battered Wives?*, in *VIOLENCE AGAINST WOMEN* 13 (Sushma Sood ed., 1990) (analogizing to Saint Paul’s clarification why women should remain subservient to a man).

92. See MAHAJAN & MADHURIMA, *supra* note 42, at 4-5.

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

94. See MAHAJAN & MADHURIMA, *supra* note 42, at 4-5.

95. *Id.* at 5.

96. *Id.*; see Reva B. Siegel, “The Rule of Love”: *Wife Beating as Prerogative and Privacy*,

Many women in India continue to believe today that discipline at the hands of their husbands and reverence and respect for their husbands are completely appropriate. Women in India, like women in the rest of the world, are unlikely to report freely on their husbands' violence against them. Even in their dying declarations, many abused women will exonerate their husbands, hoping to ensure that the men are not blamed for their wives' deaths.⁹⁷ Furthermore, since many Indians, male and female, continue to believe that wife abuse is a privilege of marriage and that husbands remain entitled to beat their wives, women do not complain.⁹⁸ One researcher discovered that 88% of the women surveyed in a village in rural Karnataka said they would not complain if beaten, while 50% of the women from two other villages in the same state responded similarly.⁹⁹ This researcher described seeing underreporting in action and offered two examples, both from the village of Halli—in the southern state of Karnataka—to illustrate this.

A focus-group discussion being conducted with a group of women was interrupted by a male relative of one of the participants. He publicly shouted at her for neglecting her “household duties,” grabbed her by the hair and pulled her out of the meeting. A day later, while a colleague and I were conducting an informal discussion with a couple in their home, we heard loud screams from the house next door. We ran over and found that a woman was being slapped by her drunken husband. Despite the fact that both these women were assaulted in our presence, neither said that

105 YALE L.J. 2117, 2117-21 (1996) (discussing the traditional notion that wife beating was permitted in the United States and the conditions under which it was permitted and, effectively, regulated). See generally Henry Ansgar Kelly, *Rule of Thumb and the Folklore of the Husband's Stick*, 44 J. LEGAL EDUC. 341 (1994) (offering humorous exploration of the “alleged” rule of thumb with regard to the subject of wife-beating).

97. See RANJANA SHEEL, *THE POLITICAL ECONOMY OF DOWRY: INSTITUTIONALIZATION AND EXPANSION IN NORTH INDIA* 118 (1999) (noting that many traditional rituals are observed to save “family honour”).

98. See SAXENA, *supra* note 26, at 174-76 (explaining that women are passive victims); see also M. Harish Govind, *Wife Beating Common in Kerala, Says Study*, HINDU, Apr. 11, 2002 (finding that 61% of women in Kerala believe that wife beating is justified for reasons such as poor cooking, going out without informing the husband, and failing to show in-laws sufficient respect), available at <http://www.hinduonnet.com/thehindu/2002/04/11/stories/2002041105790300.htm>; Sunanda Kaushik, *Social and Treatment Issues in Wife Battering: A Reconsideration*, in *VIOLENCE AGAINST WOMEN* 23, 23 (Sushma Sood ed., 1990) (stating that men generally deny battering and women deny being battered); Rao, *supra* note 89, at 99 (stipulating that between 50% and 88% of respondents surveyed said that if beaten, they would accept it quietly); Rajalakshmi Sriram, *Research on Marital Violence—Some Trends, Implications and Emerging Issues*, in 2 *RESEARCH ON FAMILIES WITH PROBLEMS IN INDIA* 486 (Unit for Fam. Stud. ed., 1991) (stating that some women accept violence as inevitable).

99. See Rao, *supra* note 89, at 99 (discussing incidents of wife-beating).

824 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

they had ever been physically abused by their husbands in response to the survey questions.¹⁰⁰

For these women, the violence is simply part of their married lives.

The move to criminalize dowry violence does nothing to prevent other forms of violence that are endemic in the lives of some women in India. By focusing attention so strongly on dowry violence, the criminalization strategy may unwittingly have reinforced the tendency of courts, the police, society in general and women themselves to view non-dowry related spousal violence as less significant or even as acceptable. The statutes and complaint procedures have sometimes been interpreted to imply that if the violence is not dowry-related, it is not worth acting on. Moral outrage that is directed toward dowry violence often fails to mention other forms of violence, implying that there is nothing wrong with them.¹⁰¹ And age-old customs of subordinating wives to husbands' desires and discipline remain in place, at least among some groups in some areas. Women themselves often do not complain because this is the way they have been socialized to understand the world. They do not understand alternatives to exist.¹⁰² The result of criminalizing only one form of violence against women may well be to leave other forms intact and unchallenged.

IV. PROBLEM THREE: IDENTIFYING THE EVIL FORCE BEHIND CRIMINAL ACTIVITY

The identification of criminal activity within a society involves the demarcation of certain conduct as immoral or socially undesirable. As a means of preserving current social structures, criminal conduct

100. *Id.* (offering numerical data regarding reported incidents within the study's survey); see also *Conclusion*, in A SUMMARY REPORT OF THREE STUDIES 42 (1999) (discussing underreporting); Kaushik, *supra* note 89, at 23 (arguing that women deny the violence used against them); Mahajan, *supra* note 35, at 5 (noting a study in which 22% of husbands admitted abuse, compared to only 13% of wives who admitted having been abused). This study demonstrates women's reluctance to speak out against the violence and men's feeling of entitlement to use violence. Furthermore, it shows that husbands are more willing to admit to having been violent than are women to admit being the victims of such violence.

101. See Editorial, *Fight Against Dowry: Liberating Slaves of Money and Property*, MANUSHI, July-Aug. 1979, reprinted in IN SEARCH OF ANSWERS: INDIAN WOMEN'S VOICES FROM MANUSHI 246, 248-49 (Madhu Kishwar & Ruth Vanita eds., 1984) (indicating that the "glorious heritage of systemic violence" includes *sati* and female infanticide); see also Kishwar, *supra* note 23, at 12 (arguing that downplaying "other forms of harassment tends to draw public attention away from the inherent powerlessness of women in the existing family structure"). *But see* Rajni Palriwala, *Reaffirming the Anti-Dowry Struggle*, ECON. & POL. WKLY., Apr. 29, 1989, at 943 (arguing that there are many activists who have protested dowry violence against women and other forms of violence and other means of subordinating women).

102. See *infra* notes 148-62.

is often blamed on outsiders to society. When the Murrah Building in Oklahoma City was bombed on April 19, 1995, many Americans first blamed the tragedy on Middle Eastern terrorists.¹⁰³ All cultures have “outsiders” who are likely to be blamed when something goes wrong. This tendency to rely on traditional cultural narratives of blame can subvert reformist efforts to fix blame on society itself or on powerful “insiders” within society. If “outsiders” are to be blamed, “insiders” will feel little need to alter their behavior.

This is happening in the context of the criminalization of dowry violence. It turns out that dowry violence is often blamed on either the colonial or Western influence on Indian culture or on mothers-in-law. These explanations for why dowry violence occurs provide excuses and defenses for the victims’ husbands. They help us to understand why, despite the reformers’ objectives of increasing women’s safety through the enactment of the Dowry Murder and Cruelty statutes, the statutes have not significantly decreased the amount of dowry violence to which women are subject. As already indicated, the numbers of dowry deaths rose during the 1990s,¹⁰⁴ the police often refuse to investigate or they delay for too long to conduct an effective investigation,¹⁰⁵ and acquittal and withdrawal rates have been high while conviction rates are extremely low.¹⁰⁶ These results should not be surprising if actors in the criminal justice system and members of the larger society believe that dowry violence is really a result of bad “outside” influences or of the wrongful actions of specific women in the family. Husbands and other family members are unlikely to be convicted or even prosecuted if their actions are viewed as excused due to the influence of external forces or if they are not seen as the responsible individuals at all.

