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WOMEN WHO KILL WOMEN

RASHMI GOEL*

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INTRODUCTION

Every hour of every day,¹ a woman in India dies over someone's dissatisfaction with her dowry.² Sometimes she is killed outright, other times the new bride is driven to suicide.³ They call these dowry

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1. *Dowry Deaths: One Woman Dies Every Hour*, TIMES OF INDIA (Sept. 1, 2013, 11:00 AM), <http://timesofindia.indiatimes.com/india/Dowry-deaths-One-woman-dies-every-hour/articleshow/22201659.cms> [<http://perma.cc/H52V-YSSE>].

2. Dowry is the wealth given to a daughter when she marries, though modern practice passes much of the wealth to her new husband and in-laws. *Id.*

3. Martin Rew, Geetanjali Gangoli & Aisha K. Gill, *Violence Between Female In-Laws in India*, J. INT'L WOMEN'S STUD., Jan. 2013, at 147, 155.

deaths,⁴ and in 2014 alone, officials reported 8,455 cases.⁵ The sheer scale of this terrible crime is sometimes presented as the strongest evidence that India is robustly patriarchal, but such claims miss the mark; the stronger evidence of India's patriarchy is not that these women die over dowry, but that so many of them die at the hands of other women.

Housed in one wing of Delhi's infamous Tihar jail are some of these brutal killers.⁶ Their victims have died violently—poisoned or forced to drink acid, beaten or pushed from balconies, and, all too commonly, doused with kerosene and set on fire.⁷ Tihar jail staff have named the wing for the prisoners who live there—they call it simply “the mother-in-law wing.”⁸

Why are women, like the mothers-in-law of Tihar jail, killing other women? Next to husbands, mothers-in-law are the most likely to be convicted of these terrible crimes.⁹ Accepting that India is a patriarchal society, we might expect to see women dying at the hands of men, but these women and their crimes are a surprise. These women, it appears, are part of the problem.

4. The term dowry deaths is intended to encompass both suicides and homicides that occur in the context of dowry harassment. It is difficult to find official figures which disaggregate these events. Where the distinction is to be made, I will refer to the homicides as dowry murders. My terminology is only half consistent with the wording of Section 304B, the Dowry Death provision, which does not refer to the homicides as dowry murders separately. See PEN. CODE § 304B (1860) (amended 1986).

5. INDIA NAT'L CRIME RECORDS BUREAU, CRIME IN INDIA 2014, at tbl. 1.3 (2015), <http://ncrb.gov.in/StatPublications/CII/CII2014/Statistics%202014.pdf> [<http://perma.cc/GP4H-JQ5X>].

6. Tihar jail holds over 13,500 inmates and holds prisoners from Delhi and surrounding areas. See *India Prisoners Dig Tunnel to Escape from Tihar Jail*, BBC NEWS (June 29, 2015), <http://www.bbc.com/news/world-asia-india-33307912> [<http://perma.cc/J62D-U6KG>]. It was known for harsh conditions, particularly prior to the reforms implemented by Kiran Bedi. See Rahil Shaikh, *Ray of Hope: Tihar Jail Helps Reform Inmates by Starting Recruitment Drive*, DNA INDIA (May 6, 2014, 7:25 AM), <http://www.dnaindia.com/india/report-ray-of-hope-tihar-jail-helps-reform-inmates-by-starting-recruitment-drive-1985685> [<http://perma.cc/B72K-X2UV>]; see also Mahinder Singh Manra & Mansi Tewari, *Tihar Overflowing with Dowry Cases: How Infamous Delhi Jail is Crammed to Bursting with Women Accused of Harassment*, DAILY MAIL (July 6, 2014, 4:19 PM), <http://www.dailymail.co.uk/indiahome/indianews/article-2682604/Tihar-overflowing-dowry-cases-How-infamous-Delhi-jail-crammed-bursting-women-accused-harassment.html> [<http://perma.cc/DR4Q-8AT3>].

7. Hence the popular but grisly appellation “bride burnings.” See *#Dowry Murders: 106,000 Women Burnt to Death in 1 Year*, 50 MILLION MISSING CAMPAIGN (Oct. 2, 2011), <http://genderbytes.wordpress.com/2011/10/02/video-murder-by-fire-100000-women-a-year> [<http://perma.cc/3EUG-TVRY>]. Consider that the legislation refers to this method of killing specifically—PEN. CODE § 304B (1860) (amended 1986).

8. Hamida Ghafour, *Why Tensions are Soaring in Mother (in-Law) India*, TORONTO STAR (Feb. 17, 2014), http://www.thestar.com/news/world/2014/02/17/why_tensions_are_soaring_in_mother_inlaw_india.html [<http://perma.cc/G8GK-RFP7>].

9. See Rew, Gangoli & Gill, *supra* note 3, at 148.

India is laboring to end dowry deaths, mostly through criminal legislation. These laws threaten severe punishments for dowry and dowry violence, but they stop short of uncovering the actual forces that drive crimes against women. Such reforms, though facially progressive, are of limited value. Dowry appears an obvious evil, but there are other practices, seemingly benign, that reinforce existing power dynamics and ultimately serve to sustain Indian patriarchy. Patriarchy is not power on a single vector traveling in only one direction; it is a swirling system of power and dominance that sweeps in even women as agents and accomplices.¹⁰

This Article examines more closely the participation of mothers-in-law in India's dowry murders to gain a better understanding of these dynamics and to expose the limits of existing reforms. I first turn to the participation of women in dowry death cases and the ways in which their participation challenges our conventional understanding of patriarchy and societal manifestation. In Part II, I provide an overview of dowry deaths in India. In Part III, I survey the different criminal provisions related to dowry deaths and demonstrate how these laws actually operate within a set of cultural practices that support female subjugation. Part IV presents some theories of why these women participate in killing other women. In Part V, I examine how the courts' conservative characterizations of the women in these crimes—as perpetrators *and* as victims—serve to trap women in subordinate roles. Finally, I conclude with some observations for the future.

I. THE CURIOUS CASES OF WOMEN WHO KILL WOMEN

That dowry deaths occur at all is tragic, but it is the curious participation of women in so many dowry deaths that is so shocking.¹¹

10. Patriarchy is defined as a social power structure where male power is elevated and female power is reduced. BOUVIER LAW DICTIONARY (2012). Marilyn Fernandez, *Domestic Violence by Extended Family Members in India: Interplay of Gender and Generation*, 12 J. INTERPERSONAL VIOLENCE 433, 439–40 (1997) (discussing the multiple ways patriarchy influences decisions and co-opts even women to participate).

11. It is estimated that at least 20%, and likely a much more substantial proportion of dowry death cases involve females among the active perpetrators. See P. M. K. Mili, R. Perumal, & Neethu Susan Cherian, *Female Criminality in India: Prevalence, Causes and Preventive Measures*, 10 INT'L J. CRIM. JUST. SCI 65, 68 (2015); Mudita Rastogi & Paul Therly, *Dowry and its Link to Violence Against Women in India*, 7 TRAUMA, VIOLENCE, & ABUSE 66, 71 (2006) (citing a study in which “more than 90 per cent [sic]” of Supreme Court dowry death convictions between 1990 and 1995 involved the participation of a mother-in-law).

Even the Supreme Court of India has been moved to comment upon the proportion of dowry victims killed by another woman:

Of late there has been an alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides. . . . It is more disturbing and sad that in most of such reported cases it is the woman who plays a pivotal role in this crime against the younger woman¹²

Sadly, the mother-in-law frequently appears as a primary perpetrator.¹³ Indeed, the mother-in-law/daughter-in-law conflict has come to typify dowry death cases,¹⁴ even though the manner of death and participation of others vary.

In some cases, the mother-in-law has harassed and badgered her daughter-in-law so badly that the young woman is driven to suicide.¹⁵ In the case of *Bikshapathi v. State of Andhra Pradesh*, the mother-in-law became abusive when her postwedding demands for additional gold and a television set were not met.¹⁶ Financially drained from the wedding expenses, and having already given a substantial dowry, the young bride's middle-class parents could not meet these demands.¹⁷ The mother-in-law prevented her daughter-in-law, Rajyalakshmi, from seeing her parents and continued to demand the television set and additional gold.¹⁸ Gifts of new clothes and a gold ring did not satisfy her.¹⁹ Even a visit from Rajyalakshmi's mother beseeching that her daughter not be ill-treated had no effect.²⁰ Instead the mother-in-law continued to mistreat Rajyalakshmi, even denying her food.²¹ Rajyalakshmi's parents brought her to their home for protection, but when she tried to extend her stay with them her husband threatened to end the marriage.²² Eventually, Rajyalakshmi, just

12. *Subrahmanyam v. State of Andhra Pradesh*, (1993) 2 SCR. 666, 689 (India).

13. See Rastogi & Therly, *supra* note 11.

14. See Rew, Gangoli & Gill, *supra* note 3, at 155.

15. Recall that under § 304B, dowry deaths encompass both suicides and homicides subsequent to dowry harassment. PEN. CODE § 304B (1860) (amended 1986). It is well-accepted that some suicides are due to dowry-harassment by in-laws. See, e.g., Imran Gowhar, *Alleged Dowry Harassment Leads to Death of Newly-Married*, THE HINDU (April 12, 2015), <http://www.thehindu.com/news/cities/bangalore/alleged-dowry-harassment-leads-to-death-of-newlymarried/article7095393.ece> [<https://perma.cc/334Q-UFBC>]. There are also numerous reported cases where the victim has committed suicide due to dowry harassment. See, e.g., *Smt. Annapurnabai v. State of Madhya Pradesh* (1999) Cr. L.J. 2696.; *State of Punjab v. Iqbal Singh* (1991) AIR 1532.

16. *Bikshapathi v. State of Andhra Pradesh*, Cr. A. No. 918 of 1988, at para. 7 (HC, Andhra Pradesh Oct. 27, 1988).

17. *Id.* at paras. 6–7.

18. *Id.* at para. 7.

19. *Id.* at paras. 7–8.

20. *Id.* at paras. 8–9.

21. *Id.*

22. *Id.* at para. 9.

nineteen years old and married only two years, was found dead in her kitchen.²³ She had poured kerosene on herself and set herself on fire.²⁴

In other cases, the mother-in-law acts in concert with other family members to kill the daughter-in-law. For instance, in *Ranjit Singh v. State of Punjab*, the in-laws harassed their daughter-in-law, Jaswinder, over their dissatisfaction with the dowry.²⁵ Although a significant dowry had been negotiated and provided at the time of the wedding,²⁶ the in-laws maltreated Jaswinder from the very first days. They soon complained about the quality of the dowry goods provided and further demanded a car.²⁷ Additional “gifts” from Jaswinder’s family did not satisfy the in-laws.²⁸ They even threatened Jaswinder.²⁹ Just four months after the wedding, after berating her again about the car, the mother-in-law grabbed Jaswinder by the back of her neck and hauled her into a room where the rest of the family was waiting.³⁰ There, Jaswinder’s husband held her down while the father-in-law and the sister-in-law egged them on.³¹ Together, Jaswinder’s mother-in-law and husband strangled her until she was dead.³² Tragically, just the day before, Jaswinder had confided to her mother about the abuse, but she was murdered before her mother could rescue her.³³

In another case, *Subrahmanyam v. State of Andhra Pradesh*, a young bride, Koti Nagbani, was harassed by her husband and his family because the land portion of her dowry had been registered exclusively in her name.³⁴ She was continually harassed and tormented by her in-laws and denied leave to see her parents or even to have them visit her.³⁵ She wrote letters secretly to her sister disclosing the state of affairs and her fears.³⁶ Only a year and half after the wedding, neighbors heard terrible screams coming from the house.³⁷ They came running and witnessed the husband, mother-in-law, and

23. *Id.* at para. 3.

