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# ELIMINATING CHILD MARRIAGE IN INDIA: A BACKDOOR APPROACH TO ALLEVIATING HUMAN RIGHTS VIOLATIONS

JACQUELINE MERCIER\*

CHILD MARRIAGE IN INDIA: SOCIO-LEGAL AND HUMAN RIGHTS DIMENSIONS. By Jaya Sagade. New York: Oxford 2005.

**Abstract:** Despite its illegality, child marriage occurs throughout the Indian landscape. In her book, *Child Marriage in India: Socio-legal and Human Rights Dimensions*, Jaya Sagade examines the prevalence of child marriage among India's various cultures and its impact on the human rights of young women. Sagade asserts that, notwithstanding minimal legislative efforts, the Indian government has not met the obligations set forth in the international human rights conventions that the country has ratified. Sagade asserts that the Indian government must not only work diligently to change the nation's views on child marriage, but must also legislate more cohesively to prohibit the practice. This Book Review takes Sagade's human-rights-based proposals a step further and suggests that, in a country reluctant to release longstanding traditions, addressing the Indian tax system and dowry laws will provide a more practical, financial incentive for eliminating the practice of child marriage.

*People in [India] take great pleasure in [child] marriage. . . . The little bit of a woman, the [child] bride, clad in red silk. Drums are beating and men, women and children are running in order to have a glimpse of that lovely face. From time to time she breaks forth into little ravishing smiles. She looks like a lovely doll.<sup>1</sup>*

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<sup>1</sup> *Charting Cultural Nationalism*, HINDU, Aug. 19, 2001, available at [www.thehindu.com/thehindu/2001/08/19/stories/1319017k.htm](http://www.thehindu.com/thehindu/2001/08/19/stories/1319017k.htm) (discussing how 19th Century “cultural nationalists invested the institution of child marriage with both beauty and sentiment”).

## INTRODUCTION

Child marriage is illegal in India.<sup>2</sup> India's Child Marriage Restraint Act (CMRA) prescribes the minimum age of marriage as eighteen years for girls and twenty-one years for boys.<sup>3</sup> In various states in the United States, the minimum age of marriage is as low as thirteen years for girls and fourteen years for boys.<sup>4</sup> In Nigeria, the minimum age of marriage is as low as nine years for both girls and boys.<sup>5</sup> In some countries there is no limit on the minimum age of marriage of girls.<sup>6</sup> Despite having, by statute, one of the highest minimum age requirements for legal marriage, child marriage continues to be widespread throughout India.<sup>7</sup> In fact, India has one of the lowest median ages for brides in the world.<sup>8</sup> Recognizing that "[c]hild marriage of girls is a comparatively neglected social problem in India and is seldom given attention by policy makers, law interpreters, law enforce-

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<sup>2</sup> JAYA SAGADE, *CHILD MARRIAGE IN INDIA: SOCIO-LEGAL AND HUMAN RIGHTS DIMENSIONS*, at xxiv-xxv (2005). In her book, Sagade notes that the term 'child marriage' should be understood as contradictory because "[if] marriage is a formalized relationship with legal standing between an individual man and woman, in which sexual relations are legitimized. . . . [h]ow can a child be party to a marriage, when she is unable to understand the nature and consequences of it." *Id.* at xxvi. Despite this contradiction, the term "child marriage" as used here and throughout Sagade's book, is defined as marriage below the age of eighteen years, the age of majority for civil matters as defined in the Indian Majority Act, 1875. *Id.* at xxvi-xxvii.

<sup>3</sup> *Id.* at xxiv.

<sup>4</sup> *Id.* at xl.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at xxiv. Ghana, for example, has no defined limit on the minimum age of a marriage for girls. *Id.* Interestingly, the state of Arizona, while prescribing eighteen as the age at and after which parental consent is no longer legally required for marriage, provides no minimum age of marriage as long as the union is approved by the court. ARIZ. REV. STAT. § 25-102(A) (LexisNexis 2005). The statute provides in pertinent part,

[p]ersons under eighteen years of age shall not marry without the consent of the parent or guardian having custody of such person. Persons under sixteen years of age shall not marry without the consent of the parent or guardian having custody of that person and the approval of any superior court judge in the state.

*Id.*

<sup>7</sup> SAGADE, *supra* note 2, at 4.

<sup>8</sup> *Id.* (recognizing that the median varies depending on the age and geography of the surveyed group, but noting that one province, Rajasthan, with a median of 15.9 years, has the lowest median age of marriage among women currently aged twenty to twenty-four years in the country). Sagade also notes that although the Singulate Mean Age at Marriage has increased from 15.9 years in 1961 to 19.3 years in 1991, an average of 38.4 % of girls in the age group of 15-19 years get married; this percentage increased to a staggering 44.7 % in rural populations. *Id.* The data also indicate that 11.8 % of girls are married by the age of thirteen years and 26.1 % by the age of fifteen years. *Id.*

ment machinery, and academicians,”<sup>9</sup> Jaya Sagade, in her book *Child Marriage in India: Socio-legal and Human Rights Dimensions*, explores this neglect from a “holistic perspective—by examining the social, religious, cultural, and legal barriers in prohibiting the harmful practice of child marriage in India.”<sup>10</sup>

Adopting a feminist approach, Sagade analyzes the social, legal and human rights dimensions of the problem of child marriage and its effect on young girls.<sup>11</sup> The prevalence of child marriage cannot be fully comprehended without a discussion of both the causes for and consequences of the continued practice throughout the Indian landscape.<sup>12</sup> Sagade thus introduces the patriarchal structure of Indian society, which places men in a position to define which resources and contributions are highly valued.<sup>13</sup> With this patriarchal background, Sagade weaves through an analysis of the legal discourse surrounding child marriage in India, from incomplete legislative attempts at eliminating the practice, to the judiciary’s contradictory and very technical approach to dealing with the practice.<sup>14</sup> Sagade points to the numerous human rights that are violated by the practice, and emphasizes that India, which has ratified several international treaties addressing women’s issues and children’s human rights, is under an obligation to ensure that its infrastructure permits the equal and humane treatment of women and children.<sup>15</sup> Sagade concludes that facets of the

<sup>9</sup> *Id.* at xxv.