Commentators in the West have often blamed the custom of dowry for the violence against and subordination of women in India.¹⁰⁷

103. See Michael Hedges, *Terror in the Heartland*, WASH. TIMES, Apr. 20, 1995, at A1 (reporting that experts in international terrorism are coordinating nationwide efforts to find the terrorists, possibly of Middle Eastern descent, who were responsible for the bombing of the Murrah Building in Oklahoma City); see also *2 Sought in Oklahoma Bombing*, SEATTLE TIMES, Apr. 20, 1995, at A1 (reporting that a Jordanian-American was being returned to the United States for questioning); *Heartland Horror*, PRESS-ENTER. (Riverside, Cal.), Apr. 20, 1995, at A01 (reporting that the FBI was looking for three people of Middle Eastern origin); Martin Fletcher & Tom Rhodes, *Up to 250 Missing in U.S. Bombing; Oklahoma Bomb*, TIMES (London), Apr. 20, 1995 (reporting that the FBI was concentrating their inquiries on the Middle East), available at 1995 WL 7663248.

104. See *supra* notes 31-32 and accompanying text.

105. See *supra* notes 46-60 and accompanying text.

106. See *supra* notes 34-35 and accompanying text.

107. See Namratha S. Ravikant, *Dowry Deaths: Proposing a Standard for Implementation*

826 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

Since parents have to pay large dowries to the bridegroom's family upon the marriage of their daughters, there is thought to be an incentive to kill or abort female infants or provide insufficient medical care and education.¹⁰⁸ Similarly, Western commentators often portray women as valuable primarily for the dowries they bring to their marital families.¹⁰⁹ Once these have been collected, the women can be disposed of, perhaps to make room for another dowried wife. According to the Western image of India, these "dowry killings" are accepted by traditional Indian society. Uma Narayan and Ratna Kapur, in their discussions of this view, refer to the Western understanding of dowry killings as being "death by culture."¹¹⁰ In contrast, some Indian commentators tie dowry violence to British colonial rule and the effects of Western-style conspicuous consumption in India. This reverses the Western claim of "death by [Indian] culture," turning it into one of death by Western culture.

Instead of the Western portrayal of dowry as evil, it can be portrayed as a spiritual good. According to these accounts, dowry ensured the sanctity of one form of traditional Hindu marriage.¹¹¹ It was the gift giving that gave a wedding its spiritual meaning. To function in this way, the gift had to be voluntary.¹¹² The most valuable

of Domestic Legislation in Accordance with Human Rights Obligations, 6 MICH. J. GENDER & L. 449, 457-59 (2000) (arguing that dowry deaths are consistent with the inferior position of women in Indian society, and that women are "socialized" to think they must submit to violence from their husbands); see also Anshu Nangia, *The Tragedy of Bride Burning in India: How Should the Law Address It?*, 22 BROOK. J. INT'L L. 637, 646-48 (1997) (arguing that the fact that dowry is still practiced in modern times is a reflection of the patriarchal values embedded in Indian society); OLDENBURG, *supra* note 73, at vii-viii (recounting that colleagues in the United States viewed an Indian documentary on domestic violence as blaming the violence on dowry).

108. See Ravikant, *supra* note 107, at 457-58 (explaining, by contrast, that the male is seen as an asset to the family because he can perform labor and provide for aging parents).

109. See *id.* (arguing that the groom's family wants to find a bride who is willing to support the groom's ambitions).

110. The phrase "death by culture" is shorthand for the claim that the violence against Third World women comes from particular cultural practices, and is therefore different from and more exotic than the violence against women in the United States. See Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1, 13-17 (2002) (arguing that while dowry murder is viewed as a cultural or religious tradition, it is instead of modern origin); UMA NARAYAN, *DISLOCATING CULTURES: IDENTITIES, TRADITIONS, AND THIRD WORLD FEMINISM* 107 (1997) (arguing that "dowry murder is neither Hindu nor a tradition").

111. See SHEEL, *supra* note 97, at 19-20 (stating that in traditional society, the practice of gift giving was approved from references in the Vedas and Smritis). Some even claim that dowry was unknown in ancient Hindu communities.

112. See *id.* at 20.

gift that one could give was the gift of a virgin bride.¹¹³ This practice not only ensured the sanctity of the marriage, it also increased the worthiness of both the giver and the recipient: “[H]e who gave a girl in marriage according to the *Brahma* rite brought her into the world of Brahman (after her death), and entered the world himself.”¹¹⁴

Others have seen the Indian practice of giving dowry as having pure origins because they view it as having been a means of protecting the bride’s rights in the property of her natal family. These commentators connect dowry with the ancient practice of *stridhana*.¹¹⁵ *Stridhana* was property that was provided to women upon marriage as their share in their fathers’ estates.¹¹⁶ Under Hindu law, women were not able to inherit from their fathers. Instead, they received *stridhana*. *Stridhana* differed from the current dowry practice in that the woman owned and controlled the *stridhana*. Dowry, in contrast, is given to the husband and his family.¹¹⁷ As one commentator said, “Often, *stridhana* is depicted to glorify . . . the better position of women in the Indian society.”¹¹⁸

Whether dowry is seen as having valid Hindu origins because it sanctified marriage or because it provided women with a measure of economic security, scholars like Ranjana Sheel and Veena Oldenburg argue that the practice of giving dowry became much more important as a result of India’s experience as a British colony.¹¹⁹ Prior to the colonial period, different forms of marriage were associated with the different castes and different geographical areas of India.¹²⁰ Although the higher castes engaged in rituals involving the giving of a bride with dowry gifts, other castes recognized marriages consistent with a host of other rituals including marriages in which the groom would give gifts to the bride and her family.¹²¹

113. See *id.* at 21 (explaining that the attitude in society makes it imperative for girls to be married on grounds of purity).

114. *Id.* at 42.

115. See KUMARI, *supra* note 42, at 3 (referring dowry as *streedhanam*, which is a form of inheritance); SHEEL, *supra* note 97, at 46 (describing *stridhana* as wealth given to females at marriage).

116. See Nangia, *supra* note 107, at 640 (explaining that, in contrast to dowry, *stridhana* is given as a personal gift and meant as a token of love).

117. See SHEEL, *supra* note 97, at 47-51 (citing a discussion of early Hindu texts from 8th century B.C. through 12th century A.D.).

118. *Id.* at 48.

119. See *id.* at 73-84 (discussing the colonial strategy universalizing the practice of dowry as a necessary ingredient of Hindu marriage); OLDENBURG, *supra* note 73, at 1 (arguing that dowry as a force in gender crimes resulted from the collusion of imperialism and Punjabi men who changed patriarchal ideas).

120. See SHEEL, *supra* note 97, at 72.

121. See *id.* at 40 (summarizing the eight rites/forms of marriage rituals). One of

828 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

The British colonial government reinforced the high caste marriage rituals, establishing a presumption that marriages celebrated with other forms were not valid. In part, it did this because of ideological distaste for the bride price form in which the gifts pass from the groom to the bride's family. In a 1909 case, the court said, "Where the person who gives a girl in marriage receives consideration for it, the substance of transaction makes it, according to Hindu Law, not a gift but a sale of the girl."¹²² Of course, the dowry form of marriage can also be understood as the sale of a bride. Whereas the British interpreted the bride price form as a purchase of a bride by the groom for money given to the bride's family, they could just as easily have viewed the dowry form of marriage as the sale of the bride by her family to the groom's family.¹²³

The colonial government's presumption that valid Indian marriages required dowry served a second purpose also: certainty. Its administrative duties required it to be able to distinguish between valid and invalid marriages. In order to do this, the colonial government moved to standardize the customs associated with a valid marriage and to create a system for identifying the essential rituals of a marriage.¹²⁴ Standardization was effectuated through the refusal to recognize marriages that involved anything other than bestowing both a bride and gifts on the family of the bridegroom.¹²⁵ Thus, all the other forms of marriage had to be rejected. In the early colonial period, bride price marriages were still common among the lower castes, as were other forms.¹²⁶ In one case, the groom had kidnapped the bride and then performed a marriage ceremony with her at the home of another. This might have complied with the ancient *Rakshasa* form,¹²⁷ but the court rejected it on the grounds that the

the ancient Indian marriage rituals involved the abduction of the prospective bride. *Id.* (describing the *Rakshasa* rite). In an ironic twist, the high cost of dowry weddings has resulted in the reverse practice in northern Bihar where some families have recently resorted to the abduction of grooms who are then married at gunpoint, without dowry, to women in the family. See Sunita Singh, *Marriages at Gunpoint: Bihar's Unique Response to Exorbitant Dowries*, 125 *MANUSHI* 34 (2001) (describing 299 such marriages between 1995 and 2000).

