

WHEN LAW DEFEATS IT PURPOSE: HOW ANTI-DOWRY LEGISLATIONS (FAIL TO) ADDRESS THE NORMS THAT MOTIVATE DOWRY PAYMENTS IN INDIA

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60 years since dowry was criminalized in India, 20 women die every day of the year due to dowry related deaths. Recently, an Indian High Court demanded (once again) that the government explain why dowry related legislations are ineffective in changing attitudes. This article addresses the issue by incorporating social norms within the analysis of the law and explains why dowry centric legislations (even with implementation) are doomed to fail. Dowry payments are not a social norm in itself (as the law presumes) but a social preference given the rules of the Indian marriage. Willingness to pay dowry within the reference network is guided by social norms of paying for daughter's wedding and acceptable level of marital violence. The impact of anti-dowry legislations is, then, considered on these norms. Studying its influence of these norms explains why the law has failed to influence dowry preferences. It targets the symptoms i.e. dowry without understanding the norms underlying a marriage in the society.

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I. INTRODUCTION

In June 2021, the Kerala High Court noted the failure of dowry related legislation in changing the attitudes towards dowry in India by stating that

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‘matrimonial houses can be the most dangerous place for women.’¹ The Court demanded from the government a response for why the relevant laws have not been enforced properly. This is not the first time courts have demanded such responses from the government with the Supreme Court asking for a similar report as far back as in 2005.² The first legislation on prohibiting dowry in India, in fact, was introduced in 1961.³ And yet in 2017, 22 women died every day of the year due to dowry related violence while 334 women filed complaints of dowry related violence every day.⁴ That is over a hundred thousand new cases every year. The presumption, in all these court judgments and popular discussion, is that these legislations fail to influence social attitudes because of improper implementation.

This article proposes that, even with proper implementation, these legislations will fail to address the problem of dowry in India because they misdiagnose the social norms governing incentives to pay dowry for the women’s family. Existing legislations consider dowry payments to be a harmful and stand-alone social norm that needs to be tackled as such. The article, on the other hand, argues that the decision to pay dowry (much like other social phenomenon) is an outcome of the dominant social norms regulating marriage within the context of the society it regulates. As long as the identified social norms persist, paying dowry will continue to be the dominant strategy for the daughter’s family. In fact, as the discussion highlights, doubling down on dowry as a norm through more and more formal interventions is much likely to exacerbate dowry related problems such as domestic violence. Meanwhile, precious resources are diverted away from addressing the root causes.

In section 2, the article provides a brief overview of the dowry legislations. Even if the focus of the present article is on the practice of dowry, related legislative intervention on dowry related violence is also included to ensure we are considering the full framework of intervention. The article, in section 2.2, provides multiple sources of evidence to argue that these legislations have failed not only in reducing dowry related violence (the most problematic but not the only problem related to dowry) but also failed in changing the overall attitude towards dowry.

¹ See: Hannah M Verghese, *Dowry Matrimonial Homes the Most Dangerous Place to Live for Women: Kerala High Court, Live Law* (July 17, 2021); Express News Desk, Dowry Harassment Making Matrimonial Homes Dangerous Places for Women, Observes Kerala HC, *The New Indian Express* (Kochi) July 17th, 2021. <<https://www.newindianexpress.com/states/kerala/2021/jul/17/dowry-harassment-making-matrimonial-homes-dangerous-places-for-women-observes-kerala-hc-2331636.html>> accessed 25 July 2021 (Since the order is yet to be published, journalistic sources provide a brief overview of the issue).

² In Re : *Enforcement and Implementation of Dowry Prohibition Act* (1961) (2005) 4 SCC 565 : AIR 2005 SC 2375.

³ Dowry Prohibition Act 1961.

⁴ Ministry of Home Affairs, National Crimes Record Bureau, *National Crimes Survey* 2018, <<https://ncrb.gov.in/crime-india-2017-0>> accessed 10 July 2021.

In fact, as evidence shows, instances and quantum of dowry have only increased since 1960s.

In section 3, the article identifies the two normative expectations which make dowry payment the preferred strategy for the woman's family and how the present legislations treat these social norms. First, there is a social expectation that families pay for a daughter's wedding. The cost includes but is not limited to dowry. It is the law, and not the social rules of marriage, that artificially separates and criminalises a limited type of these expenditures i.e. dowry. As the discussion illustrates, the law, therefore, does little to curb the pressure, normative and psychological, to spend on a daughter's wedding, providing lavish gifts and incurring other costs. These expenses are important to find a good groom but also to signal to our social network that we are happy with the match. How precisely dowry criminalization influences this norm and how the norm has responded to the legislation is discussed. Second, there is relatively high acceptable threshold of domestic violence in India and low acceptance of divorce. Dowry related violence is only one form of such violence. This creates even greater incentive to spend considerably on the daughter's wedding to 'buy' her safety after marriage. The article considers how dowry criminalization and dowry related violence legislations try but fail to address these fears of the daughter's family. Meanwhile, as the discussion highlights, these legislations incentivise the groom's family to delay dowry demands and use violence post marriage. By focusing on the wrong social behaviour, the laws not only fail to address the dowry and dowry related violence but end up exacerbating the issue.

In section 4, the article considers whether these legislations could have any symbolic influence on the social attitudes towards the practise of dowry. The article argues that the laws fail to channel any such expressive influence for two reasons. First, while the focus has been on changing the attitude of woman's families, the social realities (as discussed in Section 3) imply the cost of switching from paying to not paying dowry is still very high for them. Therefore, mere symbolic laws will not actively incentivise them to stop making these dowry payments in presence of these high costs involved with switching. Second, creating an artificial hierarchy in domestic violence between dowry and non-dowry related violence where one is treated as worse than the other, in fact, propels attitudes in the wrong direction, forcing women to argue dowry related violence to legally strengthen their argument. Meanwhile, it also results in social backlash with even the Supreme Court considering the clauses as being unfair for grooms and their family.⁵ This influences attitudes towards domestic violence, both in relation to dowry and otherwise. As a result, the article argues, the laws have had little effect on the public attitude towards dowry.

⁵ Indira Jaisingh, 'Concern for Dead, Condemnation for the Living', 49(30) Economic and Political Weekly 34 (2014).

Finally, the article concludes in Section 5 highlighting how this misdiagnosis has led to well-intentioned but wasteful efforts in addressing the symptom rather than the root of the issue. In fact, some of these well-intentioned efforts have worsened the situation of women in weddings. As the discussion highlights, failing to incorporate the social context within which the laws will operate while designing laws can end up severely undermining its effectiveness. And when the cost of these misdirected steps is lives of women and their safety, it is important to take note and change courses as soon as possible.

II. LEGISLATIVE INTERVENTION IN REDUCING DOWRY PAYMENTS IN INDIA: SUMMARY AND DATA ON EFFICACY

Despite active legislative and policy efforts to reduce dowry, the number of dowry and dowry related crimes have steadily increased over the decades with the rate of increase in marriages involving dowry showing little correlation to the enactment of various laws previously discussed.⁶ It is important to understand the legal framework within which dowry payments exist presently.

A. LEGAL BACKGROUND OF DOWRY RELATED LEGISLATIONS IN INDIA

The relevant legislation specifically tackling dowry practices is the Dowry Prohibition Act, 1961 which criminalizes the giving and receiving of dowry.⁷ The Act distinguishes between gifts traditionally given during a wedding and dowry. It, therefore, recognizes the traditional concepts of gift giving during Indian wedding as legitimate.

The term dowry is defined under the Act as follows:⁸

“‘dowry’ means any property or valuable security given or agreed to be given either directly or indirectly:

- a. by one party to a marriage to the other party to the marriage; or*
- b. by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of said parties.”*

In order to incentivize reporting, if the person reporting the dowry transaction was the one offering the dowry (bride's family), they will be protected

⁶ Gaurav Chiplunkar and Jeffrey Weaver, 'Marriage Markets and Rise of Dowry in India' (13th Annual Conference on Economic Growth and Development, Delhi, October 2017).

