

# COMMENTS

## Dowry Death: A Violation of the Right to Life Under Article Six of the International Covenant on Civil and Political Rights

Angela K. Carlson-Whitley\*

“There can be no issue of more pressing concern to international law than to protect the life of every human being . . . . If international law is unable to fulfil[1] this basic task then for what does it exist?”<sup>1</sup>

### I. INTRODUCTION

Every day in India fifteen women are murdered by their new husbands and/or in-laws for failing to bring a sufficient dowry to the marriage.<sup>2</sup> Although India has many positive laws in place to prohibit and punish these “dowry deaths,” or “bride-burnings,”<sup>3</sup> they continue to occur in increasing numbers because of vague statutory language, faulty enforcement, cultural attitudes, and economic discrimination against women.

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\* B.A., The Evergreen State College, 1991; J.D. Candidate, University of Puget Sound School of Law, 1994. I would like to thank Assistant Professor Geoffrey R. Watson for his helpful comments and encouragement and Robert Menanteaux, senior research librarian at the University of Puget Sound School of Law, for his assistance in obtaining sources for this Article.

1. B.G. Ramcharan, *The Concept and Dimensions of the Right to Life*, in *THE RIGHT TO LIFE IN INTERNATIONAL LAW* 1, 2 (B.G. Ramcharan ed., 1985).

2. Reena Shah, *India's Invisible War Against Women*, ST. PETERSBURG TIMES, Mar. 13, 1992, at 10A. The author reports that nearly 16,000 women had been killed in dowry disputes from 1989 to 1991, about 15 a day. It is notable that more women die each year in dowry disputes than people are killed in the Sikh secessionist conflict with the government of the Punjab province, which kills about 5,000 people each year. *Id.*

A more recent report notes that every one hour and 42 minutes a newly married woman is burned to death for bringing an insufficient dowry to the marriage. *India Report Details Abuses of Women*, DETROIT FREE PRESS, Jan. 29, 1993, at 6A.

3. ELISABETH BUMILLER, *MAY YOU BE THE MOTHER OF A HUNDRED SONS: A JOURNEY AMONG THE WOMEN OF INDIA* 47 (1990) (noting that the terms “bride burning” and “dowry death” came into use in India in the late 1970s “when a handful of feminists began protesting against the occasional case that became known to the public”).

By failing to effectively prevent dowry deaths, India, as a party to the International Covenant on Civil and Political Rights (ICCPR),<sup>4</sup> violates the "right to life" as expressed in Article 6(1) and protected by Article 2.

Part II of this Comment describes the phenomenon of dowry death generally and explains the origins of dowry and its relatively recent transformation into a means of extortion by the groom and his family. In addition, this Part examines the laws enacted by India in response to the growing incidence of dowry deaths. Finally, Part II explains why these positive laws fail to solve the problem of dowry deaths.

Part III explains that the practice of dowry death not only violates India's existing domestic laws, but also violates international human rights law as embodied in the ICCPR. This Part briefly describes the ICCPR and examines India's obligations under the covenant with respect to the right to life. Part III takes the position that the practice of dowry death violates the ICCPR provisions protecting the right to life.

Part IV concludes that India violates its Article 2 obligations with respect to the right to life and suggests some measures that India should pursue to meet its obligations under the ICCPR. This Part also addresses the obligations of the international community, particularly the other states party to the ICCPR, to exert pressure on India to fulfill its obligations to protect the right to life and prevent dowry deaths.

## II. DOWRY DEATHS: THE PROBLEM, ITS RESPONSES, AND THE FAILURE OF EXISTING LEGAL RESPONSES

India's practice of arranged marriages, which involves the giving and receiving of dowry, is at the root of dowry deaths. Section A of this Part explains the concept of dowry and its importance in Indian culture. Section B describes the phenomenon of dowry deaths and attempts to discern its causes. Section C examines India's positive laws regarding dowry and dowry deaths. Finally, Section D addresses the failure of India's positive laws to prevent dowry deaths.

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4. International Covenant on Civil and Political Rights, G.A. Res 2200, 21 U.N. GAOR Supp. No. 16, at 52, UN Doc. A/6316 (1966) [hereinafter ICCPR].

## A. Dowry Defined

At one time, dowry was a means for parents to endow a daughter with material goods because she could not inherit property.<sup>5</sup> Traditionally, dowry consisted of gifts, usually jewelry,<sup>6</sup> given to the bride at the time of her marriage.<sup>7</sup> The dowry provided the new bride with financial security in her marriage into a new family.<sup>8</sup>

Today, dowry is negotiated and refers to the wealth that the bride's parents must pay the groom and his family as part of the marriage arrangement.<sup>9</sup> The groom and his family demand dowry not only in the form of money, but also in the more modern forms of televisions, video cassette recorders, refrigerators, motorcycles, and automobiles.<sup>10</sup> The amount demanded is often

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5. Barbara Crossette, *India Studying 'Accidental' Deaths of Hindu Wives*, N.Y. TIMES, Jan. 15, 1989, at A10. See generally BUMILLER, *supra* note 3. Bumiller notes that dowry appears to be an ancient Indian tradition. Sanskrit religious texts refer to parents giving away their daughters in marriage "decked with ornaments." The author also notes that according to Indian historians, dowry coexisted with the custom of "bride price," in which the boy's family paid a relatively small sum of money to the girl's parents as compensation for the loss of their daughter and the loss of her labor in the house and fields. Another commentator also discusses the custom of bride price, noting that dowry and bride price existed side by side as far back as the early Moghul era. William Claiborne, *Dowry Killings Show Social Stress in India*, WASH. POST, Sept. 22, 1984, at A1. Bride price tended to be favored by the lower castes, particularly in northern India, while dowry became the preferred practice among the upper castes. BUMILLER, *supra* note 3, at 48; SARA S. MITTER, *DHARMA'S DAUGHTERS: CONTEMPORARY INDIAN WOMEN AND HINDU CULTURE* 111-20 (1991) (providing additional information on the custom of bride price); Claiborne, *supra*, at A1 (describing dowry as a "centuries old . . . tradition" and the "cornerstone of arranged marriages").

6. *Hundreds of Dowry Deaths Reported in India*, UPI, Dec. 16, 1992, available in LEXIS, Nexis Library, UPI File [hereinafter *Hundreds of Dowry Deaths*]; MITTER, *supra* note 5, at 110 (noting that gifts to the bride traditionally consisted of jewelry, silks, and gold).

7. Lori Heise, *The Global War Against Women*, WASH. POST, Apr. 9, 1989, at B1.

8. See generally Clifford J. Levy, *India's Dowry Obligations Cause Fiery Deaths*, UPI, July 31, 1988, available in LEXIS, Nexis Library, UPI File; MITTER, *supra* note 5, at 110-12. Mitter notes that dowry was traditionally *stridhan*, the exclusive property of the bride. The jewelry was hers to wear or place in safe deposit in her own name and was given to the bride as compensation because she could not inherit land. Legally, it reverted to her in the event of divorce, annulment, or her husband's death.

9. Crossette, *supra* note 5; Heise, *supra* note 7. As women increasingly lost status during the era of Moslem rule and the marrying age of girls dropped to ten and even lower because of nuptial competition, dowries gradually began to increase in value from gifts of jewelry and other finery to large cash payments arrived at through intricate negotiations. Claiborne, *supra* note 5.

10. BUMILLER, *supra* note 3, at 47; *India's Hidden Tragedy*, BOSTON GLOBE, Aug. 4, 1991, at A26 [hereinafter *Hidden Tragedy*]. One commentator attributes increasing dowry demands to the impact of Western culture in India. Crossette, *supra* note 5. Another commentator, however, finds it too simplistic to attribute the spread of dowry to increasing greed, arguing instead that it is more accurately viewed as evidence of the

exorbitant; a family may be required to raise a dowry many times the annual earnings of the household to marry off a daughter.<sup>11</sup> Furthermore, such demands continue for months or even years after the wedding, as the husband and his family extort more money from the bride's family.<sup>12</sup> Increasingly, dowry has degenerated into merely a means for the groom and his family to increase their material wealth and raise their standard of living.<sup>13</sup>

In addition to being a real financial burden to the parents of the bride, demands for more dowry that cannot be met often result in severe abuse and harassment of the young bride, frequently culminating in her murder or suicide.<sup>14</sup> It is common for the groom and/or his mother to murder the new bride in the first year of an arranged marriage because they consider her dowry insufficient.<sup>15</sup> It is also common for the bride to kill her-

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growing devaluation of women's lives and that the murders should be characterized, not as dowry deaths, but as femicide. Renu Kakkar, *India: "Dowry Death" Victims Get No Justice*, INTER PRESS SERV., Aug. 6, 1990, available in LEXIS, Nexis Library, INPRES File; see also U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1991 1388, 1403 (1992) [hereinafter COUNTRY REPORTS 1991] (reporting that "[t]he claim that 'dowry deaths' (usually by burning) of young married women result from their inability to meet property demands by their husband's [sic] families has been challenged by women's rights groups who contend that insufficient dowry is often used as an excuse for societally condoned violence against married women").