122. See SHEEL, *supra* note 97, at 73 (quoting *Chuni v. Suraj*, I.L.R., (Bom.) 433 (1909)).

123. See *id.* at 74 (stating that such payment was necessary for marriage to take place).

124. See *id.* (upholding the validity of the gift-giving of a daughter after her father had died).

125. See *id.* at (classifying the bridegroom price as a Brahma marriage).

126. See *id.* at 78 (indicating the Chamars castes, which unlike upper castes, are paying bride-price instead of dowry).

127. See *id.* at 40 (indicating this to be the forcible abduction form of marriage).

2003]

CRIMINALIZING DOWRY DEATHS

829

court needed the authority to declare non-compliant marriages void.¹²⁸

This process of standardization was furthered by the British practice of relying on Hindu “experts” to assist in the determination of which marriages were valid. In an effort to be sensitive to local custom, the British hired Brahmin (high caste) Indians to advise them on the validity of marriages under the ancient traditions. These advisors tended to be orthodox in their views and highly conservative.¹²⁹ This tendency reinforced the primacy of the most demanding forms of dowry weddings, although it did not avoid disputes among the Hindu advisors as to exactly what the requirements of religious law were. As one historian has noted, “The fact of being native simultaneously privileged and devalued [the advisors] as reliable sources. The pundits were essential to ‘unlocking’ the scriptures for officials. But they were also believed by officials to be the ‘devious minority’ against which it was the mission of colonization to protect the ‘simple majority.’”¹³⁰ As a result of the desire to standardize the marriage form and of the decision to rely on high caste Hindus to authenticate marriages, the multiple forms of Hindu marriage that existed at the beginning of the colonial period had disappeared by the mid-twentieth century.¹³¹ The colonizers discredited all other marriage rituals leaving intact only the Brahmin form which included dowry giving.¹³²

Many observers of the Indian marriage scene argue that Western influence on the modern practice of dowry goes beyond the colonial experience. They claim that dowries are used today as a means of participating in a display of conspicuous consumption similar to that which occurs in many Western countries. Traditionally, dowries consisted of money, jewelry, and clothing for the bride. Elegant saris and golden bracelets are typical examples, although in many cases the gifts had only minor value.¹³³

128. *Id.* at 81 (refusing to recognize noncompliance, except for families of elites, high castes or kings).

129. *Id.* at 68 (describing native pundits as clinging onto conventional, orthodox views when “altered social conditions an established local customs demanded departure from the ancient interpretations”).

130. Lata Mani, *Contentious Traditions: The Debate on Sati in Colonial India*, in *RECASTING WOMEN* 88, 102 (Kumkum Sangari & Sudesh Vaid eds., 1989).

131. See SHEEL, *supra* note 97, at 72 (indicating from British ethnographic surveys and census reports the obsolescence of all other forms of marriage except Brahma and Asura).

132. See *id.* at 73 (stating that “the Brahma is the only legal form at present”).

133. See Ravikant, *supra* note 107, at 455 (exemplifying typical gifts involved in the traditional, and outdated, dowry).

830 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

Several commentators have suggested that some grooms' families today see dowry as a way of improving their economic status.¹³⁴ This has become particularly acute in the post-independence period because middle income families have become the target of consumerism and Western style advertising. For example, one advertisement for a laundry detergent shows a man bursting into his home furious (and abusive toward his wife) because he had a spot on his shirt and was unable to make a sale. The advertised detergent then works its magic, the man returns to the field, the sale is made, and everyone is happy.¹³⁵ Similarly, Indian advertisements often link Hindu ceremonies with consumption, conveying the implicit message that to consume is Indian.¹³⁶ Ranjana Kumari argues that as the middle class has become increasingly the target of advertising, this has created an "insatiable greed" and a desire to "keep up with the Joneses."¹³⁷

This position is reinforced by Arvind Rajagopal's study of advertising showing that whereas advertising aimed at the lower castes used to lecture about the product's utility, today it is aimed at the creation of desire.¹³⁸ Not surprisingly, consumer items are often advertised particularly for a bride's dowry.¹³⁹ Today, dowries often include home appliances, furniture, scooters (a common means of

134. See Barbara Harriss-White, *Gender Cleansing*, in SIGNPOSTS: GENDER ISSUES IN POST-INDEPENDENCE INDIA 124, 142 (Rajeswari Sunder Rajan ed., 1999) (arguing that the dowry, along with ceremonies revolving around the girl's reproductive cycle, are a way for the groom's family to show upward movement in society); KUMARI, *supra* note 42, at 35-38 (discussing the newly affluent middle class business community); Laurel Remers Pardee, *The Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe?*, 13 ARIZ. J. INT'L & COMP. L. 491, 498 (1996) (arguing that greed and extreme poverty lead grooms to demand dowries).

135. See Arvind Rajagopal, *Thinking about the New Indian Middle Class*, in SIGNPOSTS: GENDER ISSUES IN POST-INDEPENDENCE INDIA 88-89 (Rajeswari Sunder Rajan ed., 2001) (arguing that the melodramatic nature of the advertisement reflects an attempt to get into the heads of lower class consumers, to whom questions of survival are a much greater part of life).

136. See *id.* at 65-66 (arguing that there are four ways that ads make this link: by promoting consumption during Hindu festivals; by discussing emotions surrounding religious festivals, thus linking religion and consumption; by using religious symbols; and by using religious fetishes and symbols of good luck).

137. See KUMARI, *supra* note 42, at 37.

138. See Rajagopal, *supra* note 135, at 69, 79 (showing that television forced advertisers to switch from using different marketing techniques for wealthy and lower income people to using the same selling techniques for both groups). Thus, whereas before advertisers marketed the aesthetics of a product to the wealthy and the utility of the product to those of lower income, now they market aesthetics to both groups. *Id.*

139. See KUMARI, *supra* note 42, at 15 (indicating that offering bank loans and consumer items as the ideal dowry arises from the onset of consumerism and materialism).

transportation), clothing for the groom and his family, and money.¹⁴⁰ A bride's family may well spend several times its annual income on a daughter's dowry, creating enormous economic hardship for them.¹⁴¹ Thus, what may have started as a ritual for sanctifying marriage has, according to this way of seeing things, become, as a result of the colonial experience and contact with Western consumerism, a "sordid commercial transaction."¹⁴²

In addition to blaming the colonial government and Western consumerism for dowry violence, women, specifically mothers-in-law, are often blamed.¹⁴³ Again, placing the blame here means that one can imagine developing remedies for the problem of dowry violence without attacking the more basic problem of young brides' subordination within the family or even other forms of violence that enforce women's subordinate position. Mothers-in-law, in Indian family mythology, are often evil actors. Thus, they are easy to blame. Criminal action against them fits easily with cultural understandings of who mothers-in-law are and does not challenge traditional patterns of male dominance. In many ways, mothers-in-law play, within India, roles that are similar to the ones that stepmothers play in United States' family mythology. They are frequently portrayed as overdrawn exaggerated characters with evil hearts.¹⁴⁴

Marriages in India are often exogamous, meaning that the bride moves away from her community to live with the groom and his family; this is particularly true in northern India.¹⁴⁵ Just as a two-parent family with children is the imagined familial norm in the United States, so in India is the joint family in which the newly married couple lives with the groom's parents. But, just as the two-parent family in the United States does not describe all actual families, so the reality for many people in India differs from the joint

140. *Id.* at 47.