24. *Id.*

25. *Ranjit Singh v. State of Punjab*, Cr. A. No. 510 of 2007, at para. 2 (SC, July 3, 2013).

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at para. 13.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* at para. 15.

34. *Subrahmanyam v. State of Andhra Pradesh*, (1993) 2 SCR 666, 669.

35. *Id.* at 680.

36. *Id.* at 680–81.

37. *Id.* at 683–84.

father-in-law hurriedly exiting the kitchen.³⁸ They found Koti Nagbani lying on the kitchen floor engulfed in flames;³⁹ her mother-in-law and husband made no attempt to save her. In her dying declaration, Koti Nagbani said her mother-in-law had poured kerosene on her and her husband had ignited it.⁴⁰

In a few cases, the mother-in-law acts independently. Consider *Shrimati Paniben v. State of Gujarat*.⁴¹ Bai Kanta was only eighteen but had been married for five years, and had a young daughter.⁴² While her marriage appeared happy, her relationship with her mother-in-law was strained and difficult.⁴³ On one occasion, Bai Kanta even left home and went to her parents' house.⁴⁴ She returned to her husband only after her mother-in-law came to get her and her father-in-law promised nothing would go wrong.⁴⁵ But the mistreatment continued.⁴⁶ Bai Kanta awoke one night to find her mother-in-law sprinkling kerosene on her.⁴⁷ As she ran out of the room, her mother-in-law threw a match on her and she was engulfed in flames.⁴⁸ Despite the desperate efforts of her father-in-law and husband, Bai Kanta died later that night.⁴⁹

This is only a tiny window into the hundreds of cases of dowry death perpetrated by women every year. These facts truly are disturbing. This is partly because the violence is extreme, but moreso because of the gender of the perpetrator and the nature of the crime. In our minds, we have a set understanding of the nature of women and the nature of violence against women. We believe that women are not violent; we believe that women are not killers. We also believe that women are victims, not perpetrators; women don't hurt women—men hurt women.

Our beliefs are amply supported by history and crime statistics. Women make up only a fraction of all offenders, and an even smaller fraction of violent offenders. There were only about 111,000 female offenders in the United States in correctional facilities in

38. *Id.*

39. *Subrahmanyam v. State of Andhra Pradesh*, (1993) 2 SCR 666, 683–84.

40. *Id.*

41. *Paniben v. State of Gujarat*, (1992) 2 SCR 197; *see also Lichhamadevi v. State of Rajasthan*, (1988) 4 SCC 456.

42. *Id.* at 200.

43. *Id.*

44. *Id.* at 197.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* at 198.

2013, compared to almost 1.5 million men.⁵⁰ Only about one third of sentenced female offenders (about 38,000) were serving time for violent offenses.⁵¹ Compare this to about half of male offenders (about 760,000) who were serving time for violent offenses.⁵² In other parts of the world, women make up even less of the violent offender population.⁵³

Even rarer are women who kill. Legal and social examinations of women who have killed have fallen primarily into two types:⁵⁴ women who kill in self-defense (including cases where women kill their abusers),⁵⁵ and women who kill as a result of severe mental illness (often in cases of infanticide).⁵⁶ In other words, women kill only when they have no other choice, or are so mentally ill that they have no control over their own actions.⁵⁷ These are the cases which leap to mind when we are asked to think of female killers. Even so, we recognize that these cases are rarities; they do not dilute our common view that women are simply not violent.

This view is also borne out when we consider domestic abuse. Worldwide, most cases of domestic violence involve a male perpetrator and a female victim.⁵⁸ In cases of serious physical injury, it is inflicted almost exclusively by men.⁵⁹ We rightly perceive most abusers to be men and most victims to be women.

50. E. ANN CARSON, BUREAU OF JUSTICE STATISTICS, NCJ247282, PRISONERS IN 2013, at 2 (2014).

51. *Id.* at 15.

52. *Id.*

53. See PENAL REFORM INTERNATIONAL, GLOBAL PRISON TRENDS 2015, at 14 (2015), <http://penalreform.org/wp-content/uploads/2015/04/PRI-Prisons-global-trends-report-LR.pdf> [<http://perma.cc/4PVT-PAWY>].

54. See Rew, Gangoli & Gill, *supra* note 3, at 148. Some might also suggest adding a third category to include those women who kill out of jealousy as a result of infidelity, but this group is fairly small. A last category, exceedingly rare, might be those women who are serial killers. See BELINDA MORRISSEY, WHEN WOMEN KILL: QUESTIONS OF AGENCY AND SUBJECTIVITY 39 (2003).

55. VICKIE JENSEN, WHY WOMEN KILL: HOMICIDE AND GENDER EQUALITY 10–11 (2001).

56. Consider, for example, the case of Andrea Yates, who drowned her five children in the bathtub of her Houston home in the throes of a postpartum depression and psychosis. See Andrew Cohen, *10 Years Later, the Tragedy of Andrea Yates*, THE ATLANTIC (Mar. 11, 2012), <http://www.theatlantic.com/national/archive/2012/03/10-years-later-the-tragedy-of-andrea-yates/254290> [<http://perma.cc/6U26-GKJG>]; see also Rashmi Goel, *Can I Call Kimura Crazy?: Ethical Tensions in the Cultural Defense*, 3 SEATTLE J. SOC. JUST. 443, 443 (2004) (detailing the legal case of Fumiko Kimura, who attempted a parent-child suicide in which her two children were killed but she survived and mental illness was proffered as an explanation).

57. Women killing others outside of these subsets is so rare it has hardly been studied. It tends to occupy the realm of the freakish and bizarre rather than a reflection of society. See MORRISSEY, *supra* note 54, at 39, 65.

58. Rew, Gangoli & Gill, *supra* note 3, at 148; Fernandez, *supra* note 10, at 435.

59. Fernandez, *supra* note 10, at 436.

Violence committed by women against other women appears very rare. There are some notorious cases of harm done by women to other women, the cases of female genital mutilation where the procedures are performed mostly by women, for instance.⁶⁰ But these cases are distinguishable overall as culturally or religiously mandated.

The cases of women who kill women are so rare that there is no study devoted to it as a general category either in the social science or legal literature.⁶¹ The murderous mothers-in-law of Tihar jail thus defy our expectations in two ways—first, because they are violent, and second, because they have killed other women. Our notions about the very nature of women, and about who has power over them, are upended, or at least endangered, by the curious cases of women who kill other women. Even India's Supreme Court remarked in bewilderment: "[I]t is rather strange that the mother-in-law who herself is a woman should resort to killing another woman. It is hard to fathom as to why even the "mother" in her did not make her feel."⁶²

The phenomenon is rendered even more odd by the context of the crime itself. Patriarchy, as we generally understand it, is a social system where men hold the power, and women are excluded, or a system that privileges male power and reduces or deprecates female power.⁶³ Accepting that dowry and dowry-related violence are symptoms of a patriarchal power structure where men exercise dominance over women, why would women—any women—participate in it?

Answering that question is important for several reasons: first, from a legislative perspective, because the criminal law is only legitimate when it punishes the morally blameworthy, and that depends as much on the offender's mental state and motivation as it does on the act she commits. Understanding why these women kill may lead to a different assessment of their culpability. Culpability itself so often hinges on the "why," but even where it does not, sentencing often reflects motive in an effort to temper justice with mercy. For instance, some might argue that these women are victims themselves, and that their participation in female-on-female violence is actually coerced. If this is true, the stigma and sanction should be commensurately reduced. Second, solutions to preventing any crime are more likely to be effective when tailored to the motivations of those committing the crime. Legislative and social reforms need to respond to the real reasons these women kill if there is to be any chance of success. Finally, assuming the objective is to ameliorate the harms of

60. *Id.* at 438.

61. Although cases of intrasexual hostility and aggression have been studied. *Id.* at 436, 438.

62. *Paniben v. State of Gujarat*, (1992) 2 SCR 197, 200.

63. *See supra* note 10 and accompanying text.

patriarchy, an understanding of how patriarch works to co-opt women in its operations is essential to any remedy or progress.

It is estimated that a significant proportion of dowry death cases involve the mother-in-law as the prime perpetrator.⁶⁴ India's dowry deaths therefore represent a unique opportunity to examine a substantial group of women who kill women, not available in any other context.

II. THE PROBLEM OF DOWRY DEATHS

The case stories related here all emphasize the role of dowry harassment. The laws clearly presuppose that dowry greed is the primary motivator in the abuse and deaths of these young women. In India, dowry is a part of most marital alliances.⁶⁵ Simply put, dowry is the money and goods a bride takes with her to her marital home when she marries. It is an ancient tradition. As early as 200 A.D., the Laws of Manu refer to the property a women receives at her nuptials from her family.⁶⁶

Originally, the dowry was for the exclusive benefit of the bride, called *stridhan* (woman's wealth).⁶⁷ The dowry served as a kind of insurance policy to ensure her security if anything happened to her husband or if she was denied necessities in her marital home.⁶⁸ Giving dowry meant a share of the family wealth passed to a daughter upon her marriage.⁶⁹ It consisted primarily of things for her personal use—jewelry and domestic goods—items that would enhance her enjoyment in the marital home and were unlikely to be usurped by anyone else.⁷⁰ According to many Indian historians and activists, therefore, dowry is an essentially feminist practice that has been corrupted by consumer culture.⁷¹

Despite its positive origins, modern day dowry practice is decidedly less beneficial to women. As dowry evolved to include gifts for the

64. See Rastogi & Therly, *supra* note 11, at 67. See also Mili, Perumal & Neethu, *supra* note 11, at 68 (providing that since at least 2001, females compose about 20% of persons arrested for dowry deaths, a significantly higher percentage than for almost any other reported crime type in India).

65. See Leigh Seeger, *India's Dowry Culture*, INT'L POL'Y DIG. (July 30, 2013), <http://www.internationalpolicydigest.org/2013/07/30/indias-dowry-culture> [<http://perma.cc/BE3Z-2JLV>].

66. See VEENA TALWAR OLDENBURG, *DOWRY MURDER: THE IMPERIAL ORIGINS OF A CULTURAL CRIME* 19 (2002).

67. See *id.* at 19–22; see also The Hindu Succession Act, No. 30 of 1956, INDIA CODE (1956) (drawing a distinction between dowry and *stridhan*).

68. See OLDENBURG, *supra* note 66, at 9.

69. In contrast, sons received their share of the family wealth through inheritance. *Id.*

70. See *id.* at 1.

71. *Id.* at 5.

groom and his family as well,⁷² its purpose went from ensuring the bride's comfort to ensuring the satisfaction of the groom's family.⁷³ It is common understanding that the more desirable the groom—based on education, earning potential and social status—the higher the dowry required.⁷⁴ Today, grooms' families want compensation for the high cost of educating their sons, and something to offset the cost of adding another member to the family. For some, a daughter-in-law is seen as a path to wealth, her presence a burden they bear to get that wealth.⁷⁵ In these cases, marriage becomes a business transaction, complete with buyer's remorse.