11. A typical middle-class family in New Delhi will pay a dowry of about 100,000 rupees (about \$7,200 in 1988 U.S. Dollars) in cash and goods. Levy, *supra* note 8.

12. See generally Melissa Spatz, A "Lesser" Crime: A Comparative Study of Legal Defenses for Men Who Kill Their Wives, 24 COLUM. J.L. & SOC. PROBS. 597, 607 (1991). This article analyzes legal systems around the world that are lenient toward men who murder their wives. The author shows how many legal systems treat the murder of a wife as a less serious crime than the murder of a stranger, permitting men who kill their wives to avoid punishment or receive mitigated sentences through a variety of techniques, including the creation of statutory and common law defenses to criminal charges and nonenforcement of criminal laws. *Id.* at 597. In effect, countries around the world sanction these murders. The author's thesis is that the international human rights community can and should address the right of wives to state protection from violence at home. *Id.* at 598.

13. *Hidden Tragedy*, *supra* note 10; Shah, *supra* note 2. For a more detailed description of the history of dowry and its evolution over the last two decades, see BUMILLER, *supra* note 3, at 48-49, and MITTER, *supra* note 5, at 109-20.

14. Heise, *supra* note 7.

15. It is an irony of the Hindu culture that only after a woman's son marries does she acquire a measure of respect and power. Indian mothers-in-law . . . rule households with an iron hand. Often the man's wife becomes little more than a servant for his mother. It is through the mother-in-law . . . that the most vicious aspects of Indian sexism are realized. In many cases the mother-in-law, making up for a lifetime of abuse, hounds a wife into suicide or actually kills her.

BUMILLER, *supra* note 3, at 47; see also Rone Tempest, *Dowry Deaths; India Brides Still Facing Fiery Ordeal*, L.A. TIMES, Oct. 10, 1987, at A1.

self to spare her family further hardship.<sup>16</sup> In either case, the man is then free to seek a new bride who presumably will fulfill the dowry demands.<sup>17</sup>

### B. *The Problem of Dowry Deaths*

"Dowry deaths" is the collective name for these fatalities.<sup>18</sup> The most popular way to murder a young bride is to burn her alive, dousing her with kerosene in the kitchen and igniting her<sup>19</sup> (hence the term "bride burning").<sup>20</sup> Because Indian women cook with kerosene, it is readily available in every household.<sup>21</sup> It is also inexpensive, much cheaper than the

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Examples of successful and unsuccessful murder attempts abound. One author describes Krishna, a survivor of such a murder attempt in New Delhi, who now lives in a woman's home. Her parents abandoned her, her husband remarried, and her case languished in the district court. The police found the evidence insufficient to prosecute her husband and in-laws. The same author also describes Nalini Singh, the daughter of a city businessman who was immolated. She had asked for permission and help from her parents to obtain a divorce, but they refused, afraid of the scandal. After her death, her mother told reporters that the in-laws had demanded a car and that they could not afford it. Kakkar, *supra* note 10. Another author tells the story of Supriya Sing, the granddaughter-in-law of the Chief Minister of the state of Haryana, who was found shot through the neck and quickly cremated without any investigation. Her father promptly offered another daughter, Kanta, as a replacement. Crossette, *supra* note 5.

16. Examples of suicide as a result of dowry harassment also abound. One author describes separate incidents in which two young physicians at the same New Delhi hospital, no longer able to bear the pressures exerted on their families to provide more dowry, injected themselves with lethal doses of drugs. The author also describes the joint suicide of four sisters by hanging. They left a note saying, "[o]ur parents are not yet to pay fully for the dowry of our sister who was married some time ago. Having sold their gold and land, we are not sure that they will be able to provide anything for our marriages. Hence the decision to end our lives." Crossette, *supra* note 5; *see also* Nikki Lastreto & William Winans, *The High Price of Marriage in India Burning Brides*, S.F. CHRON., July 2, 1989, at 10/Z1 (providing a detailed description of the joint suicide). The four sisters were daughters of Police Constable Raman of the hamlet of Neyyarathode in southwest India. The dowry he paid to arrange a husband for his eldest daughter was 35,000 rupees (\$2,400 U.S. Dollars) and represented a fortune for a man of his profession, but the young groom demanded still more. The Constable's daughters who committed suicide were Santha, age 24, Sumathi, 21, Kanakalatha, 19, and Sasikala, 17. *Id.*

17. Heise, *supra* note 7.

18. Crossette, *supra* note 5.

19. BUMILLER, *supra* note 3, at 47. Victims of bride burnings in India generally do not survive. Victims who do not die immediately often succumb to infection shortly thereafter in substandard hospitals. According to police, the low survival rate is what makes the practice so popular as a form of murder. *Id.*

20. *See id.* at 44 (describing the importance of fire in Hindu religion, specifically to Hindu women); Heise, *supra* note 7; *see also* Crossette, *supra* note 5 (noting that women are also found hanged or poisoned, whether as a result of murder or suicide); Lastreto & Winans, *supra* note 16 (reporting that women are also strangled, thrown down wells, or even tied to train tracks).

21. BUMILLER, *supra* note 3, at 47.

price of a gun or a knife.<sup>22</sup> Murder by burning is also grimly expedient. The sari of combustible cloth worn by the bride ensures that she will burn quickly and easily.<sup>23</sup> Because the murder is committed behind closed doors, the murderers can later claim that the young bride died as a result of a kitchen accident or suicide.<sup>24</sup> There are generally no witnesses to refute such claims, nor does any evidence remain.<sup>25</sup>

Although there are no accurate statistics on the number of dowry deaths per year, the number of registered cases has risen steadily in the past decade.<sup>26</sup> In 1982, India registered 389 cases of dowry deaths nationwide.<sup>27</sup> By 1985, this number had more than doubled to 999 registered cases.<sup>28</sup> Finally, by 1991, the number had reached 5,157 registered cases, more than ten times the number of registered cases in 1982.<sup>29</sup>

Whether the increase is due to more accurate reporting, a higher incidence of dowry deaths, or a combination of the two is unknown.<sup>30</sup> Despite these higher figures, evidence indicates that hundreds of additional murders and attempted killings of

22. *Id.*

23. Spatz, *supra* note 12, at 608.

24. See BUMILLER, *supra* note 3, at 47; *Almost 11,000 Proven Dowry Deaths in India in Three Years*, AGENCE FRANCE PRESSE, July 31, 1991, available in LEXIS, Nexis Library, AFP File.

25. BUMILLER, *supra* note 3, at 47; Ashis Ray, *Dowry Death Takes Many Brides in Indian Tradition* (CNN television broadcast, Dec. 28, 1992), available in LEXIS, Nexis Library, CNN File.

26. See *infra* note 29. There are few, if any, accurate statistics because much domestic violence goes unreported or is not registered by the police. In addition, statistics do not include the women who are driven to commit suicide because of harassment over inadequate dowries. Shruti Shukla, *India: Women Fighting Back Against 'Dowry Deaths'*, INTER PRESS SERV., Aug. 24, 1987, available in LEXIS, Nexis Library, INPRES File. Other violence against women has also shown an upward trend over the past decade. See U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1992 1144 [hereinafter COUNTRY REPORTS 1992].

27. *India Reports 550 'Dowry Deaths' in 1984*, L.A. TIMES, April 25, 1985, at A6 [hereinafter *Dowry Deaths*].

28. Crossette, *supra* note 5; Levy, *supra* note 8.

29. COUNTRY REPORTS 1991, *supra* note 10, at 1403; *Hidden Tragedy*, *supra* note 10. Official figures for the years 1982 through 1990 are as follows: 1982—389 registered cases of dowry deaths, *Dowry Deaths*, *supra* note 27; 1983—444 registered cases, *id.*; 1984—550 registered cases, *id.*; 1985—999 registered cases, Crossette, *supra* note 5; 1986—1,319 registered cases, *id.*; 1987—figures for 1987 vary from 1,786, BUMILLER, *supra* note 3, at 48, to 1,912, *Crimes Against Women on Rise in India*, XINHUA NEWS AGENCY, June 1, 1990, available in LEXIS, Nexis Library, XINHVA File [hereinafter *Crimes on Rise*]; 1988—2,209 registered cases, *Hidden Tragedy*, *supra* note 10; 1989—figures vary from 3,829, *Crimes on Rise*, *supra*, to 4,215, *Hidden Tragedy*, *supra* note 10; 1990—4,835 registered cases, *Hidden Tragedy*, *supra* note 10; 1991—5,157 registered cases, COUNTRY REPORTS 1992, *supra* note 26, at 1144.