141. *See id.* (showing that families may even spend over ten times their income on dowries); BLOCH & RAO, *supra* note 36, at 5 (finding that dowries averaged six times the annual income of the bride's parents in the community studied).

142. *See* KUMARI, *supra* note 42, at 1.

143. *See* Rani Jethmalani & Shally Prasad, *Internalizing Patriarchy*, in KALI'S YUG: EMPOWERMENT, LAW AND DOWRY DEATHS 139 (Rani Jethmalani ed., 1995) (alleging that mothers-in-law are often held responsible for dowry murders).

144. *See, e.g.*, ANITA RAU BADAMI, *THE HERO'S WALK* 222 (2001) (depicting, in this novel, a mother-in-law who despite her age dominates the whole family without a thought for anything except her own comfort and power). Although her age has made her dependent physically on her daughter-in-law, the old woman still believed, "Daughters in law were crooks. . . . They stole power from you before you knew what was happening." *Id.*

145. *See* Billig, *supra* note 41, at 346 (explaining that such movement is due to the fact that most castes in North Indian villages are composed of only one clan).

832 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

family.¹⁴⁶ The image of the typical Indian joint family includes a mother-in-law who dominates the multi-generational family, enforcing compliance with her petty whims and looking to pick a fight with anyone who challenges her. Furthermore, although the husband of the abused woman may be the undisputed head of the household, especially if he is the only adult male, his mother holds significant power over his wife.¹⁴⁷

Accounts of dowry violence frequently focus on the role of the mother-in-law. Often the mother-in-law is depicted as initially making impossible demands on the daughter-in-law and then punishing noncompliance with violence. In these portrayals, the mother-in-law is sometimes shown as the major source of the violence against the victim. One well-known example is the case of Sudha Goel.¹⁴⁸ Within a month of her marriage, she was harassed by her mother-in-law, husband, and brother-in-law for having brought an inadequate dowry.¹⁴⁹ She was also physically abused in that she was expected to do more housework than she could possibly accomplish.¹⁵⁰ This particular form of abuse would be attributable to the mother-in-law. Then, when she was a full nine months pregnant, she was killed by a kitchen "accident" in which kerosene from the stove got on her sari and caught fire.¹⁵¹ Immediately after the fire and before she died, Sudha Goel looked at her mother-in-law and told the neighbors, "This lady has put kerosene oil on me and set me ablaze."¹⁵² Although Sudha Goel's husband was also found responsible for her death, one account of the Supreme Court's opinion notes that the witnesses' testimony was deemed plausible because of its description

146. See JAIN, *supra* note 36, at 23 (providing proof that joint families may be the exception, rather than the rule, for a significant portion of the Indian population, and that one study showed that only 58% of male respondents and 50% of female respondents actually lived in joint families); JOANNA LIDDLE & RAMA JOSHI, *DAUGHTERS OF INDEPENDENCE: GENDER, CASTE AND CLASS IN INDIA* 142-43 (1986) (showing that 60% of the highly educated, professional women studied who all lived in Delhi were living in nuclear families; that 21% were living in family structures that were neither nuclear nor joint; and that only 19% were living in joint families). This study even questions the prevalence of joint family structures in North India where they are supposed to be dominant. *Id.* at 142.

147. See Bush, *supra* note 24, at 591 (arguing that family power is based on age and gender).

148. See Rani Jethmalani & P. K. Dey, *Dowry Deaths and Access to Justice*, in KALI'S YUG: EMPOWERMENT, LAW AND DOWRY DEATHS 51-60 (Rani Jethmalani ed., 1995) (explaining that this was the first dowry death case for which the death penalty was given).

149. *Id.* at 52.

150. *Id.*

151. *Id.* at 53.

152. *Id.*

of the mother-in-law's indifference to the sight of the young wife engulfed in flames. The Court was ready to believe that a mother-in-law might indeed act in this way.¹⁵³

The story of Santara Singh follows a similar pattern. Santara Singh's in-laws began harassing her for dowry money shortly after her marriage. "Why don't you go home and get 50,000 rupees," her mother-in-law is quoted as saying to her. "Otherwise we'll throw kerosene on you." When Santara Singh was unable to produce the money, her mother-in-law is reported to have carried out the threat and poured kerosene on her. Luckily for Santara Singh, she was able to flee from her in-laws' home before the match could be lit.¹⁵⁴ As Isabel Marcus has noted, these stories follow a script.¹⁵⁵ For Marcus, an American law professor, the interesting feature is the way in which violence in the home is considered ordinary and unremarkable when it is in an American home, but becomes "exotic," "uncivilized," and a form of terror when it occurs in foreign societies.¹⁵⁶ The script that I want to focus on is the one that includes the evil mother-in-law. Just as the foreignness makes the violence visible to Americans, so the role of the mother-in-law may make it easier for Indian society to recognize it and talk about it.

Not surprisingly, actual court cases also often display a tendency to blame the mother-in-law. The case of *Prem Singh v. State of Haryana*¹⁵⁷ is a good example. In this case, Sumitra, wife of Prem Singh and daughter-in-law of Shanti, complained to her father within days of her marriage that she was being harassed and taunted for having brought insufficient dowry into the family. Sumitra's parents did give her in-laws some additional presents and, when the harassment and abuse continued, a mutual friend tried to mediate by talking to Prem Singh directly. Approximately two years after her marriage, Sumitra suffered burn injuries. While in the hospital, she complained again to her parents about dowry abuse. Within a few days she died, perhaps from having consumed poison.

153. See *id.* at 57 (finding that if the mother-in-law really wanted the victim to have the child, she would have been upset to see her die so close to the baby's due date); Sandanshiv & Mathew, *supra* note 72 (recounting that in another case, the prosecutors chose to prosecute only the mother-in-law, despite evidence that the deceased's sister-in-law could also have been responsible for the woman's death).

154. Molly Moore, *Consumerism Fuels Dowry-Death Wave; Bride Burnings on the Increase in India*, WASH. POST, Mar. 17, 1995, at A35.

155. See Isabel Marcus, *Reframing "Domestic Violence": Terrorism in the Home*, in *THE PUBLIC NATURE OF PRIVATE VIOLENCE* 11, 13 (Martha Albertson Fineman & Roxanne Mykitiuk eds., 1994) (recognizing a pattern in dowry deaths).

156. *Id.* at 12.

157. A.I.R. (1998) S.C. 2628.

One interesting thing about the India Supreme Court's opinion in this case is that, like the description above, it does not indicate exactly who did the abusing and harassing of Sumitra. Despite the fact that Shanti, the mother-in-law, is never mentioned in the Court's description of the facts, she was charged under Section 304B with having caused Sumitra's death. Her son, Prem Singh, was also charged. The trial court acquitted them both, but the state supreme court, the High Court, reversed the acquittals and convicted them both. The India Supreme Court then affirmed the conviction of Prem Singh, the victim's husband, but acquitted Shanti, the mother-in-law, on the grounds that there was no evidence that she had treated Sumitra badly. According to the Supreme Court, Shanti did not live with Sumitra and Prem Singh, was not with them at the time of Sumitra's death, and would not have benefited from the payment of any additional dowry. If this is the case, why was Shanti initially charged and convicted by the High Court? It is only possible to speculate on an answer, but it may be that the script that attributes primary responsibility for the dowry violence to the evil mother-in-law is so firmly embedded in the Indian narrative of how these tragedies occur that neither the prosecutors nor the lower court could let go of it. The story of dowry violence so frequently involves a mother-in-law as the most significant perpetrator of the abuse that it may be difficult for prosecutors, judges, and others to believe that she is not responsible at least in a behind-the-scenes manner.¹⁵⁸

A quick review of a number of court opinions indicates that dowry violence is typically a family affair.¹⁵⁹ In many cases, numerous members of the groom's immediate family participate in dowry violence over a period of many years. However, the fact that these cases involve convictions of multiple members of the groom's family indicates that the mother-in-law is probably not any more responsible for the violence than the others who are also convicted. Furthermore, as in most countries, familial violence in India frequently takes the form of rape or other sexual abuse of the wife.¹⁶⁰

158. See also *Wazir Chand v. State of Haryana*, A.I.R. (1989) S.C. 378 (acquitting the mother-in-law but convicting the husband and father-in-law).

