

THE DILEMMA OF DOWRY DEATHS: DOMESTIC DISGRACE OR INTERNATIONAL HUMAN RIGHTS CATASTROPHE?

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"[W]hen murders, tortures . . . go unchecked, more so when their perpetrators (the worst people in the world) are treated as if they are legitimate, the common humanity of all of us is stained."¹

I. INTRODUCTION

Six months after nineteen-year-old Santara married, her in-laws began badgering her to ask her parents for money to buy a car. "Why don't you go home and get 50,000 rupees (about \$1600)," her mother-in-law told her, "[o]therwise we'll throw kerosene on you." Santara's family did not come through with the money, and three months later, Santara's mother-in-law carried out her threat. She poured kerosene on the young bride but, before she could strike the match, Santara fled the house. She hid at a neighbor's home until her mother came to rescue her.²

Santara's story does not end there. In India, a broken marriage is considered a mar on the bride's family's honor. Consequently, soon after Santara returned to her parent's home her mother began pressuring her to return to her husband's home. Her mother went so far as to file a case of desertion against her husband, hoping the courts would force him to take Santara back. "I could not keep a married daughter with me," Santara's mother said. "There would be a stain on her honor because she has been deserted. It would mean more and more dishonor for me."³ Six months later the court ordered the husband's family to take Santara back with a harsh warning against harming her.⁴ Whether Santara's in-laws will pay heed to the court's warning remains to be seen.

The only thing remarkable about Santara's story is its ordinariness. Indeed, her's is the paradigm tale of thousands of young Indian brides who attempt to escape from an abusive marriage only to be sent back to their deaths. Despite the Indian government's efforts to outlaw dowry and criminalize dowry-related deaths, seventeen Indian women are reported burned, poisoned, strangled or otherwise killed each day at the hands of husbands and in-laws whose greedy demands are not

1. David Luban, *The Romance of the Nation-State*, 9 PHIL. & PUB. AFF. 392, 397 (1980).

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

3. *Id.*

4. *Id.*

met.⁵ Law enforcement of Indian laws has allowed the practice to increase at an alarming rate. In the last ten years the number of dowry murders has increased 170%.⁶

The practice of dowry murder constitutes a deprivation of the right to life, of the right to security in one's person, and of the right to be free of torture. The failure of the Indian government to stop this practice is a violation of its obligations under the Universal Declaration of Human Rights,⁷ the International Covenant on Civil and Political Rights⁸ and the Declaration on the Elimination of Violence Against Women.⁹

Part II of this Note explains the roots of dowry death and how Indian culture and religion perpetuate this practice. Part III analyzes the Indian positive law currently in place to prevent dowry deaths and discusses its shortcomings. Part IV evaluates the relevant United Nations (U.N.) documents and posits reasons why the U.N. should take action in and/or against India for allowing this practice to continue. Part V examines the legitimacy of possible United Nations interference in India's efforts to deal with dowry murders through an evaluation of the philosophical arguments against intervention. Part VI refutes these arguments and discusses additional reasons for U.N. action to encourage the Indian government to take a firmer stand against dowry death. Finally, Part VII discusses possible U.N. involvement and makes suggestions for implementation of sanctions against India.

5. *Id.* Dowry deaths are notoriously under-reported because the husband and his relatives either disguise the death as a suicide or the bride's family considers the death shameful and wishes to avoid publicizing it. Renu Kakkar, *India: "Dowry Death" Victims Get No Justice*, INTER PRESS SERVICE, Aug. 6, 1990, available in LEXIS, Nexis Library, INPRES File.

6. Kakkar, *supra* note 5.

7. Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948) [hereinafter UDHR].

8. International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 6 I.L.M. 368 (entered into force Mar. 23, 1967) [hereinafter ICCPR].

9. The Declaration on the Elimination of Violence Against Women, Feb. 23, 1994, 33 I.L.M. 1049 [hereinafter Declaration on Violence]; Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 COLUM. HUM. RTS. L. REV. 291, 295, 319, 357 (1994); Rebecca J. Cook, *State Responsibility for Violations of Women's Human Rights*, 7 HARV. HUM. RTS. J. 125, 138 (1994) (asserting that violence systematically inspired by the state to subjugate women is torture); see also Angela Carlson-Whitley, Note, *Dowry Death: A Violation of the Right to Life Under Article Six of the International Covenant on Civil and Political Rights*, 17 U. PUGET SOUND L. REV. 637, 638 (1994).

II. WOMEN IN INDIAN SOCIETY: SETTING THE STAGE FOR DOWRY MURDERS

The status of women in Indian society is the fundamental reason dowry deaths continue to rage unchecked.¹⁰ From birth, an Indian female is considered a burden.¹¹ Her family will have to expend its valuable resources for the care and upbringing of a child who, because she will leave her family for her husband's upon her marriage, will be unavailable to support and care for them in their old age.¹² Furthermore, when she is old enough to marry, her parents will have to amass large quantities of money to induce her new family to take on the burden of her maintenance.¹³ For these reasons, Indians are more likely to abort female fetuses,¹⁴ murder female infants,¹⁵ and favor sons in terms of food, medical treatment, and education.¹⁶

10. *Plight of Indian Women: Burned, Beaten, Choked*, PLAIN DEALER, Feb. 17, 1992, at 4E [hereinafter *Plight*].

11. ELISABETH BUMILLER, *MAY YOU BE THE MOTHER OF A HUNDRED SONS: A JOURNEY AMONG THE WOMEN OF INDIA* 10 (1990). Bumiller notes that while the birth of a boy is a time for celebration, the birth of a girl is viewed as a crisis. She reports that the cultural preference for boys is so strong that the phrase, "[m]ay you be the mother of a hundred sons," is a blessing given to a Hindu woman at the time of her wedding. In an interview with a young Hindu woman, Bumiller was told "Our society makes you feel so bad if you don't have a son. Especially when I go out for parties, people say, 'How many children?' and I say, 'Two girls' and they say, 'Oh, too bad, no boy.'" See also *In India, Dowry is Key to 'Decent Marriage'*, N. Y. TIMES, Jan. 2, 1994, at 16A [hereinafter *Dowry is Key*] (pointing out that many Indian parents maintain that their problems are not with the dowry system but with their daughters. "Girl children are a big headache, a big problem. One man said, '[w]hy this trouble? If we don't give birth to girl children, we wouldn't have these problems . . ."). *Id.*

12. BUMILLER, *supra* note 11, at 102. The author notes that a daughter is an investment with little return. She will never earn as much working in the fields as a son, and her small contribution to the family will end upon her marriage. *Id.*

13. Moore, *supra* note 2. Moore points out that the poorest of Indian families spend more than \$3000 on a wedding - the equivalent of nearly 10 years wages for the average worker. *Id.*; see also *India's Hidden Tragedy*, BOSTON GLOBE, August 4, 1991, at A26. The author reports that, in 1988, three sisters hanged themselves from a ceiling fan. The eldest was to marry but her parents could not meet the dowry demand. The younger sisters hanged themselves in fear that their parents would face similar burdens when their turn came to marry. *Id.*

14. BUMILLER, *supra* note 11, at 115-16. Bumiller notes that amniocentesis for sex selection is practiced by Indian women of all classes. A working class Bombay clinic preyed on the fear of dowry with slogans such as, "[b]etter 500 rupees now than 500,000 later." A study of a different clinic by a Bombay women's organization found that of 8000 women tested, 7999 wanted a boy. One woman Bumiller interviewed said if the child she carried turned out to be a girl, she would have an abortion, not because she couldn't afford a daughter, but because she wanted a boy. *Id.*; see also Clifford J. Levy, *India's Dowry Obligations Cause Fiery Deaths*, UPI, July 31, 1988, available in

Should an Indian girl survive childhood, her fate is an arranged marriage that is little more than a business deal: the groom's family acquires material wealth and the bride's family rids itself of a mouth to feed.¹⁷ After her marriage, the young bride moves in with her husband's family and becomes a virtual slave to her mother-in-law.¹⁸ Additionally, because she has met her husband only once or twice, generally no emotional bond or affection exists between the couple.¹⁹

LEXIS, Nexis Library, UPI File (noting one study that found 99% of fetuses aborted after sex testing were female).

15. BUMILLER, *supra* note 11, at 107-11. Bumiller chronicles the stories of four couples in the village of Belukkurchi who murdered their infant daughters. One couple hired a man to give their day-old baby milk from a poisonous plant. They justified the act as having saved the girl from a lifetime of suffering. The second and third couples also poisoned their child, because abortion was too costly. The fourth couple gave their infant daughter sleeping pills mixed with cow's milk. The husband explained that this would have been their second daughter and that they had only saved enough money to supply a dowry for their first. A second daughter would have ruined the family's financial future. *Id.* at 108-11. An impoverished couple drowned their daughter in the Yamuna River one hot summer night. "They said they were too poor to save for her dowry, and a lame girl would have meant more dowry money," reports the investigating police officer. *Id.*

The same author also reports that in the villages of Rajasthan, very few girls can be found. Because Bhatti men marry women from other villages, and Bhatti women are not allowed to marry either below their caste or another Bhatti, their choice of groom is severely limited. Most parents prefer to kill their daughters than support them for the rest of their lives. Methods used by the Bhatti include strangling, placing a heavy bag of sand or salt on the infant's face, putting a cot leg on the infant's throat and pressing, stuffing opium into the baby's mouth, or leaving the baby out in the open. *Id.*

In Tamil Nadu where almost 80% of all female babies born are killed, parents use poisonous berries or place an uncooked grain of rice in the baby's mouth. "If it does not suffocate the child, the sharp point of the grain tears the intestine," reports an officer of the New Delhi police squad. *Id.*

16. *Id.* at 105. Girl babies are denied the same food and medical care that boy babies receive and often suffer from severe malnutrition. Bumiller notes that, in India, girl babies die more often than boy babies, even though medical research has found that girls are generally biologically stronger than newborn boys. *Id.* at 90. Bumiller further notes that, in the village of Khajuron, while the majority of the children went to grade school, only 20% of the girls went on to high school compared to 80% of the boys. Boys were considered a better investment than girls. *Id.* See *supra* note 13.