30. See COUNTRY REPORTS 1992, *supra* note 26, at 1144.

young brides are not reported simply because the brides' families prefer to avoid publicizing what they consider to be a shameful incident.<sup>31</sup> Moreover, the husband and his relatives disguise many such deaths as suicides or accidents.<sup>32</sup> Consequently, many fear that the actual occurrence of dowry deaths far exceeds the number reported to the police.<sup>33</sup> The Ahmedabad Women's Action Group in Gujurat State estimates that, in Gujurat alone, 1,000 women may be burned alive annually.<sup>34</sup>

### C. India's Positive Laws

The Indian government has tried to combat the growing incidence of dowry death by enacting various laws to prevent such deaths from occurring and to punish those responsible when they do occur.<sup>35</sup> The government's first effort came with

31. See Kakkar, *supra* note 10; Shah, *supra* note 2 (noting that only a fraction of the deaths are ever reported to the police).

32. Heise, *supra* note 7.

33. See Ray, *supra* note 25.

34. Heise, *supra* note 7. Mortality data from India reveals the reasonableness of the Women's Group's claim. In both greater Bombay and urban Maharashtra, "accidental burns" cause 19% of all deaths among women 15- to 44-years old. In other Third World countries, like Guatemala, Ecuador, and Chile, the same statistic is less than one percent. *Id.*

Dowry deaths are not the only indicator of violence and discrimination against women in India. Infant girls are more likely to be prematurely weaned and neglected by parents who wish to try for sons. Shah, *supra* note 2. When a girl's health suffers, she is less likely to receive medical care. *Id.* Female fetuses are also much more likely to be aborted than male fetuses. *Id.* Parents use amniocentesis tests to determine the sex of the expected child and abort it if it is female. *Id.* Until protests forced them to stop, Indian sex detection clinics promoted selective abortions by advertising that it was better to spend \$38 now to terminate a female fetus than to pay \$3,800 later on her dowry. Heise, *supra* note 7. Apparently the advertising worked; one study found that 99% of fetuses aborted after sex testing were female. Levy, *supra* note 8. Another study examined 8,000 fetuses at six Bombay abortion clinics and found that 7,999 of them were female. Heise, *supra* note 7. Fear of having to pay large dowries was believed to be partly responsible for the sex detection trend. Levy, *supra* note 8. The belief is that a girl is a liability because she will belong to her husband's family and will be of no use to her parents in their old age. *Eliminate Inequality, Not Women*, THE GAZETTE (MONTREAL), Apr. 26, 1993, at F5.

The effect of the practice of aborting female fetuses has begun to show in the balance between the sexes in India's population. There are fewer women than in the past, about 929 for every 1000 men. COUNTRY REPORTS 1992, *supra* note 26, at 1144. Another source cites a figure of 92.9 females for every 100 males. *Being Female Can Be Fatal*, INTER PRESS SERV., June 17, 1993, available in LEXIS, Nexis Library, INPRES File [hereinafter *Being Female*]. One author asserts that in addition to sex-selective abortions, female infanticide also continues to be practiced. Crossette, *supra* note 5. In the family of a prominent Rajasthan politician, there have been no recorded births of girls in 40 years. *Id.*

35. Spatz, *supra* note 12, at 607. India's government is a federal republic with a bicameral parliamentary system of government and a strong central administration.

the Dowry Prohibition Act of 1961.<sup>36</sup> To increase its effectiveness, the government has twice amended the Act, in 1984<sup>37</sup> and 1986.<sup>38</sup> The 1986 amendments require the police and a judicial magistrate to investigate every unnatural death of a woman married less than seven years.<sup>39</sup> Currently, the Act prohibits the "giving, taking, or demanding of dowry."<sup>40</sup> The Act defines "dowry" as property that is given or agreed to be given to a newlywed by the other newlywed or either set of parents "in connection with the marriage."<sup>41</sup> Violations of the Act are "punishable with a term of imprisonment of between six months and two years, plus a fine of up to ten thousand rupees or the value of the dowry, whichever is higher."<sup>42</sup>

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Jamie Cassels, *Bitter Knowledge, Vibrant Action: Reflections of Law and Society in Modern India*, 1991 WIS. L. REV. 109, 110 (book review). Its judicial system is a hierarchy with three levels consisting of state district courts (and local tribunals) at the bottom, state high courts at the second level, and a national supreme court as the final court of appeal. *Id.* The Indian Constitution establishes the institutions of state, defines how power is to be divided among the various levels of government, and contains a bill of rights. *Id.* at 110-11. Notably, one of the fundamental rights guaranteed by the Indian Constitution is the right to life. *Id.* at 111.

36. Spatz, *supra* note 12, at 608 n.66.

37. *Id.* at 608, 608 n.67.

38. *Id.* at 608, 608 n.68.

39. *Id.* at 610, 610 n.81. In addition to the Dowry Prohibition Act and changes in criminal laws, recent changes have been made in personal and labor laws governing women. These changes include the Equal Remuneration Act, the Prevention of Immoral Traffic Act, and the *Sati* (Widow Burning) (Prevention) Act. *Id.* Although these new laws have resulted in increased numbers of cases being brought by women's rights groups, deeply-rooted religious and social traditions continue to contribute to uneven enforcement of these laws. *Id.*

Media coverage of the treatment of women has also increased. See COUNTRY REPORTS 1991, *supra* note 10, at 1402. However, one author notes that dowry deaths actually get less publicity now "because reporters, editors, and even the public seems to be suffering from atrocity fatigue." *Being Female, supra* note 34. Only the particularly gruesome cases now receive any media attention. *Id.* Furthermore, the same Indian newspapers that report and denounce dowry deaths simultaneously perpetuate the practice by printing thousands of lucrative matrimonial advertisements used by parents in arranging marriages. *Ottawa Sets Hopeful Trend with Woman-Refugee Guidelines, THE GAZETTE (MONTREAL)*, Mar. 15, 1993, at A2.

40. Spatz, *supra* note 12, at 608-09, 608-09 nn. 69-71 (citations omitted).

41. *Id.* at 609, 609 n.72 (quoting the Dowry Prohibition Act). The author notes that this language is an improvement over the original language, which required that dowry be "as a consideration for" the marriage. *Id.* at 609 n.72. Courts had construed the previous language to include only money and items given at the wedding ceremony. Consequently, the Act did not include any gifts demanded after the wedding. *Id.*

42. *Id.* at 609, 609 n.74. These offenses are cognizable and noncompoundable. "Cognizable" means that in some instances the police may make a warrantless arrest, while "noncompoundable" means that the complainant cannot withdraw the claim. *Id.* at 609, 609 nn.75-76.



In addition to criminalizing dowry, the Indian Parliament has criminalized dowry-related violence against women.<sup>43</sup> The Indian Penal Code, amended in 1983, outlaws dowry-related cruelty by the husband and his relatives.<sup>44</sup> The Parliament further amended the Penal Code in 1986 to explicitly provide that dowry deaths are punishable with imprisonment between seven years and life.<sup>45</sup> Additionally, the Code of Criminal Procedure now mandates a police investigation into deaths of women under suspicious circumstances that occur within seven years of marriage.<sup>46</sup> Finally, in addition to criminal laws, the Parliament amended the Indian Evidence Act, which now creates a presumption of dowry death whenever a woman is subjected to dowry-related cruelty or harassment soon before her death.<sup>47</sup>

#### D. *The Failure of India's Positive Laws*

Despite the Indian government's efforts, India's statutory laws have been ineffective in preventing dowry deaths. The practice of demanding dowry has spread throughout India and the incidence of dowry deaths continues to increase.<sup>48</sup> Once practiced only by middle-class Hindu families in north India, dowry has now spread to different castes, provinces, and economic classes.<sup>49</sup> Even religious groups who never before

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43. *Id.* at 607.

44. *Id.* at 609, 609 n.77. The Code states that "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.* The Code defines dowry related cruelty as "'willful conduct' which would likely drive the woman to commit suicide or cause her grave injury, and harassment for dowry." *Id.* at 609 n.77.

45. *Id.* at 609, 609 n.78.

46. *Id.* at 610, 610 n.80.

47. *Id.* at 609-10, 609-10 n.79. The 1986 amendment to the Indian Penal Code provides as follows:

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 a "dowry death," and such husband or relative shall be deemed to have caused her death.

*Id.* at 609 n.78.