<sup>10</sup> *Id.* at xxxvii. Sagade goes on to state,

[m]y thesis is that law must have a role in effecting social change. If it is not harnessed in support of progress, it obstructs attempts to redress patriarchy. Unless the law articulates and recognizes the rights of people, redressal of violation of human rights is difficult. From this perspective, law must be seen as empowering . . . . *One needs to adopt more realistic appraisal of the limitations of the law.* The myths that presently imbue law with its apparent sanctity must be abandoned. I argue therefore, that along with the reforms in the existing laws, a movement creating a legal culture, making the active agents sensitive to the consequences of child marriage, and furnishing meaningful viable alternatives to young girls, is required to be built up. The responsibility for this lies with civil society.

*Id.* at xxxix (emphasis added).

<sup>11</sup> *Id.* at xiii.

<sup>12</sup> See SAGADE, *supra* note 2, at 1–25.

<sup>13</sup> *Id.* at 8 (suggesting that “[t]he collective effect of patriarchy is thus to reinforce subordination of women in the name of care, protection, and welfare, and make them dependent on men throughout their lives”).

<sup>14</sup> See *id.* at 35–64, 73–100.

<sup>15</sup> See *id.* at 111–26, 132–66, 175–202. Sagade emphasizes throughout her discussion that state parties to international human rights conventions are under a legal obligation to

Indian government, from the courts, to the legislature, to law enforcement, need to work in concert to spread awareness of the problems with child marriage and to eliminate the practice for the sake of the nation's young girls.<sup>16</sup>

While reading Sagade's explanation of the problem and her suggestions for future action, it becomes apparent that the practice of child marriage is deeply ingrained in Indian culture and tradition.<sup>17</sup> Thus, relying on the government and certain professionals<sup>18</sup> to eliminate the practice through an imposed rule, which seeks to change superficially the culture's patriarchal perception of women, will likely face wide-spread and long-term opposition.<sup>19</sup> In addition to attempts to change the culture's perspective on women and girls, this Book Review suggests that addressing the Indian tax system and dowry laws would provide a more practical approach to eliminating the practice of child marriage.<sup>20</sup> Utilizing financial means to compliment the feminist methodology that Sagade lays out could produce more immediate effects as the nation takes time to adjust to the feminist perspective.<sup>21</sup>

Part I of this Book Review discusses the perspectives from which Sagade addresses the problem of child marriage, namely the feminist and human rights approach to eradicating the problem. Part I also discusses the causes and consequences Sagade illustrates in the first half of her book. Part II outlines and critiques the methods of eradicating child marriage that Sagade suggests the Indian government

not only ensure legislative conformity, but also to investigate and remedy the conduct of individuals and institutions that violate these human rights. *Id.*

<sup>16</sup> *Id.* at 208–15.

<sup>17</sup> See SAGADE, *supra* note 2, at 7–14.

<sup>18</sup> *Id.* at 211. Sagade suggests that a “special responsibility could be put on certain professionals. For instance, health professionals, law enforcement officials, people’s representatives, members of the judiciary, and social workers in non-governmental organizations and in the local community could be trained to address the practice of child marriage from [the] human rights perspective.” *Id.*

<sup>19</sup> See *id.* at 208–17.

<sup>20</sup> See Luigi Bernardi & Angela Fraschini, *Tax System and Tax Reforms in India* 2, 13–14 (Univ. of Pavia & Univ. of Eastern Piedmont, Working Paper No. 51, 2005) available at <http://polis.unipmn.it/pubbl/RePEC/uca/ucapdv/fraschini51.pdf>. The Indian tax system is a three-tiered structure made up of the union government, the state governments, and the urban/rural local bodies. *Id.* at 2. The main taxes that the union is empowered to levy are income tax, customs duties, excise duties, sales tax and service tax. *Id.* The income tax includes both tax deductions and tax credits similar to those established by the IRS. *Id.* at 13–14. Spouses are treated separately and generally their income is not combined. *Id.* at 14.

<sup>21</sup> See SAGADE, *supra* note 2, at 229. Sagade concludes by recognizing that “mere passage of any law will not be able to achieve its objectives unless it is meaningfully strengthened by other support mechanisms.” *Id.*

adopt to comport with international human rights standards. Part III begins with a discussion of the Indian practice of dowry, a discussion glossed over in Sagade's book. Part III then presents the economic perspective and concludes by suggesting that the government could use tax incentives and dowry law amendments to provide more efficient relief to the plight of young girls and women in India.