17. Rone Tempest, *Dowry Deaths: India Brides Still Facing Fieri Ordeal*, L.A. TIMES, Oct. 10, 1987, P 1, Pt 1, Col 1.

18. *Id.*

19. BUMILLER, *supra* note 11, at 26; see Tempest, *supra* note 17, who reports that from her wedding night the bride is no longer considered a daughter in her parents' home. She must move in with her husband and begin a new life among strangers. The author reports that most Indian mothers-in-law rule their homes with an iron hand. See also Elisabeth Bumiller, *The Wife and the Flame of Mystery*, WASH. POST, Apr. 1, 1986, at E1 [hereinafter *Flame of Mystery*]. Sociologists theorize that mothers-in-law

Consequently, when a bride's dowry proves insufficient, and her parents are unable to supplement it, the lack of emotional attachment between the couple facilitates the groom's family in ridding themselves of her without thought.²⁰

The socialization of Indian girls allows this manipulation and torture to continue. Indian women are unable to stand up for themselves, and when they do, they are quickly silenced.²¹ Indian society conditions females from childhood to be subservient to their husbands.²² Men, on the other hand, are taught that they may beat or even kill their wives.²³ Once a woman marries, Indian culture requires that her maternal family eschew her, never to allow her back into their household.²⁴ In addition, a broken marriage brings great disgrace to both the bride and her family.²⁵ Relatives and neighbors, therefore, usually refuse to assist a bride who escapes an abusive home.²⁶ Consequently, women rarely seek divorces, nor do they accuse their husbands of violence. Instead, they suffer in silence.²⁷ Society's mandate of obedience extends so far that often Indian wives will refuse to implicate their husbands in their murders even on their death beds, blaming their in-laws instead.²⁸ Because Indian society views females as valueless burdens and because Indian marriages are generally for profit, Indian society implicitly sanctions the practice of dowry murders.

Indian culture did not always view women as a burden. During the Vedic period, 2500 B.C. to 1500 B.C., men and women shared equal status.²⁹ Society

have missed out on emotional intimacy in their own arranged marriages and, therefore, turn to their sons for intimacy. By mistreating her daughter-in-law, she merely repeats what was done to her by her own mother-in-law a generation before. It is through the mother-in-law that the most vicious aspects of Indian sexism are realized. In many cases, perhaps to make up for a lifetime of abuse, the mother-in-law hounds the wife into suicide or actually kills her. *Id.*

20. Tempest, *supra* note 17.

21. Moore, *supra* note 2.

22. Tempest, *supra* note 17. Tempest reports that the 11th Century "Padmapurana," the Hindu code of marriage outlined in the ancient religious texts, instructs a woman that even if her husband is "offensive in his manners, is choleric, debauched or immoral; if he is a drunkard or a gambler; if he raves like a lunatic . . . whatever his defects may be, a wife should always look upon him as her god and should lavish on him all her attention and care . . ." *Id.*

23. *Id.*

24. Barbara Crossette, *India Studying 'Accidental' Deaths of Hindu Wives*, N.Y. TIMES, Jan. 15, 1989, at A10. Girls are told from childhood that once they leave they can come back only as a dead body. *Id.*

25. Melissa Spatz, A "Lesser" Crime: A Comparative Study of Legal Defenses for Men Who Kill Their Wives, 24 COLUM. J.L. & SOC. PROBS. 597, 615 (1991).

26. Moore, *supra* note 2.

27. Crossette, *supra* note 24; Levy, *supra* note 14.

28. Spatz, *supra* note 25 at 608; *Flame of Mystery*, *supra* note 19.

29. KAMALADEVI CHATTOPADHAYAY, INDIAN WOMEN'S BATTLE FOR FREEDOM 9 (1983). The author notes that during the Vedic period women were essential to worship, were useful to society and were involved in all activities from agriculture to

did not curtail women's freedom until the Aryan period began in 300 B.C. when the Brahmins solidified the rigid system of social caste.³⁰ During this period the Brahmins twisted the ancient texts to support their new social system.³¹ The new texts referred to women in extremely disparaging terms and degraded women to the status of unwanted progeny.³² Marriage became a woman's vocation and she had to walk in her husband's shadow.³³

Child marriages also became popular during the Vedic period.³⁴ With marriages occurring while children were still in cradles,³⁵ child widows became a

crafts and scholarship. Marriage was not compulsory in this society; divorce was permissible and widows were allowed to remarry. *Id.*

Furthermore, the women of the Vedic texts, Sita, Mandodari, Draupadi, Tara and Ahalya, are powerful and courageous women who stood up to their husbands and spoke their minds. In one tale, Sita shows disdain for her husband's weak character when he banishes her, and she expresses her contempt openly. Mandodari has the courage to warn and reprimand her husband against his pursuit of Sita, and the seizing of unwilling women for pleasure. Draupadi is a learned woman who is anything but meek and submissive to her five husbands. She even scolds the gods for their reprobate conduct towards her, and upbraids her weak husbands for their many failings. Ahalya, revered as an ideal woman, committed adultery. *Id.* at 13-15.

30. *Id.* at 17. During the late Vedic period (2500 B.C. to 1500 B.C.), a person's caste related to his vocation, and people could change castes as suited their vocation. With the advent of the Aryan period in 300 B.C., the reigning caste, the Brahmins, altered the caste system so that caste passed by birth. Consequently, one born into a caste had no choice of independent vocation. As a result of this transition, women assumed a lower social level than men and lost many rights: they were no longer allowed to recite the scriptures, they lost the right to education and were prohibited from learning Sanskrit. The author asserts that the obvious purpose for excluding women from religious and educational activities was "to breed them as servile nonentities." *Id.* at 17-18.

31. *Id.* at 18. Chattopadhyay reports that, to support their new order, the Brahmins "interpolat[ed] whole new passages into the original shastric texts and epics, posed as emanating from learned, respected leaders or rishis." *Id.*

32. *Id.* at 19. The Atharva Veda, originating from this period, presented the idea that "all embryos were normally male and only evil spirits turned them into female." *Id.* Consequently, special rituals were necessary to ensure that a child would arrive safely in its proper masculine form. In addition, because women were fundamentally evil, only men could perform the elaborate death ceremonies, which, if not performed correctly, could damn the father to an existence as a ghost or to hell. Therefore, men were indispensable. Furthermore, a wife who did not produce a son could be banished for her failure. A woman's value depended solely upon her fertility and she had no value outside of her ability to bear sons. *Id.*

33. *Id.* at 18. Womanhood now revolved around her role in the preservation of the species through reproduction. A woman's supreme dharma, at the sacrifice of all else, was the care of her family. *Id.*

34. CHATTOPADHAYAY, *supra* note 29, at 19. The author states that child marriages were supposed to bring special merit to the parents of the young couple. Failure to marry one's children young involved a harsh and vulgar punishment. *Id.*

reality. Because a woman's sole purpose was to serve her husband, a child widow had no further reason to live.³⁶ The obvious answer to this problem was Sati. Sati (or suttee) is the practice of throwing oneself on the funeral pyre of one's husband or father.³⁷ The practice reflects the belief that a man could take his possessions with him into the next world if they were burned along with his body.³⁸ Indian society considers Sati an act of great honor which will bestow many blessings upon the widow's family.³⁹ For this reason, in-laws pressured widows to engage in Sati through ostracism and humiliation.⁴⁰

The practice of giving dowry also developed during the late Vedic period.⁴¹ Dowry was originally practiced only by the upper castes, and was a collection of gifts the parents gave to their daughter to take into her new life.⁴² The practice of

35. *Id.* The author reports that "[a]t one stage this custom reached a point when even a baby in the womb was pledged - for all practical purposes, married." *Id.*

36. *Id.* at 20.

37. *Id.* Five of the god Krishna's wives were believed to have immolated themselves on his funeral pyre and four of Krishna's father's wives were said to have done the same. The custom is named after Sati, wife of the god Shiva. Sati's father refused to invite her husband to a feast which mortified her so thoroughly that she burnt herself to death. BUMILLER, *supra* note 11, at 63. By immolating herself on her husband's funeral pyre, Indian society considers a woman to have "become Sati." Although Sati is sought to be elevated to a religious rite, there is no advocacy of Sati in the Rig Veda, a religious text from the Vedic period, and, indeed, there are earlier references in the Veda condemning it. CHATTOPADHAYAY, *supra* note 29, at 20.