⁷ Dowry Prohibition Act 1961, s 3.

⁸ Dowry Prohibition Act 1961, s 2.

from prosecution.⁹ Additionally, the Act permits only the bride, the bride's family and social organizations working on such issues to report an incidence of dowry.¹⁰ The aim is to ensure that a wedding should not be disrupted due to frivolous reporting of cases where neither parties to the wedding have any complaints but a third uninterested party may file a report with the police to disturb the wedding. The punishment prescribed in the Act is a minimum imprisonment of 5 years and a fine of fifteen thousand rupees (approximately 200 USD) or the amount of dowry, whichever is higher.¹¹ A complaint under the Act is sufficient proof of guilt unless the groom's family can rebut the presumption with evidence.¹² It is important to note that this applies to the ones demanding dowry and not the ones giving dowry, thereby providing additional protection to the bride's family.

The criminalization of dowry happened in 1961. However, it was inadequate in protecting women from dowry related violence during their marriage. Therefore, three criminal law provisions were added to the Indian Penal Code and the Indian Evidence Act in 1983 to address specifically violence against married women:

- a. If a woman dies in suspicious circumstances within 7 years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, it is presumed to be a case of dowry-death.¹³ Dowry is said to have the same definition as that under the Dowry Prohibition Act.
- b. Similarly, if a married woman commits suicide within the first 7 years of her marriage and there is evidence that her husband or relative had subjected her to cruelty, they may be charged with abetment of suicide.¹⁴
- c. If husband or relatives of the husband subject a married women to cruelty, they can be punished with imprisonment extending up to three years and fine.

Cruelty is defined as:

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

⁹ Dowry Prohibition Act 1961, s 7 (proviso).

¹⁰ Dowry Prohibition Act 1961, s 7.

¹¹ Dowry Prohibition Act 1961, s 3.

¹² Dowry Prohibition Act 1961, s 8A.

¹³ Indian Penal Code 1860, s 304B.

¹⁴ Indian Evidence Act 1872, s 113.

- (b) *harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.*¹⁵

In order to further facilitate reporting and support victims of dowry and dowry related violence, all provisions discussed above do not carry a presumption of innocence i.e. the complaint by the victim is considered sufficient ground to consider the accused guilty unless they provide evidence to prove their innocence.¹⁶ All offences discussed above are cognizable (where the police can arrest on receipt of complaint without arrest warrant) and non-bailable offences.

The first legislation criminalizing dowry is the relevant legislation from the perspective of targeting the practice of dowry. It is also important to understand that that is only legislation that can be applied to the situation before a wedding is concluded. The other developments were responses to urgently tackle a symptom of the practice of dowry – dowry related violence. Even in absence of this violence, dowry continues to be a problematic social practice with consequences on the health and education of daughters in India.¹⁷

The focus of the present article is on dowry and whether law can be effective in preventing dowry payments. Therefore, specific dowry related legislations are pursued rather than generic domestic violence specific legislations.

B. HOW SUCCESSFUL HAVE THE LAWS BEEN IN CURBING DOWRY PAYMENTS?

When discussing the role of laws in reducing actual incidences of dowry, it is important to remember that accessing the actual incidences of dowry and the quantum of dowry can be complex. A lot of empirical studies rely on either dowry related violence as a proportionate proxy for the prevalence of dowry,¹⁸ or on small random/non-random samples from different regions of the country,¹⁹ or

¹⁵ Indian Penal Code 1860, s 498A.

¹⁶ Indian Penal Code 1860, s 304B (dowry death); Indian Evidence Act 1872, s 113 (suicide of a married woman); Indian Penal Code 1860, s 498A (cruelty against married women).

¹⁷ See: Sonia Bhalotra, Abhishek Chakraborty and Selim Gulesci, 'The Price of Gold: Dowry and Death in India', 143 J of Dev Eco [2020]; Marco Alfano, 'Daughters, Dowries, Deliveries: The Effect of Marital Payments on Fertility Choices in India', 125 J of Dev Eco 89 (2017); Arun Jacob, Gender Bias in Educational Attainment in India: The Role of Dowry Payments (MPRA Paper No. 76338, 2017).

¹⁸ Geetika Dang, Vani Kulkarni and Raghav Gaiha, Why Dowry Deaths have Risen? (ASARC Working Paper 03, 2018).

¹⁹ Mimou Makimo, 'Marriage, Dowry and Women's Status in Rural Punjab', 32 J of Population Econo 769 (2019).

representative surveys such as Rural Economic & Demographic Survey (REDS).²⁰ Since the practise was criminalised in 1960s, most of these self-reported numbers are most likely not the accurate representation of the situation due to considerable under-reporting.

In a country with over 95% arranged marriages and one of the lowest divorce rates in the world (around 1%)²¹, most people with weddings that did not end in divorce, violence and/or death are unlikely to report the exchange of dowry during their wedding. So the statistics in hand (which still show a considerable rise)²² are after severe under-reporting highlighting the severity of issue at hand.

Sample and case-studies all indicate that the practise of dowry which was traditionally restricted to particular castes and class of families has now uniformly spread across all Hindu societies.²³ Similarly, it is no longer restricted to particular regions where it traditionally originated.²⁴

Another important parameter to judge the success of dowry related legislations is through the number of cases reported on dowry related violence. Estimates indicate that 5 women in India face dowry related torture and cruelty every hour.²⁵ In 2010, a woman was burnt to her death every 90 minutes.²⁶ The 2017 National Crime Statistics indicate that cases of death because of dowry related violence has only increased since.²⁷ These numbers continue to rise despite modernisation and economic development.²⁸

The majority of cases in India regarding dowry related violence are filed after the death of the woman.²⁹ These cases are also viewed more sympathetically

²⁰ Afra Choudhary, 'Money and Marriage: The Practice of Dowry and Brideprice in Rural India' (Working Paper, Princeton University, 2010).

²¹ Adoor, 'India has the Lowest Divorce Rate in the World: Countries with Lowest and Highest Divorce Rates', (India Today, 20 November 2018) <<https://www.indiatoday.in/education-today/gk-current-affairs/story/india-has-the-lowest-divorce-rate-in-the-world-1392407-2018-11-20>>.

²² Priya Banerjee, 'Dowry in 21st-Century India: The Sociocultural Face of Exploitation' *Trauma, Violence & Abuse* (2014) 15(1).

²³ Chiplunkar and Weaver (n 6).

²⁴ Banerjee (n 22).

²⁵ Aysan Sev'er, 'Discarded Daughters: The Patriarchal Grip, Dowry Deaths, Sex Ratio Imbalances & Foeticide in India', *Women's Health and Urban Life* [2018] 7.

²⁶ Rahul Bedi, *The Telegraph*, 'Indian Dowry Death on the Rise', (New Delhi) 27 February 2012.

²⁷ National Crimes Record Bureau (n 4).

²⁸ Soumyanetra Munshi, *IIM Kozhikode Society & Management Rev*, 'Education and Dowry: An Economic Exploration', 111 (2012), 1(2) 111.

