

INTERSECTIONALITY AND THE UNDER-ENFORCEMENT OF DOMESTIC VIOLENCE
LAWS IN INDIA

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INTRODUCTION

Judged by laws alone, India has among the world’s most progressive measures in place to tackle violence against women. Since 1993, India has had a National Human Rights Commission with a broad mandate to investigate all human rights abuses.¹ India also has a National Commission for Women whose job specifically includes curbing abuse against women, and at the heart of the Fourteenth, Fifteenth, and Sixteenth Articles of India’s 1950 Constitution are clauses banning discrimination on grounds of sex and establishing a secular republic founded on principles of equality and fundamental human rights.² Moreover, India is a signatory of the

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¹ See Vijayashri Sripati, *India’s National Human Rights Commission: A Shackled Commission?*, 18 B.U. INT’L L.J. 1, 12-13 (2000) (“[T]he Commission has essentially four roles to play—protector, advisor, monitor and educator of human rights. The Commission has a two-pronged mission—one urgent, in order to investigate and recommend remedies for immediate wrongs, and another, more measured, to strive for the development of a human rights culture.”).

² INDIA CONST. art. 14, cl. 1, art. 15, cls. 1, 3, art. 16, cls. 1-2; see Subrata Paul, *Combating Domestic*

Convention of Elimination of Violence against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which promotes the economic rights of women.³ Despite these legal remedies, however, India's progressive laws prohibiting violence against women remain largely unenforced, and prevailing institutional and cultural disincentives for women to report incidents of violence remain.⁴ The unrealistic and ambitious breadth of current legal mandates protecting women from spousal abuse—particularly against violence related to the payment of dowries—creates dilemmas for agencies and officers attempting to enforce such broad measures.⁵ The result is commissions that are charged with ensuring the enforcement of these laws have become burdened by large mandates and shackled by lack of practical authority to implement or enforce their findings.⁶

Numerous legal scholars have established and commented on the futility of Indian organizations, such as the Indian National Human Rights Commission and National Commission on Women, in making inroads into the basic cultural presumptions and biases that lead to an entrenched problem of spousal abuse in India.⁷ Few legal scholars, however, have made use of a number of sociological and anthropological studies that suggest that the problems of spousal

Violence Through Positive International Action in the International Community and in the United Kingdom, India, and Africa, 7 CARDOZO J. INT'L & COMP. L., 227, 237 (1999).

³ See Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]; see also AMNESTY INT'L, INDIA: THE BATTLE AGAINST FEAR AND DISCRIMINATION: THE IMPACT OF VIOLENCE AGAINST WOMEN IN UTTAR PRADESH AND RAJASTHAN (2001), available at www.unhcr.org/refworld/pdfid/3b83b6f17.pdf; Cyra Akila Choudhury, *Exporting Subjects: Globalizing Family Law Progress Through International Human Rights*, 32 MICH. J. INT'L L. 259, 282 (2011) (finding that the primary international instruments for domestic violence prevention include ICCPR, IESCR, and CEDAW, all of which "have the force of justiciable law"); Pami Vyas, *Reconceptualizing Domestic Violence in India: Economic Abuse and the Need for Broad Statutory Interpretation to Promote Women's Fundamental Rights*, 13 MICH. J. GENDER & L. 177, 197 (2006).

⁴ See AMNESTY INT'L, *supra* note 3, at 17-18 (discussing the unwillingness of local police to take up cases of violence against lower caste women in Uttar Pradesh and Rajasthan especially against upper caste members); Laurel Remers Pardee, *The Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe?*, 13 ARIZ. J. INT'L & COMP. L. 491, 502 (1996) (finding that gender discrimination is perpetuated by a patriarchal society that "condition[s] women to expect abuse and endure it"); Vijayashri Sripati, *Human Rights in India—Fifty Years After Independence (1947-1997)*, 26 DENV. J. INT'L L. & POL'Y 93, 132-33 (1997) (discussing the continuing deference to "personal religious laws" over women's rights); Vyas, *supra* note 3, at 182 (finding that many rights, including gender equality, fail to be actualized or adequately enforced).

⁵ See Kirsten K. Davis, *Equal Protection for Women in India and Canada: An Examination and Comparison of Sex Equality Provisions in the Indian and Canadian Constitutions*, 13 ARIZ. J. INT'L & COMP. L. 31, 66 (1996) (contrasting the extensiveness of protections for women against the superficiality of enforcement); Sripati, *supra* note 1, at 12-13 (discussing the broad investigational and educational mandate of the National Human Rights Commission).

⁶ See Sripati, *supra* note 1, at 16-17 (discussing the National Human Rights Commission's mandate to spread literacy, do research, conduct seminars, and work with the media but decriing the fact that commissions like the NHRC are "deviously designed—deliberately deprived of crucial powers—even if vested with a broad mandate").

⁷ See Angela K. Carlson-Whitley, *Dowry Death: A Violation of the Right to Life Under Article Six of the International Covenant on Civil and Political Rights*, 17 PUGET SOUND L. REV. 637, 645-46 (1994) (noting that legislation has been ineffective in deterring dowry deaths); Davis, *supra* note 5, at 33 (noting that religious customs prevent the full enforcement of equal rights guarantees in the Indian Constitution); Paul, *supra* note 2, at 237 (noting that the equal rights guarantees in the Indian Constitution are not yet backed up by state action); Sripati, *supra* note 1, at 16 ("[T]he state and its agents (police and the armed forces) are the biggest human rights violators.").

violence may be intertwined with economic status and class discrimination, particularly when economics are mixed with the social stigma of caste.⁸ Domestic violence, these studies suggest, is particularly pervasive in rural areas in India and disproportionately affects the poorest classes and castes of women, since women of lower class status and from rural areas have the least access to information about their rights.⁹ Despite progressive legal reforms, statutes addressing dowry violence and spousal abuse remain unenforced for the majority of rural and lower caste women because these women cannot overcome the combined effects of deep-seated presumptions about both their gender and class status.¹⁰ Recognizing that the intersection of gender and class discrimination is at the heart of the problem of domestic violence is a necessary step to solving the problem of the lack of enforcement of laws criminalizing gender-based violence.

I. INDIAN LEGAL PROTECTIONS FROM DOMESTIC VIOLENCE

A. *Protections in Indian Constitutional Law*

Although the Indian judicial system is largely modeled after the English common law system, India also incorporates the doctrine of judicial review, which enables the court to review the constitutionality of legislative statutes.¹¹ The practice of statutory interpretation primarily involves textual analysis, legislative intent, historical and contextual analysis, and examination of case law in order to reveal the intention and meaning of a statute.¹²

This discretionary power has enabled courts to establish broad constitutional protections. Because Indian constitutional law has a strong human rights and antidiscrimination component, there are, in theory, substantive legal protections in place to prevent the discrimination of women. Some of these laws date back to efforts by the British colonial government to eliminate the practice of *sati* (the immolation of widows) and to ensure that widows were entitled to property.¹³

⁸ See Diane Mitsch Bush, *Women's Movements and State Policy Reform Aimed at Domestic Violence Against Women: A Comparison of the Consequences of Movement Mobilization in the U.S. and India*, 6 GENDER & SOC'Y 587, 600 (1992) (noting that Indian feminists have stressed the need to consider issues of gender violence together with class and caste violence); L. Gerstein, *In India, Poverty and Lack of Education Are Associated with Men's Physical and Sexual Abuse of Their Wives*, 26 INT'L FAM. PLAN. PERSP. 44, 44-45 (2000) (arguing that low economic status leads to greater abuse); Dorothy Stein, *Burning Widows, Burning Brides: The Perils of Daughterhood in India*, 61 PAC. AFFAIRS 465, 477 (1988) (noting that urbanization, westernization, education, and wealth have effected changes in the actual workings of both dowry and marriage systems).