38. BUMILLER, *supra* note 11, at 64.

39. *Id.* at 70. Committing Sati, as one Indian woman told Bumiller, "guaranteed that a woman, her husband and seven generations of the family after her had a 'direct passport' to heaven and would be released from the painful cycle of birth and rebirth." *Id.* Bumiller goes on to describe the Sati of Roop Kanwar. Roop Kanwar was the 18-year-old widow of an unemployed college graduate. In September, 1987, after seven months of marriage, Roop Kanwar was burned alive on her husband's funeral pyre. Her in-laws and many villagers insist that her Sati was voluntary, but other witnesses contend that Roop was pushed and held on the pyre by her father-in-law and brothers-in-law. Roop Kanwar's Sati incited a rash of religious fundamentalism throughout India. Hindus came from miles around to worship at the site of Roop's death. It was thought that visiting the site of the Sati would cure ailments and bestow blessings. The Indian Parliament officially denounced Roop's Sati and arrested her father-in-law and five members of his family. The charge was abetment to suicide, not murder. *Id.* at 67-74.

40. *Id.* at 64. Bumiller described the miserable life of Indian widows who are forced to shave their heads, made to sleep on the floor and are often blamed by their in-laws for their husband's deaths. Many widows are beaten, denied food and forced to beg in the streets. *Id.*

41. CHATTOPADHAYAY, *supra* note 29, at 21.

42. Lori Heise, *The Global War Against Women*, WASH. POST, Apr. 9, 1989, at B1; see also BUMILLER, *supra* note 11, at 48 (commenting that, according to Indian historians, "bride price" was the favored practice among the lower classes, bride price was a small sum of money the groom's family paid to the bride's family at the time of the wedding to compensate them for the loss of their daughter). *Id.*

giving dowry later spread to the lower classes who wished to emulate the upper castes.⁴³ Only recently has dowry spread to the lowest classes.⁴⁴ Dowry, over time, evolved from a simple set of gifts to a payment to the groom's family to take the bride off their hands.⁴⁵

Today, Indian families use dowry as a quick way of accumulating material wealth and raising their standard of living.⁴⁶ Extreme poverty and greed drive many grooms and their families to demand money, televisions, video cassette recorders, appliances, motorcycles, and automobiles.⁴⁷ Generally, the dowry a bride's family must raise amounts to several times its yearly earnings, and many families go deeply into debt doing so.⁴⁸ Once the groom's family receives the initial dowry, a taste of material wealth may drive them to demand yet more. Ironically, an increase in status or wealth of the groom's family may convince them that the bride is no longer worthy of them and, therefore, must supply more dowry or lose her place in the family.⁴⁹ In addition, boys who have received a college education see their diplomas as a symbol of increased worth and use their diploma to demand more dowry, instead of adopting what Western society would consider an enlightened view.⁵⁰ This desire for accumulation of material wealth, coupled with the devaluation of women in Indian society, creates the ideal

43. BUMILLER, *supra* note 11, at 49.

44. *Dowry is Key*, *supra* note 11. The practice of dowry has now spread to untouchables, who traditionally had not given dowry. *Id.*

45. BUMILLER, *supra* note 11, at 49. The author reports that as a village family's wealth increased, it became a matter of prestige to keep women from working on the land. In such a family, a woman who had once been an asset, involved in harvesting the family fields, became a liability requiring removal for a price. *Id.*

46. Moore, *supra* note 2.

47. BUMILLER, *supra* note 11, at 47.

48. Moore, *supra* note 2; *see also supra* text accompanying note 13.

49. Tempest, *supra* note 17. Tempest recounts the story of a family in a middle-class neighborhood that had just come into money because one of the brothers had made a fortune manufacturing television sets. The custom in India is to share the increased wealth and social status with all the brothers. One brother, however, had been married in leaner times and his marriage had reflected his status. Now that his family had become prosperous, the man's position in the marriage market had changed and he could easily get a woman with more money and beauty. The brother began to resent his wife and became openly hostile towards her. She lost privileges and was ordered about like a slave. A few days later a neighbor saw "a glob of fire running down the street." The running fire was the rejected wife. Fourteen days later, she died of her burns." *Id.*

50. BUMILLER, *supra* note 11, at 49. Bumiller reports that men in the elite Indian civil service command the most dowry, followed by sons of prosperous business families. *See also Dowry is Key*, *supra* note 11, which recounts the story of a woman whose engineer husband was arrested for dowry harassment. She told the interviewer, "[m]y husband wanted a house in his name. . . . He wanted a 30,000 rupee scooter. He said if I did not give him this, he would take me to the top of a building and push me down. He kept saying, 'I am an engineer and we must have lots of things.'" *Id.*

backdrop for dowry murders. The groom's family can murder the bride or harass her into suicide without remorse and then seek a more profitable union.

The primary way a groom and his family murder a young bride is to burn her alive by dousing her with cooking kerosene and igniting her.⁵¹ The ready availability of cooking kerosene as a household item, combined with the combustible cloth of the saris worn by most Indian women, makes this form of murder inexpensive and difficult to trace.⁵² Furthermore, because the murders are committed in the privacy of the home, the family can allege that the bride died in a kitchen accident or suicide.⁵³

Harassing the young bride to commit suicide is also a common practice.⁵⁴ Repeated beatings and harassment often leave young brides desperately seeking means of escape from a miserable situation. Because Indian social mores do not permit women to divorce or leave marriages, a young woman may turn to suicide to spare her parents added expense and shame.⁵⁵ Death by fire is a logical choice for many women because of the prevalent role of fire in Indian lore.⁵⁶

51. BUMILLER, *supra* note 11, at 47. The frequent use of this method has given rise to the term "bride burnings." Victims of bride burnings rarely survive. Those who do not die immediately often succumb to infection shortly thereafter. The effectiveness of this method, according to police, is what makes it so popular. *Id.*

52. Spatz, *supra* note 25, at 608; *see* Heise, *supra* note 42. In urban Maharashtra and Bombay, 19% of all deaths among women from 15 to 44 years of age are due to "accidental burns." In other Third World countries, such as Guatemala, Ecuador and Chile, the same statistic is less than one percent. *Id.*

53. Spatz, *supra* note 25, at 608; *see also* Mark Fineman, *Four Mothers Seek Justice For Their Daughters' Death*, PHILA. INQUIRER, Feb. 3, 1984, at A2 (describing the hunger strikes of four mothers near the home of Indira Gandhi to protest the Indian government's lax treatment of dowry deaths, these women's daughters were killed under suspicious circumstances, but the police ruled each death a suicide because the husband or the husband's family was well-connected). *Id.*

54. Crossette, *supra* note 24.

55. *Id.* Crossette described the suicides of two young New Delhi physicians who, unable to bear the pressures exerted on their families to provide more dowry, injected themselves with lethal doses of drugs. *Id.*

56. BUMILLER, *supra* note 11, at 57. Hindu legends are full of women who proved their worth through self-immolation. Bumiller recollects the story of Sita who threw herself into the flames to prove her purity. Sita, wife of Rama, had been abducted by the demon king, Ravana. After a great war, Rama defeated Ravana and rescued his wife only to reject her as the spoiled goods of another man. He tells her, "I undertook the effort of war only to clear my name and that of my family. I am unable to stand your presence . . ." She threw herself into the flames of a funeral pyre to prove her innocence to her husband. *Id.* at 45; *see also* Tempest, *supra* note 17. Tempest reports that for Hindus, fire is a symbol for the ordeal of life and death. The idea of fire as the symbol and agent of death is embedded deep in the Hindu woman's consciousness. A New Delhi psychiatrist explained the incredible power of the Hindu socialization process. She told the author, "Even in threats of suicide . . . she doesn't say, 'I will kill myself.' She says, 'I will burn myself.'" *Id.*

The fact that Indian society considers the widely practiced murder of brides culturally acceptable suggests that the Indian parliament and local police must take a firm and severe stance against this practice. While the Indian government has addressed dowry deaths in a series of laws, these paltry acts are largely insufficient to address a problem which is rapidly becoming a national disaster.⁵⁷

III. INDIA'S POSITIVE LAWS

In 1961, the Indian government enacted the Dowry Prohibition Act⁵⁸ in an attempt to impede the practice of dowry murder.⁵⁹ Parliament amended the Act in 1984 and 1986 to increase its effectiveness.⁶⁰ The Act's current version outlaws the giving, taking, or demanding of dowry, which the Act defines as property given or agreed to be given in connection with marriage.⁶¹ A violation of the Act is punishable by imprisonment for up to two years, plus a fine.⁶²

The Indian Parliament took further steps to reduce dowry murders when it criminalized dowry-related violence against women. In 1983, it amended the Indian Penal Code⁶³ to outlaw dowry-related cruelty by the husband or his relatives.⁶⁴ The Parliament amended the Penal Code again in 1986, providing a punishment for dowry death of seven years to life.⁶⁵ In addition, the Parliament

57. Spatz, *supra* note 25, at 608.

58. Dowry Prohibition Act, No. 28 (1961); *see* Spatz, *supra* note 25, at 608 n.66.

59. Spatz, *supra* note 25, at 608.

60. Dowry Prohibition (Amendment) Act, No. 63 (1984); Dowry Prohibition Act, No. 43 (1986); *see* Spatz, *supra* note 25, at 608 nn.67-68.

61. Dowry Prohibition (Amendment) Act, No. 43, § 2-4 (1986) (codified as Indian Evidence Act, 1872, § 113-B).

62. *Id.* §3-4.

63. INDIA PEN. CODE, (Second Amendment), Criminal Law Act, No. 46 (1983); *see* Spatz, *supra* note 25, at 609 n.77.

64. INDIA PEN. CODE, *supra* note 63. This Act supplemented the Indian Penal Code section 498-A, which states: "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 . . ." The Act defines cruelty as "willful conduct" likely to drive a woman to suicide, cause grave injury or harassment. *See* MATTADI SUBBAMMA, ATROCITIES ON WOMEN, 22 (1987).