### I. DEFINING SAGADE'S PERSPECTIVES

Sagade emerges from an introductory sea of demographic and medical statistics, and charts an investigation of the causes of cultural support for child marriage.<sup>22</sup> She then investigates why the prevalence of child marriage has not diminished despite current legislation that makes contracting a child marriage a criminal offense.<sup>23</sup> Sagade focuses on several reasons for child marriage, including the intensely patriarchal customs in India where the attitude towards women is that they are not to be left independent.<sup>24</sup> Sagade notes that by marrying off young girls at an early age, their "submission and acceptance of the traditional gender roles" becomes almost guaranteed; the young bride herself becomes "the carrier of the patriarchal ideology and unknowingly contributes to the strengthening of patriarchy."<sup>25</sup>

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<sup>22</sup> *Id.* at 1–21. Sagade offers statistics that indicate child marriage levels in different regions of India and how they have changed over time. *Id.* at 4–5. She also discusses the medical consequences young brides often face from early exposure to sexual intercourse and child birth. *Id.* at 14–21. As young brides are statistically more likely to be poverty stricken and lacking proper prenatal care, they are more susceptible to risks that can be avoided or lessened through proper pregnancy management; for example, "[g]irls below the age of twenty years are likely to suffer from . . . recto-vaginal fistula (VVF), which is a hole between the vagina and bladder or rectum. This results in continuous involuntary leakage of urine or faeces . . ." *Id.* at 14. Sagade also tells the story of Phulmonee, a girl just over eleven years old who "died because of haemorrhage from a rupture of the vagina caused by her husband who had forcible sexual intercourse with her." *Id.* at 40–43. Though initially charged with murder, the court later exonerated him as Phulmonee was above ten years old. *Id.* at 40. In 1860, at the time of Phulmonee's death, the age of consent for sexual intercourse was ten years and "[s]exual intercourse without the consent or against the will of a woman is not rape when committed by a man with his wife" provided she was not below ten years of age. *Id.* at 38.

<sup>23</sup> *Id.* at 1–14. Persons that can be held criminally liable for contracting child marriage are the groom, individuals who perform or conduct the child marriage, guardians or persons in charge of a minor who promote, permit, or negligently fail to prevent child marriage, and persons who violate an injunction issued to prohibit a proposed child marriage. *Id.* at 48–49. The punishment for contracting a child marriage is imprisonment for three months and/or a fine. *Id.* at 49. The CMRA is silent on whether a child marriage, once performed, is legally valid. *Id.* at 52.

<sup>24</sup> *Id.* at 8.

<sup>25</sup> *Id.* at 10.

In addition, Sagade offers several economic reasons for perpetuation of the practice.<sup>26</sup> In India, dowry is still a practiced custom where the parents of a girl are required to give cash gifts to the groom and his family; the longer the marriage arrangement is delayed, the more the dowry increases.<sup>27</sup> Economics further sustain the practice of child marriage as it lessens the financial burden of supporting daughters as a married girl joins the family of her husband.<sup>28</sup> Also, because women are “out-marriers,” daughters are not expected to support their parents in any way.<sup>29</sup> Thus, “it becomes a *straight economic, utilitarian calculation of gains and losses* in marrying daughters off young.”<sup>30</sup> These economic reasons fade from Sagade’s analysis when she discusses the methods by which the government should legislate, implement, and enforce rules to eradicate the practice of child marriage.<sup>31</sup>

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<sup>26</sup> SAGADE, *supra* note 2, at 7–14. In addition to, but not completely isolated from the patriarchal and economic reasons for child marriage, Sagade offers several other causes for the continued practice. *Id.* These causes include the community’s desire for control over sexuality where culturally embedded concepts of virginity and chastity are often symbols of honor and status. *Id.* at 9. With these values, concerns over purity are eased if girls are married at a younger age. *Id.* at 9–10. Sagade also points to a lack of awareness about the adverse health consequences and the law as reasons for the continued practice. *Id.* at 12. The lack of political commitment is also discussed, where Sagade alleges that no serious efforts have been made by the Indian government to curb child marriage despite an at least superficial attempt to respond to the demands of the international community. *Id.* at xxxiv. 13.

<sup>27</sup> *See id.* at 10–11. “[A]s the girl gets older . . . she needs an older bridegroom. An older bridegroom is likely to be more educated. And the more education the more dowry is an established trend. To avoid more expenditure by marrying her at a later age, parent prefers to marry her off at an early age.” *Id.*; *see also* Barbara R. Hauser, *Born a Eunuch? Harmful Inheritance Practices and Human Rights*, 21 LAW & INEQ. 1, 32–33 (2003) (defining dowry as the practice of a bride’s family giving money and property either to the bride or to the new family she joins; thus dowry is understood as giving the daughter her inheritance at the time of marriage).

<sup>28</sup> SAGADE, *supra* note 2, at 11.

<sup>29</sup> *Id.* at 11, 30 n.61. Sagade explains that “[o]ut-marriers means women leave their parent’s [sic] house and join the husband at his house.” *Id.* at 30 n.61.

<sup>30</sup> *Id.* at 11 (emphasis added). Because daughters typically become extensions of the bridegroom’s natal family, they cease to be members of their own natal family and thus daughters are spared the responsibility of supporting their parents or siblings. *Id.* Thus, in financial terms, daughters are a perpetual expense and their parents can expect no future return on their investment. *See id.*

<sup>31</sup> *See id.* at 208–17. In her introduction, Sagade discusses the economic reasons that contribute to the continued practice of child marriage, including the practice of dowry and the cultural understanding that women do not contribute monetarily to the income of the family and are therefore burdens to be married off as soon as possible. *Id.* at 10–11. These economic reasons are not discussed in depth again in her analysis, nor are they mentioned in her suggestions for future action. *See id.* at 208–17. The only time economically based laws are discussed as needing reform is when Sagade briefly notes that, “all other laws that devalue women need to be amended. For example, laws relating to inheri-

The tension between a sometimes progressive government and a people entrenched in tradition surfaces as legislative and judicial attempts to curb child marriage stall at the feet of cultures and religions more concerned with historical customs than the dictates of an ideologically distant administration.<sup>32</sup> Sagade next uncovers several gaps in India's legislation and case law, and in doing so uncovers the divergence of cultural norms from governmental goals.<sup>33</sup> While Sagade is quick to allege that these lacunae indicate that the Indian government is merely "pay[ing] lip service to the cause of preventing child marriage,"<sup>34</sup> she seems to have forgotten that this is a government seeking to create rules that conflict with the deeply imbedded patriarchal traditions of Indian society.<sup>35</sup>

This conflict becomes evident as the government's attempts to legislate and the judiciary's attempts to adjudicate historically have been confronted with community disregard or outrage.<sup>36</sup> Even within the last decade, public outrage at attempts to discourage child marriage has led to uproar and violence not just against the government,

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tance, divorce . . . and equal opportunities for women in all spheres including political and economic spheres." *Id.* at 90.