⁹ See JOANNA LIDDLE & RAMA JOSHI, *DAUGHTERS OF INDEPENDENCE: GENDER, CASTE, AND CLASS IN INDIA* 38 (1986) (suggesting that legislation for women's equality fails because rural women do not have access to education and therefore are unaware of their legal rights); see also Bina Agarwal, *Widows Versus Daughters or Widows as Daughters? Property, Land, and Economic Security in Rural India*, 32 MODERN ASIAN STUD. 1, 42 (1998) (suggesting that women's inheritance rights and land claims might be taken more seriously if there were a greater presence women's organizations that could provide rural women with access to lawyers, legal advice, and information).

¹⁰ See Anuradha Saibaba Rajesh, *Women in India: Abysmal Protection, Peripheral Rights and Subservient Citizenship*, 16 NEW ENG. INT'L & COMP. L. ANN. 111, 112 (2010) (finding that regional, cultural, class, caste, education, religious, and community variations result in differential levels and experiences of violence, exploitation, and abuse).

¹¹ NORMAN D. PALMER, *THE INDIAN POLITICAL SYSTEM* 128 (1961).

¹² Vyas, *supra* note 3, at 181.

¹³ See Hindu Widow's Re-Marriage Act, No. 15, Acts of Parliament, 1856, § 2, 4 (1) 1856 (allowing Hindu widows to legally remarry if they forfeit the right to the property inherited from her husband); Hindu Women's Right to Property Act, 1937, No. 18, Acts of Parliament, 1937 (giving Hindu women the limited right to inherit their husband's

Upon the promulgation of the new Constitution of an independent India in 1950, further substantial protections were added in the form of Articles 14, 15, and 16 of the Indian Constitution, which together come under Part III's Fundamental Rights section entitled *Right to Equality*.¹⁴ These sections of the Indian Constitution seem to guarantee basic rights to equality embodied in Article 14's guarantee that "[t]he State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."¹⁵ The addition of a new section to Article 15 by the Constitution Act of 1951, furthermore, makes explicit that the guarantee of basic rights does not limit the Indian government from enacting special provisions to aid women or those with lower economic or social standing in attaining equality: "Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."¹⁶ This amendment has led to a strong presumption that the State should redress existing inequalities, since "[e]quality before the law means that equals should be treated equally, but unequals should not be treated equally."¹⁷

The Indian Constitution also recognizes the international obligations incurred by virtue of being a signatory to CEDAW and ICESCR, both of which promote the economic equality of women.¹⁸ CEDAW broadly defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex," which serves to impair the fundamental human rights in the political, economic, social, cultural or civic fields.¹⁹ ICESCR guarantees the right of self-determination and equality of opportunity.²⁰

B. Protections in Indian Penal Law

In addition to the fundamental rights of equality articulated by the Indian Constitution, India has on several occasions amended the Indian penal code to reflect the need for more specific statutes to address problems of violence against women.²¹

In 2005, India passed the Protection of Women from Domestic Violence Act (PWDVA).²² The act "aims to expand existing definitions of domestic violence to include verbal, emotional, sexual, and economic abuse, and allows women civil and/or criminal redress for

estate with the caveat that such an estate would revert back to the husband's heirs upon her death).

¹⁴ See INDIA CONST. art. 14 (assuring that no person should be denied equality before the law), *id.* art. 15 cl. 1, (assuring that the state shall not discriminate on the basis of religion, race, caste, sex, or place of birth), *id.* art. 16, cl. 1 (ensuring equality of opportunity); Davis, *supra* note 5, at 37 (noting that these Articles form the heart of India's constitution and provide important fundamental rights).

¹⁵ INDIA CONST. art. 14.

¹⁶ INDIA CONST. art. 15, cl. 4.

¹⁷ S.P. Sathe, *Judicial Activism: The Indian Experience*, 6 WASH. U. J.L. & POL'Y 29, 61 (2001).

¹⁸ See Vyas, *supra* note 3, at 196 (finding that the Indian Constitution references India's obligations under international law).

¹⁹ CEDAW, *supra* note 3, at art. 1.

²⁰ See Vyas, *supra* note 3, at 198 ("To comply with its international obligations under ICESCR, India must ensure that a woman has the right to work and the right to determine her economic security through self-actualization.").

²¹ Carlson-Whitley, *supra* note 7, at 644-45; Madhu Kishwar, *Laws Against Domestic Violence: Underused or Abused?*, MANUSHI, no. 120, 2000, at 17, 19-22.

²² The Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005), vol. 12.

violations of the Act.”²³

Additionally, PWDVA allows magistrates to grant orders of protection, temporary compensation and housing to victims of domestic violence.²⁴ The intention of the law is to simplify the process for making a domestic violence claim and to assist women who might find it difficult to leave a violent relationship. This statute has the benefit of being far more expansive than prior legislation. Nevertheless, difficulties in enforcing PWDVA have followed the pattern of prior expansive laws. In some cases, such as in Maharashtra, courts have intervened to force compliance at the local level.²⁵

Furthermore, PWDVA may expand the definition of domestic violence too far by combining it with relatively minor offenses. In addition to more serious acts of violence, the law potentially criminalizes acts of “name-calling” related to not having a male heir. This part of the statute may have the effect of trivializing the more substantive elements of the law by criminalizing a single verbal act.²⁶ The law also reifies the notion that women can only be victims, rather than perpetrators, of violence.²⁷

However, PWDVA does represent an improvement over the narrow scope of prior laws. Prior to the passage of that statute, India enacted several laws to tackle domestic violence, including the Anti-Cruelty Statute, which applies to acts of extreme cruelty, and the Anti-Dowry Statute, applicable in cases of violence inflicted in connection with demands for dowry.²⁸

In fact, legislative reform has been most consistently applied to cases of “dowry death,” in which a husband or his family abuses or kills a bride in retaliation for his not having received sufficient dowry from the bride’s family.²⁹ In many cases, this practice can lead to particularly brutal murders: for instance, brides have been doused with kerosene in their kitchens and burned alive, with the families of the grooms later insisting that their deaths were the result of a suicide.³⁰

Concern over the continued prevalence of dowry murders in the post-independence period—coupled with public pressure for reform—drove new legislation instituting harsher punishments for dowry-related abuses or deaths.³¹ The first of a series of legislative efforts was the Dowry Prohibition Act of 1961. The Act codified and made explicit the definition of “dowry” as “any property or valuable security given or agreed to be given either directly or indirectly”

²³ Vyas, *supra* note 3, at 179.

²⁴ SAUMAYA UMA, ADDRESSING DOMESTIC VIOLENCE THROUGH THE LAW: A GUIDE TO THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005, at 110-11 (2010).

²⁵ *Id.* at 70-71 (“[T]he Bombay High Court provided directions to the Maharashtra government for an effective implementation” by appointing women as protection officers to process complaints and appointing social workers as service providers.).

²⁶ See Choudhury, *supra* note 3, at 299 (noting the overbreadth of the law).

²⁷ *Id.*

²⁸ Dowry Death, § 304B, PEN. CODE (1986); Husband or Relative of Husband of a Woman Subjecting Her to Cruelty, § 498A, PEN. CODE, (1983); see also Judith Greenberg, *Criminalizing Dowry Death: The Indian Experience*, 11 AM. U.J. GENDER SOC. POL’Y & L. 801, 803 (2002).

²⁹ See Carlson-Whitley, *supra* note 7, at 644-45 (discussing a series of laws that the Indian government has enacted to combat dowry deaths).

³⁰ *Id.* at 641; see also Stein, *supra* note 8, at 482 (discussing the most common forms of dowry deaths which involve kitchen or bathroom immolation using kerosene).