65. Spatz, *supra* note 25, at 609 n.78. Spatz reports that the new section 304-B states:

Where the death of a woman is caused by 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 other husband for, or in connection with, any demand for dowry, such death shall be called

amended the Indian Evidence Act⁶⁶ to create a presumption of dowry death where the woman had been subjected to cruelty or harassment for dowry soon before her death.⁶⁷ In a final attempt to curb dowry murders, the government amended the Code of Criminal Procedure⁶⁸ to require an investigation whenever a woman has died under suspicious circumstances within seven years of marriage.⁶⁹ Despite the Indian government's efforts, the practice of dowry murders rages unchecked. India's laws are ineffective because: 1) the statutes are too vague; 2) the police and the courts do not enforce the laws; and 3) social mores keep women subservient and docile.⁷⁰

The statutory language of the Dowry Prohibition Acts is inadequate because it only covers gifts given at the wedding. The statute fails to provide for post-wedding dowry demands.⁷¹ Additionally, Indian families expect certain gifts at an Indian wedding and, therefore, investigators do not consider these gifts to be dowry.⁷² Because the statute is underinclusive and ambiguous, Indian families can continue to request dowry without fear of reprisal.

Lack of enforcement by the police and the courts also contributes to the ineffectiveness of India's laws. The Ministry of Home Affairs has established guidelines for the investigation of dowry deaths⁷³ but the police seldom follow these guidelines.⁷⁴ Many police officers regard these incidents as family matters and are unwilling to devote much effort to them.⁷⁵ Police often fail to take photographs or fingerprints when investigating an alleged dowry death and rely instead on statements by relatives.⁷⁶ The police departments rarely perform post-mortems and the body is cremated immediately.⁷⁷ Furthermore, police frequently wait several months to file their reports, arguably waiting for relatives to bribe

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

Id.

66. Dowry Prohibition (Amendment) Act, No.43, § 12 (1986) (codified as Indian Evidence Act, 1872, § 113-B); see Spatz, *supra* note 25, at 610 n.79.

67. Spatz, *supra* note 25, at 610 n.79.

68. *Id.* at 610 n.81.

69. *Id.*

70. *Id.* at 611.

71. *Id.*

72. Spatz, *supra* note 25, at 611. These gifts include refrigerators, color televisions and video cassette recorders.

73. *Id.*

74. *Id.* at 613.

75. *Id.* at 612. A Delhi study reports that of 109 police diaries and reports concerning severely burned women, 63% were dismissed as accidental with no investigation, despite laws requiring investigation.

76. *Id.*

77. Spatz, *supra* note 25, at 612; see *supra* text accompanying note 63. Of the cases which were not investigated, the police failed to perform a post-mortem in 22%. See also J.P. ATRAY, CRIMES AGAINST WOMEN 78 (1988) (noting that post-mortems are not performed because the accused have the body cremated before the police can access it). *Id.*

them to not make a formal report.⁷⁸ Regardless of the officers' reasons for stalling the investigation, after several months delay the majority of the evidence has disappeared.⁷⁹

Police reluctance to investigate properly alleged dowry murders is not the only reason India's positive laws have failed to stem the tide of dowry murder. Even when the police do investigate, prosecutors seldom file charges and judges are reluctant to hand down convictions.⁸⁰ In the fourteen years following the initial passage of the 1961 Dowry Prohibition Act, prosecutors filed only one case under the Act.⁸¹ Furthermore, judges find it easier to acquit the accused due to faulty investigations and the frequent uncertainty of the bride's parents as to whether the death was murder or suicide.⁸² In a landmark decision, a Delhi justice, S.M. Aggarwal, imposed the death sentence on a man, his mother and his elder brother for killing his pregnant bride.⁸³ In 1984, however, the High Court overturned the decision, "sending the message to Indian men that the courts would protect them even if they murdered their wives."⁸⁴ Furthermore, a woman's death in a dowry dispute is not considered murder. When a groom and his family murder over dowry, the courts treat the crime as a special category, a dowry death.⁸⁵

The final reason India's positive laws have failed to protect women is because Indian society has conditioned women to expect abuse and to endure it.⁸⁶ The conviction that women are their husband's property pervades Indian society. Women feel that they must submit.⁸⁷ Indeed, the dowry system itself rests on the concept that men own their wives.⁸⁸ The dowry system creates an "ethos in which brides can be viewed as objects to be passed from one social group to another, both as a means for the procreation of children and as vehicles for aspirations to social prestige."⁸⁹

The view of women as property has important implications in the context of dowry-murder. Because men believe that their wives' are their property, they believe that they may control their wife's fate. Therefore, should a wife not live

78. ATRAY, *supra* note 77.

79. *Id.*

80. Spatz, *supra* note 25, at 613.

81. *Id.* at 613 n.110.

82. *Id.* at 614.

83. *Id.* at 614 n.111. Spatz reports that Justice Aggarwal's decision came as a great surprise to the victim's husband who was so confident he would be acquitted he had already taken another wife (and another dowry). *Id.*

84. *Id.* at 614 n.111.

85. *Inequality Remains a Religion in India*, CHI. TRIB., Jan. 29, 1989, at B2 [hereinafter *Inequality*].

86. See *supra* notes 54-65 and accompanying text.

87. Spatz, *supra* note 25, at 614-15.

88. *Id.* at 614-15.

89. Ursula Sharma, *Dowry in Northern India: Its Consequence for Women*, in WOMEN AND PROPERTY-WOMAN AS PROPERTY 62, 73 (Renée Hirshon ed., 1984).

up to her husband's expectations, the husband has the right to punish or even kill her.⁹⁰

Furthermore, while Article 14 of the Indian Constitution guarantees equal rights for all citizens, regardless of sex or creed, the religious laws of the Hindus, Moslems and Christians prevent women from exercising these rights.⁹¹ Indian women have limited property rights,⁹² are prohibited from heading households and are unable to inherit ancestral property except through testation.⁹³

Indian women also experience employment discrimination. No laws guarantee equal employment opportunities to women.⁹⁴ Indeed, in a country where women receive significantly less education than men and where even educated men are unable to find employment, women's chances for employment are slim.⁹⁵ Until Indian women are able to gain employment and support themselves, until they are able to recognize their worth beyond their role as wives and mothers, the enforcement of India's positive laws will not be sufficient to save Indian women from the horror of dowry death.

IV. DOWRY DEATHS AND INTERNATIONAL LAW

The Indian government's failure to enforce laws prohibiting dowry deaths violates both customary international law⁹⁶ as well as India's obligations under certain International Human Rights Agreements to which it is a party.⁹⁷ India's disregard for the systematic torture and murder of its citizens violates its obligations under the Universal Declaration on Human Rights.⁹⁸ In addition,

90. *Id.*

91. *Inequality*, *supra* note 85.

92. *Id.*

93. *Id.*

94. Spatz, *supra* note 25, at 616.

95. BUMILLER, *supra* note 11, at 89.

96. Customary international law is recognized by the international courts of justice as a rule of law that "results from a general and consistent practice of states followed by them from a sense of legal obligation." RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 102(2) (1986). This source of international law finds its roots in positivist law where a nation cannot be bound where it is unwilling to be bound. LOUIS HENKIN ET AL., INTERNATIONAL LAW, CASES AND MATERIALS 52 (3d ed. 1993). The International Court of Justice has defined "general practice" as "a very widespread and representative participation in the practice" by all major and specially affected states. *North Sea Continental Shelf*, 1969 I.C.J. 3 (F.R.G. v. Den.) (F.R.G. v. Neth.). Widespread and representative practice is not binding unless evidence exists that the nations involved recognized the rule as one of international law. *S.S. Lotus* (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10.

97. Carlson-Whitley, *supra* note 9, at 651.

98. UDHR, *supra* note 7.

India ratified the International Covenant on Civil and Political Rights⁹⁹ and the Declaration on the Elimination of Violence Against Women,¹⁰⁰ obligating it to uphold the human rights principles cited in these United Nations documents.

A. The Universal Declaration on Human Rights

The U.N. General Assembly adopted the Universal Declaration on Human Rights (UDHR) on December 10, 1948.¹⁰¹ It is the first of three documents which comprise the International Bill of Rights.¹⁰² The remaining documents, the International Covenant on Civil and Political Rights¹⁰³ and the International Covenant on Economic, Social and Cultural Rights followed in 1966.¹⁰⁴ The Universal Declaration of Human rights has been recognized as the "authoritative articulation and enumeration of essential human rights of individuals."¹⁰⁵ The parties to the Declaration did not originally intend it to be binding but the Declaration has arguably become customary international law through years of practice.¹⁰⁶ As one commentator explains, "[t]he duty of a state to provide remedies under its national law for violations of human rights is perhaps implicit in human rights treaties which require national implementation and whose effectiveness depends on the availability of municipal remedies."¹⁰⁷ The commentator quotes an authority on international law, Professor L. Sohn, "[t]he Declaration, as an authoritative listing of human rights, has become a basic

99. ICCPR, *supra* note 8.

100. Declaration on Violence, *supra* note 9.

101. LOUIS HENKIN ET AL., BASIC DOCUMENTS SUPPLEMENT TO INTERNATIONAL LAW CASES AND MATERIALS 143 (3d ed. 1993). Forty-eight states, including India, voted in favor of the Declaration, none voted against and eight states abstained. Those abstaining included Saudi Arabia, South Africa, Union of Soviet Socialist Republics and Yugoslavia. *Id.*

102. Carlson-Whitley, *supra* note 9, at 652.

103. ICCPR, *supra* note 8.

104. International Covenant on Economic, Social and Cultural Rights, G.A. Res 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No.16, at 49, U.N. Doc. A/6316 (1966) (entered into force Jan. 3, 1976) [hereinafter ICESCR]; *see also* HENKIN, *supra* note 101, at 146, 151.