²⁹ According to a study conducted of all Supreme Court cases involving dowry related cases from 1995 to 2011, 68% of the cases were filed after the woman had passed. See: Preethi Krishnan and Mangala Subhrmaniam, 'Contemporary Perspectives in Family Research ,Gender, Domestic Violence, and Patterns of Conviction: Analysis of India's Supreme Court Rulings', (2017) 9, 45.

by the courts with higher rates of conviction.³⁰ Meanwhile cases filed under Section 498A (cruelty against married woman) of the Indian Penal Code has a conviction rate of less than 15%.³¹ The Supreme Court of India considered such low conviction rates to indicate that women use the cognizable, non-bailable (i.e. the police can arrest the accused on the basis of a complaint itself) aspect of this offence to harass their husbands and his family in matters of matrimonial tension, famously comparing the provision to a shield which is being misused as a sword.³² The court considered it to have the potential of unleashing unprecedented legal terrorism on the husband and his relatives.³³ Critics of the court argue that the court cannot consider Section 498A (which aims at preventing dowry death) as misused while lamenting increased number of dowry death cases that it receives.³⁴ However, there are several instances which also highlight that there exist cases of misuse of penal provisions protecting married women from cruelty.³⁵ It enables women to negotiate better in case of matrimonial discord. It is important, however, to remember that dowry related violence is only one of the symptom of the practise of dowry. Therefore, the overall success of dowry related legislations should be their ability to help move the society away from the practise rather than mere symptom management.

Both in terms of the problem and its symptom, it is clear that the law fails in addressing the social practice it aimed to solve through the legislation. Legal proactiveness in empowering the victim and her family clearly exists, so much so that there is fear of its misuse. The law recognizes the importance of women and their family in addressing the problem. The Supreme Court of India recognized the pivotal role of women and her family in abolishing the harmful practice of dowry when it stated:

“Possibly, a social revolution is needed to put an end to the menace. Refusal by the bride’s father to pay dowry, refusal of the girls to get married if dowry is insisted upon and the attaching of a social stigma to those who demand dowry, can alone ultimately put an end to this system or at least reduce its prevalence”.³⁶

Clearly, the lawmakers envision a pivotal role for the women and their families in any social revolution that eradicates the practice. The law also creates

³⁰ Indira Jaisingh, ‘Concern for Dead, Condemnation for the Living’, 49(30) Economic and Political Weekly 34 (2014).

³¹ Prashant Trivedi and Smriti Singh, ‘The Fallacies of a Supreme Court Judgment: Section 498A and Dynamics of Acquittals’, [2014] Economic and Political Weekly 49(52).

³² *Social Action Forum for Manav Adhikar v. Union of India* (2018) 10 SCC 443.

³³ *Sushil Kumar Sharma v. Union of India* (2005) 6 SCC 281.

³⁴ Indira Jaisingh, (n 30).

³⁵ *Rajesh Sharma v. State of U.P.* 2017 SCC OnLine SC 821.

³⁶ *Enforcement and Implementation of Dowry Prohibition Act, 1961, In re* (2005) 4 SCC 565 : AIR 2005 SC 2375.

institutional mechanisms to empower the victim. The presumption being that this will motivate the women and their families to reject dowry. Yet, 68% of such cases of instances of dowry and dowry related violence are reported only after the death of the woman.³⁷

The next section provides the prominent social norms that motivate the woman and her family continue to pay dowry and refrain from reporting both dowry as well as dowry related violence. The laws are then analyzed in light of these persistent norms to better explain their failures in addressing the issue.

III. INCORPORATING SOCIAL NORMS WITHIN LEGAL ANALYSIS TO EXPLAIN THE FAILURES OF LAW IN ADDRESSING DOWRY: WHAT SOCIAL NORMS MOTIVATE A FAMILY TO PAY DOWRY?

As is clear from the preceding discussion, dowry continues to be rampantly practiced despite laws to prevent it. The reporting of demand for dowry payments as well as dowry related violence depends largely on the bride and her family. Therefore, it is important to understand the motivations behind the decision of the woman and her family to pay dowry and avoid reporting dowry related violence.

As the preceding section explains, the law also recognizes the importance of empowering the woman and her family through progressively reducing the legal and procedural constraints that they may face in reporting the issue. Yet, it does not impact the behaviour of the woman or her family. Many articles and analysis of the legislation criminalizing dowry wrongly argue that its ineffectiveness is based on the fact that it criminalizes both taking and giving dowry which could prevent families of the bride from reporting for fear of prosecution.³⁸ However, the Act specifically protects those reporting from prosecution which means that it should not dissuade the family from reporting dowry.³⁹ Additionally, reversing the presumption of innocence in crimes involving dowry, dowry death and cruelty against married women also indicate the legislative intent to procedurally empower the woman and her family. Since a reversal of presumption of innocence is often considered a means to strengthen the probability of conviction as it is the accused who will need to adduce evidence as well as less burdensome for the victim.

When it comes to understanding the motivations for dowry payments, the law presumes rather than enquiring. It assumes that dowry practice is a norm that

³⁷ Krishnan and Subhramaniam, (n 29).

³⁸ Musa Sainabou, 'Dowry-Murders in India: The Law and its Role in the Continuance of the Wife Burning Phenomenon', (2012) North-Western Interdisciplinary Law 5(1).

³⁹ Dowry Prohibition Act 1961, s 7 (proviso).

coerces women's family to pay dowry without investigating what motivates the family to pay the dowry. Legal academics and law makers consider dowry to be a social practice that son's families indulge in for selfish reasons and women's family are forced into out of pressure to marry their daughter. Once the bride's family is empowered with legal protection, they will reject paying dowry and enough bride's families will report demands made for dowry. And the increased prosecutions will balance any payoffs from dowry with potential cost of prosecution for the groom's family. The presumption was that, over time, this will result in the eradication of dowry.

Other social science academics attempted to provide alternative rational explanations for the dowry payments from bride's family to groom's family generally. The most prominent of these include – a traditional method to bequest inheritance to daughters in India,⁴⁰ a form of Streedhan (which gives some autonomy to the bride) or a payment to the groom's family since they will be paying for the upkeep of the daughter in the patrilocal tradition⁴¹. The fact that the assets and financial transfer at the time of the wedding are controlled by the groom's family contradicts the first two explanations where these are considered as the woman's inheritance or wealth.⁴² Additionally, the increase in education and financial independence of women over years had little impact on the dowry paid for their wedding which undermines the explanation that dowry is paid for her upkeep.⁴³ In fact, some studies have found that the quantum of dowry is higher in case of highly educated women.⁴⁴ These factors may have had some impact on the quantum of dowry but cannot be considered the primary motivations behind it.

In this section, the promulgation of dowry in the present times is considered as a social preference which is motivated by the expectations and actions of others in one's social reference network. Social preference implies that preferences of an individual will take into account the behavior, beliefs and outcomes of other people.⁴⁵ While choosing between the alternative strategies (to pay or not pay dowry), the families are motivated by their belief of others' preference and expectations. In the following section, we consider two common social norms that result in a preference to pay dowry. As long as these dominant social norms stay the same, the article argues, practise of dowry will continue unabated.

⁴⁰ Maristella Botticini and Aloysius Siow, 'Why Dowries?' (2003) *American Economic Review* 1385 93(4).

⁴¹ Avraham Ebenstein, 'Patrilocality and Missing Women' [2014], Social Science Research Network.

⁴² Chiplunkar and Weaver (n 6).

⁴³ Munshi (n 28).

⁴⁴ This phenomenon can be explained by the prevailing norm of *hypergamy*. Since the tradition is for women to marry men who are more educated and earning better than themselves, highly educated women will need to find an adequate match. Meanwhile, highly educated men are not as restricted in their options. See: Jacob (n 5).

⁴⁵ Bicchieri (n 54).

A. DOWRY IS ONLY ONE COMPONENT OF THE NORM THAT REQUIRES THE WOMAN'S FAMILY TO 'PAY FOR THE DAUGHTER'S WEDDING'

The social script of a Hindu marriage incorporates within it 'marriage payments in lieu of/for a daughter's marriage' and not 'dowry' per se. Dowry is a part of the payment but not the only aspect. The legislation also recognized this when permitting gifts but criminalizing dowry. Its distinction was based on the voluntary nature of gifts and mandatory nature of dowry.⁴⁶ However, in the presence of a strong social norm and a preference of adhering to such norm, can the voluntary and the obligatory be separated? Can social pressures, expectations and not demands of dowry by the groom's family or expectation of the social network and not directly the groom's family truly count as voluntary?