This is not new. The insidious harm of dowry was already a recognized issue during the fight for India's independence. By the 1950s, it was widely believed that dowry practice contributed significantly to the lower status of women.⁷⁶ Scholars and sociologists agreed it was at least partly to blame for the poor state of women in Indian society. Eventually, dowry practice was criminalized in 1961.⁷⁷ Unfortunately, despite the ban, people continued to give dowry, relying on the legislative exemption for "gifts."⁷⁸ Today, it remains an almost universal part of the marriage alliance negotiations.⁷⁹ The tradition never went away, and any changes seem to be changes for the worse. Grooms and their families expect, and sometimes demand, expensive consumer goods and hefty sums in consideration of the marriage.⁸⁰ When they feel the dowry is inadequate, the result is often marital strain, verbal harassment of the new bride and her family, and, in far too many instances, violence. In the worst cases, the result is fatal.

It is difficult to say when dowry deaths and dowry murders became a recognizable part of Indian society. By the mid-1970s, reports attributing domestic murders to dowry greed had become ubiquitous, and journalists coined the grisly appellation "bride burning" for those instances where victims were doused with kerosene and

72. *Id.* at 21.

73. See Edith Samuel, *Dowry and Dowry Harassment in India: An Assessment Based on Modified Capitalist Patriarchy*, 1 AFRICAN & ASIAN STUD. 187, 205 (2002).

74. Lionel Caplan, *Bridegroom Price in Urban India: Class, Caste and 'Dowry Evil' Among Christians in Madras*, 19 MAN 216, 220–21 (1984); see Samuel, *supra* note 73, at 206. For a modern online dowry calculation model that epitomizes the crass commercialism of the marriage market, see <http://www.dowrycalculator.com>.

75. See Samuel, *supra* note 73, at 206.

76. Kirti Singh, *Dowry, Violence and the Law*, in WOMEN AND THE POLITICS OF VIOLENCE 247, 256 (Taisha Abraham ed., 2002); see also OLDENBURG, *supra* note 66, at 5 (stating that the British had already declared almost 100 years earlier that dowry was the source of female inequality and son-preference).

77. The Dowry Prohibition Act, No. 28 of 1961, INDIA CODE (1961).

78. *Id.* ¶ 3.

79. Seeger, *supra* note 65.

80. Caplan, *supra* note 74, at 217.

burned alive.⁸¹ Nowadays, newspapers are replete with stories of young women killed, or driven to suicide, by the cruelty of the marital home and the constant demands for more money.⁸²

Dowry deaths today are pervasive. They happen in every socio-economic class,⁸³ in every religious group,⁸⁴ and in every region of the country.⁸⁵ Worse, the number of dowry deaths in India continues to increase.⁸⁶ In 2000, there were 6,995 dowry deaths across India.⁸⁷ In 2010, there were 8,391 dowry deaths.⁸⁸ In 2014, the figure rose to 8,455 dowry deaths reported.⁸⁹

As shocking as these figures are, they likely represent only a fraction of the cases that actually occur.⁹⁰ There are many women who die and whose names are never brought to the police because the matter is simply handled “privately.” A groom’s family might successfully cover up the crime, or convince the bride’s family not to pursue charges.⁹¹ Some brides’ families lack the financial and psychological

81. RANJANA KUMARI, BRIDES ARE NOT FOR BURNING: DOWRY VICTIMS IN INDIA 25–26 (1989) (referencing in its bibliography articles which show the use of “bride burning” in titles in the early 1980s, such as A.S.J. Andley, *Acquittal Order in Bride Burning Case*, STATESMAN, Nov. 30, 1984; Chaitanya Kalbag, *Bride Burning, Until Death Do Us Part*, INDIA TODAY, Jan. 27, 1982; and *Ending Bride Burning*, DECCAN HERALD, Aug. 9, 1983).

82. See, e.g., *Two Crimes Against Women Reported Daily in Tripura*, TIMES OF INDIA, (Apr. 30, 2013), <http://timesofindia.indiatimes.com/city/guwahati/Two-crimes-against-women-reported-daily-in-Tripura/articleshow/19776895.cms> [<http://perma.cc/L3H5-3CGJ>].

83. Samuel, *supra* note 73, at 200, 208, 211.

84. See David Devadas, *The Horror Spreads: Dowry Related Deaths Break Religious, Caste and Geographical Barriers*, INDIA TODAY (June 30, 1988, 1:45 PM), <http://india.today.intoday.in/story/dowry-related-deaths-break-religious-caste-geographical-barriers/1/329482.html> [<http://perma.cc/FZ8X-LK9C>].

85. However, some states appear to exhibit slightly higher rates than others, as “[t]he data suggests that the problem is concentrated in three states. Rajasthan has 60% of all cases in India.” Sahil Bhalla, *False Dowry Case Problem is Overblown, There Is Still One Death Every Hour*, SCROLL.IN (July 04, 2014, 7:55 AM), <http://scroll.in/article/669073/False-dowry-case-problemis-overblown,-there-is-still-one-death-every-hour> [<http://perma.cc/CS3Z-UM3B>].

86. NAT’L CRIME RECORDS BUREAU, CRIME IN INDIA 2012, at 58 (2013), <http://ncrb.nic.in/StatPublications/CII/CII2012/Compendium2012.pdf> [<http://perma.cc/PLL2-Y26A>] (noting that in 2012 there was a 20.7% increase in dowry deaths from the level recorded in 2002). Of course, India’s population has also increased dramatically over this time period.

87. NAT’L CRIME RECORDS BUREAU, *Chapter 5: Crime Against Women*, in CRIME IN INDIA 2000, at tbl. 5.1 (2002), <http://ncrb.nic.in/StatPublications/CII/CII2000/CONTENTS/CHAP5.DOC> [<http://perma.cc/EW3C-VV9E>].

88. NAT’L CRIME RECORDS BUREAU, CRIME IN INDIA 2010, at 58 (2011), <http://ncrb.nic.in/StatPublication/CII/CII2010/Compendium2010.pdf> [<http://perma.cc/Z4SN-YGH5>].

89. NAT’L CRIME RECORDS BUREAU, *supra* note 5, at tbl. 1.8.

90. See Jason Koutsoukis, *India Burning Brides and Ancient Practice Is on the Rise*, SYDNEY MORNING HERALD (Jan. 31, 2015, 12:15 AM), <http://www.smh.com.au/world/india-burning-brides-and-ancient-practice-is-on-the-rise-20150115-12r4j1.html> [<http://perma.cc/XML2-CM9L>] (estimating actual figures are three to four times the number of reported cases).

91. See *id.*

resources to pursue a case in India's hopelessly backlogged system.⁹² Sometimes the police are inept, corrupt, or unconcerned, and charges are never laid.⁹³ In response, the Indian legislature enacted several laws to deal with just this particular subset of gender violence.⁹⁴

III. THE INDIAN LEGISLATIVE RESPONSE—PUNISHING PRACTICE WHILE PRESERVING CULTURE

India's laws criminalize the practice of dowry and harshly punish violence associated with it.⁹⁵ However, the laws function more to operate within cultural constraints than to change them. Over the past 50 years, India has enacted three major pieces of dowry violence legislation.⁹⁶

A. *The Dowry Prohibition Act of 1961*⁹⁷

In 1961, Indian legislators passed the Dowry Prohibition Act. The Act defined Dowry as:

any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the persons of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before [or any time after the marriage] [as consideration for the marriage of the said parties]⁹⁸

The giving or taking of dowry was made punishable by fine or incarceration.⁹⁹ At present, the Act provides for a term of no less than five years imprisonment and a fine of no less than fifteen thousand

92. Olga Khazan & Rama Lakshmi, *10 Reasons Why India Has a Sexual Violence Problem*, WASH. POST (Dec. 29, 2012), <https://www.washingtonpost.com/news/worldviews/wp/2012/12/29/india-rape-victim-dies-sexual-violence-proble> [<http://perma.cc/NF8L-GAH7>] (indicating that one judge estimated India's current backlog of criminal cases would take 466 years to clear even if no new cases were added to the books).

93. *Bikshapathi v. State of Andhra Pradesh*, Cr. A. No. 918 of 1988, at para. 21 (HC, Andhra Pradesh Oct. 27, 1988).

94. *See infra* Part III.

95. *See, e.g.*, V. K. DEWAN, *THE DOWRY PROHIBITION ACT, 1961*, at 185 (2000).

96. *See* Judith G. Greenberg, *Criminalizing Dowry Deaths: The Indian Experience*, 11 AM. U. J. GENDER, SOC. POL'Y & L. 801, 807–08 (2003); *see also* DEWAN, *supra* note 95, at 121–23.

97. PEN. CODE § 304B (1860) (amended 1986).

98. *Id.* (footnotes omitted). Note that this subsection was changed to “in connection with” from “as consideration for” in 1984.

99. *Id.*

rupees.¹⁰⁰ Unfortunately, the incidence of dowry did not decline after the Act was passed. Instead, the practice of dowry continued to spread across castes, classes, and communities, becoming more and more excessive. The 1961 provisions were largely ineffective because of large loopholes and lax enforcement. The law exempted “gifts” as they were technically not given in “consideration for the marriage,” but the “gifts” simply became a euphemism for grand dowries.¹⁰¹ Families were encouraged to keep detailed logs of “gifts” to be used as evidence in the event of a dispute or the dissolution of the marriage, but this was cumbersome and felt unseemly.¹⁰² Though over 10 million weddings happen in India every year,¹⁰³ and dowry plays an integral part in most, prosecutions are rare.¹⁰⁴ Grooms’ families continue to demand money, and brides’ families continue to scrimp and save to assure a good match.

*B. Dowry Harassment and Cruelty: Section 498A*¹⁰⁵

In the 1980s, the Indian legislature amended the Indian Penal Code to fully acknowledge, and specifically criminalize, dowry-related violence. The first of these additions was Section 498A 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. . . . [C]ruelty means

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any

100. *Id.*

101. *Id.*; see also Dhananjay Mahapatra, *Custody Payments, Gifts not Dowry: SC*, TIMES OF INDIA (Feb. 1, 2008, 12:35 AM), <http://timesofindia.indiatimes.com/India/Customary-payments-gifts-not-dowry-SC/articleshow/2747113.cms> [<http://perma.cc/4E7S-DRWF>].

102. Utkarsh Anand, *Prepare List of Dowry Articles to Prove Claims: HC*, INDIAN EXPRESS (Feb. 27, 2011, 2:33 AM), <http://archive.indianexpress.com/news/prepare-list-of-dowry-articles-to-prove-claims-hc/755421> [<http://perma.cc/Y2SQ-SWYU>].

103. Sahiba Sachdev, *The Flourishing Indian Wedding Industry*, INDIAN RETAILER, <http://www.retail.franchiseindia.com/article/whats-hot/trends/The-Flourishing-Indian-Wedding-Industry.a247> [<http://perma.cc/E6TQ-3ZT7>] (providing an overview of the wedding industry in 2010).