³¹ See Carlson-Whitley, *supra* note 7, at 645 (discussing laws by which the Indian government has made dowry deaths punishable by imprisonment between seven years and life); see also Pardee, *supra* note 4, at 500 (discussing the insufficiency of a series of laws designed to remedy dowry deaths).

either by one party of the marriage to another, or by any other person; or by the parents or any other person to either party or any other person.³²

The Act also provided a penalty of imprisonment for a minimum of six months and a maximum of two years for demanding a dowry.³³ The Act was amended twice, in 1984 and 1986, in an attempt to close loopholes. The amendments required police and local magistrates to investigate suspicious deaths of brides after marriage. The 1986 amendment also revised the Indian Penal Code to require a minimum imprisonment of seven years and a maximum sentence of life imprisonment for those involved in dowry deaths.³⁴ In addition, the Indian Evidence Act was amended to presume that a dowry death occurs whenever evidence indicates that a bride has been subjected to harassment or cruelty in relation to a dowry shortly before her death.³⁵

While the Indian government has focused its efforts to eliminate violence against women on the problem of dowry deaths, over time, amendments to the Indian Penal Code have also criminalized domestic abuse unrelated to dowry disputes.³⁶ In 1983, the Indian government, for the first time, recognized domestic violence as a specific category of crime through the introduction of section 498A into the Indian Penal Code, outlawing “a husband or relative of a husband . . . subjecting [a woman] to cruelty.”³⁷ In addition, 498A provides a punishment of up to three years for such an action.

Because of the seemingly strict punishments prescribed by section 498A, including making it a non-compoundable offense, which means that an accusation triggers immediate arrest of the perpetrator and cannot be easily withdrawn, this section has generated considerable controversy. In 2003, the Malimath Committee on Reforms of the Criminal Justice System called for section 498A to be amended to make the offenses bailable and compoundable in order to allow for the possibility of “reconciliation.”³⁸ In reality, however, a more persuasive case can be made that section 498A does not go far enough. Though PWDVA closed several loopholes in 498A, such as extending protection to women are not formally married, PWDVA did not fix several other lacunae in 498A, such as the focus on adult women in relationships in the nature of

³² Dowry Prohibition Act, No. 28 of 1961, § 2, INDIA CODE (YEAR?), vol. ??.

³³ *Id.* § 4.

³⁴ Indian Penal Code Act, No. 45 of 1860, PEN. CODE § 304B(2); *see also* Carlson-Whitley, *supra* note 7, at 645 (discussing laws by which the Indian government has made dowry deaths punishable by imprisonment between seven years and life).

³⁵ *See* Carlson-Whitley, *supra* note 7, at 645 (discussing how the Indian “Parliament amended the Indian Evidence Act, which now creates a presumption of dowry death whenever a woman is subjected to dowry-related cruelty or harassment soon before her death”); Kishwar, *supra* note 21, at 115 (discussing the insertion of “section 113B in the Indian Evidence Act, [in which] the lawmakers stipulated that in all those cases where a person is booked for having caused a ‘dowry death’ under section 304B, the court shall presume that the accused is guilty unless he can prove otherwise”).

³⁶ *See* Kishwar, *supra* note 21, at 112 (discussing a number of amendments that have been made to the Indian Penal Code in order to protect wives from marital violence); *see also* *Laws Against Domestic Violence and Abuse*, MANUSHI, no. 137, 2003, at 24, 24-25 (discussing legal resources for women who are victims of different forms of domestic violence).

³⁷ Indian Penal Code Act, No. 45 of 1860, PEN. CODE § 498A; *see also* Kishwar, *supra* note 21, at 114 (discussing the introduction and parameters of § 498A of the Indian Penal Code).

³⁸ I MINISTRY OF HOME AFFAIRS, GOV'T OF INDIA, COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM: REPORT 191 (2003), *available at* http://www.498a.org/contents/general/Malimath%20Committee_SelectedSections.pdf.

marriage, leaving abused children and domestic servants without protection.³⁹

C. Commissions Protecting Against Domestic Abuse

Over the past two decades, the Indian government has pushed for more successful implementation of new domestic violence laws by founding two commissions with mandates related to domestic violence concerns: the National Commission for Women and the National Human Rights Commission. The National Commission on Women was created by the National Commission for Women Act of 1990 (NCWA) and was set up as a statutory body in January 1992.⁴⁰ The Commission's mandate is chiefly to perform an investigatory and watchdog role. Its main function is to look into the implementation of "safeguards provided for women under the Constitution and other laws" and to make recommendations to the central government on how to improve these measures.⁴¹ But the Commission also has a substantial number of additional duties, including inspecting women's prisons and undertaking educational research on women's issues.⁴²

A second body, the National Human Rights Commission, has a mandate that includes investigating cases relating to domestic abuse. Created in the context of a public outcry over rapes, tortures, and murders by police officers acting under the sweeping power of Indian antiterrorist legislation in the 1980s, the National Human Rights Commission was given an extremely broad mandate to investigate human rights violations and suggest remedies to the central government.⁴³ This mandate includes investigation of human rights abuses, educating the population on human rights issues, and regularly monitoring the enforcement of human rights provisions in India.⁴⁴

II. REASONS WHY INDIAN LEGAL REMEDIES FOR DOMESTIC VIOLENCE HAVE BEEN INEFFECTIVE

India's legislative efforts and related commissions have failed to stem the rising tide of domestic violence.⁴⁵ As numerous scholars have shown, there are at least two reasons why the Indian government has failed to decrease abuse. First, the unwillingness of local police to

³⁹ See Tahira Karanjawala & Shivani Chugh, *The Legal Battle Against Domestic Violence in India: Evolution and Analysis*, 23 INT'L J.L. POL'Y & FAM. 289, 294-95 (2009) (discussing how the PWDVA is ambiguous as to "whether the definition of an aggrieved person would include a child" and "does not make any provision for the protection of domestic servants").

⁴⁰ National Commission for Women Act, 1990, No. 20, Acts of Parliament, 1992.

⁴¹ *Id.* at § 10(a)-(c).

⁴² *Id.* at § 10(h), (k).

⁴³ See Sripati, *supra* note 1, at 8-9 (discussing how a politically turbulent time in India during the 1980s gave rise to the National Human Rights Commission).

⁴⁴ *Id.*; The Protection of Human Rights Act, 1993, No. 10, Acts of Parliament (1994).

⁴⁵ See Pardee, *supra* note 4, at 501 (discussing reasons why India's laws have been ineffective at reducing dowry murders such as, "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"); see also Carlson-Whitley, *supra* note 7, at 645-46 (discussing reasons why the enacted Indian laws have failed in reducing dowry murders); Melissa Spatz, *A "Lesser" Crime: A Comparative Study of Legal Defenses for Men Who Kill Their Wives*, 24 COLUM. J.L. & SOC. PROBS. 597, 610-11 (1991) (discussing reasons why the Indian government has failed to reduce dowry murders).

implement current legislation on domestic violence has played a major role in the inability of the national government to decrease violence against women.⁴⁶ Second, deep-set cultural presumptions and attitudes regarding the position of women in families have also been impediments to reform.⁴⁷ These two factors play a critical role in the impotence of domestic violence legislation, and will be considered below. A third factor, the economic disempowerment of women, particularly in rural areas, must also be analyzed to understand how intersections of caste, class, and education can create a disparate impact on women who are insufficiently informed about their legal rights or fail to act on them.

A. *Difficulty in Implementing Legal Protections*

The first impediment to decreasing domestic abuse in India is the impracticality of enforcing domestic violence laws as they are written. Some, such as the Dowry Prohibition Act of 1961, are too broad in their scope. If the definition of the dowry—"any property" to be "directly or indirectly" given or exchanged—were taken literally by the courts, then the courts would be in the unreasonable position of imprisoning entire wedding parties for bringing any wedding gifts at all. Rather than take this untenable position, courts and law enforcement have simply declined to implement the law.⁴⁸ Moving too far in the other direction, the Indian Supreme Court has recently declared that a demand for money by a bride's parents after a wedding cannot constitute a dowry, creating a situation in which the law is being interpreted in simultaneously over-inclusive and under-inclusive ways.⁴⁹ For example, only thirty-five people were charged in dowry death cases between January and October 1987,⁵⁰ despite the fact that, by one estimate, one thousand women are burned alive annually in dowry death cases in Gujarat province alone.⁵¹ Moreover, implementation does not appear to be improving over time. Of the 131,338 crimes

⁴⁶ See Carlson-Whitley, *supra* note 7, at 648-49 (stating that police often fail to properly investigate domestic abuse cases); see also Indira Jaising, *Domestic Violence and the Law*, 1 J. NAT'L HUM. RTS. COMM'N, 72, 72-73 (2002) ("[T]he role of State inaction in the perpetuation of the violence combined with the gender-specific nature of domestic violence require that domestic violence be classified and treated as a human rights concern rather than as a mere domestic criminal justice concern.").