In this section we consider how the social preference of families to adhere to the norm of paying for a daughter's wedding/marriage can result in dowry payment preference.

1. SOCIAL NORM OF PAYING FOR A DAUGHTER'S WEDDING

According to an ancient Hindu scripture, marrying your daughter off with appropriate gifts and charity is considered the highest duty of a father and one that ensures the parents attain moksha.⁴⁷ Lest one consider it an easy route to moksha, a daughter's wedding can be an expensive affair and the cost can be as high as 6 times the annual household income.⁴⁸

In fact, it is a legitimate and popular reason to obtain a personal loan from both formal and informal sources. HSBC Bank helpfully advertises – "When expenses arise, like your daughter's marriage, furnishing your home, higher education for your children or a family holiday you can turn to Personal Loan from HSBC".⁴⁹ Investment advisers inform their readers that as a father in retirement, one can take a loan against their pension as well.⁵⁰ Others provide the step by

⁴⁶ Dhananjay Mahapatra, 'Customary Payments, Gifts not Dowry: Supreme Court', (*The Times of India* (New Delhi) 1 February 2018).

⁴⁷ Francis Bloch, Vijayendra Rao and Sonalde Desai, 'Wedding Celebrations as Conspicuous Consumption: Signaling Social Status in Rural India', (2004) 39(3) *The J of Human Resources* 675.

⁴⁸ Vijayendra Rao, 'The Rising Price of Husbands: A Hedonic Analysis of Dowry Increases in Rural India', (1993) 101(4) *J Pol Econ* 666.

⁴⁹ HSBC Personal Loan, 'Why Chose an HSBC Personal Loan?' HSBC Bank <<https://www.hsbc.co.in/loans/products/personal/>> accessed 10 July 2021.

⁵⁰ Vikas Mirmira, 'Best Marriage loan in India at the Lowest Rates' CashKumar Loans <<https://cashkumar.com/marriage-loan>> accessed 10 July 2021.

step investment strategy, the parents of a daughter need to follow for their 1 year old daughter's future wedding.⁵¹

Less financially savvy, rural households need to take loans from informal money lenders at interest rates as high as 200% interest rate to be able to perform their duty as parents of the daughter.⁵² A personal loan taken for the wedding of a daughter can be used for any of the following expenses – 'purchase of wedding gifts, booking honeymoon tickets, shopping, buying gifts and others. You can also hire a caterer, makeup artist or a wedding photographer'.⁵³ It is also an indicative list of costs that a parent incurs in organising the wedding along with the cost of the accommodation, food and gifting of all groom's and his family's guests as well as that invited by the bride's family. Overall, this number varies between 200 to 1200 people.

That one has to pay for a daughter's wedding is a commonly known social rule. In fact, it is this expectation of a future expense that results in much of the indirect negative externality that is associated with dowry. The cost of the future wedding is one of the leading reasons for female foeticides, under-investment in education of daughters as well as larger number of female child-labour and higher enrolment of boys in schools.⁵⁴ Research also indicates that families with first-born daughters considerably increase their household saving and time/effort at work in comparison to households with first-born sons.⁵⁵ This clearly indicates that the rule is well known and one that households plan for.

Additionally, statistics also indicate that it is almost universally followed by all. The savings, the religious reverence and social pressure surrounding a daughter's wedding also indicates that the most families with a daughter consider it their duty to oblige by the rule.

Therefore, paying for a daughter's wedding carries with it both the empirical expectation that everyone around us is doing it as well as a sense of normative expectation i.e. we ought to/are expected to do it.⁵⁶ It has two different types of

⁵¹ Vyas Rajani, 'Step by Step Approach to Plan Your Child's Marriage Needs' (2018) Personal Fn: Wealth Creation and Wealth Advisory <<https://www.personalfn.com/guide/steps-to-plan-your-childrens-marriage>> accessed 10 July 2021.

⁵² Vikas Mirmira (n 50).

⁵³ Nehita Abraham, 'Worried About Planning Your Daughter's Dream Wedding? Here is why You Should Apply for a Marriage Loan', (The Daily Hawker, January 14, 2020) <<https://www.daily-hawker.com/finance/marriage-loan-planning-your-daughter-dream/>> accessed 10 July 2021.

⁵⁴ Cristina Bicchieri, *Habits of the Mind*, in *The Grammar of Society: The Nature and Dynamics of Social Norms* 55, 55–99 (2012).

⁵⁵ S Anukriti, Sungoh Kwon and Nishith Prakash, Dowry Payments: Household Response to Expected Marriage Payments (Working Paper: Boston College 949, 2016) <<http://fmwww.bc.edu/EC-P/wp949.pdf>> accessed 10 July 2020.

⁵⁶ See: Bicchieri (n 54) 40–41 (Bicchieri lays down these two characteristics as defining a social norm. According to her, the individual should believe most people within their reference network

influence on the families' decision to offer to pay dowry, irrespective of an explicit demand or not.

First, strategically if one believes that others within their social network are willing to provide certain material benefits which will attract prospective grooms' families to these families, it encourages them to match the offer or, even, increase the amount. The empirical expectation i.e. many other families pay for their daughter's wedding itself fuels the normative expectation that it is expected of them to pay for the daughter's wedding.

Second, expenditure on the wedding (including but not limited to the dowry) has an important signalling function within the society where paying for the daughter's wedding is baseline norm.⁵⁷ To distinguish one's wedding and wedding related satisfaction from the rest, they must not only pay for their daughter's wedding but that the wedding should be a grand affair. The size and scale of the wedding is considered to be a social signal to indicate the status of the groom's family to the social circle of the bride's family – the more spent on the wedding, the more satisfied the family must be with the choice of groom. Additionally, the more spent on the wedding gifts also indicates the high standards of the groom's family to the guests.⁵⁸ Therefore, the bride's family is not only forced to spend just enough to find the right groom but to invest more to signal satisfaction. As people spend more within a reference network, it will necessitate over compliance with the norm and over investment by others within the group as well since their investment was dependent on the empirical and normative expectations of others' preference.⁵⁹

Resultantly, to spend on a daughter's wedding is religiously motivated, morally expected and socially beneficial. The ones who may still not consider paying for a daughter's wedding will be additionally sanctioned in terms of not finding any prospective grooms for the daughter. Paying for a daughter's wedding, therefore, is a sticky social norm which is likely to produce strict compliance.

2. *LAW ARTIFICIALLY SEPARATES DOWRY FROM OTHER EXPENSES OF THE WEDDING: DOWRY BUT CALL IT A 'GIFT'*

If one were to understand 'dowry' as one of the components of the wedding expense then its persistence despite criminalisation makes logical sense.

are adhering to the social rule which she called the empirical expectation as well that everyone expects the individual to adhere to the rule as well which she called normative expectation).

⁵⁷ See: Eric Posner, 'Symbols, Signals and Social Norms in Politics and the Law', (1998) 27 J of Legal Stud 765-98 (Posner recognizes the importance of signaling and how adhering to certain norms can communicate that we are good co-operators/neighbors etc.).

⁵⁸ Bloch, Rao and Desai (n 47).

⁵⁹ Posner (n 57).

After all, footing the bill of a daughter's wedding continues to be the job of the father. Gifting the future in-laws as well as the groom is an essential component of that responsibility and legally permitted.⁶⁰ Gift is a vague term and can include small tokens as well as automobiles. After all, dowry is but an English term. Traditionally, in conversations, it is simply "expectations". "He is your son and you must have some expectations of how his wedding should be done" can easily and successfully replace "How much dowry would you like?" This highlights, not for the first time, how policy makers often ignore the power of local vocabularies or nuances of informality and focus on universal definitions when legislating.⁶¹ The vernacular is more flexible than the law.