104. See *Supreme Court Expresses Anguish over Continuing Dowry Deaths*, INFOCHANGE INDIA, <http://infochangeindia.org/women/news/supreme-court-expresses-anguish-over-continuing-dowry-deaths.html> [<http://perma.cc/P2C4-6XDR>] (reporting in 2009 that the Dowry Prohibition Act is rarely enforced).

105. PEN. CODE § 498A (1983) (referred to colloquially as the “Anti-Cruelty Act”).

unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.¹⁰⁶

Section 498A was a monumental shift in the law. It was the first legislative acknowledgment of domestic violence as a crime.¹⁰⁷ Most notably, Section 498A includes dowry harassment of any kind in the definition of cruelty, identifying it as a particular form of domestic violence. The law is very narrow though, and, aside from dowry matters, only criminalizes conduct so extreme it risks grave injury. Nonetheless, it was a step forward because it recognized domestic violence. Battering could previously have been prosecuted under the Indian Penal Code provisions for assault and battery, but such prosecutions were extremely rare.¹⁰⁸

C. The Offense of Dowry Death: Section 304B

The third major legislative change was the insertion of Section 304B in 1986, creating the newly defined crime of dowry death:

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty 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.¹⁰⁹

Section 304B was generally heralded as a feminist triumph. Naming the phenomenon specifically, and creating a whole new category of homicides, paved the way, it was thought, for new and favorable jurisprudence. Furthermore, it was felt that deeming provisions responded to the evidentiary hurdles that typify dowry death cases,

106. *Id.*

107. CENTRE FOR SOCIAL RESEARCH, IPC SECTION 498A SEMINAR: A TOOL TO COMBAT DOMESTIC VIOLENCE 16 (2005), http://www.498a.org/contents/Publicity/CSRStudy_FinalSeminarReport.pdf [<http://perma.cc/2FFS-R5XW>].

108. *See id.* at 7; *see also* *Bikshapathi v. State of Andhra Pradesh*, Cr. A. 918 of 1988, at para. 40 (HC, Andhra Pradesh Oct. 27, 1988) (acknowledging the social pressures that prevented reporting).

109. PEN. CODE § 304B (1860) (amended 1986) (emphasis added). Note that dowry death is a separate crime from murder. A prosecutor who feels the requirements of 304B are lacking may choose to proceed with murder charges if the evidence is sufficient, but convictions in such cases are rare. *See* LAW COMM'N OF INDIA, TWO HUNDRED AND SECOND REPORT ON PROPOSAL TO AMEND SECTION 304-B OF INDIAN PENAL CODE, at 3 (2007).

which frequently occur in the home where evidence is scant and witnesses may all be complicit in the act.

Overall, the network of dowry death legislation appears positive in terms of its appreciation of the problem. The language of the statutes, and particularly the deeming provision of Section 304B, makes it clear the legislature wants dowry deaths taken seriously. Even so, the legislature anticipates the laws will operate within certain cultural norms. Impliedly or by reference, all three laws acknowledge, and largely accept, arranged marriage, the joint family system, and, to some extent, even dowry itself. Unfortunately, these cultural norms are not egalitarian. All of these practices presume, within the realm of marriage and family, a hierarchy where women are lower than men. The unintended result is the encumbrance of the anti-dowry and dowry violence measures. While the state criminalizes the ill-effects on the one hand, it tacitly applauds the family structures and practices that render women unequal on the other.

The Dowry Prohibition Act, for instance, plainly refers to the presence of family members in the marriage agreement,¹¹⁰ thus unquestioningly accepting the tradition of arranged marriage.¹¹¹ Arranged marriages remain the norm in India,¹¹² despite increased Westernization that prefers romantic love precede marriage.

110. The Dowry Prohibition Act, No. 28 of 1961, INDIA CODE (1961).

111. See Samuel, *supra* note 73, at 207–08. It is difficult to measure exactly how much the practice of arranged marriage contributes to dowry death. In arranged marriages, parents often allow social class and education to serve as proxies for “a good family.” Focused on status and appearances and a desire to avoid the scandal that can come with lengthy premarital courtships, some parents do not take the time to truly get to know the other family. In such cases, post-wedding dowry harassment is a rude awakening. The rate of dowry deaths in love marriages is lower than in arranged marriages. *Id.*, at 208. But even dowry-related violence is unlikely to cause Indians to abandon arranged marriages, since such arrangements address numerous concerns about family traditions, boundaries, and relations between the sexes and the social classes. See *id.*, at 201.

112. See *Indians Swear by Arranged Marriages*, DECCAN HERALD (Mar. 2, 2013), <http://www.deccanherald.com/content/316016/indians-swear-arranged-marriages.html> [<http://perma.cc/P3MK-P9D3>]; see also Anjali Thakur, *More Indians Prefer Arranged to Love Marriages: Study*, JAGRAN POST (Apr. 12, 2014, 9:41 AM), <http://post.jagran.com/More-Indians-prefer-arranged-to-love-marriages-Study-1397275884> [<http://perma.cc/6S93-BR4F>] (supporting the proposition that regardless of faith or social class, most Indian families believe that decisions like choosing a life partner are best made with the guidance of elders); Giri Raj Gupta, *Love, Arranged Marriage, and the Indian Social Structure*, 7 J. COMP. FAM. STUD. 82–83 (1976) (acknowledging that arranged marriages serve several purposes). Proponents of arranged marriage point to the comparatively high rate of divorce in countries like the United States that favor love marriage, versus India’s extremely low rate of 1.1 percent. Rashmi Goel, *Coaxing Culture: India’s Legislative Response to Dowry Deaths*, in *COMPARATIVE PERSPECTIVES ON GENDER VIOLENCE: LESSONS LEARNED FROM EFFORTS WORLDWIDE* 99, 104 (Rashmi Goel & Leigh Goodmark eds., 2015). Ideally, if parents have matched family styles and outlook, arranged marriage also reduces the likelihood of marital discord. It expands the pool of potential partners to unknown individuals. This helps ensure marriage for almost everyone, including introvert and wall-flower personalities who might otherwise not find a partner.

Arranged marriages are not forced marriages. They function more as facilitated first meetings between the potential groom and the potential bride, with only limited time given to decide if the match is acceptable. Parents today generally seek their child's consent before agreeing to any alliance, but it is rare that any arranged marriage would include anything akin to dating prior to the agreement to marry.¹¹³ Courtships prior to any agreement are generally short.¹¹⁴ That said, arranged marriages definitely involve limiting choice and autonomy. Because parents seek potential partners who have something in common, the arranged marriage market also reduces the pool of potential partners to those who are most similar.¹¹⁵ It works to preserve social group purity, so that parents consider only matches of the same religion, caste, social status, etc.¹¹⁶ Women are given a choice, but only within a select group.

Further, the arranged marriage market often includes double standards for women. For instance, many grooms' families will seek a potential bride who is educated, because that demonstrates status, but not one who desires a career, because that might imply she needs to work to support the family and thus lower their status.¹¹⁷ Arranged marriage preserves the economic power structure of traditional gender roles, as in most cases, the bride will not work outside the home at all after marriage. Even when the bride will be working outside the home, parents generally seek a match in which the groom will earn more than the bride.¹¹⁸ The state may push education and financial independence for women in the public realm, but by accepting arranged marriage they also accept that women are unequal in the private realm, and particularly in the arena of marriage.¹¹⁹ There is also some moral standing associated with an arranged marriage over a love marriage.¹²⁰ Even among those families that are "modern," liberal, and educated, arranged marriages are preferred as the mark of a "good family."¹²¹ The unwritten rules imply that love marriages bring the risk of sexual indiscretion, and thus low morals.

Critics also argue that arranged marriages are largely about social status.¹²² Brides seek to "marry up" and grooms seek to increase

113. See Gupta, *supra* note 112, at 78.

114. *Id.* at 79.

115. *Id.* at 78.

116. *Id.* at 80. This can intensify divisions between different economic, religious, cultural, and linguistic traditions in an extremely diverse society.

117. *Id.* at 78.

118. Samuel, *supra* note 73, at 200.

119. See *id.* at 83.

120. Gupta, *supra* note 112, at 79.

121. See *id.* at 77.

122. See *id.* at 78.

their assets, while at least maintaining their social standing. Any dowry can demonstrate social status, but a generous dowry can actually change a groom's social status. Negotiating a large dowry from the bride's parents is a way of climbing the economic ladder.¹²³ In other words, arranged marriages and dowry go hand in hand. Accommodating arranged marriage as a social norm also accommodates the Indian reality that marriage can be based upon finances rather than affection.¹²⁴ So long as the bride is viewed as a path to economic enrichment rather than as a life partner, she is a commodity and at risk.

Just as the Dowry Prohibition Act contemplates arranged marriages by referring to parental involvement in dowry exchanges, Section 498A and Section 304B accede to the joint family system by reference to the actions of the husband's relatives.¹²⁵ The joint family system entails several generations living under the same roof; parents live with their sons, their daughters-in-law, their unmarried daughters, and their sons' children. Currently, twenty to thirty percent of Indian families live in joint family homes.¹²⁶ Under the best circumstances, the joint family arrangement involves everyone living together as one big happy family.¹²⁷ Joint families also enjoy a certain status that implies homespun, good old fashioned values.

The special dangers associated with this system, though, are significant. Because the joint family home involves multiple people, it also entails negotiating multiple relationships, expectations and power dynamics.¹²⁸ Although often romanticized, the joint family system envisions a very definite power structure in which women are lower in the family hierarchy than men. The system works, but only if everyone acts according to their position and limitations. Daughters-in-law are subject to the multiple hierarchies of age and economics. They are the bottom of the power structure, subject to their parents-in-law, other elders of the home and their husbands. New brides are expected to adjust to a whole new set of household rules.¹²⁹ They are

123. Samuel, *supra* note 73, at 198, 206.

124. *Id.* at 207.

125. PEN. CODE § 498A (1983); *see also* PEN. CODE § 304B (1860) (amended 1986).

126. Madhavi Rajadhyaksha, *56% More Joint Families in City than 10 Years Ago*, TIMESOFINDIA (Mar. 24, 2012), <http://timesofindia.indiatimes.com/city/mumbai/56-more-joint-families-in-city-than-10-years-ago/articleshow/12386310.cms> [<http://perma.cc/GHP3-JZPC>]; *see also* P. Sunderarajan, *Several States in North India Cling on to Joint Families*, THE HINDU (Mar. 16, 2012, 1:56 AM), <http://www.thehindu.com/news/national/several-states-in-north-india-cling-on-to-joint-families/article2999837.ece> [<http://perma.cc/ECC5-DBTK>].

127. *See* Rajadhyaksha, *supra* note 126.

128. *See* Rastogi & Therly, *supra* note 11, at 73.

129. *Id.*

usually forbidden from working outside the home,¹³⁰ limiting their economic power, and those women who do work outside the home may invite criticism because they appear insufficiently devoted to family.¹³¹ Instead of offering additional protection for a young bride, the joint family system can create the conditions for abuse. In an already existing family structure, the new daughter-in-law is a relative stranger. If she is cast as an outsider,¹³² it can promote collusion, conspiracy, and ultimately, deadly violence.¹³³ When dowry deaths occur in joint family homes, family members, especially mothers-in-law, are unavoidably implicated. Again, by accepting the joint family system unqualifiedly, the state unwittingly hampers the efficacy of its own legislation.