<sup>32</sup> See Celestine I. Nyamu, *How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?*, 41 HARV. INT'L L.J. 381, 409–10 (2000).

<sup>33</sup> See SAGADE, *supra* note 2, at 85–89. After a detailed discussion of the anomalies in the CMRA and other legislation connected directly or indirectly with the question of age at marriage, Sagade summarizes the contradictions and lacunae as a means to understand the desired reforms that need to be introduced. *Id.* CMRA not only prescribes different minimum ages for the bride and the bridegroom, but it also allows an underage marriage, once solemnized, to become a legal union—the marriage is merely penalized. *Id.* at 86. Sagade notes that CMRA does not address the validity of the child marriage, nor does it make provision for registration of marriages. *Id.* CMRA does not require free consent of the parties for a marriage; it further declares offenses to be cognizable only for the purpose of investigation. *Id.* There is no provision for an ex-parte injunction to prevent the solemnization of child marriages. *Id.* Lastly, Sagade emphasizes that there are contradictions in respect of the age of consent between CMRA and law regarding the offense of rape under the Indian Penal Code. *Id.* The age of consent is 18 years for girls under CMRA, but only 16 years for consent under the Indian Penal Code. *Id.* at 38, 86.

<sup>34</sup> *Id.* at xxxiv.

<sup>35</sup> *Id.* at 7–11.

<sup>36</sup> *Id.* at 39, 42, 74. One example of community outrage can be seen in the events that gave rise to *Vishaka v. State of Rajasthan*. A.I.R. 1997 S.C. 3011, 3014 cited in SAGADE, *supra* note 2, at 128 n.22. *Vishaka* was a 1997 case filed by a volunteer organization after the rape of a social worker. SAGADE, *supra* note 2, at 128 n.22. The social worker, Bhavari Devi, was working to create awareness about CMRA and to prevent child marriages. *Id.* As Sagade suggests, "[s]he was taught a lesson for this work. She was gang-raped by the so-called high-caste people who did not like her intervention in their personal matters." *Id.*

but against those working for reform.<sup>37</sup> In light of such resistance, Sagade places too much weight on the need for the government to perfect the black letter law preventing child marriage; even laws that on paper completely prevent child marriage will likely have little effect in a society resistant to change.<sup>38</sup> While “one has to appreciate that the law has a definite role to play in bringing about social reforms,” the behavior of people might be more easily changed through laws that seek to do more than change the traditional perception of women.<sup>39</sup> For example, if India implements legislation that will provide some economic incentive to comply with marital laws, either by reforming property and dowry laws or by offering tax incentives to register marriages, people will be more likely to abide by the marriage laws even if motivated by economics rather than women’s rights.<sup>40</sup>

With the reasons for child marriage and the problems with the current law explored, Sagade investigates the barriers to prohibiting child marriage.<sup>41</sup> As her title indicates, Sagade investigates the issue of child marriage not only from a human rights approach, but also by

<sup>37</sup> See SAGADE, *supra* note 2, at 128 n.22.

<sup>38</sup> *Id.* at 74. Sagade herself suggests, in the introduction to her legal reform argument, that “[n]o one can guarantee, particularly in the area of personal relations, that legislation will succeed in changing the behaviour of people.” *Id.*; cf. ROHIT BAROT ET AL., SOUTH ASIANS AND THE DOWRY PROBLEM 76 (Werner Menski ed., 1998) (discussing the existence of dowry and how “[a]ttempting to eliminate the custom exogenously rather than investigating and removing its root causes is a classic case of treating the symptoms rather than the disease”). Despite her recognition that perfect legislation alone would be insufficient, Sagade dedicates many pages to recommendations for legislative reform. See SAGADE, *supra* note 2, at 52–55, 57–60, 85–91, 99–100, 138–66, 188–92, 208–10, 213–17.

<sup>39</sup> *Id.* at 74. Calling it one of the easiest and most effective methods to control child marriage, Sagade suggests that making the registration of marriage compulsory would ensure that the minimum age condition is met. *Id.* She also believes that it would assure the free consent of the parties to the marriage. *Id.* Making registration compulsory in the CMRA would be beneficial, but as Parliament’s legislative declaration asserts, “it is not practical in a vast country like India with its variety of customs, religions, and level of literacy.” *Id.* at 59 (citing the Convention on the Elimination of All Forms of Discrimination against Women, Declarations and Reservations, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13, available at <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>).

<sup>40</sup> See Deborah M. Weissman, *The Human Rights Dilemma: Rethinking the Humanitarian Project*, 35 COLUM. HUM. RTS L. REV. 259, 333–36 (2004) (discussing how human rights are best considered with “ideological dispositions that recognize that diverse cultures possess their own methods of resolution”); see also Nyamu, *supra* note 32, at 409 (recognizing that in a plural settling like India “proponents of gender equality must balance idealistic aspirations with a pragmatic realization that different contexts may call for diverse sets of tools to challenge unequal power relations”).