Consider Section 4A of the Dowry Prohibition Act, 1961 – it prohibits any advertisement soliciting dowry. In a sample study done of 800 matrimonial advertisements from educated middle and upper middle class families of West Bengal (a relatively better educated, less patriarchal state than the median), a certain percentage still preferred providing specifically in their advertisements "no dowry expected".⁶² Another study of matrimonial advertisement from the same region too revealed that 21% specifically mentioned "No dowry" indicating that the signalling mechanism had adapted to the law.⁶³ No explicit reference/demand of dowry would imply there is an expectation which may or may not be vocalised later in the process. In a post-criminalisation marriage negotiation, 'no dowry' in matrimonial advertisements imply no expectation while no mention of dowry communicates the standard expectation of dowry. Similarly, advertisements or discussion from the bride's family may indicate the father's profession or financial status to indicate the payment capacity of the bride's family.⁶⁴ With almost 90% of Hindu marriages involving dowry according to an analysis of 70,000 marriages between the 1940s to 2000,⁶⁵ the vocabulary of the negotiations may have changed but the terms of the negotiation stays largely unchanged.

⁶⁰ Even the legislation as well as the Supreme Court of India recognizes these customary gifts and its expectation which were excluded from the ambit of regulation.

⁶¹ Nicolette Makovsky and David Henig, 'Neither gift nor payment: the sociability of instrumentality', in *Global Encyclopedia of Informality* 125-199 (Alena Ledeneva, Anna Baile, Sheelagh Barron, Costanza Curro and Elizabeth Teague, eds., Vol. 1, 2018).

⁶² Abhijeet Banerjee, Esther Duflo, Maitreesh Ghosh and Jeanne Lafortune, 'Marry for What? Caste and Mate Selection in Modern India' (2013) 5 *Am. Econ. J.* 2, 33-72.

⁶³ Falguni Dey, 'Socio-cultural analysis of marriage: Introspection into matrimonial advertisements', 7(1) *Int. J. of Recent Scientific Research* 8388.

⁶⁴ Vaishana Roy, 'Its not dowry, its just a gift', *THE HINDU* (New Delhi) 05 February 2016. <<https://www.thehindu.com/features/metroplus/woman-uninterrupted-its-not-dowry-its-just-a-gift/article8198165.ece>> accessed 10 July 2021.

⁶⁵ Weaver, Chiplunker (n 5) (The authors observed that by 1970, 90% of the marriages involved dowry. Since then, according to the data, the median dowry payment has stayed relatively consistent.).

Traditionally, dowry had two components – currency (in the form of cash) and gifts (gold, property, automobile, clothes, appliances etc.).⁶⁶ When ‘progressive and educated’ families advertise ‘no dowry’ in their matrimonial advertisements, they refer to payment in cash. However, the cost of the wedding and the gifts are excluded from this definition.⁶⁷ Depending on the quality and quantity of gifts, they will continue being considerable financial burden and, therefore, all the negative consequences of dowry continue even if ‘dowry’ no longer does. This is another example of how social norms manage to avoid legal definitions.

The courts have also had to constantly grapple with the distinction between ‘gift’ and ‘dowry’. In absence of understanding the norms, they have created a fictional distinction between the two on the basis of voluntarily made gifts and demanded dowry. Expectations of the groom’s family about the gifts to be given to the relatives of the groom during traditional wedding ceremonies, for example, do not constitute a demand for dowry according to law.⁶⁸

The legislation and judicial decisions indicate a clear misunderstanding on how behaviours can be dictated by expectations of others within one’s social reference network. Understanding the social norm of paying for a daughter’s wedding explains why families of brides continue lavishing gifts on the groom and his family despite a law criminalising dowry. It helps explain why even without an explicit demand and a law criminalising dowry, daughter’s family will save for her wedding from her time of birth. It also highlights how criminalising dowry will, therefore, not address dowry related social issues of underinvestment in a daughter’s education, considering daughters as financial burden etc.

It also explains the expectations of the groom’s family. The more lavish and rich the weddings in one’s social reference network, the more the groom’s family will expect and the more the bride’s family will pay without either explicitly discussing the same. As the weddings and gifts become more expensive, others in the reference network will have to match the same to be considered norm compliant. The financial burdens of the daughters’ families multiplied without anyone ‘demanding or giving’ dowry. This can help explain the relative failure of Dowry Prohibition Act, 1961.

However, logically legislations relating to dowry related violence could enable the bride’s family to negotiate for a safer, violence free married life for their daughter. Since there are strict laws for prosecuting dowry related violence, even if the groom’s family is unhappy with the gifts and scale of wedding that the daughter’s family manages, at least they will not harass the woman for it. The

⁶⁶ Nicole Wilson, ‘Confrontation and Compromise: Middle-Class Matchmaking in Twenty-First Century South India’, (2013) 71(1) *Asian Ethnology* 33.

⁶⁷ *Ibid* 66.

⁶⁸ *Arjun Dhondida Kamble v.. State of Maharashtra* (1993)1 Mh LJ 1.

statistics on dowry related deaths indicate that this must be a genuine concern of families marrying their daughter. This could also reduce some of the pressure on the family if the law in fact creates this presumption of safety within their marital life. The daughters' family will still try to adhere to the social norm but not go bankrupt for it. The next section explores whether the social realities complement this potential desirable outcome of the legislative intervention to dowry related violence.

B. DOWRY LEGISLATIONS EXACERBATE DOMESTIC VIOLENCE INCLUDING DOWRY RELATED VIOLENCE

Social expectations discussed above are only one part of the reason why a woman's family prefers to pay dowry. The other reason is the safety of the woman after marriage. It is widely known that groom's families use violence after marriage to express their dissatisfaction with the wedding and gifts received during the wedding as well as to make the bride's family to make more payments.⁶⁹ The prevalence of this technique can be witnessed from the fact that laws addressing domestic violence in India have had to separately (and more harshly) address dowry related violence after marriage than traditional domestic violence. The more the number of deaths, the more active an incentive for the bride's family to pay even when not asked to purchase safety of the bride after the wedding.⁷⁰

3. *SOCIAL NORM OF DOMESTIC VIOLENCE AND STIGMATIZATION OF DIVORCE IN INDIA PREVENT WOMEN FROM REPORTING DOMESTIC VIOLENCE INCLUDING DOWRY RELATED VIOLENCE*

For those not from within these social systems, it leads to a common question – why would one accept to marry their daughter into a family which they believe can use violence to make money? It brings us to an important reality of marriages and communities in India: wife beating/domestic violence is an acceptable norm. Dowry related violence is one subset of domestic violence. Understanding the social norm of domestic violence prevalent in Indian households better explains why families use violence as a threat to get more dowry as well as why women and their families continue suffering the violence without reporting.

Domestic violence and intimate partner violence are not phenomena limited to India. Neither is the under-reporting of such crimes.⁷¹ However, the effect is

⁶⁹ Bloch, Rao and Desai, (n 47).

⁷⁰ Ibid 69.

⁷¹ Enrique Garcia, 'Unreported cases of domestic violence against women: towards an epidemiology of social silence, tolerance, and inhibition', (2004) 58(7) J. of Epidemiology and Public Health 536.

compounded in light of the financial dependence of women on their husbands as well as the excessive social cost of divorce on the woman and her family. People in Indian communities including women, often, consider some level of violence acceptable within a marriage.⁷² An additional feature of domestic violence in India is that it may not be restricted to intimate partner violence (IPV) but is perpetuated by the family with whom the victim resides.⁷³

It is more likely to be more prevalent in communities where wife-beating is more widely accepted.⁷⁴ History of family violence also has an impact on the probability of violence.⁷⁵ This creates an empirical expectation among the victims that most women are bound to suffer from some level of abuse. In sample surveys, over 70% women have reported being victim to violence by their husband and his family at some point in their married life. This indicates that there is an empirical expectation in favour of domestic violence within the society i.e. women believe that other women are, often, victims of domestic violence as well.