48. See *supra* note 29 and accompanying text.

49. See Crosssette, *supra* note 5. One commentator notes that "Indian social historians attribute the spread of dowry to the desire of the lower castes to emulate the upper castes, and to the spread of prosperity. As a village family's wealth increased, it became a matter of prestige to keep women off the land." BUMILLER, *supra* note 3, at 49. As a result, women, who were once assets because they were involved in harvesting the family lands, became liabilities.

observed dowry customs, such as Muslims and Christians, have begun demanding dowry.<sup>50</sup> Yet despite the increase in dowry deaths, very few convictions have been obtained for dowry-related murders.<sup>51</sup> According to one commentator, India's statutory laws are ineffective in preventing dowry deaths and punishing the perpetrators for four reasons.<sup>52</sup> Subsection 1 of this Section discusses the problem of vague statutory language. Subsection 2 examines the problem of nonenforcement of existing laws. Subsection 3 addresses the impact of cultural attitudes toward women. Finally, Subsection 4 discusses the effects of economic discrimination against women.

### 1. Vague Statutory Language

First, the statutory language is too vague to effectively stop the practice of demanding or giving dowries.<sup>53</sup> "The law's definition of dowry fails to include items that may be extorted from the bride's parents for years after the wedding."<sup>54</sup> The groom and his family simply ask for a "small gift."<sup>55</sup> The culture does not consider refrigerators, color televisions, and video cassette recorders as dowry because these gifts are expected.<sup>56</sup>

What one commentator describes as a vagueness problem is actually a problem of underinclusiveness. As originally construed by the courts, dowry included only money and property given at the wedding ceremony.<sup>57</sup> Consequently, the Act did not prohibit gifts demanded after the wedding.<sup>58</sup> The Act's definition of what constitutes dowry needs to be expanded to prevent Indian families from evading the Act's proscription against dowry. As one commentator notes, "as long as dowries remain legal in fact, the murder of new brides is likely to continue."<sup>59</sup>

50. Crossette, *supra* note 5.

51. Spatz, *supra* note 12, at 611. "[B]etween 1961 and 1975, only one case was registered under the dowry act [in India] and that resulted in an acquittal." *Id.* Between 1975 and 1984, only a few cases had even been heard. *Id.*

52. *Id.* at 611-16. The author explains that India's statutory reforms have proved ineffective because of vague statutory language, faulty enforcement, Indian cultural attitudes, and legalized economic discrimination against women.

53. *Id.* at 611.

54. *Id.*

55. *Id.*

56. *Id.* at 609, 609 n.72, 613.

57. *Id.*

58. *Id.* at 609 n.72.

59. *Id.* at 611.

## 2. Nonenforcement of Existing Laws

Equally at fault in the continuing problem of dowry deaths is the nonenforcement of criminal laws by police and prosecutors.<sup>60</sup> Although the Ministry of Home Affairs has issued specific instructions to police officers as to how to investigate dowry deaths,<sup>61</sup> the police rarely follow these guidelines and frequently fail to investigate properly.<sup>62</sup> Instead, police often dismiss such crimes as family disputes and report them as "kitchen accidents."<sup>63</sup> Less than ten percent of apparent dowry-related deaths are actually investigated.<sup>64</sup>

Even when investigations are carried out they are generally incomplete.<sup>65</sup> The police fail to take photographs or fingerprints and often base their investigations primarily on statements made by relatives.<sup>66</sup> Any witnesses that do exist are intimidated into silence<sup>67</sup> or are reticent to get involved.<sup>68</sup> If a death "cannot be written off as accidental, the police take months and even years to file a charge sheet."<sup>69</sup> By this time, any evidence that was available has disappeared.<sup>70</sup> In addition, prosecutors are often reluctant to prosecute the alleged perpetrator.<sup>71</sup> Between 1961 and 1975, only one case was filed under the Dowry Prohibition Act in all of India and, from January through October 1987, only thirty-five people in India were

60. *Id.* at 611 n.108. In 1982, the Bihar government widened the scope of its "antidowry cell" (a special unit to investigate dowry crimes), and renamed the "Offenses Against Women Cell," to include dowry, murder, burning, and rape. Nonetheless, it was reported that a Bihar police officer had just married and obtained a large dowry. The marriage was attended by high officials. *Id.* If police officers can flout the antidowry laws with impunity, with the tacit condonation of high officials, how can the rest of India be expected to comply?

61. *Id.* at 611.

62. *Id.*

63. Crossette, *supra* note 5; Shah, *supra* note 2. One author notes that some Indian feminists explain that the criminal laws punishing dowry deaths are not readily enforced because the police consider the crimes private or family affairs. Spatz, *supra* note 12, at 613.

64. Spatz, *supra* note 12, at 611.

65. *Id.* at 612.

66. *Id.*

67. See Crossette, *supra* note 5.

68. See Levy, *supra* note 8.

69. One author reports a study that found that 63% of the 109 first information reports and police diaries concerning women burned in Delhi were dismissed by the police as accidental with no investigation, and that in 22% of the cases no postmortem analysis was performed, despite laws requiring both investigation and postmortem analysis. Spatz, *supra* note 12, at 612.

70. See *id.*

71. See *id.*

charged in dowry death cases.<sup>72</sup> Even when prosecutions do eventually make it to trial, the faulty investigations provide judges with an excuse to acquit.<sup>73</sup>

Police corruption is largely responsible for such slipshod investigations and prosecutorial delays.<sup>74</sup> There is evidence that police are bribed by husbands and in-laws in exchange for agreeing not to make a formal investigation.<sup>75</sup> It is also not uncommon for police to conspire with the accused to falsify cases as suicides or accidents.<sup>76</sup> This falsification may even involve altering the woman's dying declaration, which is often the only evidence of any wrongdoing by the husband and in-laws.<sup>77</sup> Such an alteration by the police may effectively prevent conviction.<sup>78</sup> "A member of the Indian police on the Union Public Service Commission stated in 1990 that about [ninety-five] percent of registered cases of dowry death result in acquittal as corrupt police and medical officers tamper with crucial evidence."<sup>79</sup>

Even the judiciary contributes to the small number of dowry-related prosecutions. Dowry complaints are given such low priority that it can often take up to one year before the court even agrees to grant a hearing.<sup>80</sup> Moreover, courts often suppress certain crucial evidence, such as suicide notes and dying declarations, on technical grounds.<sup>81</sup>

72. *Id.* at 612, 613 n.110.

73. Spatz, *supra* note 12, at 613 n.110. The author describes a case in which Delhi Justice S. M. Aggarwal imposed the death sentence on a man, his mother, and his elder brother for killing his young bride who was 8-months pregnant. *Id.* at 613 n.111. In 1984, the High Court overturned the decision, sending the message to Indian men that the courts would protect them even if they murdered their wives. *Id.* The author also notes that Justice Aggarwal's decision was a surprise to everyone, including the victim's husband, who was so confident that he would be acquitted that he had already taken another wife (and another dowry) while the court was hearing his appeal. *Id.*

74. *Id.* at 612.

75. *Id.*

76. See Kakkar, *supra* note 10.

77. See Spatz, *supra* note 12, at 612. Cases are further complicated by the conflicting claims of the victim's family and of the husband and in-laws as to whether the bride committed suicide or was murdered. See *Hundreds of Dowry Deaths*, *supra* note 6.

78. Spatz, *supra* note 12, at 613.

79. COUNTRY REPORTS 1992, *supra* note 26, at 1144; Kakkar, *supra* note 10.

80. See Kakkar, *supra* note 10.

81. In New Delhi, between 1983 and 1990, only 3 convictions had been ordered by the court, while more than 220 cases awaited final judgment. *Id.*

### 3. Cultural Attitudes Toward Women

Cultural attitudes toward Indian women provide the third impediment to effective enforcement of laws prohibiting dowry and criminalizing dowry murder.<sup>82</sup> From childhood, an Indian woman is taught that she will marry the man her family chooses and that she will have to win over the family into which she marries.<sup>83</sup> Once married, a woman's maternal family shuns her; she must make a place for herself in her new family.<sup>84</sup> Moreover, she must serve her husband selflessly, bear everything without complaint, and never attempt to return to her maternal family.<sup>85</sup> Hindu religious texts reinforce this theme, instructing women to remain devoted to their husbands no matter what their husbands do to them.<sup>86</sup> The prestige of both families depends on the woman remaining in the marriage.<sup>87</sup> Men,

82. Spatz, *supra* note 12, at 614.

83. See Crossette, *supra* note 5.

84. *Id.*

85. Girls are told from childhood that once they leave they can come back only as a dead body. *Id.* One of the most encouraging developments in India in the past several years has been the willingness of more families to allow a daughter to return home if she is in danger, often saving her life. *Id.*

86. See Tempest, *supra* note 15. For example, according to the 11th century *Padmapurana*, even if a woman's husband "is offensive in his manners, is choleric, debauched or immoral; if he is a drunkard or a gambler; if he raves like a lunatic . . . whatever his defects may be, a wife should always look upon him as her god and should lavish on him all her attention and care . . ." *Id.* Young Indian girls, especially those who are Hindu, are taught to model themselves on Sita, the mythological wife of the legendary hero Rama, who abandoned comfort and wealth to follow her husband into a wilderness exile and always did his bidding. See Crossette, *supra* note 5. Ultimately, Sita throws herself into a flaming pyre to prove her purity and fidelity to her husband. *Id.*; see BUMILLER, *supra* note 3, at 45 (providing a more detailed description of the myth of Rama and Sita).