<sup>41</sup> See SAGADE, *supra* note 2, at 7–14, 74–92. Sagade will later use this investigation as a backdrop for her concluding discussion of how the Indian government should operate beyond mere legislation to overcome cultural hurdles. See *id.*

asking the woman question.<sup>42</sup> These two perspectives, Sagade purports, are necessary to understand the barriers in prohibiting child marriage and the methodology that should be implemented to overcome these barriers.<sup>43</sup> Sagade suggests that the practice of child marriage can be challenged from the human rights perspective because marriage is a state sanctioned institution and failure on the part of India to address the prevention of child marriages of young girls is an indication of social injustice.<sup>44</sup>

### I. DIVERGING FROM THE PRACTICAL

Because India has ratified several international conventions supporting women's rights and the prevention of child marriage, it is "under an obligation as a matter of international law to respect, protect, and fulfill human rights of the girls referred to [in the various conventions]."<sup>45</sup> India is obligated to not only protect those rights, but to fulfill them.<sup>46</sup> Sagade recognizes that internal bodies monitoring India's fulfillment of these obligations are making serious efforts to "bring in the gender perspective," but she argues that "these bodies need to confront the practice of child marriage more seriously and effectively by asking the woman question."<sup>47</sup> The woman question is necessary because cultural traditions pose a significant barrier to prohibiting child marriage.<sup>48</sup> Those who defend child marriage suggest that the practice is so ingrained in Indian culture that eradicating the

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<sup>42</sup> *Id.* at xxx. Sagade explains that, "[i]n the context of child marriage, asking the woman question requires an examination of the gendered conditions that facilitate or enable child marriage, and the laws intended to regulate it. It requires attention to the ways in which women's experiences and interests have been overlooked." *Id.* The woman question means examining shortcomings in the law in failing to consider the experiences and values that are more typical of women than of men. *Id.* The purpose of the woman question is not only to uncover male infused features of the law and how they operate, but also to approach the law with a conception of how these features might be corrected. *Id.*

<sup>43</sup> *Id.* at xxviii-xxx, xxxv-xxxvi.

<sup>44</sup> *Id.* at 125. Sagade argues that child marriage infringes on several human rights of the young bride including her autonomy in choosing a life partner. *Id.* Furthermore, as a young bride forced into the role of wife, the child's right to an education is taken away, which in turn denies her the opportunity to become economically independent and affects her overall well-being. *Id.* at 125-26.

<sup>45</sup> *Id.* at 115.

<sup>46</sup> SAGADE, *supra* note 2, at 115-16. By ratifying the international conventions, India adopted the direct, positive duty to enact appropriate legislation and provide administrative, budgetary, and economic measures for the full realization of human rights. *Id.*

<sup>47</sup> *Id.* at xxxvii.

<sup>48</sup> *Id.* at 140.

practice would be equivalent to eradicating a piece of Indian tradition.<sup>49</sup> In reaction to such arguments, Sagade emphasizes that,

[n]o social group has suffered greater violation of its human rights in the name of culture than women. A cultural explanation of the gendered social practice of child marriage has to be challenged by asking ‘the woman question’ [because] [o]nly when women are kept at the centre of the discussion can the gender complexity of the cultural argument be exposed.<sup>50</sup>

Casting tradition aside, India is legally bound to bring its legislation and policies in line with international standards.<sup>51</sup> Sagade lists the measures India would have to take to comply with the international treaties it ratified,<sup>52</sup> but India’s lack of complete compliance is not out of ignorance, but out of purposeful non-compliance.<sup>53</sup> While

<sup>49</sup> See Debali Mookerjee-Leonard, *Disenfranchised Bodies: Jyotirmoyee Devi’s Writings on the Partition*, GENDERS J. 2003, [http://www.genders.org/g38/g38\\_leonard.html](http://www.genders.org/g38/g38_leonard.html).

<sup>50</sup> SAGADE, *supra* note 2, at 140.

<sup>51</sup> See *id.* at 115.

<sup>52</sup> *Id.* at 142–48, 152–59, 162–63, 165–66, 178–81, 188–92, 195–99, 201–02. Sagade discusses several international human rights treaties that India has ratified, including the Convention on the Elimination of All Forms of Discrimination against Women (the Women’s Convention) 1979, and the Convention on the Rights of the Child 1989. *Id.* at 111–12. Sagade emphasizes that there is a “direct positive obligation on state parties to enact appropriate legislation and provide administrative, budgetary, and economic measures for the full realization of human rights.” *Id.* at 115.

<sup>53</sup> *Id.* at 144. For example, India has filed a declaration to an article of the Women’s Convention which reads:

(i) With regard to Articles 5(a) and 16(1) of the Convention on the Elimination of All Forms of Discrimination against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.

*Id.* Because marriage is a matter that falls within the purview of religion-based personal laws, India has excused herself from needing to eliminate discrimination based on sex, gender, and religion in the field of personal laws. *Id.* Article 5(a) states that state parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Convention on the Elimination of All Forms of Discrimination against Women, art. 5(a), *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13, *available at* <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. Article 16(1) states in pertinent part that:

India's non-compliance lends support to Sagade's earlier suggestion that the government's attempts to prohibit child marriage have been insufficient, it also implies that the government is aware of, but has not fully embraced, the woman question.<sup>54</sup> The community and the government would likely be more amenable to a dialogue on how prohibiting child marriage will benefit society as whole.<sup>55</sup> Although it is important and necessary that India understand human rights legislation under the woman question umbrella, the government's apathy toward the impact of child marriage might nonetheless be more easily extinguished if the gender neutral question was also asked.<sup>56</sup> Sagade considers only the woman question even when she discusses the effects of child marriage on the health of young women; she does not discuss the financial impact that treating preventable ailments have on the national economy.<sup>57</sup> After briefly acknowledging that "[s]ociety bears a phenomenal cost by allowing the continuation of the practice of child marriage,"<sup>58</sup> Sagade provides no further discussion of the reduction in socio-economic advancement of women, the increased costs of providing non-preventative health care, or the more

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1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure [that men and women enjoy]:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

....