However, the entrenchment of the norm is also exacerbated by the unavailability of options for a woman in such situation. When considering the solutions to be pursued against the violence – convincing husband, earning his family's trust and, lastly, asking one's natal family for help is often the order in which solutions are considered.⁷⁶ Financial dependence is one functional reason why women may not be able to threaten their husbands with abandonment.⁷⁷ It weakens their bargaining power as well as acts as a deterrence from leaving an abusive marriage in time.

However, abandoning a marriage in India also carries a severe social cost (normative expectation). Research has found evidence of 'gender deviance neutralization' where the woman is likely to be punished (through violence) for earning and having education which is considered uncommon for her gender.⁷⁸ This highlights that financial dependence is not the only reason a woman continues to stay in a marriage since educated, financially independent women should then walk

⁷² Vivian F Go, S. Johnson, M. Bentley, S. Sivaram, S. Srikrishnan, D. Celentano and S. Solomon, Crossing the Threshold: Engendered Definitions of Socially Acceptable Domestic Violence in Chennai, India, 5(5) Culture, Health & Sexuality 393 (2020); D. Hollander, 'Domestic Violence in India Is Linked to Individual and Community Factors', 32(1) International Family Planning Perspectives 53 (2006); Ravneet Kaur and Suneela Garg, 'Domestic Violence Against Women: A Qualitative Study in a Rural Community' 2010, 22(2) Asia Pacific J of Public Health 242.

⁷³ Geetanjali Gangoli, 'The Campaign Against Domestic Violence, *Indian Feminisms: Law, Patriarchies and Violence in India*' in Indian Feminisms: Law, Patriarchies and Violence in India 99-100 (Routledge and CRC Press, 2007).

⁷⁴ D. Hollander (n 72).

⁷⁵ Abigail Weitzman, 'Women's and Men's Relative Status and Intimate Partner Violence in India', [2014] 40(1) Population and Development Review 55.

⁷⁶ Krishnan and Subramaniam (n 29).

⁷⁷ Weitzman (n 75).

⁷⁸ *ibid* 77.

out of abusive relationships in absence of any other constraints. It indicates that the social cost of divorce on the woman is considerably high.

An additional cost and cause of alienation for the victim is the natal family's social cost of hosting a married daughter. This can also be witnessed in cases of domestic violence that are finally reported. Court judgments indicate that in most cases which ended in the death of the woman, the women's natal families also were perpetuating the violence by being aware of instances of violence but continuing to send the woman back to her marital home.⁷⁹ Qualitative surveys quote that the families of women have specifically stated that they would prefer their daughter's death than the stigma of a broken marriage.⁸⁰ This is especially the case in regions which have strong patrilineal norms (north India) where the woman loses her connection to the natal family on marriage.⁸¹

Lastly, the society imposes tangible material costs on an outlier woman who may be willing to incur these social costs on herself and her family. An important aspect of Indian cultural identity is strict regulation and proscription of woman's sexuality. This translates to women being married at an early age (unmarried women being considered a risk to social order) but also remarriage of divorced women being difficult, if at all possible (since she has already been sexually active with another person and hence not chaste).⁸²

Therefore, suffering from and accepting violence is entrenched as a social norm that married women have to follow in many Indian communities. As a married woman within these communities, one sees domestic violence all around, thus fulfilling their empirical expectation. And when she considers alternatives to following the norms and informs her familial support systems, she is made aware of their expectations by being returned to the house of the abusers. Women who may still consider rejecting the norm are faced with financial, social and personal sanction for their decision. This fulfils the normative expectations that compel norm compliant behaviour.

Once domestic violence is considered a common aspect of a marital life, the reasons for such violence can vary and need not be exclusive to dowry specific violence only. This is especially true when violence includes all forms of violence – physical, psychological and sexual. Most households where there is violence, the reasons often include one or more of these reasons – failure to meet dowry

⁷⁹ Krishnan and Subramaniam (n 29).

⁸⁰ Laurel Remers Pardee, 'The Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe?' (1996) 13 *Arizona Journal of International and Comparative Law* 491.

⁸¹ Geetanjali Gangoli (n 73).

⁸² Premchand Dommaraju, 'Divorce and Separation in India' 2016 42(2) *Pop and Dev Rev* 195.

demands, alcoholic husband, disciplining the woman, punishment for birthing daughters or in ability to conceive etc.⁸³

Therefore, a married woman and her natal family are unlikely to report domestic abuses. The norm forcing her to bear domestic violence does not apply differently to dowry related violence and, therefore, it does not change her preference to not report the violence. Both families are cognizant of the norm of wife beating and expect compliance to it from each other as well as the social sanction of any who does not adhere to it.

Within this social reality, the stringent laws against dowry related violence was introduced. The next section analyses why the law and the cost it imposes on the abusers cannot change the decision to give dowry in light of the high cost for reporting violence or abandoning marriage.

4. *CRIMINALIZING DOWRY INCENTIVIZES FAMILIES TO DELAY DOWRY DEMAND TILL AFTER WEDDING AND USE DOMESTIC VIOLENCE AS A THREAT FOR COMPLIANCE*

As a family of the bride, of course, all attempts are made to reduce any prospect of violence. All strategies, social and legal, are employed for the purposes. Then could criminalising dowry help better protect women in their marriages from dowry related violence and deaths? The simple answer would be negative.

The Dowry Prohibition Act criminalises all valuables exchanged before, during and after the marriage in connection to the marriage. When a marriage is conditional on the payment of the dowry i.e. payment needs to be made during or before the wedding for it to proceed/conclude, it is easier to identify dowry. However, there is ambiguity on how courts will interpret any familial pressure or violence for payments after the wedding is concluded.

Demand for valuable property, currency etc. in times of financial instability and pursuant violence was considered beyond the purview of dowry related violence.⁸⁴ Similarly, 'property that may pass hands subsequent to the marriage, even months or years after it, *merely to save the marriage from being broken or to smoothen the course of matrimonial life, or to keep the family of the in-laws of the wife better disposed towards her*'⁸⁵ was not considered as within the definition of dowry. Gifts demanded for traditional customs at the birth of a daughter cannot

⁸³ Madhu Kishwar, 'Strategies for Combating the Culture of Dowry and Domestic Violence in India' [2005], UN Division for the Advancement of Women <<https://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/kishwar.dowry.pdf>> accessed 10 July 2021.

⁸⁴ *Appasaheb v. State of Maharashtra* (2007) 9 SCC 721.

⁸⁵ *Madan Lal v. Amar Nath* 1984 SCC OnLine Del 228 : 1984 RLR 697.

be considered as dowry.⁸⁶ The Supreme Court has emphasised that “a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential” for it to be covered under the definition of dowry.⁸⁷ All the cases referred to above involved a married woman who had died and harassment in her marital home was already established.

This highlights another important feature of how the social practise is enforced. Dowry related violence is perpetrated after the wedding is concluded to coax the parents of the bride to pay more. This is evident from the fact that all penal provisions punishing dowry related violence protect married women which indicates that the wedding is concluded successfully before the violence commences.

Traditionally (in absence of the law), all decisions on dowries were made before concluding a roka (engagement) ceremony to ensure only families which could match the demanded dowry agreed to the wedding. Once agreed, the bride's family is likely to perform their commitment since the patrilocal norm ensures that the groom's family can easily punish/sanction the bride for failures of the bride's family and the natal family is unlikely to report the same given the norm on domestic violence. Both parties are aware of this larger framework within which traditional marriage operates. Therefore, since the sanction for non-payment of dowry is after the wedding, the demand can be at any time before, during and after the wedding is concluded with same levels of enforcement.