Similar to dowry deaths and also outlawed in India is the practice of *sati* or *suttee*, where a widow throws herself on her husband's funeral pyre. See Lastreto & Winans, *supra* note 16. *Sati*, named after the wife of the god Shiva, was once very common in India, particularly among the Rajput warrior caste in Rajasthan. See BUMILLER, *supra* note 3, at 63 (describing the Hindu myth on which the practice is based). Like dowry death, *sati* continues to be practiced in India, although it is less common. See Lastreto & Winans, *supra* note 16 (noting that *sati* continues to be practiced "clandestinely"). For example, in a 1987 story that shocked all of India, a young bride from a small village in Rajasthan, died in the flames of her husband's funeral pyre. BUMILLER, *supra* note 3, at 46. Whether the bride was forced onto the pyre, or chose to die, is unknown. *Id.* at 62. In any case, she and others like her are "victims of a society in which women are not only burned to death but are raised to see self-immolation as their only escape from miserable marriages—or, worse, as an act of courage and religious inspiration." *Id.* at 46.

87. Lastreto & Winans, *supra* note 16.

on the other hand, are taught that they may beat or even kill their wives if they choose.<sup>88</sup>

In Indian society, family honor resides in the woman.<sup>89</sup> Social mores dictate that a woman must never speak out against her husband,<sup>90</sup> and a broken marriage is viewed as a disgrace both to the woman's family and to her own honor.<sup>91</sup> Consequently, Indian women rarely seek divorces or accuse their husbands or in-laws of violence.<sup>92</sup> Instead, they suffer harmful abuse in silence.<sup>93</sup> Women will not complain about a husband's abuse or even a murder attempt,<sup>94</sup> refusing to implicate their husbands even on their deathbeds.<sup>95</sup> As a result of these cultural attitudes, parents and neighbors rarely offer to help the new bride.<sup>96</sup> Even when a bride has the courage to seek help, her parents almost always refuse to allow her to return home out of fear of public humiliation.<sup>97</sup> Thus, the bride, who has nowhere to turn for help, is placed at great risk of a dowry-related death.

#### 4. Economic Discrimination Against Women

Finally, legalized economic discrimination against women impacts the Indian government's efforts to halt dowry deaths by preventing women from achieving economic independence and freedom from their aggressors.<sup>98</sup> Because of laws governing the ownership of both real and personal property, women have "little control over land use, retention, or sale."<sup>99</sup> Of the personal property laws, only Hindu family law distinguishes between "ancestral and self-acquired property in the matter of inheritance."<sup>100</sup> Under these inheritance laws, women are prohibited from heading households or inheriting ancestral property.<sup>101</sup> Instead, the only way women can inherit their father's or hus-

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88. See Spatz, *supra* note 12, at 614-15.

89. See *id.* at 615.

90. See *id.*

91. See *id.* at 614-15.

92. See Crossette, *supra* note 5.

93. See Levy, *supra* note 8.

94. See Spatz, *supra* note 12, at 615.

95. See *id.* at 614.

96. See Claiborne, *supra* note 5.

97. See Levy, *supra* note 8.

98. See Spatz, *supra* note 12, at 615-16.

99. COUNTRY REPORTS 1992, *supra* note 26, at 1144.

100. COUNTRY REPORTS 1991, *supra* note 10, at 1402.

101. See Spatz, *supra* note 12, at 615-16.

band's personal property is through testation.<sup>102</sup> Although in theory the Hindu Succession Act gives Hindu women equal inheritance, "in *practice*, married daughters are seldom given a share in parental property."<sup>103</sup> Similarly, Islamic personal law recognizes the inheritance rights of both sons and daughters, but it mandates that the daughter's share be just one half of the son's because sons are responsible for caring for their elderly parents.<sup>104</sup>

In addition to discrimination against women in the matter of inheritance, women are discriminated against in the area of employment. No law guarantees women equal employment opportunities.<sup>105</sup> Because it prevents women from becoming economically independent, Indian law compels them to remain in abusive relationships, even if their husbands have tried to murder them.<sup>106</sup> Compounding this problem are existing laws that make obtaining a divorce difficult and that fail to provide adequate support for the few women who are successful.<sup>107</sup> As one commentator correctly comments, "[a]nti-dowry laws will therefore not work until the government takes preventive measures, enabling women to achieve economic stability."<sup>108</sup>

### III. DOWRY DEATHS AND INTERNATIONAL LAW

Not only does the practice of dowry death violate India's existing domestic laws, but it also violates international human rights laws, specifically the ICCPR. Section A of this Part briefly describes the ICCPR. Section B takes the position that dowry deaths constitute an arbitrary deprivation of life under the ICCPR. Finally, Section C examines India's obligations under the ICCPR with respect to the right to life and argues that India is in violation of its treaty obligations.

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102. *See id.* at 616.

103. COUNTRY REPORTS 1992, *supra* note 26, at 1144 (emphasis added).

104. COUNTRY REPORTS 1991, *supra* note 10, at 1402.

105. *See Spatz, supra* note 12, at 616. The ICCPR also does not guarantee such a right. ICCPR, *supra* note 4.

106. *See Spatz, supra* note 12, at 616.

107. *See id.*

108. *Id.*

A. *The ICCPR*

The ICCPR is one of three international human rights treaties collectively known as the International Bill of Rights.<sup>109</sup> All three treaties were part of a United Nations' effort to protect human rights.<sup>110</sup> The purpose of the ICCPR is to protect the civil and political rights of individuals. To this end, the ICCPR provides for enforcement of its provisions through two means administered by the Human Rights Committee:<sup>111</sup> interstate complaints<sup>112</sup> and self-reporting by member states.<sup>113</sup> In addition, a companion treaty to the ICCPR, the Optional Protocol,<sup>114</sup> provides for an individual petition procedure.<sup>115</sup>

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109. RICHARD B. LILICH, *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY, AND PRACTICE* 175-76 (2d ed. 1991). The other two treaties are the Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, U.N. Doc. A/810 (1948), and the International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI), U.N. GAOR Supp. No. 16, at 49, U.N. Doc. A/6316 (1966).

110. LILICH, *supra* note 109, at 175. The Universal Declaration of Human Rights (UDHR) is a nonbinding resolution of the United Nations General Assembly that took effect in 1948. *Id.* Many international law scholars argue that the UDHR has become binding as customary international law. *Id.* The ICCPR and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) were initially intended to be a single treaty, but some states were reluctant to commit themselves to protect economic, social, and cultural rights, so the General Assembly requested that two separate covenants be drafted simultaneously. *Id.* The ICCPR and ICESCR both took effect in 1976. *Id.* at 175-76.

111. Article 28 of the ICCPR establishes a Human Rights Committee consisting of 18 members to administer the enforcement mechanisms provided for in the ICCPR. ICCPR, *supra* note 4, art. 28(1).

112. Article 41 of the ICCPR permits states parties to file a formal complaint respecting the nonfulfillment of human rights obligations by other states parties. *Id.* art. 41. The procedure is optional and only applies to situations where both parties have recognized the competence of the Human Rights Committee to receive and consider such complaints. *Id.* art. 41(1). As of December 31, 1992, only 38 states met this requirement. India has not filed such a declaration. Torkel Opsahl, *The Human Rights Committee, in THE UNITED NATIONS AND HUMAN RIGHTS* 369, 420 (Philip Alston ed., 1992). Furthermore, as of July 1991, the procedure had never been used. LILICH, *supra* note 109, at 189.

113. Article 40 of the ICCPR creates a mandatory reporting system under which all states parties must submit reports to the Human Rights Committee on the measures they have adopted that give effect to the rights protected by the ICCPR and on the progress made in enjoyment of those rights. ICCPR, *supra* note 4, art. 40(1).

114. Optional Protocol to the International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), U.N. GAOR Supp. No. 16, at 431, U.N. Doc. A/6316 (1966) [hereinafter *Optional Protocol*]. India is not a party to the *Optional Protocol*. UNITED NATIONS MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL: STATUS AS OF 31 DECEMBER 1992, at 154, U.N. Doc. ST./LEG./SER.E/11, U.N. Sales No. E.93U.11 (1993) [hereinafter *MULTILATERAL TREATIES*].