Even dowry appears widely tolerated in the Penal Code provisions. Although the burden of proof is arguably reduced in dowry violence and dowry death cases, easing prosecution is not the same as increasing punishment. In fact, the sanction is not greater in dowry violence cases than other domestic violence cases. As a result, cases of dowry harassment and dowry death are punished no more seriously than cases of cruelty and homicide without dowry.¹³⁴ Dowry's widespread persistence is thus simultaneously lamented and conceded.¹³⁵ Ultimately, the legislation functions more to regulate dowry in family violence than to eradicate it.

In the end, dowry, arranged marriage, and the joint family system are presented as immutable features of Indian society. All of these practices however include an implicit gender hierarchy in which women are less than men, women's choices are limited and these practices are simultaneously cast as good. Although the state may accept the advancement of women in the public realm, married life is viewed as rightly limiting. A young female college graduate with opportunities trades her freedom in for marriage where she is first given limited choice as to a partner, and then moves on to live in a household where she is subject to the will of a husband and male and female elders. Worse yet, these are all the mark of a "good family" and social success. For the Indian woman then, the culmination of

130. See Ghafour, *supra* note 8.

131. See Rew, Gangoli & Gill, *supra* note 3, at 152.

132. Rastogi & Therly, *supra* note 11, at 71 (explaining that older women often align themselves against new female family members).

133. Rew, Gangoli & Gill, *supra* note 3, at 147; see also Samuel, *supra* note 73, at 210.

134. U.N. Women, *Criminal Sanctions and Sentencing Provisions*, <http://www.endvawnow.org/en/articles/829-criminal-sanctions-and-sentencing-provisions-.html?next=830> [<http://perma.cc/KBN2-E8EJ>].

135. The Dowry Prohibition Act is woefully unenforced; only 10,050 violations of the Dowry Prohibition Act were reported in 2014 for all of India. NAT'L CRIME RECORDS BUREAU, *supra* note 5, at tbl. 1.12.

her life, i.e., becoming a married woman, is a stage of limitation and constraint, if not outright subjugation. Whatever their merits might be, these structures maintain patriarchy in the domestic sphere. In extreme cases, they form a deadly trifecta for a new bride. Accepting practices like arranged marriage and the joint family system, without also acknowledging their harms, ultimately sets the stage for women's subjugation in the home.

It is useful also to consider these practices in the Indian historical and political context. As with most post-colonial nations, India post-independence entails rediscovering the pre-colonial identity, even imagining the country would have been better off without British rule and intervention. The process of rediscovering roots often involves a cultural retrenchment then as an anti-colonial act.¹³⁶ Consider for example Mahatma Gandhi's appeal during the campaign for independence to the people of India to wear only homespun cloth, instead for buying cloth from the British textile mills.¹³⁷ Of course it was an economic act, but it was also an act to inspire pride and self-sufficiency in Indians. This return to the homespun is not limited to the economic realm. It is equally, if not more, present in the philosophical realm. Once dowry, arranged marriage and the joint family system are cast as "traditions," continuing those traditions is a kind of anti-colonial act, a way of asserting that the old Indian ways are the best ways.¹³⁸

This kind of thinking is evident even in the arguments surrounding dowry on the legislative floor in 1960, and the way it is presented today even in Supreme Court judgments. That is, the Indian judiciary has denounced current dowry practice as different, capitalism-infused and worse than the tradition of old. The alleged original value and purpose of the custom, in a simpler time, is asserted even as it is begrudgingly abandoned, or maintained as the case may be. Similarly, although arranged marriage and the joint family system create obvious dangers and diminish the status of women, they are retained as positive Indian cultural traditions, and indications of a good family. For a woman to be considered "from a good family" or "worthy of a good family" she must be willing to accept this kind of diminished status. The social fabric creates a false dichotomy between women's rights and good moral character or social success. Not only is there little shame in accepting women as

136. S Raju, *The Issues at Stake: An Overview of Gender Concerns in Post-Independence India*, 29 ENV'T & PLAN. A 2191, 2191-93 (1997).

137. Theodore M. Brown & Elizabeth Fee, *Spinning For India's Independence*, 98 AM. J. PUB. HEALTH 39, 39 (2008).

138. See Raju, *supra* note 136, at 2193-94.

inferior, it is almost a mark of pride. It can easily be spun as being a bit old-fashioned, and preserving culture. A family can be both liberal and traditional in this way. Some of the most progressive and successful families in India have joint family living arrangements and expect arranged marriages.¹³⁹ They will educate their daughters to show they are not backwards, but still insist that the daughter must marry and have a family, as opposed to a career, as the achievement of adulthood.¹⁴⁰ There is simply no expectation, in the courts or in the legislatures, that equality is a necessary part of the marital experience.

The Indian laws punish dowry and dowry violence, but they stop short of critiquing the practices that promote female inferiority to enable those crimes. Admittedly, the legislature must be wary of intruding too deeply into cultural traditions and the intimate spaces of family customs—laws that push for significant change in the private sphere often invite backlash—but here the legislature leaves these aspects of cultural change to the slow shift of hearts and minds, without the benefit of any legislative boost.

The legislative scheme fails to appreciate the robust connection between these practices and dowry, and fails to appreciate the position of dowry violence within a network of patriarchal practices that encourage the subjugation of women more generally. Instead, the legislative scheme assumes the motive for dowry related violence to be greed. The laws and judgments speak to the financial motivations. But the dowry deaths are only a symptom of an underlying system that accepts the inferior position of women within marriage as a given. The end result is that the provisions punish the harm done to women, but do nothing to address the power structures or systems of patriarchy by which women are put in harm's way in the first place.

IV. ANSWERING WHY

A. *The Hurdle of Section 304B*

It is a maxim of criminal law that people should be punished according to their moral blameworthiness.¹⁴¹ For this reason, women who kill in self-defense are not culpable, because what they have done is justifiable and they are not morally blameworthy.¹⁴² Similarly,

139. Ghafour, *supra* note 8.

140. *Id.*

141. WAYNE R. LAFAVE, CRIMINAL LAW 15 (5th ed. 2010).

142. *See id.* at 17.

women who kill while legally insane are excused because they do not understand what they are doing and are not responsible for their actions.¹⁴³ In either case, correctly assessing culpability requires asking why the offender acted as she did.

Section 304B is vulnerable to critique in part because it presumes the “why” is dowry greed, but precludes any inquiry to confirm it. Under the deeming provisions of Section 304B, the prosecution needs to establish only that the victim died of unnatural causes within seven years of marriage and that she was subject to dowry harassment shortly before her death;¹⁴⁴ there is no need to prove the defendants’ mental state at the time of the acts that caused the death, or even that the defendants actually caused the death at all. Technically, any “unnatural” death that occurred shortly after dowry harassment could qualify as a dowry death and garner a conviction. This might seem outrageous, but the Indian dowry death provisions actually function similarly to American felony murder rules. Under the felony murder rule, a defendant who, while committing an enumerated felony, causes a death, intentionally, recklessly, negligently, or even accidentally, will be held strictly liable for that death as a murder.¹⁴⁵

The American felony murder rule has received significant criticism for its breadth and its strict liability application.¹⁴⁶ It has long ago been abandoned in other parts of the world, including India.¹⁴⁷ Here in the United States, scholars and judges have criticized it for ignoring the fundamental principle that the defendant’s mental state as to the harm caused is an essential measure of criminal culpability.¹⁴⁸

Some have likewise criticized the deeming provisions of Section 304B for ignoring the accused’s mental state as to the death of

143. *Id.* at 391.

144. PEN. CODE § 304B (1860) (amended 1986).

145. See LAFAVE, *supra* note 141, at 786, 801–02.

146. See *id.* at 785–86. See also Robert Mauldin Elliot, Comment, *The Merger Doctrine as a Limitation on the Felony Murder Rule: A Balance of Criminal Law Principles*, 13 WAKE FOREST L. REV. 369, 371 (1977) (contending that “the rule does violence to the philosophy which dictates that criminal liability should be commensurate with moral culpability”); Jeanne H. Seibold, *The Felony Murder Rule: In Search of a Viable Doctrine*, 23 CATH. LAW. 133, 160–61 (1978) (arguing that the rule is “grossly misplaced in a legal system which recognizes the degree of mental culpability as the appropriate standard for fixing criminal liability”).

147. *Time to Do Away with the Felony Murder Rule*, N.Y. DAILY NEWS (Dec. 23, 2008, 2:48 PM), <http://www.nydailynews.com/news/world/time-felony-murder-rule-article-1.358242> [<http://perma.cc/LGN3-9DTY>].

148. See Timothy P. O’Neill, *It’s a Bird, It’s a Plane, It’s Felony Murder*, CHI. DAILY L. BULL. (Aug. 11, 2006), <http://www.jmls.edu/directory/profiles/oneill-timothy/pdfs/20060811-cdlb-oneill.pdf> [<http://perma.cc/PJ66-66GP>].

the victim.¹⁴⁹ Essentially, the basic inquiry into the mental state of the defendant is lost. The law infers from the dowry harassment that the motivation for the killing must have been avarice, but it does not actually require that motivation be proven.

Furthermore, Section 304B significantly reduces the burden on police and prosecutors to achieve a conviction by way of its deeming provisions. Proponents of the deeming provisions argue they are necessary to counter the biases of police and judges that often leave dowry deaths ignored and prosecutions unsuccessful.¹⁵⁰ Ancillary laws were also amended to counter bias. For instance, Section 174 of the Indian Criminal Procedure Code now requires police to order a postmortem even in cases of suicide of a woman within seven years of marriage.¹⁵¹ Even the Evidence Act was amended to overcome the general reluctance of courts to deal with these crimes, essentially restating the presumption of Section 304B:

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.¹⁵²

In at least one case, the husband was not even physically present at the time of the killing, but the court found him culpable nonetheless, courtesy of the deeming provisions.¹⁵³

Section 304B is thus praised as a pragmatic response to the formidable challenges of prosecution and proof in dowry death cases. Physical evidence,¹⁵⁴ and testimonial evidence, is often very limited,¹⁵⁵ frequently because the death occurred in a private home and residents

149. PHYLLIS CHESLER, *WOMAN'S INHUMANITY TO WOMAN* 43 (2001).

150. Amartya Talukdar, *IPC 498A, Dowry & Dowry Deaths*, SADDHAHQ (July 8, 2015, 12:24 PM) <http://www.saddahaq.com/ipc-498a-dowry-dowry-deaths> [<http://perma.cc/9LWR-VTKK>].

151. The Code of Criminal Procedure, INDIA CODE § 174 (1973).

152. PEN. CODE § 304B (1860) (amended 1986) (emphasis added).

153. See *What Constitutes the Offence of Dowry Death*, LEGAL ASPIRATION (Dec. 7, 2015), <http://www.lawkam.org/criminal/what-constitutes-the-offence-of-dowry-death/6094> [<http://perma.cc/UAY5-2PVA>].

154. Rew, Gangoli & Gill, *supra* note 3, at 155 (referring to the destruction of evidence that often occurs as a result of immolation).