159. See, e.g., *Agarwal v. State of Bihar*, A.I.R. (1997) S.C. 1830 (charging and convicting husband, brother-in-law, and mother-in-law for the death of twenty-eight year old Kiran Devi); *Asokan v. State*, A.I.R. (2000) S.C. 3444 (charging the husband, brother-in-law, mother-in-law and father-in-law for causing the murder of Porkodi, and convicting all but the brother-in-law, who was acquitted); *Ravinder v. State of Andhra Pradesh*, A.I.R. (1991) S.C. 1142 (charging and convicting husband, father-in-law and mother-in-law).

160. See Mary Anne Weaver, *Gandhi's Daughters*, NEW YORKER, Jan. 10, 2000, at 52 (noting that 70% of all rape cases in India involve rapes that occur within the family).

This is a form of violence for which mothers-in-law are likely to be less responsible than other family members.

There is also some evidence that mothers-in-law, instead of instigating violence, may reduce the level of abuse that their daughters-in-law experience at the hands of other family members. This is illustrated by the story of Ms. Harjit, who initially lived in a joint family with her husband and his parents.¹⁶¹ After the in-laws moved away, her husband's abuse of her increased. Eventually, she fled to her in-laws' home. Although life with her in-laws was not wonderful—she had to leave when they tried to marry off her daughters in ways she did not like—it was better than life with her husband. Ms. Harjit stayed with her in-laws for ten years. Similarly, one study of 120 college-educated, professional women from Delhi found that although most of them did not live in joint families, the women indicated that many of their mothers-in-law treated them the same as the older women treated their own daughters.¹⁶² Indeed, one study found that women in nuclear families are abused at a 50% rate, while only 30% of women in joint families are abused.¹⁶³ This would imply that life with one's in-laws may be protective for wives.

My point is not to attribute blame for dowry violence to particular family members nor is it to absolve others of blame. It is likely that colonialism, Western consumerism, and mothers-in-law all bear some responsibility for the dowry practices and violence of modern India. Instead, I am arguing that the criminalization of dowry violence encourages the search for socially-marginalized people and for external forces that can be blamed for activities that have been declared to be socially reprehensible. Whatever responsibility may appropriately be placed on these people and forces, the current legal discussion tends to obscure the role of the men who dominate the family structure. Furthermore, blaming mothers-in-law, colonialism and consumerism—all of which are already viewed as “evil”—makes fundamental change in family power relationships appear unnecessary. In this way, criminal laws that were originally seen as a tool for change lose their reformist edge.

161. See MAHAJAN & MADHURIMA, *supra* note 42, at 51-54.

162. See LIDDLE & JOSHI, *supra* note 146, at 146 (demonstrating how mothers-in-laws treat their sons' wives in “new” joint families).

163. See Visaria, *supra* note 36, at 11 (referring to psychological and physical abuse); see also Govind, *supra* note 98 (noting that Kerala women from nuclear households are more likely to be abused than those from non-nuclear households).

V. PROBLEM FOUR: CRIMINAL LAW IS INDIVIDUALISTIC IN NATURE

Criminal law makes a public statement that a particular prohibited activity is anti-social. Criminal laws that target domestic violence or even dowry violence announce that those practices, which previously were considered private problems (at best) or non-problematic (at worst), are problems worthy of the attention of public officials and public resources. This is an important statement. However, while they do this, laws that criminalize domestic violence often fail to recognize that the problem is systemic and not just individual.

Criminal law focuses on individual wrong-doing, not on problematic social structures. Thus, prosecutions for dowry violence charge particular individuals, not whole segments of society, with violating social norms. Similarly, criminal prosecutions assume a victim who is initially able to bring the offenses to the attention of the appropriate public officials and is then able to persevere with the prosecution. As anthropologist Sally Merry says, the criminal law offers victims of domestic violence the “promise of liberal legalism.”¹⁶⁴ For many women around the world, this is an empty promise. For a variety of reasons, their ties to their families are too strong and their alternatives too unattractive for them to go forward, alone, with a criminal prosecution.

The institution of marriage and the marital family are particularly important to Indian women. It is considered a disgrace to a woman’s natal family if a woman is unmarried past marriageable age.¹⁶⁵ In the 1980s, the average age of marriage for Indian women was 18.4; in some rural areas of Rajasthan it was 15.8.¹⁶⁶ Although it has crept up since then,¹⁶⁷ the relatively early marriage age and the emphasis on the necessity of marriage for women mean that for natal families, one of the major obligations to daughters is to find an appropriate husband.¹⁶⁸ For many families, marriage is a religious obligation. A

164. See SCHNEIDER, *supra* note 11, at 52 (2000) (stating that such promise is disconnected from the realities of women’s lives because this “connection” with the legal system is inadequate).

165. See BADAMI, *supra* note 144 (telling the story that a brother is aware of his failure in his duty to his sister in not finding her a husband); SHEEL, *supra* note 97, at 18 (stating that a “bride’s family either reluctantly or eagerly complies with ‘gift demands’ primarily because of the socio-cultural stigma attached to keeping the girl in parental house beyond the marriageable age”).

166. See Billig, *supra* note 41, at 344 (noting the low mean age of marriage for females in India and particularly the state of Rajasthan).

167. See MEDICAL COMPUTER SOC. OF INDIA, AVERAGE MARRIAGE AGE (last visited Jan. 19, 2003) (noting that in 1991, nineteen years old was the average age at marriage for women in India), available at http://www.medindia.net/health_statistics/general/marriageage.asp.

girl's purpose in life is to become a wife and mother.¹⁶⁹

Since marriage is such an important part of Indian women's identity, it is often especially difficult for them to escape from violent marriages. Abused women's natal families frequently feel unable to help. Some parents feel that their major responsibility to their daughter is to secure a marriage for her. Once this is accomplished, their obligations toward her are ended. Folk wisdom claims that Hindu parents tell their daughter as they leave for her wedding that now she will enter her husband's home, and she is not to leave it, except for her own funeral.¹⁷⁰ The married daughter who wishes to return permanently to her parents' home often recognizes that she will no longer receive the love, honor and respect that she enjoyed there earlier.¹⁷¹ Parents who respond this way to their own daughter's violent marriages may be reacting to the same social pressures faced by everyone. If their daughter returns home, they will now have to care for her in addition to the extended families of their sons to whom they have committed themselves. Often it is the abused woman's brothers and their wives who are particularly resentful of her return home.¹⁷² Furthermore, if the victim of abuse has unmarried younger sisters, her return home is likely to seriously complicate their marriage prospects.¹⁷³ As a result, for many abused women, a permanent return to their natal families is not likely to be a possibility.¹⁷⁴

168. See Billig, *supra* note 41, at 348 (indicating that the common preference is for a woman to marry into a family of her own status or into one that is of higher status).

169. See MAHAJAN & MADHURIMA, *supra* note 42, at 58.

170. See Mahajan, *supra* note 35, at 8.

171. See Jethmalani & Prasad, *supra* note 143, at 146 (stating that new brides cannot return to their natal homes because "from the moment a young woman's marriage is negotiated, her parents condition her to serve her in-laws, sacrificing her own likes and dislikes"); Madhu Kishwar, *When Homes are Torture Chambers [An Interview with Celine Suguna of Vimochana]*, 110 MANUSHI (1999) (viewing daughters who return to their natal homes as liabilities), available at <http://free.freespeech.org/manushi/110/vimochana.html>.