⁴⁷ See Sripathi, *supra* note 1, at 44 (discussing the indifference of the Indian central government to the actions and recommendations of the NHRC); Bush, *supra* note 8, at 601 (explaining that legal remedies for domestic violence do little to change or question familial power structures at the root of the domestic violence problem); Sudhir Kakar, *Feminine Identity in India* (discussing the subordinate position of women in traditional family structures), in *WOMEN IN INDIAN SOCIETY: A READER* 44, 61 (Rehana Ghadially ed., 1988).

⁴⁸ See *Laws Don't Benefit Women*, STATESMAN (India), Mar. 18, 2001 (noting the lack of implementation of domestic violence laws); Dharam Shourie, *HR Group Praises Indian Democracy*, PRESS TRUST OF INDIA, Jan. 17, 2002 (noting that particularly in Bihar and Uttar Pradesh, complaints of violence against *dalits* and women are rarely brought to the attention of the authorities).

⁴⁹ See Dhananjay Mahapatra, *Customary Payments, Gifts not Dowry*, SC, TIMES INDIA, Feb. 1, 2008, http://articles.timesofindia.indiatimes.com/2008-02-01/india/27773374_1_dowry-harassment-charges-dowry-prohibition-act-judicial-discipline (criticizing India's Supreme Court ruling "that demand for money and presents from parents of a married girl at the time of birth of her child or for other ceremonies, as is prevalent in society, may be deprecable [sic] but cannot be categorised [sic] as dowry to make it a punishable offence").

⁵⁰ Namratha S. Ravikant, *Dowry Deaths: Proposing a Standard for Implementation of Domestic Legislation in Accordance with Human Rights Obligations*, 6 MICH. J. GENDER & L. 478, 476-77 (2000) (discussing the number of dowry death cases).

⁵¹ Carlson-Whitley, *supra* note 7, at 643 (showing that one-thousand women are buried alive in Gujarat).

committed against women in 1998, thirty-one percent were perpetrated by a husband or relatives.⁵²

Even after the passage of PWDVA, similar problems persist. Many of the PWDVA's provisions are still problematic and vague, and enforcement remains partial. For example, the PWDVA allows judges to mandate counseling in which the victim of domestic abuse is required to sit in sessions with her abuser.⁵³ Moreover, the statute's potential criminalization of "insults" and "ridicule" affords opponents of the law a means to trivialize the law in its entirety.⁵⁴ As a result, the law remains largely unimplemented, since the public is largely unaware of its provisions and enforcement efforts remain underfunded.⁵⁵

Even more significantly, the Supreme Court's decisions indicate that laws about domestic violence cannot be properly enforced because a traditional mindset regarding inter-caste relations, gender roles, and marriage persist. A noteworthy example of how extensively these mentalities are entrenched can be seen in the 2008 Indian Supreme Court case of *Dilip Premnarayan Tiwari & Anr. v. State of Maharashtra*, in which the Court reviewed the appropriate sentence for acts of homicide motivated by issues of caste. This case involved a Brahmin woman, Sushma Tiwari, whose family was from Uttar Pradesh. Sushma married a Malayali man, Prabhu Nochil from the *Ezhava* (small cultivator) caste, against the wishes of her family. As a result, Sushma's brother, Dilip, along with his friends, attacked the Nochil house, killing Prabhu, his father, his cousin, and a family friend, and severely wounding Prabhu's mother and sister.⁵⁶

In its decision, the Supreme Court found that the Mumbai High Court erred in sentencing the perpetrators to death because it failed to account for mitigating circumstances, including the violation of family honor in the case of an unsanctioned intercaste marriage. Specifically, Justice Sirpukar found that, for Dilip, it was "necessary to display the loyalty to the family in whose house he was living and it could have been only out of that, that the murders took place."⁵⁷

In rendering such a decision, the Court justifies the idea that, contrary to the intent of PWDVA, prevalent cultural norms ought to be used as mitigating factors, rather than penalty-enhancing ones. Justice Sirpukar added that "it is the elder brother who justifiably or otherwise is held responsible for not stopping" the inter-caste affair, and that Sushma Tiwari increased her family's animosity by refusing to drop out of college where she was "openly mixing with the society."⁵⁸ The Court further found that blame for the honor killing rested with Sushma not only for marrying Prabhu, but also for becoming pregnant and thus reaching "a point of no return."⁵⁹

⁵² See Editorial, *Private Tears and Public Pain*, HINDU, Jun. 6, 2001, available at <http://www.hindu.com/2001/06/06/stories/05062512.htm> (noting that the lack of implementation of laws at the local level has led to a decreased confidence in the legal system among victims and ultimately to making them less likely to seek justice).

⁵³ Ashleigh Owens, *Confronting the Challenge of Domestic Violence Sentencing Policy: A Review of the Increasingly Global Use of Batterer Intervention Programs*, 35 FORDHAM INT'L L.J. 565, 594 (2012) (discussing how provisions of the PWDVA are controversial such as giving judges the option of mandating that an offender attend counseling sessions with the victim).

⁵⁴ See Choudhury, *supra* note 3, at 299 (discussing how the PWDVA has been criticized because "it is overbroad in its definition of verbal and emotional abuse").

⁵⁵ See Owens, *supra* note 53, at 595 (stating that the effectiveness of some provisions in the PWDVA is limited due to "lack of public awareness and inadequate funding").

⁵⁶ *Dilip Premnarayan Tiwari & Anr. v. State of Maharashtra*, (2009) 16 S.C.R. 322.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

Accordingly, Sushma's breach of expected cultural norms was "the reason why this ghastly episode took place."⁶⁰

This line of reasoning presumes that violence is justified as a response to a woman's failure to adhere to traditional mores and that the intersection of still-prevalent ideas of caste and gender superiority supersede statutory mandates. The resulting and quite problematic paradox is that the Court cannot be expected to enforce laws designed to counteract cultural bias if it endorses a line of reasoning that justifies their blatant violation.

Another problem of implementation stems from the reluctance of regional or local officials to enforce the mandates of the central government. Police are reluctant to become involved in prosecuting domestic violence offenses, and prosecutors frequently refuse to take up these cases.⁶¹ In addition, state and local governments frequently balk at following up on the mandates of the central government. For example, though the National Commission for Women put pressure on individual states to set up women's commissions, only a few states have done so. Additionally, some states lacking a state commission, such as Uttar Pradesh, are also states in which domestic abuse is most serious.⁶² Efforts to delay implementation are heightened by the genuine backlog in the dockets of many Indian courts resulting from a lack of proper funding. A recent survey found that, at their current pace, Indian courts would take 320 years to hear their existing backlog of cases.⁶³

In addition, the decisions of lower courts often reflect an unwillingness to convict and imprison abusers. In one recent case, a trial court judge acquitted a man of domestic abuse under section 498A of the Indian Penal Code on the basis of a supposed dying declaration of the victim exonerating her husband from all charges.⁶⁴ The trial court gave weight to this "dying declaration" despite the fact that the prosecution at trial produced eight witnesses who testified to the abuse of the victim.⁶⁵

In another case, the High Court of Allahabad reduced the sentence of abusers who had mercilessly beat a victim with a wooden stick and planned to burn her alive to a small fine of RS 1000 (approximately twenty U.S. dollars), without hearing any evidence or argument as to why the sentence should be reduced.⁶⁶ When delivering the judgment, the Indian Supreme Court restoring the original jail sentence, Justice Shah noted the repeated problems of getting lower courts to enforce domestic violence law:

⁶⁰ *Id.*

⁶¹ See Carlson-Whitley, *supra* note 7, at 647-48 (noting that half-hearted investigations by police often force judges to dismiss cases of domestic abuse); Ravikant, *supra* note 50, at 449, 476-77 (2000) (discussing how police often categorize spousal abuse as a "private affair" as a way of refusing to investigate abuse).