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights . . . in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

*Id.* at art. 16(1).

<sup>54</sup> See SAGADE, *supra* note 2, at 144.

<sup>55</sup> See *id.*

<sup>56</sup> See generally Nyamu, *supra* note 32, at 409–11.

<sup>57</sup> SAGADE, *supra* note 2, at 14–22, 175–92. Because adolescent girls experience pregnancy before they are physically fully developed, they are more like to suffer from several conditions, including maternal mortality, severe damage to the reproductive tract, and pre-eclampsia and eclampsia, a condition involving high blood pressure, iron deficiency anemia, and convulsions. *Id.* at 14.

<sup>58</sup> *Id.* at 22.

peripheral financial impacts including decreased tourism from westerners who view India as hostile towards women.<sup>59</sup>

Sagade's human rights approach further wanders from the realm of the practical when she discusses the strategies and future action that the Indian government, and the Indian people, should adopt to eliminate child marriage.<sup>60</sup> Sagade suggests that national publicity aimed at creating awareness about international human rights jurisprudence should be at the forefront of the nation's aims.<sup>61</sup> Through such publicity, the state can better be held accountable for its seeming apathy and negligence in enforcing the rights of young girls.<sup>62</sup> While this suggestion seems sound and effective, Sagade goes on to assert that it should be the "special responsibility" of certain professionals including law enforcement, people's representatives, and members of the judiciary.<sup>63</sup> Has she forgotten that these are the same individuals that she alleges fall short when enforcing, legislating, and adjudicating against support for child marriage?<sup>64</sup>

Sagade further involves the court in methods that may alleviate the problem of child marriage. She suggests that,

a petition could be filed before the Supreme Court challenging the practice of child marriage. The foundation of such a petition could be a claim that child marriage violates various human rights and, therefore, needs to be stopped. The government could be asked to submit a time-bound action plan covering legal and extra-legal measures to control child marriage.<sup>65</sup>

Again, Sagade is calling on the judiciary and the government, both of whom she has criticized for failing to act sufficiently in the past, to implement a plan that requires changing cultural norms and perspectives on the role of women in Indian society.<sup>66</sup>

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<sup>59</sup> See *id.* at 7–22 (suggesting that the societal costs are high, but that much of the costs are hidden because statistical information is scarce).

<sup>60</sup> *Id.* at 208–18.

<sup>61</sup> *Id.* at 211.

<sup>62</sup> SAGADE, *supra* note 2, at 211.

<sup>63</sup> *Id.*

<sup>64</sup> See *id.* at xxxiv, 85–89, 208–15.

<sup>65</sup> *Id.* at 180.

<sup>66</sup> See *id.*

### III. ADDING THE PRAGMATIC

Thus, Sagade succeeds in weaving a holistic perspective, but hers is a narrow holistic perspective, limiting its purview to the human rights dimension and the woman question, while ignoring the potentially more practical economic aspect that might more readily succeed in diminishing the practice of child marriage.<sup>67</sup> Further, Sagade's suggestions as to legal and extra-legal steps that must be taken are necessary, but she focuses only on improving the means that already exist.<sup>68</sup> These means have thus far not succeeded in reaching the desired end, namely an end in which the proper legislation and enforcement of marriage laws buttress a reformed ideology that places women alongside men in all forms of discourse.<sup>69</sup> Missing from Sagade's discussion is any investigation into how reforming laws once-removed from child marriage, such as property and tax laws, might eliminate some of the named causes of child marriage.<sup>70</sup>

#### A. *The Dowry System*

If dowry practices decrease, occurrences of child marriage will decrease.<sup>71</sup> Sagade recognizes the practice of dowry as a financial reason why child marriage is still widely practiced, yet she makes no mention that the practice of dowry has been prohibited by law in India since 1961.<sup>72</sup> The two problems are similar in scope and effect; much

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<sup>67</sup> See Nyamu, *supra* note 32, at 409–10. Sagade's discussion of India's responsibility to the women in its communities, and to the international arena at large is an important, tangible tale of the work that needs to be done by the legislature and the judiciary. See generally SAGADE, *supra* note 2, at 208–20. For an interesting discussion on "critical pragmatism," see Nyamu, *supra* note 32, at 409–410. In her article, Nyamu, a fellow at the Institute of Development Studies at the University of Sussex, recognizes that "proponents of gender equality must balance idealistic aspirations with a pragmatic realization that different contexts may call for diverse sets of tools to challenge unequal power relations." *Id.* at 409. Nyamu also notes that "[h]uman rights principles embodied in constitutions and international instruments may provide a basis for such questioning, but concrete engagement with the politics of culture creates a much more productive challenge." *Id.* at 410.

<sup>68</sup> See SAGADE, *supra* note 2, at 208–20.

<sup>69</sup> See generally *id.* See also Louise Harmon & Eileen Kaufman, *Dazzling the World: A Study of India's Constitutional Amendment Mandating Reservations for Women on Rural Panchayats*, 19 BERKELEY WOMEN'S L.J. 32, 43–44 (2004) (stating that efforts to legislate against child marriage were made even pre-Independence from Britain, and that such efforts have historically had little effect).