Given the sequence of events, criminalising dowry could, in fact, incentivise the groom's family to delay dowry demands till after the wedding. The Dowry Prohibition Act would create incentive for the groom's family to select a family which could match their future demands but refrain from making any explicit demands till after the wedding was concluded. It would also potentially contribute to increased violence (both physical and mental) against women.

Meanwhile, the stigma of divorce or a broken marriage for the woman is sufficiently high for the woman's family to continue fulfilling any such demands of the groom and his family once a marriage has been concluded. It also keeps the potential cost of prosecution sufficiently low for the groom's family to not really alter their incentives and the violence. This ensures the woman's family not only pays, even without explicit demands, heavily to meet expectations of the groom's family during the wedding (as discussed in the previous section) but also is vulnerable to the use of violence as a means to collect more after the wedding.

⁸⁶ PTI, Customary gifts not dowry: Supreme Court, Outlook (New Delhi) 14th May 2008. <<https://www.outlookindia.com/newswire/story/customary-gifts-not-dowry-sc/571276>> accessed 10 July 2021.

⁸⁷ *Appasaheb v. State of Maharashtra* (2007) 9 SCC 721.

As the violence increases, stories about such violence and deaths reported, a prospective bride's family is more likely to ensure that all expectations, explicit and implicit, of the groom's family are satiated during and after the wedding to protect their daughter from the same fate of other married women they read in newspapers or hear in their societies about. It creates a situation where the empirical expectation of dowry related violence further entrenches the normative expectation that the daughter's family should pay as much as is necessary to prevent their daughter's future sufferings.

The discussion so far clarifies how not comprehending the social script of an Indian marriage resulted in laws that did not address the actual motivations behind dowry payments and instead focussed on managing the symptom of dowry itself. However, despite ineffective enforcement, certain laws can have power through expression. It communicates to people what society values and transform their perception in the process. Could criminalising dowry and punishing dowry related violence impact the social tolerance to dowry related violence if not dowry itself. In the next section, the article considers why the dowry legislations failed to capture this expressive powers of law in transforming societies.

IV. ANTI-DOWRY LAWS DO NOT IMPACT THE SOCIAL PERCEPTION OF DOWRY: SYMBOLIC/ EXPRESSIVE POTENTIAL OF THE LAW

When discussing expressive power of law, the focus is on the legal statement independent of its power through efficient enforcement of legal sanctions. There are various approaches that legal expression could address an issue. A law can be considered a tool of social signalling i.e. what the society considers acceptable behaviour which applies to laws on smoking in public spaces, homosexuality, marijuana legality etc.⁸⁸ A law can help alter the social meaning of an act such as when duelling laws were changed in France, abandoning a duel was not an act of cowardice but showing respect for the law which enables people who wanted to opt-out of the self-harming activity had a reason which did not affect their pride.⁸⁹ It can help coordinate behaviour by providing a focal point around which people can coordinate their behaviours such as traffic rules etc.⁹⁰

The legislature was cognizant of this additional impact that Dowry Prohibition Action could have when it stated –

“Legislation cannot by itself normally solve deep-rooted social problems. One has to approach them in other ways too, but legislation is necessary

⁸⁸ Lawrence Lessig, ‘The Regulation of Social Meaning’, (1995) 62 U Chi L Rev 943.

⁸⁹ *ibid.*

⁹⁰ Kaushik Basu, ‘The Focal Point Approach to Law and Economics’[2018] in Republic of Beliefs 38.

and essential, so that it may give that push and have that educative factor as well as the legal sanctions behind it which help public opinion to be given a certain shape."⁹¹

When assessing the strength of such legal expression, its impact on behaviour of the targeted group becomes relevant. There are two presumptions that the Indian courts and the Parliament made when enacting and implementing Dowry Prohibition Act – a. prohibiting an activity will necessarily impact the social attitude towards said activity; b. changing social attitude towards a practice necessarily translates to (desired) change in preference and behaviour.

In this section, the article explores whether these presumptions hold true in light of the social realities of dowry.

A. EXISTING (SOCIAL) RULES OF COOPERATION AND HIGH COST OF SWITCHING FROM THE SOCIAL RULE TO THE LEGAL RULE FOR THE WOMAN'S FAMILY MAKE ANTI-DOWRY LEGISLATIONS INEFFECTIVE IN ALTERING DECISION TO PAY

The typical situation where expressive function of law plays a dominant role is in coordinating social behaviour/ defining attitude is in social situations that can be described as a coordination game such as determining which side of the road to drive.⁹² These games are defined by the possibility of multiple equilibria but the players are necessarily better-off if they can coordinate and choose the same rule.⁹³ However, marriage transactions are co-operation game where each party can have different winning strategies (which may not always be coordination) and, more importantly, there already exists a social rule which helps the families and society co-operate. Ignoring the pre-existence of strong social rules that motivates the willingness to pay and attempting to create a new equilibrium for cooperation through expressive function of law is flawed strategy. The players already coordinated with the presumptions created by the existing social rules. The social norms that result in preference to pay dowry – a. paying for a daughter's wedding and b. fear of future violence or, worse, divorce/death are the same motivations that result in non-compliance with the law. And, therefore, the legal enforcement and the traditional function of sanction (and not expression) becomes relevant for the law to be of any effect.

⁹¹ *Enforcement and Implementation of Dowry Prohibition Act, 1961, In re* (2005) 4 SCC 565 : AIR 2005 SC 2375.

⁹² See: Richard McAdams, *The Expressive Powers of law: Theories and Limits* (2016) for more details on how laws can help societies coordinate behavior without employing legal sanctions.

⁹³ See: Douglas Baird, Robert Gertner and Randall Picker, *Game Theory and the Law* (Harvard University Press, 1994).

Additionally, switching between rules has different consequences for different players within the same game.⁹⁴ It is easier for a groom's family to switch from demanding dowry to not demanding dowry in a patriarchal society since it will not impact the quality of potential matches they receive. It might in fact increase the pool of potential matches since many eligible prospects which were previously rejected for lack of resources to pay dowry can now be considered. As a bride's family, the choices received will considerably vary if one bride's family abandons the social rule of dowry while other families of brides continue to offer dowries. The groom's family, if they continue to prefer dowry, will select the bride's family willing to pay dowry over the one refusing to do so. The normative and empirical expectations originating from the social norms previously discussed motivate payments for a daughter's marriage. Due to an incomplete analysis of the norms that motivate dowry payments, the law focused on empowering and relying on the bride's family to enforce the law. For channelling the expressive function of the law in this case, the law should have encouraged the groom's family to reject dowry rather than suggesting the bride's family to reject grooms demanding dowry. Framed as such, it raises a question whether criminal law was the most efficacious method to send out the message.

Therefore, the expressive powers of law cannot just be presumed to flow from any expression of law. To effectively harness it, the circumstances in which expression is most potent to impact attitudes needs to be manufactured. It again raises the question of what attitude should these laws attack which requires an understanding of the social norms that most directly impact behaviour. Without understanding the norms motivating dowry payments, the law focused on the wrong attitudes making the expression ineffective in reducing dowry and, in fact, created greater apathy in case of domestic violence.

B. THE LAW FAILS TO TARGET THE CORRECT SOCIAL NORMS THAT IMPACT THE PREFERENCE TO PAY DOWRY

It is important to remember that not all attitudes translate into behavioural or preference change.⁹⁵ Most people consider that exercise is good for health (attitude) and yet not all people who agree that exercise is good for health lead active lifestyles (behaviour).⁹⁶ For an attitude to inform preference, it is essential that the attitude and preference are with respect to the same behavioural situation (the

⁹⁴ Amy L Wax, 'Expressive Laws and Oppressive Norms', [2000] 86 Virginia Law Review 1731.