172. See Kishwar, *supra* note 171 (stating that resentment of a new bride's return to her family comes from both her sisters-in-law and her brothers because of the additional responsibilities she imposes); MITRA, *supra* note 33, at 10 (stating that an abused woman is often considered a burden at her parents' home and likely to be beaten by her own brothers).

173. See Flavia, *Violence in the Family: Wife Beating*, in WOMEN IN INDIAN SOCIETY 151, 157-58 (Rehana Ghadially ed., 1988) (noting how an abused woman could not return to her natal family because she had two younger sisters, and it would be too hard to find husbands for them if she remained at home).

174. See OLDENBURG, *supra* note 73, at 183-200 (providing examples of parents who respond to the discovery of their daughter's abuse by acting to remove her). Naturally, there are many parents who come to their daughters' aid. I have heard and read individual stories of parents doing their utmost to help their daughters leave abusive marriages and to provide for them subsequently.

Nor is there any place in much of Indian society for an unmarried adult woman. Divorce, although legal, is not an option.¹⁷⁵ In 1991, the divorce rate was 0.3%¹⁷⁶ Women who leave their husbands' homes are often forced by social pressures to return. For example, the well-known feminist Flavia Agnes tells the story of Prema, who fled from her husband's home to live with a friend.¹⁷⁷ Immediately, the walls of the factory where she worked were covered with signs saying that she was a slut who had run off with another man. Prema was forced to work alone and spent most of her time crying. She did not even try to get a divorce. By the end of two years, the social pressure was so great that she returned to her husband. Not only was her life miserable, but her daughter was approaching her early teens and Prema knew she would not be able to find a husband for the child if she herself remained separated from her own husband.¹⁷⁸

When Prema left her husband, she had to move in with a friend. This was uncomfortable and contributed to her return to her husband because the apartment was overcrowded with the addition of Prema and her daughter.¹⁷⁹ Lack of housing is a major problem for women who would like to leave their husbands' homes. For example, in 1997, only 0.03% of the budget of the Social Welfare Board of Madhya Pradesh was used to support shelters for women.¹⁸⁰ One study reported that nearly one-third of abused women had considered fleeing from their husbands, but had decided against doing so because they had nowhere to go and were afraid they would have to leave their children behind.¹⁸¹

Women's economic position in India makes it very difficult for most women to leave their husbands. Only 22% of women are employed, as compared with 52% of men.¹⁸² Most Indian workers,

175. *See id.*

176. *See* BLOCH & RAO, *supra* note 36, at 5. As in many countries, the divorce rate in India varies widely in different geographical areas. One article claims that the divorce rate has reached a "scary" 30% in metropolitan India. *See* Neelu Kang, *Marriages Caught in a Whirlpool of Stress*, TRIB. (India), Jan. 13, 2002, at <http://www.tribuneindia.com/2002/20020113/herworld.htm#1>.

177. *See* Flavia, *supra* note 173, at 158 (recounting the story of a working woman named Prema who faced social difficulties after leaving her husband).

178. *See id.*

179. *See id.*

180. *See* Mitra, *supra* note 46, at 23 (reporting also that 6.9% of the Board's budget was allocated to counseling services.) These funds usually support efforts to encourage the abused woman to return to her husband. *See supra* notes 48-52 and accompanying text.

181. *Conclusion*, in A SUMMARY REPORT OF THREE STUDIES 42 (1999).

182. *See* INDIA AT A GLANCE: WORK PARTICIPATION RATES, 1991 CENSUS OF INDIA, available at <http://www.censusindia.net/workpart.html>; *see also* *Steady Growth in*

male or female, are employed in the agricultural sector.¹⁸³ The Indian census divides agricultural workers into three categories: cultivators, laborers, and other. Cultivators usually have some ownership rights to the land and frequently direct or supervise the work of others, while laborers work on another's land for wages.¹⁸⁴ More than half of the female agricultural workers are laborers but only one-third of male workers are.¹⁸⁵ Female agricultural laborers are likely to be working on family farms in which they do not have a property interest, in contrast to men working the same farms who probably do have an ownership or leasehold interest. Furthermore, the agricultural laborer positions are lower-skilled and more poorly paid than the cultivator positions.¹⁸⁶ Even in laborer positions, women are usually paid only 40% to 60% of what men earn.¹⁸⁷ Consistent with this, experts estimate that as many as 90% of working women toil in the informal, undocumented sector.¹⁸⁸ Again, these jobs are unskilled, low paying and do not provide benefits.¹⁸⁹ Nor is life easy for Indian women with professional educations. One study found that even these women believe that they are discriminated against in the workplace and must work harder than men to receive comparable benefits.¹⁹⁰ The result is that most women are unable to support themselves apart from their husbands.

The criminal law does not help women to cope with these social difficulties. Instead, a woman who invokes its protection would be left to fend for herself. She would be forced to turn to her own parents for assistance. If they are unable or unwilling to help, she may have very few options for survival. As a result, it is not likely that women will report the violence that they suffer to criminal

Women's Employment (citing HINDU, Oct. 22, 2000) (women's employment is 16.3% of employment in the organized sector), available at <http://www.indiasocial.org/result.asp?id=1351>.

183. See JOHN E. DUNLOP & VICTORIA A. VELKOFF, BUREAU OF THE CENSUS, U.S. DEP'T OF COMM., WOMEN AND THE ECONOMY IN INDIA (1999) (showing that 63% of male workers and 81% of female workers are employed in the agricultural sector), available at <http://www.census.gov/ipc/prod/wid-9802.pdf>.

184. See *id.* (pinpointing the differences between cultivators and agricultural laborers).

185. See *id.*

186. See *id.*

187. See *id.*

188. See *id.* (stating that women in the undocumented sector plow fields, harvest crops, weave, make handicrafts, sell food, gather wood, etc.).

189. See *id.*

190. See *id.* (stating that nearly two-thirds of the women in the study felt compelled to work harder to receive comparable benefits).

840 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

authorities.¹⁹¹ The vast underreporting of domestic abuse that is described above is undoubtedly due in part to women's overall subordination, both economically and within the family. Until women have options outside of their marital families, we should not be surprised that they choose to stay in violent relations instead of leaving for lives of economic oppression and social ostracism.

CONCLUSION

Criminal law is a flawed vehicle for reducing the level of domestic violence in India for multiple reasons. This is particularly true of the current system which focuses primarily on dowry-related violence. First, criminal law relies for its implementation on a police force and a judiciary that have often not understood the dynamics of family violence. As a result, instead of taking the initiative to investigate incidents and arrest the abusers, the police have often encouraged women to return to their homes to work out the problem. This does nothing to change the power dynamics within the home because the police have not traditionally seen the problem as one of power dynamics. Courts have also misunderstood the motivating factors in violent relations and have interpreted the statutes as if individual incidents of assault are not part of a larger mechanism for asserting and maintaining control over the victimized spouse. This means that courts do not look at all of the relevant evidence and therefore fail to invoke the available presumption about who caused the death. The courts' misunderstanding of the dynamics of domestic violence actually undercuts their ability to enforce the criminal laws which were meant to attack exactly the problem of such violence.

Second, the statutes' focus on making a clear statement of the evils of dowry violence has left other forms of domestic violence in an ambiguous position. Presumably few Indians advocate the beating of wives.¹⁹² However, such violence certainly occurs.¹⁹³ The courts' interpretations of the anti-dowry violence criminal laws has often resulted in making action against non-dowry violence less likely. Instead of defining "cruelty" broadly, the courts have often defined it in restrictive ways that require extreme injury before the statute can be used. This means that much non-dowry violence will be hard to prosecute.¹⁹⁴ It also means that the police are likely to view non-dowry

191. See *supra* notes 97-100 and accompanying text.

192. Nevertheless, many people in India believe that husbands are privileged by the fact of their marriage to beat their wives. See *supra* notes 96-100 and accompanying text.