155. *Bikshapathi v. State of Andhra Pradesh*, Cr. A. No. 918 of 1988, at para. 26 (HC, Andhra Pradesh Oct. 27, 1988); *Subrahmanyam v. State of Andhra Pradesh*, (1993) 2 SCR 666, para. 3.02 (quoting where the India Supreme Court expresses anguish over continuing dowry deaths); *Chandrasekaran v. State*, Cr. A No. 1161 of 2000, para. 48 (HC Mad., Aug. 20, 2003).

are complicit in the murder.¹⁵⁶ Even where evidence exists, police are often poorly trained and biased.¹⁵⁷ Police may not take a case seriously because they consider it a private matter and may not perform a rigorous investigation.¹⁵⁸ Police are also susceptible to corruption and can be bribed so that they do not investigate thoroughly, question witnesses, or collect evidence properly.¹⁵⁹ Families will pay to avoid the stigma of a charge, and when police are paid to look the other way, they often do.¹⁶⁰ By eliminating the need for causal proof, Section 304B removes many of the evidentiary difficulties that plague dowry death prosecutions.

Ironically though, this strict liability approach, intended to end dowry deaths and raise the status of women overall, could be detrimental to women in the long run. Because the law does not even contemplate inquiry into the real reasons behind the killing, other factors aside from dowry are never investigated. Section 304B's deeming provisions effectively make dowry practice the scapegoat, selecting it as the lynchpin and source of all violence in these cases. This is not to suggest that dowry plays no role, but selecting dowry as the sole motivator distracts us from a deeper interrogation of other causal factors. Dowry is merely the obvious evil, while other patriarchal practices that place women at risk are quietly discounted or overlooked.

This effect is sadly evident in the dowry death jurisprudence. Judges do not speculate on the reasons dowry deaths occur beyond the theory of dowry greed. Even the strange participation of mothers-in-law in dowry deaths has not provoked conjecture.

B. Beyond Greed

The real reasons for women's participation in these murders are likely much more complex than simple greed, but what does cause women to participate in such violence against other women? Social science scholars have offered several theories to explain why women

156. Sometimes, there is not even a corpse, because it is customary to cremate or bury the dead quickly after death. *See Singh v. State of Punjab*, Cr. A. No. 510 of 2007, para. 8 (SC July 3, 2013) (noting that the in-laws cremated the body of the victim before her parents could arrive).

157. Rehan Abeyratne & Dipika Jain, *Domestic Violence Legislation in India: The Pitfalls of a Human Rights Approach to Gender Equality*, 21 AM. U. J. GENDER, SOC. POL'Y & L. 333, 351–52 (2013).

158. *Id.*

159. Sujata Gadkar-Wilcox, *Intersectionality and the Under-Enforcement of Domestic Violence Laws in India*, 15 U. PA. J.L. & SOC. CHANGE 455, 468 (2012).

160. *See Abeyratne & Jain, supra* note 157, at 338.

might act as agents in their own oppression and the oppression of other women.

1. *Internalized Patriarchy*

Some suggest that Indian mothers-in-law, and other women who oppress women, do so because they have internalized the patriarchal values of their society.¹⁶¹ Internalized patriarchy theory,¹⁶² contends that when women are consistently devalued in society they begin to devalue themselves,¹⁶³ and other women similarly. In other words, the mother-in-law who abuses her daughter-in-law does so because she truly feels that women should not hold power or status in society. She may hold herself similarly to have little value. Some surveys of Indian women reveal that many believe they deserve to be beaten, and they claim fault for the abuse.¹⁶⁴

A mother-in-law who is controlled by her male family members, and has internalized the values that reduce women's status, will comply with the rules of the patriarchal system. Her long-suffering life is her badge of honor and compliance in this system. Furthermore, because women are punished for defying the patriarchal system, or even working outside the system, they learn to police the behavior of other women accordingly. The mother-in-law becomes another force of patriarchy, abiding by, and enforcing, the rules of that society.

2. *Patriarchal Bargain*

Another theory, the patriarchal bargain, asserts that mothers-in-law have struck a sort of bargain with the system: if they comply with the rules of patriarchy, eventually, they will be rewarded with power and privileges within that system.¹⁶⁵

In the family context, the mother-in-law has already spent her time as a daughter-in-law, perhaps suffering indignities at the hands of her own mother-in-law.¹⁶⁶ For years she must have managed the

161. Rew, Gangoli & Gill, *supra* note 3, at 147.

162. Internalization has also been suggested as a way to explain why some people of color feel prejudice against people of their own racial group.

163. Fernandez, *supra* note 10, at 439.

164. See NANDA PRIYA ET AL., INT'L CTR. RES. ON WOMEN, STUDY ON MASCULINITY, INTIMATE PARTNER VIOLENCE AND SON PREFERENCE IN INDIA, 28 (2014), http://www.icrw.org/sites/default/files/publications/Masculinity%20Book_Inside_final_6th%20Nov.pdf [<http://perma.cc/5FTX-9MBQ>].

165. Deniz Kandiyoti, *Bargaining with Patriarchy*, 2 GENDER & SOC'Y 274-75, 279 (1988).

166. See Rastogi & Therly, *supra* note 11, at 72.

household, under her own mother-in-law's strict guidance, having given up her own natal family, and moving to a home of strangers, most likely through an arranged marriage.¹⁶⁷ She might have sacrificed dreams of a career or personal ambition. Her status as a mother-in-law has been earned by her own life of sacrifices and struggles. The mother-in-law has waited for this day for a long time and she expects her due reward. When it does not come in the form of a dutiful daughter-in-law,¹⁶⁸ she feels cheated and righteously angry. The daughter-in-law is supposed to serve her mother-in-law, and give her respite from the daily drudgery of household tasks. Daughters-in-law who do not conform to the patriarchal ideals of the role risk the ire of the mother-in-law because they are not participating in the bargain. Criticisms often take the form of "this generation" complaints,¹⁶⁹ like "this generation is too modern"; "this generation of girls values independence over family"; and "girls nowadays do not know how to adjust; they just want everything their own way." Such complaints demonstrate an overarching alignment with the patriarchal aim of restricting younger women's freedoms. It is often regarded as mere conservatism or orthodoxy, but at root such old-school thinking is about preserving power structures.

Similarly, the mother-in-law's status is gained by being the mother of a son.¹⁷⁰ Her power over another woman, her daughter-in-law, is a result of her having given birth to a son. In this way also, the mother-in-law has struck a bargain with the system. She enjoys elevated status being the mother of a son, so it benefits her to elevate sons (males) overall. Her complicity with a system that values boys over girls, and sons over daughters, inures to her benefit. Therefore, the mother-in-law has a vested interest in ensuring that a system that values her status as the mother of a son continues. Because her access to power and control over her own life and surroundings is through her son, she would also want to ensure her control over her son is complete, and not diluted or divided by his wife, her daughter-in-law.¹⁷¹ A daughter-in-law who demands independent rights over her husband is disrespecting her mother-in-law's primary right over the same man.¹⁷²

167. Rew, Gangoli & Gill, *supra* note 3, at 152.

168. Kandiyoti, *supra* note 165, at 279.

169. See Adam Roberts, *Curse of the Mummyji*, THE ECONOMIST (Dec. 21, 2013), <http://www.economist.com/news/christmas-specials/21591745-curse-mummyji> [<http://perma.cc/5T68-G9W3>].

170. See Rastogi & Therly, *supra* note 11, at 72.

171. Rew, Gangoli & Gill, *supra* note 3, at 153.

172. Rastogi & Therly, *supra* note 11, at 72 (citing R. Jethmalani & S. Prasad, *Internalizing Patriarchy*, in KALI'S YUG: EMPOWERMENT, LAW AND DOWRY DEATHS 139–47 (R. Jethmalani ed., 1995)).

The patriarchal bargain theory allows for varying degrees of complex negotiation within the patriarchal framework.¹⁷³ Women (mothers-in-law) may police other women's (daughters-in-law) behavior to a greater or lesser degree, depending upon their own degree of autonomy and dependence on the bargain. Physical control and abuse of the daughters-in-law can be understood as a manifestation of this policing, bringing the daughter-in-law in line with the expectations of the patriarchal structure.

3. Limited Opportunities to Exercise Power

Some theorists suggest that senior women in the household oppress junior women in the household because it is the only opportunity for power available to them.¹⁷⁴ In other words, because women in the home are so socially constrained, exercising power over the daughter-in-law is the only outlet. The mother-in-law has power over younger females in the house, but she is otherwise subject to the rules of patriarchy and class that affect all women. What she wears, where she goes, to whom she speaks, and what she does in her spare time are all dictated by social and religious mores. She may still have the responsibility of arranging the marriages of other children, and of course she has the obligation to present the best public face of her marital family. She must still uphold the honor of the family, and manage everything with a firm hand, including the training of the new daughter-in-law.¹⁷⁵ People will blame her if her daughter-in-law is unruly,¹⁷⁶ or if the match or dowry is beneath their station. She must also ensure that her son remains close and loyal to his parents. Furthermore, her new status as a mother-in-law rekindles her obligations as keeper of family traditions.¹⁷⁷ This may cause a retrenchment of sorts, a return to an imagined era of conservatism,¹⁷⁸ even if she was never a part of it. These limitations may be even more suffocating if she is also subject to male authority in the house.

Within the Indian family structure however, age and status allow the mother-in-law a limited opportunity to exercise power over her junior, the daughter-in-law. The desire to exercise power somewhere and somehow, even over another woman, is strong. Thus, dominating junior women in the home is a rare opportunity to exercise power in a world that affords few opportunities to do so.

173. Kandiyoti, *supra* note 165, at 278–79.

174. See Roberts, *supra* note 169; see also Ghafour, *supra* note 8.

175. See Rew, Gangoli & Gill, *supra* note 3, at 154.

176. See *id.*

177. See *id.*

178. See *id.*

4. *Individual Agency and Autonomy*

Finally, some argue that women abuse other women simply because they choose to. Feminist professor Phyllis Chesler argues that attributing such acts to the influences of patriarchy essentially infantilizes women, and renders them less than fully human.¹⁷⁹ If we are to respect women as human beings capable of making choices, Chesler asserts, we must recognize their full agency in the choices they make. Under this theory, the mothers-in-law who abuse and kill their daughters-in-law do so because they are angry, greedy, and power hungry. They abuse and kill the daughters-in-law because they can, and even because they want to. They are fully responsible for their actions, and for their deviance from feminine norms.

Furthermore, the fact that the acts are extremely violent does not categorically remove them from the feminine norm; the spectrum of violence, Chesler argues, is the same for all human beings.¹⁸⁰ The fact that women exercise their capacity for extreme violence more rarely than men does not mean that the spectrum does not extend to it. Instead, women are just as capable as men of extreme violence, and they commit violence with just as much individual autonomy and agency as men do.¹⁸¹

Predictably, the individual agency theory is most consistent with the application of the criminal law. In fact, the legitimacy of criminal law rests almost entirely on a theory of individual agency and autonomy. Eighteenth century philosopher Immanuel Kant famously expounded upon this theory in his treatise *The Metaphysic of Morals*,¹⁸² as a basis for his theory of punishment. Essentially, the capacity to know (or will) the moral choice, divorced from want and desire, is the essence of autonomy.¹⁸³ When one violates the law, one makes a choice, and thus is properly subject to punishment. The considerations that go into making that choice do not affect your capacity to make the choice—they just affect the choice you make, and therefore they play no role in reducing your culpability. Kant concluded that punishing the criminal for violating the law was an essential demonstration of respect for and recognition of the criminal's exercise of autonomy.¹⁸⁴ Similarly, Chesler suggests that acknowledging

179. See CHESLER, *supra* note 149, at 67; see also MORRISSEY, *supra* note 54, at 17.

180. CHESLER, *supra* note 149, at 67–68.

181. *Id.* at 35, 39.