115. Article 1 of the *Optional Protocol* provides that "[a] State Party . . . recognizes the competence of the [Human Rights] Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a



Unfortunately, victims of dowry crimes and their families are unable to avail themselves of any of these methods for enforcing rights under the ICCPR. Only states may utilize the first two means.<sup>116</sup> The individual petition procedure, which allows individuals to lodge petitions claiming violations of the ICCPR against member states, is unavailable because India is not a party to the Optional Protocol.<sup>117</sup> But this lack of an enforcement mechanism for victims of dowry crimes does not mean that dowry deaths do not violate the right to life under the ICCPR. This Comment argues that dowry deaths are an arbitrary deprivation of life in violation of Article 6(1) of the ICCPR.

### B. Dowry Deaths: An Arbitrary Deprivation of Life

Under Article 6(1) of the ICCPR, "[e]very human being has the inherent right to life."<sup>118</sup> Commentators generally agree that the right to life is the most fundamental of all human rights because it is the essential right from which all other rights derive; if an individual is deprived of her right to life, all other human rights will be meaningless.<sup>119</sup> Support for this

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violation by that State Party of the rights set forth in the Covenant." Optional Protocol, *supra* note 114, art. 1. Thus, the state complained against must be a party to the Optional Protocol as well as a party to the ICCPR. As the language of Article 1 implies, only individual victims can submit a communication: "NGO's or other interested parties are prohibited from filing communications under the Protocol, unless they themselves are victims of [human] rights violations." See LILLICH, *supra* note 109, at 195. However, according to Lillich, the Committee will accept communications from an individual "through an appointed representative." *Id.* In addition, an individual who is a close family member of the alleged victim can submit a communication on the victim's behalf when he or she is unable to do so. *Id.* In such cases, the burden is on the author to establish that a close family relationship exists. *Id.* Failure to meet the burden will result in the communication being inadmissible. *Id.*

116. ICCPR, *supra* note 4, arts. 40, 41.

117. MULTILATERAL TREATIES, *supra* note 114, at 154.

118. ICCPR, *supra* note 4, art. 6(1). Article 6(1) provides that "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." *Id.*

This Comment discusses the right to life under the ICCPR solely as it relates to the practice of dowry death in India. It does not address the right to life as a norm of customary international law or *jus cogens* transcending particular statements of the right in specific international covenants and conventions. For such analysis, see A. Redelbach, *Protection of the Right to Life by Law and by Other Means*, in *THE RIGHT TO LIFE IN INTERNATIONAL LAW* 182, 208-09 (B.G. Ramcharan ed., 1985). Nor does this Comment consider the treaty violations of other states parties to the ICCPR for nonenforcement or ineffective enforcement of positive laws aimed at protecting the right to life.

119. See, e.g., Yoram Dinstein, *The Right to Life, Physical Integrity, & Liberty*, in *THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL & POLITICAL RIGHTS* 114,

view can be gleaned from the text of the ICCPR: Article 6(1) describes the right to life as "inherent,"<sup>120</sup> and Article 4(2) prohibits derogation from Article 6(1) even in time of public emergency threatening the life of the nation.<sup>121</sup> The Human Rights Committee has also commented that the phrase, "inherent right to life," should be liberally construed, as it cannot be properly understood if interpreted in a restrictive manner.<sup>122</sup>

While Article 6(1) does not specify the scope of protection that must be accorded the right to life, it does mandate that "no one shall be arbitrarily deprived of his life."<sup>123</sup> A leading international law scholar has stated that the "emphasis must be on both 'deprive' and 'arbitrarily.'"<sup>124</sup> "Deprivation of life" is viewed as being synonymous with homicide.<sup>125</sup> "Thus, the right to life is, in effect, the right to be safeguarded against arbitrary killing."<sup>126</sup>

As to the word "arbitrary," the drafters of the ICCPR extensively debated its use in Article 6.<sup>127</sup> Critics argued that the term did not express a generally recognized idea and was inherently ambiguous.<sup>128</sup> In fact, at least nine separate views on the meaning of "arbitrary" were propounded during the drafting.<sup>129</sup> Representatives to the drafting committee recalled that in drafting the Universal Declaration of Human Rights, the Human Rights Commission had similar difficulty in defining the word "arbitrary," and were unable to reach agreement.<sup>130</sup> Members of that drafting committee propounded definitions of arbitrary that included "illegally," "unjustly," and both.<sup>131</sup> One delegation pointed out that it could be interpreted to include accidental deaths, while others disagreed, arguing that an act of

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114 (Louis Henkin ed., 1981) (commenting that "civilized society cannot exist without legal protection of human life"); H.A. Kabaalioglu, *The Obligations To 'Respect' and To 'Ensure' the Right to Life*, in *THE RIGHT TO LIFE IN INTERNATIONAL LAW* 160, 160-61 (B.G. Ramcharan ed., 1985); Ramcharan, *supra* note 1, at 2.

120. ICCPR, *supra* note 4, art. 6(1).

121. *Id.* arts. 6(1), 4(2).

122. Kabaalioglu, *supra* note 119, at 180; Ramcharan, *supra* note 1, at 5.

123. ICCPR, *supra* note 4, art. 6(1).

124. Dinstein, *supra* note 119, at 115.

125. *Id.*

126. *Id.*

127. Ramcharan, *supra* note 1, at 19.

128. MARC J. BOSSUYT, *GUIDE TO THE TRAVAUX PREPARATOIRES OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* 122 (1987).

129. *Id.* at 121-23.

130. *Id.* at 123.

131. *Id.*

conscious will or intention was required.<sup>132</sup> "A number of representatives [to the drafting committee] maintained that the clause meant that no person could be deprived of his life 'except in accordance with law.'"<sup>133</sup> Others proposed that "arbitrarily" should mean "fixed or done capriciously or at pleasure; without adequate determining principle; depending on the will alone; tyrannical; despotic; without cause upon law; not governed by any fixed rule or standard."<sup>134</sup> Some believed the term was synonymous with the phrase "without due process of law."<sup>135</sup> Finally, some construed the term to imply "such guarantees as the right to fair trial and protection against false arrest."<sup>136</sup>

The drafting committee's comments suggest that no consensus as to the meaning of "arbitrary" was ever reached.<sup>137</sup> However, according to B. G. Ramcharan, Special Assistant to the Assistant Secretary-General for Human Rights, the word was chosen with the goal of providing the greatest possible protection for the right to life and confining legally permissible deprivations to the narrowest limits.<sup>138</sup> Ramcharan's view is supported by the drafting history of the ICCPR. One group of delegates to the drafting committee proposed that Article 6(1) should enumerate the conditions under which the taking of life was legally permissible.<sup>139</sup> The majority of representatives, however, felt that any enumeration would necessarily be incomplete and would convey the impression that the exceptions were more important than the right itself.<sup>140</sup> An article drafted under those terms would appear to authorize killing rather than safeguard the right to life.<sup>141</sup>

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132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.* at 124.

136. *Id.*

137. *See id.* at 115-25 (providing the text of the committee comments); *see also* B.G. Ramcharan, *The Drafting History of Treaty Provisions on the Right to Life: The Drafting History of Article 6 of the International Covenant on Civil and Political Rights*, in *THE RIGHT TO LIFE IN INTERNATIONAL LAW* 42, 54 (B.G. Ramcharan ed., 1985). The clause "[n]o one shall be arbitrarily deprived of his life" in Article 6(1) was adopted by the drafting committee by a vote of 46 to 12, with 14 abstentions, including the United States and India. *Id.* Article 6 as a whole, in the form it now reads, was voted on and adopted by 55 votes to none, with 17 abstentions. The United States and India both voted in favor of the Article. *Id.* at 56.

138. Ramcharan, *supra* note 1, at 19.

139. BOSSUYT, *supra* note 128, at 115.

140. *Id.* at 124.

141. *Id.* at 117.

Analyzing the dowry death phenomenon in light of the foregoing interpretations as to the meaning of "arbitrary" in Article 6(1), and in accordance with the view that the right to life should receive the greatest possible protection, it is clear that dowry deaths constitute illegal or arbitrary killings; the murder of brides in dowry disputes is not permitted under Indian law, and is in fact criminalized. But are dowry deaths an arbitrary deprivation of life within the meaning of Article 6(1)? There has been some question as to whether, if a state fails to prevent the killing of one individual by another, it violates Article 6(1).<sup>142</sup> Arguably, treaty provisions such as the ICCPR and the European Convention on Human Rights and Fundamental Freedoms<sup>143</sup> limit the concept of the right to life to protection against arbitrary deprivation of human life by the government through its agents.<sup>144</sup>

However, as Ramcharan points out, this argument ignores the fact that it is the right to life, not life itself, which must be protected by law under Article 6(1).<sup>145</sup> As he explains, the right to life is a legal concept that prohibits deprivation of life except under conditions prescribed by law.<sup>146</sup> Thus, it is reasonable to infer that the state must criminalize the deliberate taking of life by any individual.<sup>147</sup>

The question of whether state action is required to violate the right to life under the ICCPR was debated in the course of the drafting of Article 6(1).