193. See *id.*

194. In the United States most domestic violence involves comparatively low levels

violence as not covered by the statute. This provides yet another reason for them to recommend to the victimized wife that she return home and try to work things out with her husband and his family.

The police and the courts' tendency to understand domestic violence in terms of individuals' maladjustment to marriage and the over-emphasis on dowry violence at the expense of the more general phenomenon of domestic violence open the way for blaming dowry violence on forces or people that are not central to the structure of a marriage. Accusing colonialism, consumerism, and mothers-in-law of instigating dowry violence means that one can imagine reducing dowry violence without changing the gendered power dynamics that currently result in wives' inability to end the violence against them. Although colonialism may have strengthened men's position in marriage and in the family,¹⁹⁵ the colonial period itself has long since ended and domestic violence continues. Furthermore, we must be very careful because efforts to blame consumerism can easily be converted into platforms for family values that call for women to remain subordinated in the home.¹⁹⁶ Blaming mothers-in-law simply disempowers older women without helping the younger ones.

Finally, the criminal law is an unlikely vehicle for creating significant change in the power relations within families because it relies on the powerless to take control in situations in which they have almost no alternatives to disempowerment. If neither the police, the courts, nor their own natal families are likely to come to their aid and if there are few opportunities for them to live independently, how can one expect victims of domestic violence to jeopardize their already threatened positions within their marital families in order to invoke the sanctions of the criminal law? Certainly, we must offer something more than this.

Of course, one solution is to improve the overall position of women in India. This is crucial. This includes providing more education to

of violence that would not be subject to prosecution if major injuries were required. See BUREAU OF JUST. STATS., U.S. DEP'T OF JUSTICE, INTIMATE PARTNER VIOLENCE AND AGE OF VICTIM, 1993-1999 2 (2001) (indicating that approximately two-thirds of violent crimes against female intimate partners are simple assaults as opposed to rape/sexual assault, robbery, or aggravated assault..

195. See OLDENBURG, *supra* note 73, at 1 (suggesting that the collusion of colonialism and Punjabi men reconfigured patriarchal values and manly ideals ever more strongly).

196. See, e.g., Murl Manohar Joshi, *Women's Liberation: The Indian Way* (Dec. 24, 1995) (statement by one commentator for the Bharatiya Janata Party, a major Hindu nationalist party in India, contrasting western consumer values with the focus on life-long relationships and the respect for husband and wife in India), available at <http://www.bjp.org/major/mmj-wlib.html>.

842 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

women,¹⁹⁷ better employment opportunities, additional opportunities for independent living, and the chance to participate in the political system. Changes in these areas of society and the economy will provide women with choices that may favorably affect the patterns of subordination that currently make it difficult to reduce the levels of violence that women face. Women may even have better chances to participate in the political system. However, these changes, even if they are essential to improving women's situations, are beyond the scope of this Article.

What changes in the legal system might hold more promise for abused women than the criminal remedies have so far? There are at least two current initiatives in India. The first is a campaign to create a civil restraining order regime that would provide remedies without reliance on the criminal justice system and the second is a series of efforts at training the police and judiciary in issues relating to gender equality including the problems of domestic violence. Both of these are actively supported by groups within the Indian women's movement.

Beginning in December 1999, the Lawyers Collective, Women's Rights Initiative ("LCWRI") began an effort to develop new legislation on domestic violence without any limitation to, or focus on dowry violence.¹⁹⁸ After nationwide conversations, the LCWRI developed a bill that would permit the courts to issue a civil order

197. See CENSUS OF INDIA, PROVISIONAL POPULATION TOTALS: INDIA, CENSUS OF INDIA, 2001 (last visited Jan. 20, 2003) (reporting 2001 census data showing 54% female versus 76% male literacy), available at <http://www.censusindia.net/results/resultsmain.html>. The 2001 figures represent a significant improvement over the 1991 figures which showed a female literacy rate of only 39% and a male literacy rate of 64%. CENSUS OF INDIA, NUMBER OF LITERATES AND LITERACY RATES (last visited Apr. 11, 2003), available at <http://www.censusindia.net/literates1.html>. The 1991 figures in turn showed an improvement over past censuses. In 1971, only 22% of women and 46% of men were literate. Victoria A. Welkoff, *Women's Education in India* (1998), available at <http://www.census.gov/ipc/prod/wid-9801.pdf>. for more information on the history of women's education in post-colonial India, see Aparna Basu, *Women's Education in India: Achievements and Challenges*, in FROM INDEPENDENCE TOWARDS FREEDOM: INDIAN WOMEN SINCE 1947 135 (Bharati Ray & Aparna Basu eds., 1999).

There is tremendous regional variation in literacy rates, with Kerala having a female literacy rate of 86% and Bihar and Uttar Pradesh having rates of 30%. Welkoff, *supra*. In 1993, 61% of girls or primary school age were attending school, compared to 75% of boys. Girls are much more likely to be taken out of school to help with family responsibilities, or, when they reach puberty, to protect their honor. As a result, the proportion of girls attending school decreases with age, while it remains stable for boys. In 1993, only 13% of all Indian women had more than a primary school education. *Id.*

198. See LAWYER'S COLLECTIVE, WOMEN'S RIGHTS INITIATIVE PROPOSAL: THE DOMESTIC VIOLENCE AGAINST WOMEN (PREVENTION) BILL, 2001 (permitting courts to grant orders to protect victims of domestic violence).

requiring the abuser to stop the violence. This is similar to the protective order regimes that exist in the United States.¹⁹⁹ However, the bill's authors carefully tailored their proposed statute so that it recognizes the particular difficulties faced by victims of domestic violence within India's particular system of subordination of women. First, the definition of domestic violence includes not just physical and sexual abuse, but also economic abuse.²⁰⁰ Furthermore, since, as indicated above, married women in India usually have very limited opportunities to earn a satisfactory living on their own and no claim on their natal families for assistance, the bill provides that the victim should be able to remain in the marital residence even after the petition for protection is granted.²⁰¹ The proposal also allows the

199. See Barbara Hart, *State Codes on Domestic Violence: Analysis, Commentary and Recommendations*, excerpted in CLARE DALTON & ELIZABETH M. SCHNEIDER, *BATTERED WOMEN AND THE LAW* 512-15 (2001) (describing the variety of state restraining order regimes). For a discussion of the effectiveness of restraining orders in the United States, see Adele Harrell & Barbara E. Smith, *Effects of Restraining Orders on Domestic Violence Victims*, in *DO ARRESTS AND RESTRAINING ORDERS WORK?* 214 (Eve S. Buzawa & Carl G. Buzawa eds., 1996).

200. See LAWYER'S COLLECTIVE, *WOMEN'S RIGHTS INITIATIVE: CAMPAIGN FOR A CIVIL LAW ON DOMESTIC VIOLENCE 7* (last visited Mar. 17, 2003), available at http://www.learningpartnership.org/events/newsalerts/india0202/compare_bills.pdf. This article explains that "economic abuse" includes:

- a) deprivation of any or all economic or financial resources to which the person aggrieved is entitled . . . including but not limited to household necessities . . . stridhan, property, jointly or separately owned by the person aggrieved, payment of rental related to the shared household and maintenance;
- b) disposal of household effects . . . valuables, shares, securities . . . or other property in which the person aggrieved has an interest or is entitled to use by virtue of the domestic relationship . . . ; or,
- c) prohibiting or restricting continued access to resources or facilities which the person aggrieved is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Id.