182. EMANUEL KANT, METAPHYSIK DER SITTEN [METAPHYSIC OF MORALS] 105 (English Translation 1799); IMMANUEL KANT, GROUNDWORK FOR THE METAPHYSIC OF MORALS 31–32 (Jonathan Bennett ed., 2008) (1785).

183. IMMANUEL KANT, GROUNDWORK FOR THE METAPHYSIC OF MORALS 36–37.

184. IMMANUEL KANT, METAPHYSIC OF MORALS 105.

the woman's *choice* to act violently is the inevitable consequence of recognizing woman's full humanity.¹⁸⁵

Criminal law relies fundamentally on this minimalist notion of autonomy—i.e., that autonomy is realized in the choosing. From a law and order perspective, this theory is much more practical. It extends moral responsibility to all, and relieves people of culpability only when the conduct is justified (morally right) or when the person lacks the capacity to choose.¹⁸⁶

But Kant's theory of autonomy has been criticized for being atomistic, and ignoring the basic operation of human society, which is relational.¹⁸⁷ Furthermore, it privileges the rational or intellectual to the absolute exclusion of the emotional. Not only does this fail to recognize the lived human experience, which includes emotions, it operates to elevate men, who historically have been considered more capable of reason and less subject to the "emotional weaknesses" of the fairer sex.¹⁸⁸

Alternatively, feminists have posited several theories of autonomy that take into account the relational experience of women.¹⁸⁹ These theories are important in attempting to answer the difficult question of agency when women appear to act against their own interests or the interests of women in general, as in when they participate in oppressive practices like dowry. Since choice has been the central characteristic of autonomy, the theories have focused on the ways in which that choice is affected. Marilyn Friedman stated "when an agent chooses or acts in accord with wants or desires that she has self-reflectively endorsed, then she is autonomous."¹⁹⁰ Accordingly, when one is not able to choose what one truly wants because of external constraints, then she is not autonomous, even though she makes a choice. Relational factors that constrain a woman's freedom to choose, or limit the areas in which she can exercise choice, thus limit autonomy.¹⁹¹ In that same vein, Diane Meyers suggested that the capacity to reflect could itself be impaired through cultural forces.¹⁹² Women might be incapable of recognizing the things that

185. CHESLER, *supra* note 149, at 67–68.

186. See LAFAYE, *supra* note 141, at 8–9, 16.

187. See Natalie Stoljar, *Feminist Perspectives on Autonomy*, STAN. ENCYCLOPEDIA OF PHIL. (May 2, 2013), <http://plato.stanford.edu/entries/feminism-autonomy/#PraOpp> [<http://perma.cc/R7N2-483W>].

188. See Catharine A. MacKinnon, *Not a Moral Issue*, in APPLICATIONS OF FEMINIST LEGAL THEORY TO WOMEN'S LIVES: SEX, VIOLENCE, WORK, AND REPRODUCTION 37, 46–47 (D. Kelly Weisberg ed., 1996).

189. Stoljar, *supra* note 187.

190. See *id.* (citation omitted).

191. See *id.*

192. *Id.* (citation omitted).

are doing harm to them and the things that would benefit them, because of cultural forces that prevent women from learning how to think for themselves. Meyer calls the ability to recognize those conditions “autonomy competency.”¹⁹³ These feminist conceptions of autonomy allow for a diversity of individual choices, while still making room to consider the degree that cultural and relational factors limit women’s capacity to consider and execute choices.

Under Kant’s (and Chesler’s) minimalist autonomy theory, the reasons a mother-in-law might act to further the patriarchal power structure—internalized oppression, bargain, or limited opportunity to exercise power—hardly matter. She has complete autonomy and therefore is fully responsible for her choice. Under this theory, dowry deaths result from the moral failures of individuals, and not a societal failure to value and protect women.

In contrast, under the relational theory of autonomy, we can take into account the factors that motivate women’s participation in patriarchy. These provide a more nuanced view of women’s motivations in dowry death cases, and reveal the forces which might drive a mother-in-law to be complicit with patriarchal systems. Accepting these theories does not mean that women should be excused for their participation in these crimes, but it does mean recognizing that their capacity for autonomy can be impinged by societal factors. Under these theories then, society bears some responsibility for the conditions under which women choose. Technically, neither of these theories prevents women from choosing to participate in practices that oppress other women, or from choosing subservience for herself, if she is making a truly free choice.

Some social scientists have dismissed such analyses, arguing that any of these theories only explains what might drive a woman to participate in the power structure that oppresses other women, and not what might drive a woman to kill.¹⁹⁴ This, I submit, is a false question. In any society, there will always be those who violate the rules to the extreme. We can never know what will drive one man—or woman—to kill over money, and another refrain. We do know that in a system of oppression, there will always be degrees of oppression. In a system where the societal status of a daughter-in-law is inferior, there will be a large number of women who are verbally abused by their mothers-in-law. There will also be a proportion, though smaller, who are physically abused by their mothers-in-law. There will also be some who are killed by their mothers-in-law. The “why” simply

193. *Id.*

194. *Id.*

cannot be answered by looking at the top point, the extreme edge, and the small proportion of cases in which killing occurred. To understand why the women kill other women, we need to look to the conditions that made it possible for them to view women as inferior, and ultimately expendable.

V. GOING FORWARD—DON'T COUNT ON THE COURTS

Over the past forty years, Indian courts have adjudicated hundreds of dowry death cases. Judges lament the steady stream of cases, and the deplorable facts that come to light in each.¹⁹⁵ Judges also appear frustrated that even the harshest sentences have had little effect in curbing the phenomenon.¹⁹⁶ One might, given the criminal law approach of the legislature, put faith in the courts in the drive to eradicate dowry deaths. After all, the Justices of the Indian Supreme Court are especially cognizant of their dual role in apply the law and promoting social change.¹⁹⁷ Unfortunately, such faith would be misplaced. Like the legislature, the courts have not looked beyond the accepted motive of dowry greed for reasons, and like the legislation, they appear bound to the patriarchal practices under the guise of tradition.

Because dowry deaths are specifically located in the marital relationship, the Supreme Court's comments on women, marriage and family may nonetheless prove instructive. Although the burden of effecting change in this context is decidedly heavy, it has not prevented the courts from commenting on the status of women in India and the long road ahead. Consider the ways in which the court opines about marriage at length in *State (Delhi) v. Laxman Kumar*:

Every marriage ordinarily involves a transplant. A girl born and brought up in her natural family when given in marriage, has to leave the natural setting and come into a new family. . . . In the growing years in the natural setting the girl—now a bride—has formed her own habits, gathered her own impressions, developed her own aptitudes and got used to a way of life.

195. See *Jasvinder Saini v. State Delhi*, Cr. A. No. 819 of 2013, at para. 5 (SC July 2, 2013).

196. J. Venkatesan, *Dowry Killings Deserve Death Penalty: Supreme Court*, THE HINDU (Nov. 1, 2010, 3:20 AM), <http://www.thehindu.com/news/national/dowry-killings-deserve-death-penalty-supreme-court/article861624.ece> [<http://perma.cc/SFX9-ZTNU>].

197. The Supreme Court remarked here: "It is our considered opinion that this Court has obligation within reasonable limits and justifying bounds to provide food for thoughts which may help generate the proper social order and hold the community in an even form." *State Delhi v. Laxman Kumar*, (1985) 2 SCR 898.

In the new setting some of these have to be accepted and some she has to surrender. This process of adaptation is not and cannot be one-sided. Give and take, live and let live, are the ways of life and when the bride is received in the new family she must have a feeling of welcome and by the fond bonds of love and affection, grace and generosity, attachment and consideration that she may receive in the family of the husband, she will get into a new mould; the mould which would last for her life. She has to get used to a new set of relationships—one type with the husband, another with the parents-in-law, a different one with the other superiors and yet a different one with the younger ones in the family. For this she would require loving guidance. The elders in the family, including the mother-in-law, are expected to show her the way. The husband has to stand as a mountain of support ready to protect her and espouse her cause where she is on the right and equally ready to cover her either by pulling her up to protecting her willingly taking the responsibility on to himself when she is at fault. The process has to be a natural one and there has to be exhibition of cooperation and willingness from every side. Otherwise how would the transplant succeed[?]¹⁹⁸

This passage is often quoted in other dowry violence cases.¹⁹⁹ Like the dowry violence legislative provisions themselves, this rosy picture of married life reveals a conservative view of family relations: brides are expected to adjust, and are subject to their elders; mothers-in-law must be loving, generous and nurturing; husbands must be strong (and ultimately side with their wives).

This depiction casts women within a deeply conservative ideal. Even if the ideal appears unrealistic, it is comfortably ensconced in our collective unconscious. The mother-in-law who serves as a loving guide to an innocent young bride in need of care, evokes the universal image of the Mother,²⁰⁰ who represents unconditional love.

198. *Id.* at 934–35.

199. Multiple cases reference similar language in varying forms; example include *Paniben v. State of Gujarat*, (1992) 2 SCR 197 and *Rathi v. State of Maharashtra*, (1992) Crim LJ (HC Bombay) 2106 (1991).

200. The three archetypes of womanhood—the Maiden, the Mother, and the Crone—were long ago posited by Carl Jung. See Ruth E. Ray, *Toward the Croning of Feminist Gerontology*, 18 J. AGING STUD. 109, 111 (2004). Archetypes are universal archaic images and motifs derived from our collective unconscious. They transcend social, cultural and temporal boundaries. Jung asserted that the female archetypes, present and persistent in literature, religion and social structure, helped to account for the experiences and psychology of women. *Id.* Archetypes also influence the way we interpret women's experiences and actions. I refer to these archetypes not to subscribe to a particular world-view, but to utilize them as a convenient shorthand for the most common conceptions of womanhood worldwide. According to Jung, a woman passes naturally from one stage to the next in her life, each representing her essential qualities and experiences. *Id.* Applying Jungian

Though influenced and augmented by the particular manifestations of Woman in Indian history, literature and religion (primarily Hindu mythology), the core attributes and characteristics of Jung's classic archetypes remain essentially unchanged in their Indian avatars. The Indian image of the Mother is the embodiment of love. She is ever patient. She dotes on her children well into their adult lives. An Indian mother never puts her own comfort over that of her children, and works tirelessly for their benefit. She is self-sacrificing to a fault.²⁰¹ Even the nation is referred to as Mother India.²⁰² Mothers and motherhood hold a central place in Indian culture and society.

It is not surprising, then, that this ideal has found its way into legal pronouncements describing what a mother, and by extension a mother-in-law, should be. The mothers-in-law involved in dowry violence are held to these standards. Not only held culpable under the law, these women are held doubly blameworthy for their gross departure from the Mother(-in-law) ideal.²⁰³ Women's violent conduct is perceived as worse because the deviation from the inherently benevolent feminine ideal is that much greater.