⁶² AMNESTY INT'L, *supra* note 3, at 23 (discussing how "Uttar Pradesh has no State Women's Commission," yet "[in] January 2001 it was reported that the National Commission for Women had directed the Uttar Pradesh government to establish a women's commission, alarmed at the number of complaints relating to atrocities on women received from Uttar Pradesh (the largest number from any state)").

⁶³ *Courts Will Take 320 Years to Clear Backlog Cases: Justice Rao*, TIMES OF INDIA, Mar. 6, 2010, <http://timesofindia.indiatimes.com/india/Courts-will-take-320-years-to-clear-backlog-cases-Justice-Rao/articleshow/5651782.cms>.

⁶⁴ The trial court's decision was later overturned by the High Court of Judicature at Bombay. See *Kamalakar Nandram Bhavsar v. State of Maharashtra*, (2004) 10 S.C.C. 192.

⁶⁵ *Id.*

⁶⁶ *Narsingh Prasad Singh v. Raj Kumar*, (2001) 2 S.C.R. 984.

It is virtually a matter of shame to the civilization that indiscriminate attacks and violence are directed against married women in certain quarters including so-called educated for obnoxious and anti-social demand of dowry and the accused are let off for various reasons. Result is violence against women continues unabated as law loses [sic] its deterrent effect.⁶⁷

A final implementation problem lies in the unreasonably large mandates thrust upon the National Human Rights Commission and the National Commission for Women, and the comparably few mechanisms given to these organizations to enforce their mandates. Both Commissions have broad mandates to investigate abuse.⁶⁸ But upon finding abuse, all either Commission can do is recommend appropriate punitive measures to the appropriate authorities, who often ignore the recommendations.⁶⁹ Because of their lack of enforcement power to prosecute civil servants, these Commissions act most prominently as investigative bodies. Without appropriate enforcement mechanisms, the Commissions will remain “an exercise in empty rhetoric.”⁷⁰

B. *Cultural and Familial Bias Against Implementing Anti-Domestic Violence Legislation*

Blanket explanations of the lack of enforcement of domestic violence provisions on the basis of patriarchal bias tend to exaggerate the coherence of Indian culture and ignore the wide range of opinions, rural and urban differences, religious differences, and regional differences that influence cultural biases.⁷¹ In urban areas, for example, both arranged marriages and conceptions of the responsibility of a bride to live with her husband’s family are declining, giving women a greater number of familial and marital choices.⁷² Yet while levels of female autonomy vary considerably throughout South Asia, basic familial patterns in rural areas, including patrilineal residence, arranged marriage, hierarchical familial relations, and property and inheritance arrangements that exclude women, are still prevalent.⁷³ A bride’s dependence on her husband’s family in rural areas can be quite substantial, particularly in North India where women tend to enter into arranged marriages with a family far from their home village and marry husbands with whom they have had infrequent contact.⁷⁴ In these areas, larger dowries are also frequently expected, and the social and economic prestige of the husband’s family is often tied to the

⁶⁷ *Id.*

⁶⁸ See Sripati, *supra* note 1, at 37 (describing the agenda of the NHRC whose breadth includes all human rights at all levels of government); see also National Commission for Women Act, No. 20 of 1990, INDIA CODE (1990) (detailing the charter of the expansive National Commission for Women).

⁶⁹ National Commission for Women Act, No. 20 of 1990, § 10(e).

⁷⁰ Sripati, *supra* note 1, at 46.

⁷¹ See Catherine Kohler Riessman, *Stigma and Everyday Resistance Practices: Childless Women in South India*, 14 GENDER & SOC’Y 111, 112 (2000) (describing how women from different classes experience childlessness differently).

⁷² See *id.* (showing how traditional gender roles are being altered by influential feminist organizations in India and how urban women can increasingly choose to remain unmarried for longer periods of time or can choose their own husband).

⁷³ See Shireen J. Jeejeebhoy & Zeba A. Sathar, *Women’s Autonomy in India and Pakistan: The Influence of Religion and Region*, 27 POPULATION & DEV. REV. 687, 690 (2001).

⁷⁴ See *id.*

continuing success of the marriage.⁷⁵ In particular, despite legal efforts to give women financial status, the lack of clear marital property rights still leaves many women who file claims without the economic resources to support themselves.⁷⁶ This provides a disincentive for Indian women to seek divorces or to cause conflict with their husband's families by reporting abuse to authorities.⁷⁷

In rural areas, women are more likely to be tied both economically and by tradition to the property owned by their husband's family for subsistence.⁷⁸ Women in many areas of India still face strong expectations to marry and produce children and to seek divorces rarely.⁷⁹ In these situations, women still become victims of their lack of social power within the husband's family and their own lack of resources and autonomy.⁸⁰ While these factors are not the only explanations for the problems of enforcing domestic violence statutes at the local level, these persistent cultural biases against women certainly still provide a part of the explanation for local intransigence. Thus, as Prem Chowdhry has shown, in rural North India, "aspects of caste, class, and gender" often have "a crucial inter-connection," since kinship linkages, which tend to strengthen caste ties, are solidified through the institution of marriage.⁸¹

Additionally, local police forces sometimes do not prioritize dowry deaths because of the view that the family, rather than the State, is the best forum to resolve the issue. This cultural assumption—that deaths that occur within the family ought to be resolved through informal means—results in dowry deaths being given a considerably lower priority than other homicides. In certain areas of India, it can often take more than a year for such a case to even be given a hearing.⁸²

C. Caste and Economic Status as Impediments to the Enforcement of Domestic Violence Laws

In June 1999, seventeen-year-old Usha Yadav, a caste Hindu, decided to elope with a *dalit* (untouchable caste) boy.⁸³ In retaliation for this eloping and unacceptable mixing of castes,

⁷⁵ *Id.*; see also Carlson-Whitley, *supra* note 7, at 649-50 (describing how dowry law continually disempowers women).

⁷⁶ See Amy Hornbeck et al., *The Protection of Women from Domestic Violence Act: Solution or Mere Paper Tiger?*, 4 LOY. U. CHI. INT'L L. REV. 273, 303-04 (2006) (describing how the inability of many women to inherit property disempowers them).

⁷⁷ *See id.*

⁷⁸ See Agarwal, *supra* note 9, at 42-43 (discussing property rights and inheritance force women to rely on husbands).

⁷⁹ Riessman, *supra* note 71, at 113.

⁸⁰ See Tim Dyson & Mick Moore, *On Kinship Structure, Female Autonomy, and Demographic Behavior in India*, 9 POPULATION & DEV. REV. 35, 45-46 (1983) (discussing women's lack of autonomy and reliance on husband's family).

⁸¹ Prem Chowdhry, *Enforcing Cultural Codes: Gender and Violence in Northern India*, 32 ECON. & POL. WKLY. 1019, 1019 (1997).

⁸² Carlson-Whitley, *supra* note 7, at 648.