105. HENKIN, *supra* note 96, at 598.

106. *Id.*; *see also* RICHARD B. LILLICH, INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY AND PRACTICE 175-76 (2d ed. 1991).

Whether the UDHR has become customary international law is a subject of debate and is unresolved at this point. An analysis of the debates for and against the UDHR is beyond the scope of this Note. This Note will assume that the UDHR has become customary international law.

107. THEODOR MERON, HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW 82 (1989).

component of international customary law, binding on all states, not only on members of the United Nations."¹⁰⁸

The UDHR asserts that "[e]veryone has the right to life, liberty and the security of person."¹⁰⁹ The Declaration further establishes that "[n]o one shall be held in slavery or servitude . . ."¹¹⁰ and that "[n]o one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment."¹¹¹ The practice of dowry murder, combined with dowry-related abuse, violates the right to life, the right to be secure in one's person and the right to be free of torture and cruel, degrading treatment.¹¹² Furthermore, the system of arranged marriage, which the Indian government continues to allow, subjugates young brides into virtual slavery at the hands of their in-laws.¹¹³ The Indian government, as a member of the international community and a party to the UDHR, should recognize deficiencies in Indian laws and their enforcement under customary international law, and they should enforce laws that will remedy dowry deaths, dowry-related abuse and marital slavery.¹¹⁴ India's failure to enforce these laws is a violation of its obligation under customary international law.

India's failure to recognize its customary international law obligations with regard to dowry deaths is analogous to Iraq's failure to respect its ethnic population following the Gulf War as required by international law. After the cease-fire in February 1991, Iraqi forces committed wide-spread human rights violations against its Kurdish and Shiite populations.¹¹⁵ The international community recognized these atrocities as violations of Iraq's customary international law obligations and took action.¹¹⁶ Had Iraq's government recognized the army's international law violations and taken steps to curb these practices, international action would not have been necessary. While Iraq was in a unique position following the Gulf War, India's situation is analagous. Should India fail to remedy these human rights abuses, it may incur the sanction of the international community.

108. *Id.*

109. UDHR, *supra* note 7.

110. *Id.* art. 4.

111. *Id.* art. 5.

112. Carlson-Whitley, *supra* note 9, at 661; Copelon, *supra* note 9, at 291; Cook, *supra* note 9, at 138.

113. BUMILLER, *supra* note 11, at 54 (discussing one bride's treatment by her in-laws); *see also* Bumiller's chapter discussing arranged marriages, *id.* at 24-43.

114. MERON, *supra* note 107.

115. HENKIN, *supra* note 96, at 981.

116. *Id.* S.C. Res. 688 (1991), *reprinted in* 30 I.L.M. 858 (1991). Action took the form of Security Council Resolution 688 authorizing the Secretary-General to pursue humanitarian efforts through U.N. agencies. The resolution did not authorize the use of force. *Id.*

B. The International Covenant on Civil and Political Rights

The United Nations passed the International Covenant on Civil and Political Rights (ICCPR), along with its companion document, the International Covenant on Economic, Social and Cultural Rights, in 1966 to protect the rights of individuals to be free to enjoy civil and political freedom.¹¹⁷ Article 6 of the ICCPR asserts that "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."¹¹⁸ As did the UDHR, the ICCPR also guarantees freedom from torture and slavery.¹¹⁹ Article 2 of the ICCPR further provides that "[e]ach State Party to the present Covenant undertakes to respect and to ensure all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex,"¹²⁰

The ICCPR provides two means of enforcing its provisions. Article 40 creates a mandatory reporting system requiring that all States Parties submit reports to the Human Rights Committee¹²¹ regarding measures they have adopted to protect the rights enumerated in the ICCPR.¹²² Article 41 allows States Parties to file a complaint reporting another State Party's failure to fulfill its human rights obligations.¹²³ Because the remedies provided by Articles 40 and 41 are available only to states, the ICCPR provides an additional remedy to individuals in its Optional Protocol.¹²⁴ The Optional Protocol allows individuals alleging violations of the ICCPR to file petitions against the state.¹²⁵ This

117. ICCPR, *supra* note 8. The preamble of the covenant states that individuals can enjoy these freedoms only "if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights." *Id.*; see also LILLICH, *supra* note 106, at 175. The ICCPR and the ICESCR were originally intended to be a single treaty, but because certain states were reluctant to commit themselves to protect economic, social and cultural rights, the General Assembly requested that two separate covenants be drafted simultaneously. *Id.*

118. *Id.*

119. *Id.* at art. 7.

120. *Id.* The Covenant additionally ensures a remedy to "any person whose rights or freedoms as herein recognized are violated . . ." *Id.*

121. ICCPR, *supra* note 8, at art. 28. Article 28 establishes a Human Rights committee consisting of eighteen members composed of nationals of the State Parties. *Id.*

122. ICCPR, *supra* note 8, at art. 28.

123. *Id.* The procedure, however, is optional and only applies where both parties recognize the competence of the Human Rights Committee to receive such complaints. *Id.* India has yet to file a declaration recognizing the Committee's authority.

124. *Id.*; see also Optional Protocol to the International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., U.N. Doc A/6316 (1966).

125. ICCPR, *supra* note 8.

enforcement mechanism is unavailable to Indian citizens, however, because India is not a party to the Protocol.¹²⁶

India's failure to curtail the rash of dowry deaths within its borders constitutes a violation of the ICCPR. As a party to the ICCPR, India not only has an obligation to enact legislation prohibiting human rights violations, but has a duty to "ensure" the right to life and the right to freedom from torture, as well as all other rights protected under the ICCPR.¹²⁷ The language "to ensure" imposes an affirmative duty on a state to take all necessary measures towards preventing violations.¹²⁸ Consequently, India has an obligation under the ICCPR to enforce its laws or face the possibility of international criticism and sanctions.¹²⁹

C. The Declaration for the Elimination of Violence Against Women

On February 23, 1994, the U.N. General Assembly adopted, without a vote, the Declaration for the Elimination of Violence Against Women.¹³⁰ After decades of struggle by women's groups worldwide, the United Nations took a first

126. *Id.*

127. *Id.* art. 2(1), (2).

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

129. Carlson-Whitley, *supra* note 9, at 661-64.

130. Declaration on Violence, *supra* note 9. The General Assembly ratification was preceded by the adoption of the Declaration at the Vienna World Conference on Human Rights in June 1993. Sandra Pickering, *Sensitive Film Records Testimony of Victims of 'Masculine Bestiality'*, OTTAWA CITIZEN, June 23, 1994, available in LEXIS, Nexis Library, NEWS File [copy on file with author]. Thirty-three women from around the world testified before the Tribunal about their experience as victims of gender-based violence. One elderly South Korean woman told of being taken from her village at 16 and being used as a sex slave during World War II. The Japanese military gang raped her for a period of seven years and then released her. A woman from Poland described how she was tricked into working as a prostitute in Holland. An Iranian woman recounted how she witnessed another Iranian woman being stoned for suspected adultery. "She was buried up to her shoulders in sand, her long black hair spread out around her. A cry of 'Allah Akbar' [how horrible] rose and stones began to fly. Her head and chest were red with raw flesh, her brain was scattered on the ground." *Id.*

Donna J. Sullivan, *Women's Human Rights and the 1993 World Conference on Human Rights*, 88 AM. J. INT'L L. 152 (1994). The final document produced at the world conference, the Vienna Declaration and Programme of Action, identifies particular examples of gender-specific abuses as human rights violations and calls for integration of women's human rights throughout U.N. activities. *Id.*

step towards accepting women's rights as human rights.¹³¹ Adoption of the Declaration officially recognized the long-standing international failure to protect women and promote women's human rights.¹³² The Declaration's adoption is a key development in efforts by women's groups to eliminate violence against women.¹³³ The Declaration's preamble acknowledges "that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of these rights and freedoms"¹³⁴ The preamble further recognizes that "violence against women is a manifestation of historically unequal power relations between men and women, which have led to the domination over and discrimination against women by men and to the prevention of the full advancement of women"¹³⁵

Article 1 of the Declaration defines violence against women as any act of gender-based violence resulting or likely to result in harm in both public and private spheres.¹³⁶ Article 2 goes on to enumerate possible acts of violence, including dowry-related violence.¹³⁷ Article 3 ties the rights of women to be free from violence to the previous U.N. human rights' documents and Article 4 calls for state condemnation of violence against women, regardless of custom, tradition or religious considerations.¹³⁸

The fact that the General Assembly adopted the Declaration suggests that the parties, including India, may have lacked the requisite intent to make the document binding.¹³⁹ On the other hand, the fact that the General Assembly adopted the Declaration unanimously¹⁴⁰ may mean that the nations of the world accept its principles as customary international law.¹⁴¹ Whether or not the Declaration is binding in and of itself, it underscores India's obligation to uphold

131. Ellie Teshler, *A Week of Worry, A Day of Hope*, TORONTO STAR, Dec. 9, 1994, available in LEXIS, Nexis Library, NEWS File [copy on file with author]. In addition, the Vienna Tribunal appointed Radhika Coomarsarmy, a Sri Lankan lawyer-activist, as special rapporteur on violence against women. Coomarsarmy will have the right to "seek information from governments, exert diplomatic pressure and make recommendations." Aaron Derfel, *Rape Increasingly Used as a Weapon of War, Official Says*, July 11, 1994, available in LEXIS, Nexis Library, NEWS File [copy on file with author]. Her term is to last three years during which she will visit three countries a year, chronicling these visits in an annual report. *Id.*

132. Anne Park, *Women's Rights Took Their Place on the International Agenda*, MONTREAL GAZETTE, Mar. 8, 1994, available in LEXIS, Nexis Library, NEWS File [copy on file with author].