201. See LAWYER'S COLLECTIVE, *WOMEN'S RIGHTS INITIATIVE PROPOSAL: THE DOMESTIC VIOLENCE AGAINST WOMEN (PREVENTION) BILL, 2001, § 3* (last visited Mar. 17, 2003) (stating under the rights of an aggrieved person, "every woman in a domestic relationship shall have the right to reside in the shared household . . . [and] not to be evicted or excluded from the same . . ."), available at http://www.learningpartnership.org/events/newsalerts/india0202/lcwri_proposedbill.pdf. In addition, section 7 of the bill provides:

The court may pass a residence order to:

- i) restrain the respondent from alienating or dispossessing the shared household or encumbering the same;
- ii) restrain the respondent from renouncing his rights in the shared household except in favour of the person aggrieved;
- iii) require the respondent to permit the person aggrieved to enter and remain in the shared household or part thereof;
- iv) prohibit, suspend or restrict the exercise by the respondent of his right to occupy the shared household;
- v) restrain the respondent from dispossessing the aggrieved person from

844 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

court to order the payment of maintenance for the victim of violence and her children.²⁰² These provisions are a start in creating economic rights for abused women, especially if courts can be convinced to grant maintenance payments that continue throughout the woman's life and that are large enough for her to support herself and her children. Enactment of the proposal would provide some entitlements which clearly belong to her, not to her husband or his family. Finally, the proposal provides that the court may grant temporary custody of any children to the victim.²⁰³ This would have the effect of challenging the abuser's power and control over the family.

Furthermore, the proposal begins to recognize society's responsibility for the fact that women occupy a position in which they can be victimized. The proposal would allow someone other than the victim—perhaps a friend or NGO—to bring the petition on the victim's behalf, with the consent of the victim.²⁰⁴ The bill also calls for the appointment of a Coordinator for the Prevention of Domestic Violence to investigate issues relating to domestic violence in general and complaints about the implementation of the law in particular.²⁰⁵ Although neither of these provisions expressly acknowledges society's role in enabling the violence, they implicitly recognize that systemic changes in the balance of power are necessary if victimization of women within their families is to stop.²⁰⁶

Unfortunately, the bill that the government introduced into the Lok Sabha, India's Parliament, was so different from the one proposed by the women's groups that the women's organizations ultimately ended up opposing its passage.²⁰⁷ The government bill

the shared household; and

vi) direct the respondent to secure alternate accommodation for the person aggrieved or to pay rent for the same, if for sufficient reasons, the court is of the opinion that it will be harmful or injurious for the person aggrieved to live with the respondent in the shared household, having regard to the circumstances of the case.

Id. § 7.

202. *See id.* § 6 (directing monetary relief).

203. *See id.* § 8 (outlining custody order).

204. *See id.* § 12 (permitting petition by next friend).

205. *See id.* § 34 (establishing the duty of government to ensure effective implementation of the act).

206. *See* LAWYER'S COLLECTIVE, WOMEN'S RIGHTS INITIATIVE PROPOSAL: THE DOMESTIC VIOLENCE AGAINST WOMEN (PREVENTION) BILL, 2001, 2 (last visited Mar. 17, 2003) (stating in the Preamble "domestic violence has operated as a severe form of oppression of women..."), available at http://www.learningpartnership.org/events/newalerts/india0202/lcwi_proposedbill.pdf.

207. *See* BILL JUSTIFYING BATTERY INTRODUCED ON WOMEN'S DAY (last visited Jan. 20, 2003) (calling for women to mail protests to the government), available at

2003]

CRIMINALIZING DOWRY DEATHS

845

alters the definition of domestic violence, eliminates the victim's rights to remain in the marital home or to be awarded either maintenance or custody, and permits the court to order the victim and abuser to undergo counseling.²⁰⁸ Together these changes undermine whatever economic stability the LCWRI proposal could have provided. The provision allowing a court to require mandatory joint counseling reinforces the initial power imbalance between the husband and the wife by implying that the violence against her was partially her fault. These provisions, taken together, indicate a decreased willingness on the part of society to recognize social responsibility for the subordination of women and the role that violence plays in that subordination. Reliance on the internal resources of the family, for example through counseling, will work to reinforce the current power relations.²⁰⁹

The second promising initiative currently underway relates to judicial and police training. In 1997, Sakshi, a women's organization, held a conference for judges and other legal luminaries in Southeast Asia to focus on the links between violence against women and gender inequality. It was intended as a first step in creating a dialogue with the judiciary on gender expectations for women and on how these expectations affect courts' decisions.²¹⁰ The conference participants were senior members of the region's judiciary and bar, whom Sakshi saw as facilitators for gender equality training. These included several Justices of the Indian Supreme Court and the states' High Courts, leading members of the Indian bar, and their counterparts from other countries in Southeast Asia. The conference participants concluded that there was gender bias within the judiciary

www.umiacs.umd.edu/users/sawweb/sawnet/news/8Mar02.html.

208. The Protection from Domestic Violence Bill (India), Gov't Bill No. 133 (2001).

209. In December, 2002, the Parliamentary Standing Committee on Human Resource Development finally reported out a bill that makes many of the changes that the LCWRI recommended in the government bill. See E-mail from Indira Jaisi Ng, Lawyer's Collective, Secretary, and Women's Rights Initiative, Project Director, to Judith G. Greenberg, Professor of Law, *New England School of Law* (Dec. 14, 2002, 02:34 EST) (on file with author). The Committee's version of the bill reinstates the court's authority to order that the aggrieved person be awarded a right to remain in the marital home, extends the bill's coverage to those who are living in relations similar to marriage, and deletes both the provisions for mandatory counseling and the defense of self-defense that was available to aggressors under the government bill.

210. See Sakshi, *Report: Regional Perspectives on Gender Equality* (Jan. 4-5, 1997) (unpublished pamphlet, on file with author) [hereinafter Sakshi Report]. Founded in 1992, Sakshi is a violence intervention center in New Delhi that provides training, counseling, and education about violence against women. For information on Sakshi visit <http://www.mnet.fr/webparticulier/a/aiindex/sakshi.html> (last visited Mar. 19, 2003).

846 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

and that this should be addressed through the education of judges.²¹¹

The Conference Report states:

Judges, lawyers and activists were unanimous in the view that gender equality education for the region was necessary. . . . Training at all levels and as a continuous process was endorsed by most speakers since most judges and non-judges felt that gender bias was an attitudinal process, which for the existing judiciary was a process of change rather than a one time information input.²¹²

One crucial effect of this conference was to expose a number of leading judges and members of the bar to the connections between domestic violence and gender inequality and to convince them that these were interrelated and important issues for the courts.

With the assistance of some of the judges who attended the Sakshi conference, the National Judicial Academy in India and several other organizations have organized a series of colloquia on gender and the law over the past two years in more than a dozen major cities throughout India. The goal of these colloquia is to increase the police's sensitivity to gender issues, including violence against women.²¹³ Thus, as a result, in recent years, NGOs within India have begun strenuous efforts at both judicial and police education on the problem of domestic violence.

Although neither of these initiatives is a quick fix, they have the potential over time to create significant changes in the way actors in the criminal justice system view domestic violence. They make it more likely that judges, police and society will understand the intertwined gender and power relations that result in domestic violence and interpret domestic violence laws in light of these relations. They make it less likely that attention will be diverted to particular forms of violence which can then be blamed on traditional culprits. Their focus on domestic violence as a means of subordinating women is a crucial step in the process of reducing familial violence against women—a process that was begun with the passage of the Cruelty and Dowry Death statutes.

211. See Sakshi Report, *supra* note 212, at 21.

212. *Id.* at 22.

213. See BRITISH COUNCIL – INDIA, JUDICIAL COLLOQUIA ON GENDER AND LAW: STOP WOMEN BEING PERSECUTED IN CRIMINAL LAW (last visited Jan. 20, 2003), available at <http://www1.britishcouncil.org/india/india-about-us/india-what-we-do/india-rights-rights-and-society-areas-of-focus-judicial-colloquia.htm>. The LCWRI also holds police trainings lasting three or twelve days. See E-mail from Leena, Women's Rights Initiative, to Judith G. Greenberg, Professor of Law, New England School of Law (Dec. 12, 2002, 15:06 EST) (on file with author).