⁸³ The Hindu caste system has its roots in the epic religious texts such as the *Bhagavad Gita*. The system has five major class designations: *Brahmins* (priests), *ksatriyas* (warriors), *vaisyas* (farmers, merchants, artisans), *sudras* (laborers), and *dalits* (untouchable laborers). The *dalits* are referred to as "untouchables" because they are thought to be so polluting that touching them would result in ritual pollution for caste Hindus. Though in rare cases mobility within

the next month, Usha Yadav's father detained the boy's mother in his house. She was subsequently gang-raped and tortured. She was then burned alive in front of the entire village of Bhavanipur, in Uttar Pradesh state.⁸⁴ Stories like these are unfortunately common because most of the victims of caste-based atrocities are women, and many of these atrocities are related to episodes of domestic violence.⁸⁵ They are also, unfortunately, not a relic of the past, as honor killings for inter-caste marriages remain prevalent. In Uttar Pradesh in 2010, Ajit Saini was burned with acid, had his limbs cut off, and was found dead with his throat slit, apparently by the brother of a Jat girl he had married. More recently, in January 2012, a man strangled his sister who had married someone from a different caste against his wishes.⁸⁶

Economic and caste discrimination play a crucial role in preventing lower-income women and women from backward or scheduled classes from obtaining redress for their complaints of domestic and spousal abuse. A recent study that examined the reproductive health of 6,695 married men in Uttar Pradesh state has yielded valuable data corroborate the idea that persistent domestic violence has a substantial economic component.⁸⁷ Of these men, thirty percent reported physically abusing their wives.⁸⁸ Further, among such men, the study found a strong correlation between low education levels and abuse, as well as a very strong correlation between extreme poverty and spousal abuse.⁸⁹ Recent studies also show that the likelihood of abuse increases with the amount of specific economic requests by a wife on her husband (such as incurring an expense and asking for money), particularly if the husband is poor, and that the risk of domestic violence increases greatly with small dowry payments.⁹⁰ Since grooms' families view dowry as a crucial way to improve their economic status, brides and families of brides who are unable to pay dowries face far greater risks of domestic violence.⁹¹

Faced with the increased likelihood of abuse and the dual problems of economic and caste discrimination as well as gender discrimination, poor, lower caste, and rural women are bereft of the options afforded to urban, higher class, or middle class women. They are less likely to have access to feminist groups and autonomous organizations, since knowledge of these groups requires literacy, and the majority of leaders of women's groups in India are urban, middle class, and highly educated.⁹² Though there are NGOs such as Jagori Rural that work to improve access

subcastes is possible, in general one's caste status is fixed. See Oliver C. Cox, *Race and Caste: A Distinction*, 50 AM. J. SOCIOLOGY 360, 362 (1945). The rigidity of caste distinctions is in part a result of their usefulness for taking censuses in the colonial era. See Nicholas P. Dirks, *Castes of Mind*, 37 REPRESENTATIONS 56, 76 (1992) (discussing the ways in which the modern form of caste was largely a British invention).

⁸⁴ AMNESTY INT'L, *supra* note 3, at 10.

⁸⁵ *Id.* at 15.

⁸⁶ Dipak Kumar Dash, *Inter-Caste Marriage Ends in Honour Killing*, TIMES INDIA, May 9, 2010, http://articles.timesofindia.indiatimes.com/2010-05-09/india/28319860_1_ajit-saini-anshu-anuj-tomar; *Honour Killing: Man Murders Newly Married Sister*, TIMES INDIA, Jan. 2, 2012, http://articles.timesofindia.indiatimes.com/2012-01-02/delhi/30580811_1_man-murders-inter-caste-marriage-honour.

⁸⁷ Gerstein, *supra* note 8, at 45; Sandra L. Martin et al., *Domestic Violence in Northern India*, 150 AM. J. EPIDEMIOLOGY 417, 418-19 (1999).

⁸⁸ Gerstein, *supra* note 8, at 44.

⁸⁹ *Id.*

⁹⁰ See Ravi K. Verma & Martine Collumbien, *Wife Beating and the Link with Poor Sexual Health and Risk Behavior Among Men in Urban Slums in India*, 34 J. COMP. FAM. STUD. 61, 61 (2003).

⁹¹ See Greenberg, *supra* note 28, at 830.

⁹² See Leslie J. Calman, *Women and Movement Politics in India*, 29 ASIAN SURV. 940, 944-45 (1989).

to information about violence in rural areas, by their own admission their efforts to make the legal system functional in these areas is limited, forcing the organizations into a strategy of direct action rather than litigation.⁹³ Given their lack of literacy and lack of access to women's organizations, women of lower caste and lower economic status are less likely to know about judicial remedies or take advantage of them.

Economic status also affects the ability of women to obtain redress for domestic violence because of rampant bribery. Despite laws to combat corruption, bribery is still common in India, not least among the police and the judicial system.⁹⁴ Because of widespread corruption and bribery in Indian government and society, those of lower economic status have less opportunity to effectively use the judicial system.⁹⁵ Women without substantial economic means are unlikely to be able to convince authorities to prosecute cases, even when they are able to take their complaints to the National Commission on Women, the police, or the courts. Local police officers hesitate to file complaints for lower-class women, and have been known to charge an entry fee for coming into a police station and to demand an additional surcharge for filing a complaint.⁹⁶ Furthermore, lower-class and lower-status women are less likely to be able to appeal their cases.⁹⁷ Even the Indian central government has acknowledged that the lack of aid is a substantial factor in seeking relief from domestic violence:

A large number of women have not been able to fully avail the benefits under the Constitution and other legal provisions. There are several deterrents in the way of women seeking legal redress. Insufficiency of legal aid, procedural lacunae and delays, lack of basic knowledge about the law and procedures and long drawn out trials continue to hamper women's access to legal redress.⁹⁸

Moreover, this lack of aid, as well as these delays and procedural defects, have not been entirely resolved by the passage of PWDVA. The PWDVA does allow for "service providers"—organizations dedicated to the protection of women that provide legal aid—to be notified when a protection officer files a domestic incident report. However, this vests tremendous authority in the protection officers, who are neither officially trained personnel nor judicial officers, and creates the potential for "ineffectiveness or worse yet the abuse of the machinery in case a protection officer either neglects his or her responsibility or misuses his or her authority."⁹⁹ Similarly, though the PWDVA was supposed to mandate that cases be handled quickly, delays continue to plague the system, as protection and maintenance orders are still not processed

⁹³ Meera Velayudhan, *Women's Land Rights in South Asia: Struggles and Diverse Contexts*, 44 *ECON. & POL. WKLY.* 74, 77 (2009) (describing low membership in women activist groups).

⁹⁴ See Meghana Shah, *Rights Under Fire: The Inadequacy of International Human Rights Instruments in Combating Dowry Murder in India*, 19 *CONN. J. INT'L L.* 209, 221 (2003) (noting that law enforcement is weak in the Indian system because of corruption); see also Toral Patel, *Corrupt Practices in India: No Payoff*, 20 *LOY. L.A. INT'L & COMP. L.J.* 389, 397-405 (1998) (describing history of corruption in India).

⁹⁵ See Editorial, Gail Omvedt, *The Purpose of Reservation—II*, *HINDU*, Mar. 25, 2000 (arguing that set-asides for scheduled and backwards classes are necessary because these classes have less ability to bribe officials).

⁹⁶ See P. Sainath, *A Dalit Goes to Court*, *HINDU*, July 11, 1999 (describing the difficulties of going through the court system); see also AMNESTY INT'L, *supra* note 3, at 40.

⁹⁷ AMNESTY INT'L, *supra* note 3, at 39.

⁹⁸ *Id.* at 19.

⁹⁹ Karanjawala & Chugh, *supra* note 39, at 298.

quickly.¹⁰⁰

III. INTERSECTIONALITY: THE MARGINALIZATION OF ECONOMICALLY DISADVANTAGED WOMEN AND WOMEN OF LOWER CASTE

Several American legal scholars, including critical race theorist Kimberlé Crenshaw, are credited with espousing the theory of intersectionality and its impact on women of color.¹⁰¹ Crenshaw claims that experiences of discrimination are dependent upon an understanding of individuals as being comprised of multifaceted identities.¹⁰² For instance, she argues that for women of color in the United States, the intersection of race and gender creates a greater feeling of disempowerment than that of men of color or white women, both of whom are also marginalized groups.¹⁰³ The political climate of the United States in the twentieth century resulted in the creation of two very distinct sociopolitical groups that were created to account for the interests of their members who were, and still are, political minorities and often victims of social discrimination. The first group, whose members identify as women, primarily accounts for the interests of upper class white women rather than women of color.¹⁰⁴ The second group, whose members identify as of a particular race or color, primarily accounts for the interests of males.¹⁰⁵ The result is that women of color, who identify with the interests of both groups, become marginalized by both groups, since they only partially account for these women's interests. Women of color cannot be placed solely into one of the available groups because their interests lie with both.¹⁰⁶ However, both groups often look to the interests of other members first. Often the political ideology of such groups may be conflicting, in which case women of color are torn in their interests. Additionally, understanding the position of women of color in the United States can help explain their unique experience of violence and discrimination.¹⁰⁷

¹⁰⁰ See Biswajit Ghosh & Tanima Choudhuri, *Legal Protection Against Domestic Violence in India: Scope and Limitations*, 26 J. FAM. VIOLENCE 319, 327 (2011) (describing the complex and problematic process of obtaining a protection order).