In contrast, because they expect men to be violent, courts are more likely to tolerate violence from men.²⁰⁴ Husbands in dowry violence cases are given lesser sentences, and often receive bail, while their mothers sit in jail.²⁰⁵ Sometimes the men are even partially excused for their actions.²⁰⁶ Consider how the court's language below

theory, "[t]he Maiden represents the purity and innocence of childhood . . ." *Female Archetypes*, SCHOOL MODERN PSYCHOLOGY, <http://www.schoolofmodernpsychology.com.au/wp-content/uploads/2015/04/Female-Archetypes.pdf> [<http://perma.cc/AZ54-LAT4>]. Next comes the Mother. *Id.* The Mother is the giver of life. *Id.* She provides sustenance and can be self-sacrificing to deliver it. *Id.* She nurtures and comforts and cares for all things and all children. *Id.* She represents unconditional love. *Id.* In many ways, because of her life-giving ability, she is the culmination of womanhood. The last archetype, the Crone, is the old woman. *Id.* She represents the knowledge of the earth and the experience of all the stages before. *Id.* She is patient and wise. *Id.*

201. Consider one story of the Hindu Goddess Kali, also called the Universal Mother. Though she might initially appear as the most antiwoman example because of her destructive persona, she is also known for feeding her children with her own blood to sate their hunger and thirst. See Wendy Doniger, *Kali*, ENCYCLOPEDIA BRITANNICA, <http://britannica.com/topic/Kali> [<http://perma.cc/5Y3Y-8M7N>].

202. Translation of Bharat Mata is Mother India.

203. See, e.g., *Lichhamadevi v. State of Rajasthan*, (1988) 4 SCC 456 (India); see also MORRISSEY, *supra* note 54, at 156 (referring to the feminist construction of the Nurturing Woman).

204. See MORRISSEY, *supra* note 54, at 17, 46.

205. See Tim Sullivan, *Attacks on Brides Rise with Dowry Demands*, L.A. TIMES (July 25, 2004), <http://articles.latimes.com/2004/jul/25/news/adfg-dowry25> [<http://perma.cc/4KFG-C8RG>].

206. *Bikshapathi v. State of Andhra Pradesh*, Cr. A. No. 918 of 1986, at para. 53 (HC, Andhra Pradesh Oct. 27, 1988) (describing the defendant husband as being under the influence of his mother).

ultimately shifts the blame onto the mother-in-law, even as it pretends to castigate the husband:

It is more disturbing and sad that in most of such reported cases it is the woman who plays a pivotal role in this crime against the younger woman, as in this case, with the husband either acting as a mute spectator or even an active participant in the crime, in utter disregard of his matrimonial obligations. In many cases, it has been noticed that the husband, even after marriage, continues to be 'Mamma's baby['] and the umbilical cord appears not to have been cut even at that stage.²⁰⁷

Resorting to a feminine ideal as a standard affects daughters-in-law negatively too. The Maiden archetype emphasizes innocence. As Maidens, new brides are expected to be submissive and wide-eyed, with little knowledge of the world. The ideal daughter-in-law is based on Sita,²⁰⁸ the long-suffering wife of Lord Ram, who withstood fourteen years of exile in the forest and never uttered a word of complaint. Educated women with careers and experience are therefore less suitable as daughters-in-law. Women with expectations who speak their minds are also less suitable as daughters-in-law. They will have to change their ways and adjusting to the marital home will be that much harder. By endorsing the idealized models of women and marital relationships, the courts effectively pigeonhole all women into conformist subordinate roles. Variance from these ideals is then blameworthy in the public sphere. Women become further constrained as orthodoxy is dressed up as "tradition." Instead of undoing patriarchy, the cases work to undo progress.

This turn is already happening. Last year, the Supreme Court of India issued its decision in *Arnesh Kumar v. State of Bihar*, sharply curtailing police authority to make arrests on complaints of dowry harassment.²⁰⁹ Prior to this decision, police were able to make arrests immediately, and hold the accuseds until a bail hearing.²¹⁰ These provisions were intended to overcome police bias and inertia in dowry violence cases.²¹¹ It provided victims with immediate safety, at least for a few days.²¹² *Arnesh* requires police show sufficient grounds for

207. *Subrahmanyam v. State of Andhra Pradesh*, (1993) 2 SCR 666, 689.

208. Rashmi Goel, *Sita's Trousseau: Restorative Justice, Domestic Violence, and South Asian Culture*, 11 VIOLENCE AGAINST WOMEN 639, 646–47, 649 (2005).

209. *Arnesh Kumar v. State of Bihar*, Cr. A. No. 1277 of 2014, at 16–17 (SC, July 2, 2014).

210. *See id.* at 3.

211. *See id.*

212. *See id.*

arrest in front of a magistrate before an arrest can be made.²¹³ In part, the Court asserted a need to check state power, particularly since police corruption is well-recognized.²¹⁴ But the core of its decision was based upon allegations of Section 498A abuse.²¹⁵ Many cases, it was alleged, were simply trumped up allegations by vindictive wives who wanted to fleece their husbands and parents-in-law.²¹⁶ Men's groups were protesting that the laws had gone too far, and were now being used to harass innocent men, their aging parents, and even innocent sisters-in-law who resided abroad.²¹⁷ Based on the lower rate of convictions in Section 498A cases, and the specter of false allegations, the court declared that 498A "[held] a dubious place of pride among the provisions that are used as weapons rather than shield [sic] by disgruntled wives."²¹⁸ Despite evidence that established that the rate of false allegations is no more than in other criminal cases,²¹⁹ the "disgruntled wife" is held up for her failure to emulate the ideal wife's patient fortitude. Although India has a long history of prioritizing larger social goals over civil rights, here the prospect of the false allegation was enough to drive a substantial reduction in protections for all complainants.²²⁰

Similarly, other cases involving the interpretation of Section 498A and Section 304B have limited their application. For instance, the time prior to death in which dowry harassment must have occurred has been shortened—one week is too long in some cases.²²¹ "Soon before her death" has been characterized as an "elastic expression"²²² dependent upon the circumstances, and intervening periods of reconciliation have been held sufficient to break any causal chain.²²³ A killer from the extended family who does not reside with the groom and bride will not count as a relative, even if the killing was related to dowry harassment, so the groom's maternal uncle is not a relative

213. *See id.* at 11–13. This does not prevent police from making arrests if they actually witness dowry violence and need to intervene, but it prevents immediate arrest on a complaint alone.

214. *Id.* at 5.

215. *Arnesh Kumar v. State of Bihar*, Cr. A. No. 1277 of 2014, at 3 (SC, July 2, 2014).

216. *See id.* at 3–4.

217. *Id.*

218. *Id.* at 3.

219. *See Samanwaya Rautray, Section 498A: Has Supreme Court Taken a Retrograde Step by Diluting an Anti-Harassment Law?*, *ECON. TIMES*, (July 20, 2014, 4:00 AM), http://articles.economicstimes.indiatimes.com/2014-07-20/news/51780217_1_ncrb-csr-apex-court [<http://perma.cc/52WU-CYEH>].

220. Much as the specter of the false rape allegation has controlled the law in the field of rape. The search for truth and the protection of women in have become secondary to the defendant's rights, despite a near epidemic of rape in American society.

221. *Prem Kumar v. State of Kerala*, Cr. A. No. 2088 of 2008, (SC, Dec. 19, 2008).

222. *Satvir Singh v. State of Punjab*, (2001) 8 SCC 633, para. 27.

223. *Mustafa Shahadal Shaikh v. State of Maharashtra*, (2012) 11 SCC 397, para. 8.

for the purposes of Section 304B according to one case.²²⁴ Despite Supreme Court statements on the deeming provisions to the contrary, one high court judge has asserted that some causal connection to the dowry dispute must also be proven. Early dicta that called for the death penalty in every dowry murder case was quickly dialed back, so that the death penalty has only been imposed, though never carried out, in one case so far since 1985.²²⁵ In other words, the broad power and coverage of Sections 498A and 304B are slowly being chipped away. They too, it appears, are becoming complicit in the patriarchal power structure, despite their good intentions and honest grief over the increase in dowry death rates.

Courts do not seem aware of the ways repressive attitudes about women are being subtly upheld in their support of cultural traditions, feminine ideals, and observations on family relations. The judges unquestioningly accept the simplistic framing of dowry violence as a monetary crime.²²⁶ Predictably this elicits monetary solutions; courts and legislatures suggest increased education and financial independence for women will ultimately eradicate dowry deaths.²²⁷ But dowry death victims already comprise many educated and financially independent women; this alone is not a solution. Ultimately, the focus on dowry greed as the singular motivation for dowry killings detracts from a more sophisticated examination of the multiple factors that support the patriarchal structure and the power structures that oppress women in Indian society. Without tackling the other practices that support the patriarchal power structure, dowry deaths will continue to occur as violent symptoms of that power structure.

CONCLUSION

The women who kill women present a multilayered and complex crisis with no ready solution. India's current approach to dowry

224. See *HC Drops Dowry Charges Against Distant Relative of Husband*, TIMES OF INDIA (July 16, 2010, 5:51 AM), <http://timesofindia.indiatimes.com/city/ahmedabad/HC-drops-dowry-charges-against-distant-relative-of-husband/articleshow/6173730.cms> [<http://perma.cc/N8PN-2XK6>].

225. Although *State (Delhi) v. Laxman Kumar* was the first case in which the death penalty was imposed by the trial judge, the sentence was never carried out as the Supreme Court ultimately converted the punishment to life imprisonment. In subsequent cases where lower courts imposed capital punishment, appellate courts similarly have reduced the sentence to life imprisonment. See, e.g., *State of Madhya Pradesh v. Manmohan Choubey*, (1994) 3 Crimes 776. For additional discussion of sentencing for dowry death, consider VINAY SHARMA, DOWRY DEATHS: LEGAL PROVISIONS AND JUDICIAL INTERPRETATION 55–62 (2007). See also LAW COMM'N OF INDIA, *supra* note 109.

226. See Venkatesan, *supra* note 196.

227. See, e.g., *Subrahmanyam v. State of Andhra Pradesh*, (1993) 2 SCR 666, paras. 3.01–02 (India).

deaths is grossly inadequate. It does not matter how many mother-in-law wings are added at Tihar jail; reliance on the criminal law will always be inadequate when the problem is greater than criminal behavior. To solve this problem, we must first recognize that the readily observable evils, like dowry deaths, are mere symptoms of patriarchy, not incarnations. Working to eradicate the symptoms will never be enough without addressing the underlying conditions that give rise to those symptoms. This study reveals that the influence of patriarchy survives in socially venerated acts as much as criminal ones. Patriarchy is not only pervasive but insidious. It absorbs as much as it oppresses, and co-opts as much as it controls.

The larger question then is "How does one dismantle the patriarchal power structure when the objects of its oppression are complicit with its operation?" The answer will not be easy. For decades, Indian feminists have fought for equality in classrooms and boardrooms, out in the public sphere. These problems though, like Gandhi's cotton, are homespun. In the face of such intricate oppressions, to effect the profound social changes necessary, the revolution needs to return to the source: it needs to start at home.