<sup>70</sup> See SAGADE, *supra* note 2, at 208–20.

<sup>71</sup> *Id.* at 10–11.

<sup>72</sup> The Dowry Prohibition Act, No. 28 of 1961, 21 India A.I.R. Manual 127 (5th ed. 1989); see also Hauser, *supra* note 27, at 31–32. In her discussion of how the practice of dowry in India is a chief reason for the murdering of women in the upper caste's families,

like child marriage, the practice of dowry continues despite legislative efforts to prohibit it.<sup>73</sup> The *Dowry Prohibition Act of 1961* makes it a crime to give, take, or demand dowry, punishable by prison terms and substantial fines.<sup>74</sup> Because both the givers and takers of dowry are held guilty of the offense, the act works as a disincentive for the bride or her family to report dowry cases.<sup>75</sup> Furthermore, it is almost impossible to distinguish property or money given in dowry from a purely voluntary gift, thus making evidence of dowry difficult to ascertain.<sup>76</sup> Also like child marriage, the practice of dowry exists as a result of India's patriarchal structure.<sup>77</sup>

The conundrum then is that treating either one of these ill practices will likely help to cure the other, but attempts to cure each have

Hauser, a practicing attorney and the Representative to the United Nations from the Union Internationale des Avocats for issues affecting women, writes:

[t]he tradition of "dowries" has been linked with a particular kind of murder: "bride-burning," where a young wife living with her husband's family burns to death from an "accidental" kitchen fire. A recent study estimates that more than 25,000 young married women in India die or are maimed each year from dowry and bride burning.

Hauser, *supra* note 27, at 31–32. Himendra Thakur, in his preface to *South Asians and the Dowry Problem*, writes, "[t]he most likely cause [of bride-burning] is that the father of the bride has been unable to meet demands of dowry . . . which kept on increasing after the wedding." BAROT, *supra* note 38, at xiii.

<sup>73</sup> BAROT, *supra* note 38, at 75. Curious is the fact that Sagade makes no suggestion that the legislature or law enforcement make any advances in curbing this prohibited practice. See SAGADE, *supra* note 2, at 10–11, 208–20.

<sup>74</sup> The Dowry Prohibition Act, No.28 of 1961, §§ 3–4; India Code (1961). The penalty for giving, taking, or aiding in the giving or taking of dowry shall be imprisonment for no less than five years with a fine of no less than fifteen thousand rupees or the amount of the value of the dowry, whichever is more. *Id.* § 3. The penalty for demanding dowry shall be imprisonment for no less than six months but no more than two years, with a fine that may not exceed ten thousand rupees. *Id.* § 4. The Act defines dowry as,

any property or valuable security given or agreed to be given either directly or indirectly—  
 (a) by one party to a marriage to the other party to the marriage; or  
 (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person.

*Id.* § 2.

<sup>75</sup> BAROT, *supra* note 38, at 75.

<sup>76</sup> *Id.* at 75–76.

<sup>77</sup> See *id.* at xvi. Himendra Thakur, an engineer who serves as the Chair of the Board of Directors for the International Society Against Dowry and Bride-Burning in India, notes that the patriarchal structure of the culture creates social norms where the girl's family is "mainly responsible for the 'giving away' of the daughter and has to bear the bulk of the marriage expenses." *Id.*

thus far been unsuccessful.<sup>78</sup> The problem of dowry and its perpetration of child marriage could be addressed in several ways that do not necessarily eradicate either problem, but at least introduce short term methods that can begin to attack the practices from within the confines of dowry and property law.<sup>79</sup> For example, the *Dowry Prohibition Act of 1961* could be amended to make only takers (or those aiding in taking dowry) liable, thereby making the dowry giver exempt from punishment.<sup>80</sup> Making the giver exempt would allow for the bride or her family to report circumstances in which dowry was demanded without fear of punishment themselves for being a party to the transaction.<sup>81</sup>

The bride's family often agrees to give dowry because they understand it as buying assurance that their daughter will be treated well and cared for within marriage; thus, it may be better to make dowry legal but highly regulated.<sup>82</sup> If dowry, or any gift at the time of registered marriage, becomes marital property, revocable upon divorce or unnatural death of the bride within some defined length of time, then parents of young girls would be more likely to wait until their daughters were of legal marrying age before contracting their marriage so as to benefit from the protections of marital property.<sup>83</sup> If parents, at the time of registering the marriage, also registered the dowry given to the couple, parents of the bride would feel some comfort in knowing that if the groom is marrying their daughter for the dowry, they would have some recourse if the marriage fails or if their daughter dies.<sup>84</sup> Even in light of the current *Dowry Prohibition Act of 1961*, the

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<sup>78</sup> See *id.* at 75–76; SAGADE, *supra* note 2, at xxxvii–xl.

<sup>79</sup> See Nyamu, *supra* note 32, at 410.

<sup>80</sup> BAROT, *supra* note 38, at 219.

<sup>81</sup> See *id.*

<sup>82</sup> See *id.*

<sup>83</sup> See *id.* at 94, 219. Bisakha Sen, a researcher and Ph.D. in Economics, suggests that making all gifts given at the time of marriage property of the bride will ensure that the husband cannot benefit from the dowry, but Sen also suggests that such a measure would likely lead to resistance because an unconditional transfer of the full amount of dowry to the bride would make it pointless from the point of view of the groom's family to demand property. *Id.* at 94.