While the view was expressed that the article should concern itself only with the protection of the individual from unwarranted actions by the State . . . the majority thought that States should be called upon to protect human life against unwarranted actions by public authorities as well as by private persons . . . .<sup>148</sup>

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142. See Ramcharan, *supra* note 1, at 3. "[I]n principle," the ICCPR imposes obligations on states and their organs "acting within the scope of . . . their official functions." Dinstein, *supra* note 119, at 119. Thus, the obligation to protect the right to life only applies to persons discharging public duties, not private persons. *Id.*

143. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 218 U.N.T.S. 221.

144. Ramcharan, *supra* note 1, at 3.

145. *Id.*

146. *Id.* at 3-4.

147. *Id.* at 4.

148. Bossuyt, *supra* note 128, at 120.

Thus, the consensus was that state action is not required; the right to life under Article 6(1) was interpreted to include the right of individuals to be protected by the state against arbitrary deprivations of life by other persons within society.<sup>149</sup>

This interpretation of Article 6(1) has especially important ramifications for Indian women. Because dowry killings are perpetrated by private individuals, the husbands and/or in-laws of Indian brides, they fit within the type of action prohibited under Article 6(1). Consequently, Indian women have the express right under Article 6(1) of the ICCPR to be protected by the Indian state against dowry-related murders. Because of their arbitrary, unwarranted, and illegal nature, dowry deaths do constitute arbitrary deprivations of life within the meaning of Article 6(1).

### C. *India's Obligations Regarding the Right to Life Under the ICCPR*

Having determined that dowry deaths constitute arbitrary deprivations of life under Article 6(1), it is necessary to determine the nature and extent of India's obligations to protect the right to life of Indian women.

While there is no general rule of international law that requires treaties to have effect in domestic law,<sup>150</sup> Article 6(1) requires that the right to life be protected by law.<sup>151</sup> The drafting committee of the ICCPR intended the provision to emphasize the duty of states to protect life.<sup>152</sup> The drafters intended the provision to obligate each state party to have a law or laws within its internal legal system protecting the right to life.<sup>153</sup> The meaning of "law" was strictly interpreted because of the supreme importance of the inviolability of life, requiring that the right to life be protected by higher forms of law, such as statutes or constitutional provisions.<sup>154</sup>

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149. Dinstein, *supra* note 119, at 119; Ramcharan, *supra* note 1, at 7.

150. See Oscar Schachter, *The Obligation To Implement the Covenant in Domestic Law*, in THE INTERNATIONAL BILL OF RIGHTS 311 (Louis Henkin ed., 1981). The obligation to ensure rights and remedies within the domestic legal system does not require the states parties to incorporate the ICCPR into domestic law. *Id.* at 313. The states parties need only fulfill their obligations under the ICCPR by whatever means they choose. *Id.* at 314. Although a number of states have incorporated the ICCPR itself into their domestic legal systems, India has not done so. *Id.* at 493 n.1.

151. ICCPR, *supra* note 4, art. 6(1).

152. See BOSSUYT, *supra* note 128, at 120.

153. Dinstein, *supra* note 119, at 115.

154. *Id.*

Clearly, India has complied with this facet of its obligation, insofar as it has enacted statutes prohibiting dowries and criminalizing dowry deaths. However, the Article 6(1) requirement that the right to life be protected by law is not the extent of a state's obligations under the Covenant. Under Article 2(1) of the ICCPR, states parties to the Covenant must also undertake "to respect and to ensure to all individuals within [their territories] and subject to [their] jurisdiction the rights recognized in the . . . Covenant, without distinction of any kind. . . ."155 It is in this latter respect that India has not satisfied its international obligations.

A state can fulfill the obligation "to respect" simply by not violating the rights set forth in the Covenant.<sup>156</sup> India has, therefore, fulfilled its obligation to respect the right to life in connection with dowry deaths because the government does not perpetrate these crimes. However, Article 2(1) also requires states "to ensure" the rights expressed in the ICCPR, including the right to life.<sup>157</sup> This obligation imposes an affirmative duty on the state to take any measures necessary to enable individuals to enjoy and exercise their right to life under the Covenant,<sup>158</sup> including taking all possible measures to prevent violations of this right by others.<sup>159</sup>

Furthermore, such measures must be "adequate" and "effective."<sup>160</sup> At the very least, a state must exercise due diligence to prevent intentional deprivations of life by individuals, as well as to apprehend and prosecute murderers as a deterrent to future takings of life.<sup>161</sup> Thus, Article 2(1) requires India to take positive measures to ensure the right to life, including

155. ICCPR, *supra* note 4, art. 2(1) (emphasis added).

156. Thomas Buergenthal, *To Respect and To Ensure: State Obligations and Permissible Derogations*, in *THE INTERNATIONAL BILL OF RIGHTS* 72, 77 (Louis Henkin ed., 1981).

157. See ICCPR, *supra* note 4, art. 2(1).

158. See *id.* art. 2(1), (2); Buergenthal, *supra* note 156, at 77 (noting that the obligation to ensure rights creates such affirmative obligations on the state as to discipline its officials and to improve administration of criminal justice laws).

159. See Ramcharan, *supra* note 1, at 17-18 (noting that in its general comments on Article 6, the Human Rights Committee found the protection against arbitrary deprivation of life to be of paramount importance and determined that "[s]tates parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces").

160. *Id.* at 18-19; see also Redelbach, *supra* note 118, at 203-04.

161. See Dinstein, *supra* note 119, at 119. The author states that

[t]his obligation would be particularly true of mass murders. Whereas an ordinary act of murder often cannot be prevented by state officials even with due diligence on their part, the state is expected to take exceptional precaution

preventing the murder of wives by husbands and in-laws in dowry disputes. India has complied with this obligation only to the extent that it has taken some positive measures, including enacting statutory law prohibiting dowries and providing for punishment of perpetrators of dowry crimes. However, India has not taken all possible measures, as is required, nor have the measures taken by India proved adequate or effective. The number of victims of dowry deaths continues to grow each year.<sup>162</sup>

In support of the requirement that the measures taken by a state must be adequate and effective, Professor Oscar Schachter notes that the basic commitment of states can be characterized as an "obligation of result."<sup>163</sup> In other words, the emphasis is not on the process, but on the result. The ICCPR does not require specific measures to give effect to the rights in the Covenant.<sup>164</sup> Rather, Article 2(2) specifies the way in which states parties are to carry out their obligations to respect and ensure the rights recognized in the ICCPR.<sup>165</sup> "Where not already provided for by existing legislative or other measures, *each State Party to the present Covenant undertakes to take the necessary steps . . . to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*"<sup>166</sup> This phrasing leaves open the precise character of the measures, which can include incorporation of the ICCPR into domestic law or other legislative, executive, or administrative orders.<sup>167</sup>

The Human Rights Committee supports this interpretation, commenting that

Article 2 of the Covenant generally leaves it to the States Parties concerned to choose their method of implementation in

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when there is a threat of riot, mob action, or incitement against minority groups.

*Id.* at 119-20.

I submit that dowry deaths cannot be called "an ordinary act of murder," but rather are mass murders, as they are widespread, systematic, and result from cultural and world-wide beliefs about the worth (or lack thereof) of women. Further, it is unknown whether India could prevent dowry deaths with due diligence, as by any measure due diligence is not exercised by the Indian government to ensure that the criminal laws and dowry statutes are effectively enforced.

162. *See supra* note 29.

163. Schachter, *supra* note 150, at 311.

164. *Id.*

165. *Id.*

166. ICCPR, *supra* note 4, art. 2(2) (emphasis added).

167. Schachter, *supra* note 150, at 313.

their territories within the framework set out in that article. It recognizes, in particular, that the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not *per se* sufficient.<sup>168</sup>

In addition, the ICCPR leaves open for determination in specific cases whether or not legislative or other measures will be necessary at all.<sup>169</sup> According to the language of Article 2(2), if legislative or other measures are already provided for in existing law, then it is not necessary to adopt any new legislative or other measures.<sup>170</sup> However, while the obligation to implement new legislative or other measures is conditional on their being necessary, it is nonetheless an obligation,<sup>171</sup> and one that a state violates if it provides such legislative or other measures and they prove ineffective, as with India and dowry deaths.