133. *Id.*

134. Declaration on Violence, *supra* note 9.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.* at 1052.

139. HENKIN, *supra* note 101, at 130-33.

140. Declaration on Violence, *supra* note 9, at 1049.

141. *Cf.* Schacter, *supra* note 139.

the human rights of its citizens under the human rights document to which it is bound: namely the ICCPR.¹⁴² In addition, the document explicitly enumerates dowry-related incidents making a clear reference to the crisis in India. The U.N.'s reference to dowry deaths and its adoption of the Declaration not only suggests that India must act to curtail dowry murders but indicates U.N. commitment to preventing this atrocity.

V. PROBLEMS WITH USING INTERNATIONAL LAW TO HALT DOWRY MURDERS

Several considerations impede the use of international law to combat dowry deaths. These are the principles of non-intervention and cultural relativism. This Note will discuss both principles in turn and will then refute their applicability in the context of dowry deaths.

A. Non-Intervention

A state's right to govern itself without interference from outside states is a fundamental principle of the United Nations Charter.¹⁴³ Article 2(7) of the United Nations Charter states, "[n]othing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . ."¹⁴⁴ The United Nations later codified the right of self-determination as a human right in Article One of both the ICCPR¹⁴⁵ and the ICESCR.¹⁴⁶ Article One states, "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."¹⁴⁷ Finally, the 1970 Declaration on Friendly Relations provides that, "[b]y virtue of the principle of equal rights and self-determination . . . all peoples have the right

142. Declaration on Violence, *supra* note 9. The Declaration's preamble acknowledges that the rights of equality, security, liberty, integrity, and dignity as enshrined in the ICCPR are applicable to women. The Declaration further cites to the ICCPR in stating that women are entitled to the protection of all human rights, including, right to life, and the right to equality. *Id.*

143. U.N. CHARTER art. 1, ¶ 2.

144. *Id.* art. 2, ¶ 7. Article 2, ¶ 7 does allow exceptions for Security Council action as spelled out in Chapter VII (action with respect to threats to the peace, breaches of peace and acts of aggression). *Id.*

145. ICCPR, *supra* note 8.

146. ICESCR, *supra* note 104.

147. *Id.*

to determine, without external interference, their political status . . . and every state has the duty to respect this right . . ."¹⁴⁸

The language of these U.N. documents suggests that intervention by international human rights organizations in India's internal affairs would violate basic U.N. principles. India's elected governing body has enacted laws prohibiting dowry murders, has established guidelines for investigation, and has made efforts dealing with the problems inherent in the crime.¹⁴⁹ However, even if India had not taken affirmative steps to outlaw dowry deaths, the language of Article 2(7) of the U.N. Charter suggests that, because dowry deaths are a domestic matter, they are beyond the reach of international law.¹⁵⁰

Even if the Indian government's failure to enforce its laws rendered the government illegitimate, scholars have maintained that the mere appearance of illegitimacy is not grounds for interference.¹⁵¹ Michael Walzer muses that self-determination is worked out within the confines of the state.¹⁵² He postulates that the government is merely an instrument of the citizens,¹⁵³ and that a presumption exists of a "fit" between a government and its citizens.¹⁵⁴ Walzer believes that foreigners do not have the right to speculate whether a government is legitimate¹⁵⁵ and foreign states may not intervene in the domestic affairs of a state unless the absence of "fit" between the state and its citizens is "radically apparent."¹⁵⁶ For these reasons, United Nations intervention in India may violate its own mandate of non-intervention and self-determination.

B. Cultural Relativism

The principle of cultural relativism¹⁵⁷ flows logically from the ideal of non-intervention.¹⁵⁸ Just as people should be able to choose their leaders and be

148. *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations*, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, at 121, U.N. Doc. A/8028 (1970) [hereinafter *Declaration on Friendly Relations*].

149. See *supra* notes 59-65 and accompanying text.

150. U.N. CHARTER art. 2, ¶ 7.

151. Michael Walzer, *The Moral Standing of States: A Response to Four Critics*, 9 PHIL. & PUB. AFF. 209, 210 (1980).

152. *Id.*

153. *Id.* at 211.

154. *Id.* at 212.

155. *Id.*

156. Walzer, *supra* note 151, at 214.

157. Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 HUM. RTS. Q. 400, 401 (1984). Cultural relativism is a school of thought that holds culture is the principle, if not sole, source of the validity of a moral right or rule. Cultural relativists presume that "rights (and other social practices, values and moral rules) are culturally determined." *Id.*

governed without outside interference, so too should they be able to live out their cultural lives without interference.¹⁵⁹ The U.N. recognized the link between cultural rights and human dignity in the UDHR.¹⁶⁰ Article 22 of the Declaration provides, "[e]veryone . . . is entitled to realization . . . of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."¹⁶¹ The ICCRP further expanded these rights by asserting the right of all persons to "enjoy their own culture, to profess and practice their own religion, or to use their own language."¹⁶²

Cultural autonomy is essential for national sovereignty but countries resistant to universal human rights have often used cultural relativism as a shield against compliance.¹⁶³ Some nations assert that the community's needs are primary in their culture and that they will not consider individual rights until community needs are met.¹⁶⁴ These cultures view "individuals as an integral part of a larger group."¹⁶⁵ The fact that the U.N.'s human rights documents support cultural differences further fortifies their defense. In addition, these countries claim that human rights norms are based on culturally specific morals and values.¹⁶⁶ Consequently, they argue, Western norms do not apply to non-Western nations and the U.N. cannot expect compliance with its standards for human treatment.¹⁶⁷

The Indian government could advance cultural relativist arguments to resist U.N.'s interference regarding its lax treatment of dowry deaths. The giving of dowry is an ancient Indian cultural tradition designed to provide a bride with property in her new marriage.¹⁶⁸ Women's status as being virtually worthless is deeply ingrained in Indian social and religious life.¹⁶⁹ The abuses arising from dowry have their roots in women's subjugated position in Indian society. The

158. *Id.*

159. Christine Mary Venter, *The South African Constitution: Facing the Challenges of Women's Rights and Cultural Rights in Post-Apartheid South Africa*, 21 J. LEGIS. 1, 2 (1995). The author discusses the principle of cultural relativism and the position of women in post-apartheid South Africa.

160. *Id.*

161. UDHR *supra* note 7, art. 23, at 71.

162. ICCPR *supra* note 8, art. 27, at 52.

163. LEA BRILMAYER, AMERICAN HEGEMONY 148 (1994).

164. Nancy Kim, *Toward a Feminist Theory of Human Rights: Straddling the Fence Between Western Imperialism and Uncritical Absolutism*, 25 COLUM. HUM. RTS. L. REV. 49, 58 (1993). The author gives the example of China, where the government limits an individual's right to work to the type of work that benefits the community. Therefore, the rights of the individual are subordinate to the needs of the community. *Id.*

165. *Id.*

166. *Id.* at 58-59. China, Africa, and the Islamic Nations have frequently used this argument to resist U.N. pressure. *Id.*

167. *Id.*

168. See Heise, *supra* note 42.

169. See Tempest, *supra* note 17.

Indian government, therefore, could argue that dowry and dowry murders are a cultural issue and that any international interference would violate both the letter and the spirit of the U.N. Charter.

VI. THE RATIONALE FOR USING INTERNATIONAL LAW TO HALT DOWRY DEATHS

Although non-intervention and cultural relativism present rational reasons for the United Nations to let the Indian government solve the problem of dowry murders, international practice and humanitarian necessity have diminished these arguments. Furthermore, feminist human rights arguments advance more compelling reasons for the U.N. to take action against the Indian government.

A. Non-Intervention Revisited

Intervention in the domestic affairs of a nation, whether forcible or non-forcible, violates the mandate set forth in the United Nations Charter.¹⁷⁰ However, Article 55 of the U.N. Charter also states that "the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms . . ." ¹⁷¹ Furthermore, Article 56 calls on all member states to support the U.N. in achieving these goals.¹⁷² Consequently, human rights are not a matter of domestic jurisdiction but are governed by international law¹⁷³ and "[e]fforts to bring about compliance with the human rights obligations are, therefore, not improper interferences in domestic affairs."¹⁷⁴

Even if the United Nations were to consider human rights a domestic issue, recent actions by the U.N. and its member states recognize that compliance with basic human rights standards can no longer be considered as a matter of domestic jurisdiction.¹⁷⁵ Former Secretary-General Javier Pérez de Cúellar commented, shortly before the adoption of Security Council Resolution 688, that a marked shift had occurred in "world public opinion towards the belief that support of

170. See U.N. CHARTER art. 2, ¶ 7, art. 2, ¶ 4.

171. *Id.* art. 55.