¹⁰¹ See Kimberlé Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color* (stating that violence against women often requires attention to many dimensions including race and gender), in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* 357 (Kimberlé Crenshaw et. al eds., 1996) [hereinafter Crenshaw, *Mapping the Margins*]; Kimberlé Williams Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139; Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 BERKELEY WOMEN'S L.J. 16 (1995); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1989).

¹⁰² See Crenshaw, *Mapping the Margins*, *supra* note 101, at 358-59 (analyzing the unique position of women of color when facing violence and discrimination).

¹⁰³ *Id.* at 357-58.

¹⁰⁴ *Id.* at 360; see also Johanna E. Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women's Human Rights Violations*, 52 EMORY L.J. 71, 107 (2003) ("This unified, monolithic category of 'women' excluded diverse voices and inevitably reflected the position of privileged women—white, upper-middle-class, heterosexual, able-bodied women.").

¹⁰⁵ see Crenshaw, *Mapping the Margins*, *supra* note 101, at 360 (using the example of African-Americans).

¹⁰⁶ *Id.* at 358.

¹⁰⁷ See Kimberlé Williams Crenshaw, *Panel Presentation on Cultural Battery*, 25 U. TOL. L. REV. 891, 894 (1994) (stating that women from minority cultures often find it more difficult to report violence and get protection from abuse because of language barriers and discrimination against minority cultures); see also Darren Lenard Hutchinson,

A. Violence Against Women in India

The impact of multifaceted identities in understanding violence against women is not limited to the United States.¹⁰⁸ In India, issues of caste, gender and class create barriers for protecting poorer women from domestic violence.¹⁰⁹ In her study of India's National Human Rights Commission, Vijayashri Sripati notes, "[h]uman rights violations in India are rooted in deep schisms based not only on acute economic inequalities, but also caste, creed, religion, gender, social status and other characteristics."¹¹⁰ Poor women and women of low status face an especially difficult burden of reporting incidents of domestic violence due to their marginalization as both women—where certain forms of domestic violence have been “widely accepted as an integral part of the patriarchal social structure in India, under which women are considered to be inferior,”¹¹¹—and as members of a lower class or caste who often face discrimination from agency officials charged with ensuring their protection.¹¹²

B. The Effects of Gender in Prosecuting Violence Against Women

Although the role of women is changing in India over time,¹¹³ many women are still forced into roles of inferiority and submission.¹¹⁴ Gender roles are clearly demarcated between male and female obligations. Women are often expected to fulfill the role of wife and mother.¹¹⁵ Although India is not exceptional in its expectation of childbearing, “women continue to be constrained by pronatalism—the ideology of compulsory motherhood.”¹¹⁶ Women are often stigmatized when they cannot or choose not to become mothers.¹¹⁷

Furthermore, the Indian family arrangement is such that married women are often

Identity Crisis: “Intersectionality,” “Multidimensionality,” and the Development of an Adequate Theory of Subordination, 6 MICH. J. RACE & L. 285, 308 (2001); Darren Lenard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory, and Anti-Racist Politics*, 47 BUFF. L. REV. 1, 9 (1999) (explaining that intersectionality also involves the systems of oppression in which social identities are constructed, empowered and disempowered).

¹⁰⁸ See Bond, *supra* note 104, at 71 (“Ardent identity politics dominate the world stage . . .”).

¹⁰⁹ See Paul, *supra* note 2, at 236-40 (stating that factors such as gender, race and religion play a role in the prosecution of, and protection against, violence against women).

¹¹⁰ Sripati, *supra* note 1, at 11.

¹¹¹ Paul, *supra* note 2, at 236.

¹¹² See William J. Eisenman, Comment, *Eliminating Discriminatory Traditions Against Dalits: The Local Need for International Capacity Building of the Indian Criminal Justice System*, 17 EMORY INT'L L. REV. 133, 138 (2003) (discussing cases of police unwillingness to take up discrimination against *dalits*); Sripati, *supra* note 1, at 11-12 (stating that members of religious, linguistic, and ethnic minorities, and the *dalits* or *harijans*, untouchables, are often vulnerable to unreported violence due to their low status).

¹¹³ See Riessman, *supra* note 71, at 112-13 (stating that stereotypes about Indian women are based on inadequate knowledge and should take into account regional differences as well as the impact of feminist organizations).

¹¹⁴ See Paul, *supra* note 2, at 236-37 (stating women in India are often bound by cultural roles of “submissiveness, passiveness, and denial”).

¹¹⁵ See Riessman, *supra* note 71, at 112 (stating that women often feel pressure to become married with children).

¹¹⁶ *Id.* at 129.

¹¹⁷ *Id.*

expected to live with their husband's family.¹¹⁸ This extended family structure further serves to isolate women from childhood friends and family members that could otherwise serve as a source of support in the face of violence. Women who move a long distance from their childhood homes and environments are especially susceptible to feelings of isolation and loss of a support network. The internalization of certain patriarchal norms have also created situations "where the in-laws, often the mother-in-law, contribute to violence perpetuated by the husband against the wife" as a disciplinary measure.¹¹⁹

This family structure is a remnant of the traditional notion of women as the property of either their fathers or husbands.¹²⁰ Even now, this notion of the bride as property is prevalent in some areas of India where dowries are still expected from the bride's family.¹²¹ When families are unable to pay a sufficient dowry, the bride often faces physical assault and retribution.¹²² Women are especially susceptible to domestic violence where consumerism is one its root causes. There are still numerous reports of married women being beaten or killed for insufficient dowry by the bride's family.¹²³ Such crimes are still often hard to prosecute because the crimes are staged to look like suicide and the evidence is often burned along with the bride.¹²⁴ Indian law has been unable to deal adequately with dowry deaths. Even after the passage of the PWDVA, the rate of convictions in dowry-related crimes remains very low, despite evidence that these crimes are actually increasing in frequency.¹²⁵ Therefore, legal protections cannot guarantee women's safety.

Additionally, gender roles at times give males a legal advantage in crimes of violence. For instance, in the case of *TK Gopal @ Gopi v. State of Karnataka*, the defendant was charged and convicted of brutally raping a one and half-year-old child.¹²⁶ In considering the severity of punishment, the appeals court took account of certain mitigating factors presented by the defendant. The defendant pleaded for a less severe sentence because he was the "sole bread earner of his family," which besides his wife included two daughters who were sixteen and ten-years of age respectively.¹²⁷ The court withheld from giving the defendant a stricter sentence because his daughters "have come of age and are to be married," and the prospects of getting a suitable match for the daughters could be marred if the sentence were enhanced.¹²⁸ Therefore, the defendant's gender role as the male head of the household and responsibility for ensuring that his

¹¹⁸ See Paul, *supra* note 2, at 238.

¹¹⁹ *Id.*

¹²⁰ See Carlson-Whitley, *supra* note 7, at 649-50.

¹²¹ Paul, *supra* note 2, at 238.

¹²² *Id.*

¹²³ See *Three Convicted for Dowry Death*, TIMES INDIA, Jan. 16, 2004; Ramesh Vinayak, *The Battle of the Baraat Begins*, INDIA TODAY, Mar. 10, 2003, at 17 (stating that "dowry-related incidents account for 47 per cent of crimes against women in [the state of] Haryana").

¹²⁴ See Linda Hamilton Krieger, *The Burdens of Equality: Burdens of Proof and Presumptions in Indian and American Civil Rights Law*, 47 AM. J. COMP. L. 89, 98 (1999) (stating that prosecutors were rarely able to prove that dowry related deaths were the result of a homicide rather than by accident because the acts resulting in death almost always occurred in the household of the husband).