Paragraph 3 of Article 2 of the ICCPR specifies additional obligations, including a requirement that persons whose rights have been violated are ensured an effective remedy.<sup>172</sup> It also requires that an individual's right to such a remedy be determined by a competent authority "provided for by the legal system of the State"<sup>173</sup> and that any remedies granted be enforced by the competent authorities.<sup>174</sup> These provisions impose independent obligations on the states parties.<sup>175</sup> Thus, it is insufficient for a party to maintain that it respects and ensures rights; it must also discharge its obligation to use the means specified in Article 2 through its domestic legal system "to give effect" to the rights or to repair violations.<sup>176</sup>

What is meant by "to give effect" is not clearly specified. However, a right is typically given effect by (1) avoiding or preventing violations of the right, and (2) in the event that the right is violated, providing remedies to the victim.<sup>177</sup> To satisfy the first of these obligations, a state may choose to enact legislation. However, the Human Rights Committee has noted that legislative enactments are often not *per se* sufficient.<sup>178</sup>

168. Kabaalioglu, *supra* note 119, at 179.

169. Schachter, *supra* note 150, at 313.

170. ICCPR, *supra* note 4, art. 2(2).

171. Schachter, *supra* note 150, at 311.

172. ICCPR, *supra* note 4, art. 2(3)(a).

173. *Id.* art. 2(3)(b).

174. *Id.*

175. Schachter, *supra* note 150, at 311-12.

176. *Id.* at 312.

177. *Id.* at 319.

178. Kabaalioglu, *supra* note 119, at 179.



Professor Schachter, in apparent agreement, states that the citation of statutory and constitutional law may satisfy the need for legislation, but is never a sufficient answer to the question of whether "other measures" are required to give effect to the right to life or any other right granted under the Covenant.<sup>179</sup> Furthermore, Schachter explains the circumstances under which a state has failed to give effect to a right guaranteed by the Covenant: "If it is impossible or difficult for aggrieved individuals to obtain an objective determination of their rights under the Covenant . . . or if state organs, including the courts, diverge in practice from the proclaimed rules, it is clear that the obligations of Article 2 are not satisfied."<sup>180</sup>

It is true that India has attempted, through legislative enactments, to prevent dowry deaths and punish perpetrators of dowry crimes. However, at present these measure have proved insufficient. The number of dowry death victims continues to rise, and slipshod investigations and lax enforcement of antidowry laws leave victims and their families with little or no remedies. Thus, because India's measures have proved inadequate and ineffective in preventing dowry deaths and providing remedies when they do occur, the inescapable conclusion is that India is in violation of its Article 2 obligations with respect to the Article 6(1) right to life.<sup>181</sup>

#### IV. CONCLUSION

As demonstrated in this Comment, India has failed to protect the right to life of Indian women in violation of its Article 2 obligations under the ICCPR.<sup>182</sup> There are no true remedies for the few surviving victims of dowry deaths and their families, as the police, prosecutors, and courts do not effectively enforce either the laws prohibiting dowry or those punishing dowry crimes. Given this current lack of adequate and effective measures in India, Article 2 of the ICCPR mandates that India take

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179. Schachter, *supra* note 150, at 320-21.

180. *Id.* at 321.

181. This Comment will not address or attempt to formulate the standard India must meet to satisfy its obligations under the ICCPR. It is enough, at this point, to point out that India's current efforts are woefully inadequate.

182. In addition to Article 6(1), dowry deaths also impact other rights in the ICCPR not discussed in this Article, including the right to liberty and security of the person under Article 9(1), ICCPR, *supra* note 4, art. 9(1); the right to equal protection of the law secured by Article 26, ICCPR, *supra* note 4, art. 26; and equal rights for spouses during marriage in Article 23(4). ICCPR, *supra* note 4, art. 23(4).

additional measures to support and reinforce the existing laws protecting the right to life. As one commentator notes,

[t]he law cannot fulfill its goals alone, it must be reinforced by various factors . . . . Even the best law cannot play a more important role if the level of legal consciousness in a society is low, both in regard to the understanding of law and to the relevant legal estimations and attitudes.<sup>183</sup>

Protection by other means requires a comprehensive approach. Measures that India has not yet taken, but that should be pursued immediately, include educational and informational activities to inform Indian society that dowry deaths are not acceptable and will not be tolerated. Dissemination of information should be enhanced at all levels—local, regional, and national—in the context of both governmental and nongovernmental activities, and in-school and out-of-school education. Human rights education, particularly as it relates to dowry deaths and other domestic violence, should be established as a life-long system for all individuals from childhood.

In addition, if the government of India is ever to successfully halt the practice of dowry deaths, it must change the attitudes of Indian society toward women and their proper role, and it must address the societal factors that lead to domestic violence and murder.<sup>184</sup> India must also confront the issue of bias in the courts and criminal justice system, and educate its police and judicial officers, including providing and enforcing penalties for tampering with evidence, succumbing to bribes in exchange for failing to investigate suspicious and unnatural deaths of women, and delaying prosecutions.

Measures are also needed to provide economic opportunities to women and to develop institutions that remove impediments to the realization of the right to life, such as state-operated shelters for harassed brides. The Indian government should also encourage the formation of national groups interested in aiding the victims of attempted dowry murders and

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183. Redelbach, *supra* note 118, at 212.

184. Cultural relativists might argue that dowry is defensible because it is an age old cultural practice. However, dowry is not even justifiable within Indian culture; dowry violates the positive law of India. See Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 *HUM. RTS. Q.* 400, 406 (1984). More importantly, however, the practice is indefensible because it no longer resembles what it was originally intended to be—a gift to the bride. See *supra* note 9. Finally, there is nothing morally defensible about a practice that directly results in the deaths (by murder and suicide) of thousands of Indian women each year.

should promote legal-aid programs. In addition, Indian women must be assisted in becoming more economically independent so that, when faced with a life-threatening marriage, they have an alternative to returning to their parents' home (if they are even allowed), committing suicide, or being murdered. Indian society must make a place for single women.

Finally, the Ministry for Home Affairs must begin to closely monitor the number of reported cases of dowry deaths and track the number of such cases that are registered for prosecution, as well as the number that end in convictions. To ensure the accuracy of such statistics, the police should include all deaths of Indian women resulting from dowry-related cruelty as defined in the 1983 amendment to the Indian Penal Code. Such statistics should also include all deaths of Indian women that are presumed to be dowry deaths under the Indian Evidence Act. Currently, statistics are highly inaccurate and many dowry deaths continue to go uncounted. Deaths are misreported as kitchen accidents or suicides by burning, even though the definition of dowry death includes deaths in both of these categories under certain circumstances. Only when the police begin properly reporting dowry deaths will the statistics accurately reflect the number of Indian victims,<sup>185</sup> and only with accurate statistics will it become apparent whether India has taken effective measures to comply with its obligations under the ICCPR to protect the right to life.

However, as Professor Schachter has stated, "[e]ven these steps may be only a partial fulfillment of an obligation that could embrace the entire range of social structures."<sup>186</sup> Many other measures might be necessary and required if those suggested above also prove ineffective. Certainly, if the obligation to protect the right to life is to be taken seriously, it will require the Indian government and its citizens to examine, on a deeper level, the many diverse barriers to the enjoyment by Indian women of such basic rights as the right to life.

Moreover, one might argue that it is highly unlikely that any of the above changes will be made solely from within India. Changing the attitudes of Indian society will be difficult, particularly when members of the government accept the views that devalue women and condone the dowry death phenomenon.

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185. Even then, statistics would not be completely accurate because of the large amount of domestic violence in India that goes unreported. *See supra* note 27.

186. Schachter, *supra* note 150, at 319-20.

This is where international law becomes important. Although "international human rights law . . . must rely heavily on voluntary compliance by states," it also relies on "such moral and other influence as other nations are prepared to exert."<sup>187</sup> Depending on the nature of the breach, this pressure can consist of military force, suspension or termination of reciprocal obligations, a case before the International Court of Justice, economic sanctions, or political sanctions.<sup>188</sup> In addition, non-governmental organizations, such as Amnesty International, can become involved by publicizing human rights violations.<sup>189</sup>

The international community is obligated to recognize cultural practices of violence against women as human rights violations and to exert pressure on recalcitrant countries, such as India, to ensure protection of the rights guaranteed under international law. If other states parties to the ICCPR were to use one or more of the means at their disposal to put pressure on India to rectify the human rights violations that occur every day in the form of dowry deaths, perhaps, over time, Indian attitudes would change and husbands and/or in-laws would no longer murder women for a few thousand rupees.

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187. Richard B. Bilder, *An Overview of International Human Rights Law*, in *GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE* 3, 13 (Hurst Hannum ed., 1984).

188. See JOHN CAREY, *UN PROTECTION OF CIVIL AND POLITICAL RIGHTS* 7 (1970). Carey describes the ways in which the United Nations can act to protect civil and political rights, including investigation of alleged human rights violations, help for victims, adjudication, negotiation, publicity, education, and coercion directed at the government complained against. See also Bilder, *supra* note 187, at 14-16.

189. See Bilder, *supra* note 187, at 15. Amnesty International has sent a delegation to India to discuss its previous requests for authorization to send teams to research alleged human rights violations in the states of Kashmir and Punjab, as well as several others. *COUNTRY REPORTS 1992*, *supra* note 26, at 1143.