⁹⁵ Christina Bicchieri, Alesandro Sontuosso and Ryan Muldoon, Social Norms, The Stanford Encyclopedia of Philosophy (in E.N. Zalta ed., 2018) < <https://plato.stanford.edu/entries/social-norms/> > (Last visited on 15 July 2021).

⁹⁶ Rajeev Jhangiani, Hammond Tarry and Charles Stangor, 'Attitudes, Behavior and Persuasion', in Principles of Social Psychology (2014) <<https://opentextbc.ca/socialpsychology/chapter/exploring-attitudes/>> accessed 10 July 2021.

stronger the attitude, the more likely the preference will match the attitude).⁹⁷ Identifying the wrong attitude (which does not impact preference) or defining the attitude ambiguously can, therefore, be fatal for the expressive function of law. After all, even as a family of the groom (who can most easily adopt anti-dowry attitude without social sanction), one may reject dowry and continue to expect a grand wedding and multiple gifts throughout the marriage. They can also consider mistreating the daughter as a legitimate means of expressing their disappointments without having ever demanded dowry in its legal sense. Similarly, many families of brides consider their daughter's wedding to be a dowry-free affair while gifting apartments, jewellery and automobile to the in-laws of their daughter by using their life savings. Even if the law had effectively changed the social attitude to dowry, it would not have addressed the reasons why dowry as a practise should be abolished.

An example of the insidious consequence that improper expression of law can have is with respect to domestic violence. Addressing dowry related violence as a special and higher category of criminal offence, in fact, negatively signals to the society that certain types of domestic violence are worse than others and should be taken more seriously than others. Consider the definition of cruelty under the Indian Penal Code.⁹⁸ It has two categories – a. wilful conduct which should either be sufficient to drive a woman to suicide or cause **grave danger** to her health and life or b. harassment done demanding valuables. The threshold of violence to prove 'cruelty' is higher without claiming demand for dowry i.e. cruelty without an intention to extort money should be strong enough to drive a woman to suicide or 'cause danger to her health and life'.

Courts, following the law, exacerbated the issue by taking cases involving dowry deaths more seriously than cruelty against married women which did not raise dowry related violence, not realising that the enforcing provisions against cruelty is the means to prevent deaths.⁹⁹ Lawyers actively counsel their female clients to allege dowry related violence instead of merely violence to get favourable judgments. It increases the burden of proof necessary for prosecution. Meanwhile, as more complaints alleging dowry related violence fail to prove that the violence was associate to dowry, it creates greater scepticism about complaints of domestic violence victim at large both in society and legal authorities silencing the victims further.¹⁰⁰ A stronger law on domestic violence and focus on changing the social perception of domestic violence, on the other hand, would have made the marital house safer for the woman and removed at least one of the stronger motivations

⁹⁷ Ajzen, The Theory of Planned Behavior, 50(2) Organizational Behavior and Human Decision Processes 179 (1991); M Fishbein and I Ajzen, Belief, Attitude, Intention And Behavior: An Introduction To Theory And Research (1975).

⁹⁸ Indian Penal Code 1860, s 498A.

⁹⁹ Trivedi and Singh (n 31).

¹⁰⁰ *Appasaheb v. State of Maharashtra* (2007) 9 SCC 721.

for paying dowry. In that context, the Domestic Violence Act of 2005 though not specifically targeting dowry related violence will be a stronger impetus for change in the practise of dowry as it targets one of the two social norms fuelling dowry in the country.

It is essential, therefore, to understand what motivates those willing to pay dowry and other marriage payments to successfully design a law that accomplished both its enforcement and expressive functions.

V. CONCLUSION: THE NEED TO DESIGN SOCIALLY RESPONSIVE LAWS TO ADDRESS DOWRY IN INDIA

Considering the preference to pay dowry as a rational choice driven by expectations about the behaviour of the groom's family and the belief about expected behaviour of the daughter's family can help identify the social norms that guide these expectations. The article identifies two relevant social norms and its impact on the decision to pay dowry – a. paying for a daughter's wedding and b. fear of domestic violence.

The social norm of 'paying for a daughter's wedding' carries with it both the empirical and normative expectation of compliance. There exists a normative sense of obligation (normative expectation), a sociological need to adhere to group rules (empirical expectations), material benefits (better quality grooms), social benefits (social respectability) among others. In the case of domestic violence, as the article highlights, there is a strong empirical expectation among victims that most women face violence in their houses. Additionally, the pressure to make the marriage work creates a normative expectation that they must bear the violence.

Reframing the problem as such helps identify both limits and scope of legal interventions. Often when too much importance is placed on the law to alleviate conditions of the victims within a society, it absolves the relevant social and governance structures from any need to change. It also focuses the resources of the state and social organisations working in the sphere towards improving the law rather than addressing the situation. Consider the case of the Dowry Prohibition Act. It was enacted in 1961, found insufficient and amended in 1980s. Yet in 2005, well intentioned social activists and the Supreme Court again reconsidered the issues with the legislation and recommended that state government enforce the law more effectively. Considering the preceding discussion and evidence from the ground, it is perhaps the least effective mechanism to address dowry in the country and yet considerable effort has been spent in 'fixing the law' while ignoring the actual issue. Criminalising dowry, at its strongest, helps convey the symbolic message that socially we do not condemn the practise. But as the article discusses, even in this expressive capacity, the law has limited application.

The strongest legal intervention should be in strengthening domestic violence laws within the country. The civil legislation titled 'Domestic Violence Act of 2005' is an important step in the direction. It considers not only addressing the aspect of violence but also associated costs by including rehabilitation within its ambit. In fact, it should be more effective on reducing dowry payments, within the framework of the article, despite not being a dowry specific legislation. It addresses accurately the social norm and is, therefore, more potent.

The other social norm of paying for a daughter's wedding has not been considered so far in discussion on dowry payments. Creating incentives such as potential tax breaks for smaller weddings or when expenses are shared could further social change as well. Requiring mandated disclosures of gifts exchanged under the Income Tax Act could be another method. Though further discussion with stakeholders is essential before designing any specific regulatory incentive to address the norm. If the laws on domestic violence effectively address the fear of sanction through violence, it will be easier to combat remaining normative and empirical expectations involving a wedding. Creating social campaigns and education will be a better intervention to slowly help shift the normative and empirical expectations involving weddings within Hindu communities. In fact, in tackling the norm on the size of weddings, refusing to glorify and market the 'Big Fat Indian Wedding' may prove to be a more effective regulatory strategy to nudge the society away from the norm than the non-effective threat of punishment as it exists today. The Kerala Women's Commission has, in fact, recently acknowledged the issue and are considering potential legal measures to restrict 'ostentatious weddings' in Kerala.¹⁰¹

Above all, the analysis aims to highlight a long due and urgent need to understand what motivates dowry payments rather than presume intentions. As the article elucidates, sufficient evidence exists to refute the flawed presumption of law that dowry is a social norm in itself. It puts forth an explanation where the motivation to pay dowry is based on two prominently studied social norms. Structural analysis would indicate how caste (arranged marriages) and patriarchy could be the institutional framework within which these social norms exist. Cultural specificities of different areas would, perhaps, reveal even more variations in both the practise and understanding of these concepts. Any discussion on dowry and subsequent regulatory intervention on dowry should therefore aim to address these norms that propel dowry payments. Having misdiagnosed dowry as a norm has for too long misdirected well-intentioned policy efforts and resources. Meanwhile, women's lives, health and happiness continue to be in increasing jeopardy.

¹⁰¹ G Krishnakumar, 'Kerala Women's Commission to Submit Proposals to Government to Check Dowry Harassment and Ostentatious Weddings', *The Hindu* (Kochi) June 24, 2021.