172. *Id.*

173. Steve G. Simon, *The Contemporary Legality of Unilateral Humanitarian Intervention*, 24 CAL. W. INT'L L.J. 117, 135 (1993). The author reports that at the time the Charter was ratified, "concepts that were governed by international law were recognized to be ipso facto and by definition outside of the realm of domestic jurisdiction." *Id.*

174. *Id.*

175. *Id.*

basic human rights should prevail over boundaries arbitrarily drawn upon a map."¹⁷⁶

Furthermore, international law scholars argue that the practice of nations since the adoption of the Charter has had the effect of nullifying the edict of Article 2(7).¹⁷⁷ While such deviation from the Charter does not alter its legal character, "a persistent pattern of conduct inconsistent with the norm would undermine at least to some extent the hypothesis that states consider themselves under a legal obligation to comply with it."¹⁷⁸ While political interests motivated many of these deviations from the command of non-interference, several recent actions were initiated to combat human rights violations.¹⁷⁹

Other scholars argue that, while the fundamental principle governing the U.N. Charter is a desire for world peace, the founders also intended to halt violations of human rights.¹⁸⁰ The founders did not indicate, however, whether they were willing to sacrifice human rights to the ideal of a peaceful world.¹⁸¹ If they intended to place peaceful interaction among the nations above human rights,

176. Judy A. Gallant, *Humanitarian Intervention and Security Council Resolution 688: A Reappraisal in Light of a Changing World Order*, 7 AM. U. J. INT'L L. & POL'Y 881, 883 (1992).

177. Lori Fisler Damrosch, *Politics Across Borders: Nonintervention and Nonforcible Influence Over Domestic Affairs*, 83 AM. J. INT'L L. 1, 2 (1989). The author points out that the principle of nonintervention in foreign affairs is not the norm in current foreign affairs. The former Soviet Union supported Marxist-Leninist parties in various parts of the globe and the United States uses "overt and covert means to aid political groups that it believes to be pro-democratic in their values and pro-West in orientation." In addition, the United States and former U.S.S.R. have "used economic leverage to affect politics in Central America, southern Africa and elsewhere." *Id.*

Political and financial interference has not been limited to the superpowers, however, and small and medium-sized nations have often maintained "an intense interest in other states' domestic politics . . . [i]ndeed, small states have occasionally tried to assist the election and reelection campaigns of favored candidates in the United States and other major democracies." *Id.*; see also Byron F. Burmester, *On Humanitarian Intervention: The New World Order and Wars to Preserve Human Rights*, 1994 UTAH L. REV. 269 (1994). Furthermore, in November of 1992, United States forces landed on the shores of Somalia to protect food distribution. The United Nations did not authorize the United States' actions in Somalia, yet the organization quickly ratified the action when the United States dared other nations to join its crusade. *Id.*

178. Damrosch, *supra* note 177, at 2-3.

179. Paul R. Williams, *Self Determination of Peoples and Politics*, 86 AM. SOC'Y INT'L L. PROC. 369, 372 (1992). The author cites Security Council Resolution 688 authorizing action to assist the oppressed Kurdish and Shiite populations in Iraq as evidence of the change in the U.N.'s interpretation of the Charter. Gallant, *supra* note 176, at 904. This resolution was unprecedented and has placed the issue of humanitarian intervention at the forefront of international concerns. *Id.*

180. Simon, *supra* note 173, at 137.

181. *Id.*

then human rights would not exist.¹⁸² Prohibiting unilateral intervention for human rights violations leaves these violations devoid of a remedy.¹⁸³ "[A] right without a remedy implies the right does not exist."¹⁸⁴

Because states have carved out exceptions to the mandate of non-interference, because the Security Council has authorized forcible action for humanitarian reasons, and because the U.N. Charter must have, implicitly, provided a remedy for human rights violations; the command of non-interference found in Article 2(7) should not be a barrier to human rights intervention to end dowry murders in India.

B. A Second Look at Cultural Relativism

Moral norms generally vary between cultures. "Certain societies ban marriage to second cousins, the consumption of alcohol, or the use of mind-altering drugs; others encourage them."¹⁸⁵ To rebut the cultural relativist arguments, one must establish the existence of objective moral truth - a difficult task, at best.¹⁸⁶ Despite the difficulty of proving a universal morality, scholars and philosophers have offered cogent arguments which sufficiently undermine the force of those posited by relativists.¹⁸⁷

Countries such as China and Saudi Arabia have argued that certain behavior and human interactions are an integrated part of their culture.¹⁸⁸ However, many of these countries' practices - ones that have come to international attention - are not defensible on any grounds of cultural relativism.¹⁸⁹ According to international law scholar Lea Brilmayer, "[m]ost human rights abuses involve the perpetration of harms that are undeniably wrong in the eyes of all parties to the dispute."¹⁹⁰ Few societies would argue that cannibalism, slavery and genocide are morally defensible in their country today.¹⁹¹ In such cases, cultural relativism is just a pretext to justify actions that universal morality truly condemns.¹⁹² As

182. *Id.*

183. *Id.*

184. *Id.*

185. BRILMAYER, *supra* note 163, at 148.

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. BRILMAYER, *supra* note 163, at 149. Brilmayer offers the murder of citizens, gang rape, and deliberate starvation practiced in the Balkans as examples of indefensible practices. *Id.*

191. *Id.* at 148.

192. *Id.*

Brilmayer asserts, "it is not enough that morality may *in theory* differ from culture to culture; morality must *in fact* differ."¹⁹³

Furthermore, many nations that complain about the Western values embodied in the U.N. are parties to the U.N. human rights agreements.¹⁹⁴ By ratifying these documents without reservations, these countries have explicitly recognized and accepted the rights delineated in these documents to be universal human rights.¹⁹⁵ Those nations, such as India, that have ratified the UDHR and the ICCPR cannot legitimately raise the defense of cultural relativism against parties who question their human rights practices.

India could claim that oppressing women, even allowing them to be burned to death, is essential to its culture. However, the Indian Parliament has enacted laws to curtail these murders.¹⁹⁶ While the enactment of laws may be a good argument against interference in domestic matters,¹⁹⁷ the affirmative nature of the Act completely undermines any cultural relativist argument India may posit.

C. The Feminist Argument: The Public/Private Distinction and Women's Rights as Human Rights

The international human rights movement historically has neglected the rights and needs of women.¹⁹⁸ Human rights theories have dealt primarily with the public or political sphere: the sphere from which society has traditionally excluded women.¹⁹⁹ "Even today, when women have made some inroads into the outside or 'man's world,' relations between women and men - along with women themselves - are . . . largely confined to the familial or private sphere."²⁰⁰ Ironically, while the human rights movement has explicitly rejected the freedom of nations from scrutiny of their actions within their borders,²⁰¹ what a man does within the walls of his home is still his private affair.²⁰² Consequently, international human rights efforts have dealt primarily with the relations of men with men.²⁰³

193. *Id.*

194. Kim, *supra* note 164, at 64.

195. *Id.* at 64-65.

196. Spatz, *supra* note 25, at 608-10.

197. *See supra* notes 59-65 and accompanying text.

198. Riane Eisler, *Human Rights: Toward an Integrated Theory for Action*, 9 HUM. RTS. Q. 287, 289 (1987).

199. *Id.* For example, human rights documents deal with torture of political prisoners, a group which have traditionally been male.

200. *Id.*

201. U.N. CHARTER art. 2, ¶ 7.

202. Eisler, *supra* note 198, at 289.

203. *Id.*

Feminists argue that the distinction between the public and private realms is central to liberal theory and is the reason men have dominated liberal societies.²⁰⁴ The liberal state views "private" matters as being beyond its jurisdiction, and the state, therefore, is not required to remedy evils occurring with the private sector.²⁰⁵ Consequently, the state need not sanction violence against women when perpetrated in the home.²⁰⁶

Feminist scholars have argued that the United Nations emerged from the liberal state model and, therefore, embodies the public/private distinction.²⁰⁷ They further assert that the international laws put forth by the U.N. and its subordinate bodies, particularly the foundations of jus cogens,²⁰⁸ are gender biased.²⁰⁹ The norms created by jus cogens influence the choices the U.N. makes in creating international law. Feminists argue that these norms reflect what men fear will happen to them. Because men rarely experience domestic abuses, these practices, which are ostensibly human rights violations, are generally ignored.²¹⁰ The U.N. has developed conventions specifically directed at women, namely, the International Labour Organization conventions²¹¹ and the Convention on the Elimination of All Forms of Discrimination Against Women²¹² which do address the needs of women and attempt to provide an international law basis for protecting them. These conventions, however, have had the effect of marginalizing women's rights outside the mainstream of human rights law.²¹³ Consequently, "the claimed norms of jus cogens do not provide either the

204. Andrew M. Deutz, Note, *Gender and International Human Rights*, 17 FLETCHER F. WORLD AFF. 33, 35 (1993).

205. *Id.*

206. *Id.*

207. Christine M. Chinkin, *Resolving Conflicting Human Rights Standards in International Law*, 85 AM. SOC'Y INT'L L. PROC. 336, 350 (1991).

208. HENKIN, *supra* note 96, at 91. Jus cogens has been defined in Article 53 of the Vienna Convention on the Law of Treaties 1969 to be norms "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same characters." *Id.*

209. Chinkin, *supra* note 207, at 350.

210. *Id.*

211. International Labour Organization, Convention No. 100: Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, in INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS, 1919-1981, at 42-43 (1982).