¹²⁵ See Ghosh & Choudhuri, *supra* note 100, at 320 ("Cases of cruelty by husbands and other relatives have increased dramatically from 50,703 in 2003 to 81,344 in 2008.").

¹²⁶ See *T.K. Gopal @ Gopi v. State of Karnataka*, (2000) 6 S.C.C. 168, 2-3 (India).

¹²⁷ *Id.* at 4.

¹²⁸ *Id.* at 7.

daughters were properly wed served as sufficient bases for getting a mitigated sentence. Ironically, it is because the male gender role is one of superiority that the family was dependent on the father in the first place. This case illustrates that roles of gender superiority create avenues of legal advantage whereas those in inferior gender roles are left without legal protection.

C. *Social Hierarchy: The Effects of Class and Caste on Violence Against Women*

Victims of violence face numerous obstacles in a community where concepts of patriarchy, caste, community and honor have a direct impact on the discrimination perpetrated at the local level and contribute directly to a situation of impunity for perpetrators.¹²⁹ Although the Indian Constitution was written as a secular doctrine, the realities of local practice often reflect traditional religious beliefs. For example, the caste system that was incorporated from Hindu principles created among its categories the lowest class of individuals, known as *dalits* or “untouchables.” Although the Indian government has passed legislation outlawing discrimination against untouchables, incidents of violence persist.¹³⁰ This systematic discrimination remains despite what seems to be a legal commitment to redressing these wrongs, including a wide-ranging system giving reservations for seats for government jobs and at public schools based on race or caste status.¹³¹

Lowest class *dalits* have been historically excluded from meaningful employment opportunities, land ownership, and political participation, making disincentives to complain about domestic violence even more severe for most economically disadvantaged. In addition, domestic violence against *dalit* women often results from marrying out of caste. The most prevalent incidents include cases of violence against the *dalit* and their family when caste background was discovered.¹³²

Caste mobility has been increasing in recent years, particularly in North India. However, even when the class mobility of *dalits* increases, this mixing of classes results in increased gender violence. In one particularly popularized case, an entire community of *dalits* in Haryana was blamed for the “abduction” of two *jat* (landholding caste) women, resulting in threats of rape, violence against the *dalit* community, and suicide. After an investigation, it became clear that there was no abduction but rather an elopement between a *jat* woman and a *dalit* man, accompanied by another *jat* woman who was their friend.¹³³

Similarly, as increased development and rising standards of living make economic mobility increasingly possible in Uttar Pradesh and Haryana, *khap panchayats* (gangs of men who use violence to enforce existing caste lines) are increasingly in operation because of the rise of inter-caste marriage. *Khap panchayats* consider it imperative to commit “honour killings” in

¹²⁹ See AMNESTY INT’L, *supra* note 3.

¹³⁰ The Act, formerly called the Untouchability Offences Act, employs criminal penalties for certain acts of discrimination against *dalits*. See Protection of Civil Rights Act, 1955, No. 22 Acts of Parliament, 1955 (amended 1976); see also Krieger, *supra* note 124, at 95-96 (describing elements of the Protection of Civil Rights Act).

¹³¹ See Evan Osborne, *Culture, Development, and Government: Reservations in India*. 49 ECON. DEV. & CULTURAL CHANGE 659, 681 (2001) (finding that “the pattern of steadily increasing ethnicity- and caste-based violence from 1961 to the early 1990s,” despite, or even due to, government reservations).

¹³² See *Violation of Rights*, HINDU, Feb. 24, 1999.

¹³³ Uma Chakravarti, *From Fathers to Husbands: Of Love, Marriage, and Death in North India*, in HONOUR: CRIMES, PARADIGMS, AND VIOLENCE AGAINST WOMEN 308, 312-13 (Sara Hussein & Lynn Welchman eds., 2007).

order to deter inter-caste marriage and to prevent marriage-by-choice.¹³⁴ Because of the flood of cases caused by *khap panchayat* violence, the ability of the courts to intervene and prevent the violence is limited.¹³⁵

Additionally, “despite the Indian’s constitutional goal of socialism, extreme disparities exist between the advantaged and the disadvantaged.”¹³⁶ Because economically disadvantaged women are more likely to depend on their husbands for economic survival and status, there are greater disincentives to apply for the protection of the law. The class background of disadvantaged women also prevents access to education, a major factor in being aware of the potential de jure remedies available to them. Thus, the issue of domestic violence in India must be understood in terms of the disproportionate effects of class background.

A study of married women of different classes revealed differences in the effects and impacts of stigma on women of varying class backgrounds.¹³⁷ In her study, Catherine Riessman conducted and analyzed interviews of married women who did not have children. Because married women in South India are “defined and judged in relation to dominant family forms and associated gender ideologies,” women who either cannot or choose not to have children often face social stigmas.¹³⁸ Riessman found that poor women experience shame and distress by internalizing the stigma of infertility, whereas the middle class women did not stigmatize themselves and also had support from other middle class women.¹³⁹ The internalization of blame, which affects women of all classes, can be “avoided by women with educational and occupational leverage.”¹⁴⁰ Class affects not only the legal channels that women choose to pursue, but also the likelihood that they will seek protection in the first place. An increased internalization of blame for acts that come with a social stigmatization will result in victims of domestic violence silently enduring the abuse.

IV. CONCLUSION

Though cultural bias against women in India remains an important factor in the lack of enforcement of laws relating to domestic violence and dowry deaths, legal scholars also need to emphasize the self-reinforcing and intersecting dynamics of caste, class, and gender in producing violence against women. While India’s laws against domestic violence are generally under-enforced, the problem is exacerbated among the poorest and lowest caste women who do not have access to organizational support, education, or legal remedies. Because India’s Commissions and organizations have both an urban and elite bias, India’s legal and non-governmental remedies often attempt to change cultural conceptions about women while ignoring the geographical, caste, and class roots of the problem. Thus, the explanation for the failure of Indian laws to address adequately the problem of spousal abuse must come not only from its failure to change cultural

¹³⁴ See Jagmati Sangwan, *Khap Panchayat: Signs of Desperation?*, HINDU, May 7, 2010, <http://www.thehindu.com/opinion/lead/article424506.ece>.

¹³⁵ *Id.*

¹³⁶ Paul, *supra* note 2, at 237.

¹³⁷ See Riessman, *supra* note 71, at 115 (discussing the diverse reactions of childless women to the comments made by their social peers in regard to the stigma of being married woman without children).

¹³⁸ *Id.* at 128-29 (discussing social isolation experienced by brides for not continuing the family name or producing heirs).

¹³⁹ *Id.* at 120.

¹⁴⁰ *Id.*

attitudes. In order for these laws to be effective, they must also address the prevalent problem that lower-class, out-casted, and rural women are regularly denied or lack access to the legal remedies that should, in theory, be available to them.

By a being signatory to CEDAW, India is bound by international law to investigate and punish abuses against women even when the State is not responsible for them. India's solution has been to set up agency structures, which are only accessible to a small number of elites. Setting up investigative boards centered on major cities have not been, and are unlikely to be, effective in rural areas or effective in the context of lower class/caste cases of violence.

In order to be consistent with the mandates of international human rights law more generally, India is obligated to ensure the equal protection of all women. However, in order to account successfully for a large majority of women, India must account for the intersectional needs of women from poorer backgrounds and lower classes that face poor local enforcement mechanisms. A statistical correspondence exists between areas of impoverishment of women and areas of greatest occurrence of domestic violence. Given the clear statistical and social relationship between caste, class, and domestic violence, scholars should consider the importance of this correspondence and be sensitive to intersection of gender and class discrimination in India. Instead of relying on blanket explanations of "Indian culture" as the motivating factor for domestic violence and the reason for non-implementation of domestic violence law, a more nuanced intersectional approach allows us to see the importance of resources and economic status in the enforcement of domestic violence statutes.