212. Convention on the Elimination of All Forms of Discrimination Against Women, (hereinafter Convention on Elimination of Discrimination) Dec. 18, 1979, 19 I.L.M. 33, *reprinted in* TWENTY-FIVE HUMAN RIGHTS DOCUMENTS (2d ed. 1994).

213. *Id.*; see also Donna J. Sullivan, *Women's Human rights and the 1993 World Conference on Human rights*, 88 AM. J. INT'L L. 152, 159 (1994). Women's rights have been treated by the U.N. as a separate category of rights and have been addressed separately from the overarching concerns of human rights. *Id.*

symbolic or actual security from the harms women are most likely to suffer as they do for men."²¹⁴

Feminists advance the argument that violence against women is not private, but is in reality political.²¹⁵ "It results from the structural relationships of power, domination and privilege between men and women in society. Violence against women is central to maintaining those political relations at home, at work and in all public spheres."²¹⁶ The patriarchal hierarchy dictates the relationships between men and women in society and the systematic oppression of women within it.²¹⁷ These groups postulate that violence against women is very much a matter of state responsibility.²¹⁸

The United Nations General Assembly unanimously recognized that women's rights must be integrated into the mainstream of U.N. activities with the ratification of the Convention for the Elimination of Violence Against Women,²¹⁹ and that gender specific violence must be remedied in both the public and private realms.²²⁰ Some critics of the Convention argue that the fact that the Declaration on Violence did not integrate women's human rights throughout indicated the international body was still treating women's rights as separate rights.²²¹ Regardless of whether this convention brings women's human rights within the scope of human rights, feminist scholars have advanced forceful arguments that violence against women is a political issue. If the United Nations recognizes gender-related violence as political; then domestic abuse of women, such as dowry deaths, would be brought squarely within the rubric of the ICCPR and its mechanisms for enforcement. Neither India nor the U.N. should take the position that dowry murders are a private, family matter and thereby shirk enforcement of their laws or of the ICCPR, respectively.

D. Dowry Death as Torture

While dowry death is clearly an act of murder or attempted murder, the practice is also an act of torture.²²² As torture, dowry death is punishable under the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or

214. Convention on Elimination of Discrimination, *supra* note 212, at 51.

215. *Id.*

216. Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 HUM. RTS. Q. 486, 491 (1990).

217. Chinkin, *supra* note 207, at 352.

218. *Id.*

219. Sullivan, *supra* note 213, at 155.

220. *Id.* at 156.

221. *Id.* at 159.

222. Copelon, *supra* note 9, at 297.

Punishment,²²³ as well as from the UDHR and the ICCPR. To meet the definition of torture, an act must involve: 1) severe physical and/or mental pain and suffering; 2) intentional infliction; 3) specified purposes; and 4) some degree of official or quasi-official involvement, whether active or passive.²²⁴ Dowry murder and the harassment that precedes the murder clearly involve the elements of physical and mental suffering, intentional infliction and specified purpose. On the other hand, official involvement or quasi-official involvement is slightly more difficult to establish. Traditionally, to be considered torture, the state had to perpetrate, or at least tolerate, an act.²²⁵ Torture expert Nigel Rodley asserts that "involvement of the state is definitional because human rights law is about the relationship of governments and the governed."²²⁶ Rodley does recognize, however, that a state has an affirmative obligation to prevent harm and that some non-state entities could exert the equivalent of state power.²²⁷ What Rodley's theory fails to appreciate is that failure of a state to sanction gender-based domestic violence encourages such violence.²²⁸ In addition, one commentator argues that "intimate torturers do - individually and collectively - exercise 'effective power analogous to that of governments.'"²²⁹ The commentator bases this argument on the understanding that patriarchy is a "parallel state" and that, through inaction, the formal state "empowers men to mediate and often block women's relationships with the state."²³⁰

223. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, U.N. GAOR, 30th Sess., Supp. No. 34, at 91.

224. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 23 I.L.M. 1027, *as modified*, 24 I.L.M.535. Article 1 of the Convention defines torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

225. Copelon, *supra* note 9, at 350-51.

226. *Id.*

227. *Id.*

228. *Id.* Copelon reports that government sanction against domestic violence would contribute to stopping it. By not recognizing a right of women to be free from intimate torture the government is tacitly approving such acts. *Id.* at 351.

229. *Id.*

230. Copelon, *supra* note 9, at 351. Copelon asserts that because men are empowered by the state "it is thus appropriate to insist on the accountability of intimate torturers under international law." *Id.*

Because dowry death is deeply entrenched in the patriarchal state and culture of India, the state, arguably, perpetrates dowry deaths.²³¹ In addition, because the state fails to enforce its laws, dowry deaths are inflicted "at the acquiescence" of public officials. Consequently, India's failure to remedy the practice of dowry murder constitutes state action and dowry murders are sanctionable torture.

E. Chapter VII Action

The U.N. Security Council, under Chapter VII of the U.N. Charter, may authorize the use of force should it find that an act or practice creates a threat to international peace, a breach of international peace or is an act of aggression.²³² Traditionally the Security Council has only used its Chapter VII power for acts of aggression.²³³ However, the Security Council has recently found a threat to international peace and security and has authorized the use of force for humanitarian purposes.²³⁴ The most notable Security Council action for humanitarian reasons was embodied in Resolution 794 which authorized use of "all measures necessary" to facilitate U.N. humanitarian actions in Somalia.²³⁵ In Somalia's case, the Security Council found a threat to international peace and security in this humanitarian catastrophe.²³⁶ The Security Council has also found a threat to international peace and security in the possible flood of refugees (Iraq, Haiti, and Bosnia) and the threat of international terrorism (Libya).²³⁷

The Security Council could potentially characterize the epidemic of dowry-related murders as a humanitarian catastrophe. Dowry deaths could also create the impetus for a flood of female refugees out of India and into neighboring countries. Should the Security Council find a threat to international peace and security based on these factors, the Security Council could legitimately authorize a multilateral use of force against India.²³⁸

VII. CONCLUSION

The U.N. wields many tools that can persuade India to enforce its laws and end the practice of dowry murders. The ICCPR permits the U.N. to investigate alleged human rights violations, assist victims, adjudicate, negotiate, publicize,

231. *Id.*

232. U.N. CHARTER art. 39.

233. Chapter VII authorization was used for actions in Korea and Kuwait.

234. HENKIN, *supra* note 96, at 981.

235. *Id.* at 983.

236. *Id.*

237. *Id.* at 981-89.

238. *Id.* at 983.

educate, and coerce a country's government.²³⁹ The U.N. Convention Against Torture obligates states to take measures through training, investigation, and prosecution.²⁴⁰ Recently, the U.N. has used suspension or termination of reciprocal obligations, action in the International Court of Justice, economic and political sanctions, and military force to curb human rights violations.²⁴¹

Any U.N. action to remedy dowry deaths will need careful engineering. Because the practice of dowry and the devaluation of women is so intensely ingrained in the culture, action against India could meet with fierce resistance and the practice of dowry murders might actually increase. Covert military action, therefore, would be completely inappropriate. In addition, economic sanctions may require particular care because financial sanctions often disproportionately impact the poor and the powerless.²⁴² Financial sanctions, therefore, may have the greatest impact on Indian women: the very population that the sanctions would be meant to help. On the other hand, dowry murder is essentially a crime of greed. The desire for material wealth is the impetus that drives these murders; the culture and the status of women merely facilitate the commission of the crime. If the absence from the market of certain material items, such as televisions or motor scooters, would decrease dowry demands, then economic sanctions directed at these specific items, might be an effective tool.

Whatever sanctions the U.N. might choose to employ, the U.N. must reinforce them with a comprehensive system of education to teach both Indian men and women that women have inherent worth in society. If women do not realize that they have great value outside of marriage and motherhood, sanctions will be useless. In order for sanctions to be effective, women must be willing to rise up against their abusers. Women must realize that they have a place in society and are free to leave an abusive marriage: that they are worth more than just the dowry they bring. In order to accomplish this recognition, the U.N. must buttress organizations that provided asylum for women experiencing dowry harassment through infusions of capital and trained personnel. Indian women must be given alternatives to miserable and abusive marriages. The U.N. can accomplish these measures within India through the women's rights organizations that are already in place. With financial assistance from sources such as the U.N., the Indian government and non-governmental organizations, these Indian organizations could provide Indian women with shelter, education, and perhaps, employment assistance. The recently-created Special Rapporteur for the Elimination of Violence Against Women can easily facilitate this process.

239. JOHN CAREY, U. N. PROTECTION OF CIVIL AND POLITICAL RIGHTS 7 (1970).

240. Copelon, *supra* note 9, at 352.

241. See HENKIN, *supra* note 96, at 981-97. The author described U.N. action for humanitarian reasons in Cambodia, the Congo, Cyprus, Egypt, Rhodesia, the former Yugoslavia, against Libya (regarding the bombing of Pan Am flight 103), South Africa, Somalia, and Iraq. *Id.*

242. Daniel D. Bradlow, *Debt, Development and Human Rights: Lessons From South Africa*, 12 MICH. J. INT'L L. 647, 649 (1991).

In light of the recently adopted Declaration for the Elimination of Violence Against Women, the U.N. not only can, but must act to stop dowry deaths. India's U.N. treaty obligations cannot permit these murders to continue unchecked. Through widespread education and financial and legal assistance to Indian women, the Indian government and the U.N. will succeed in turning the tide of dowry murders and spare thousands of young Indian women from the fiery hell that, for many, Indian marriage has become.