<sup>84</sup> *Id.* Similarly, Sen notes that,

it would be more palatable to all if the groom's claim over the dowry were recognized as being conditional on the marriage contract being upheld, the dowry being reverting [sic] by law to the bride or her family upon the marriage contract being terminated by divorce or unnatural death. This would also encourage the bride's family to document the items given in dowry officially, and leave the groom and his family fewer reasons to protest against such documentation.

practice of dowry could fall into further disfavor if the couple themselves were given an incentive to register property given in dowry through a tax credit for jointly held property.<sup>85</sup>

### B. *Incentives to Register Marriage*

One of Sagade's strongest criticisms of the CMRA is its failure to make registration of marriage compulsory.<sup>86</sup> She suggests that mandating registration would assure the fulfillment of the condition as to the age of the parties, as well as their free consent to the marriage.<sup>87</sup> Sagade suggests that the various states use the existing infrastructure for registering births and deaths for registering marriages. She further suggests that,

[a] step towards implementation could be to establish a pilot project for registration of marriage in one state . . . . Analysis could be done of the situation whether the registration of marriages makes any difference in reducing the number of child marriages. Based on that experience, the governments of other states could be convinced to introduce the compulsory registration of marriages.<sup>88</sup>

While this prototype and spread-by-example suggestion could help to increase the registration of marriages, especially in the more developed states and regions of the country, the government's whole reasoning behind not making the registration of marriage compulsory is because "it is not practical in a vast country like India with its variety of customs [and] religions."<sup>89</sup> And while she does suggest methods for making the registration compulsory, what Sagade does not proffer is any suggestion on how to *enforce* such provisions.<sup>90</sup> In a nation where the practice of child marriage is illegal yet prevalent, a provision making registration of marriages compulsory would likely encounter similar disregard amongst various cultures.<sup>91</sup>

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*Id.*

<sup>85</sup> See BAROT, *supra* note 38, at 94, 219.

<sup>86</sup> SAGADE, *supra* note 2, at 89.

<sup>87</sup> *Id.* Sagade also emphasizes that the international treaties that India has ratified obligates India to make the registration of marriages compulsory. *Id.* at 146.

<sup>88</sup> *Id.* at 60.

<sup>89</sup> *Id.* at 59 (quoting India's filed declaration to Article 16(2) of the Women's Convention which calls for adoption of a law for compulsory registration of marriages).

<sup>90</sup> *Id.* at 89.

<sup>91</sup> See Nyamu, *supra* note 32, at 410.

Sagade's socio-legal human rights approach to decreasing the occurrences of child marriage would thus benefit from the introduction of a critical pragmatism into the struggle for gender equality.<sup>92</sup> A pragmatic approach could co-mingle property and tax laws to create a means by which the benefits of dowry are decreased and the benefits of marriage registration are increased.<sup>93</sup> Because female children are typically not given a share in parental property, dowry becomes the closest substitute for inheritance.<sup>94</sup> While the task of ensuring that daughters get their due share in parental property may prove difficult, if not impossible, perhaps there is a tax-based way to encourage a generation of wives to get their due share in nuptial property. This initial due share could then begin a cycle where wives, as property owners and mothers, would ensure their daughters receive a share in parental property that they then could bring to the nuptial table.<sup>95</sup>

For example, an immediate tax credit upon registration of marriage would encourage families to register in accordance with local laws.<sup>96</sup> If, as part of the marriage registration, the couple also registered title in property jointly, the couple could receive tax credits on liabilities incurred for personal property that would be taxed at a higher rate if held individually.<sup>97</sup> Such a practice would convert property given in dowry to property jointly owned by the married couple.<sup>98</sup> A bride and groom, if blessed with a daughter, may not be enticed to marry her off at a young age to avoid an increasing dowry if they were

<sup>92</sup> See *id.* at 409.

<sup>93</sup> *Id.* at 410–11; see also Bernardi & Fraschini, *supra* note 20, at 13–14.

<sup>94</sup> Hauser, *supra* note 27, at 33.

<sup>95</sup> See *id.*

<sup>96</sup> See generally Nyamu, *supra* note 32, at 410–11.

<sup>97</sup> *Id.* at 410 (recognizing that “[m]arriage, divorce and death are key events for defining and reconstituting property rights of women and children, whose access to economic resources heavily depends on relationships to fathers or husbands”). Nyamu further notes that the lack of women’s property interests results from “contemporary perceptions of cultural norms” and that a pragmatic solution would “seek greater inclusiveness in the registration of title, by promoting joint registration of spouses and official disclosure that a title holder is a trustee for other socially recognized, but unregistered, property interests.” *Id.* at 411; see also Hauser, *supra* note 27, at 42. Methods to increase women’s equality by restructuring property laws have recently been proposed, including a provision in the Hindu Succession (Amendment) Bill 2000 that would call for equal rights for daughters in coparcenary property, thus granting a Hindu daughter the same property rights as a son and allowing for the property to be divided equally. *Id.* A more recently drafted amendment, providing the same property rights to sons and daughters, was adopted on August 29, 2005 as the Hindu Succession (Amendment) Bill 2005. *Parliament Passes Hindu Succession and Immigration (Carriers’ Liability) Amendment Bills, 2005*, ONLYPUNJAB.COM, Aug. 29, 2005. <http://onlypunjab.com/fullstory2k5-insight-news-status-21-newsID-29136.html>.

<sup>98</sup> See Nyamu, *supra* note 32, at 409–11.

receiving continued tax incentives from their jointly held property.<sup>99</sup> The daughter's potential groom may not want to marry her at a young age because he will be unable to receive the marriage tax credit if she is below the legal age.<sup>100</sup>

A tax incentive approach would allow individuals *to choose* to have both spouses share the same rights in the ownership, acquisition, management, administration, enjoyment, and disposition of property.<sup>101</sup> The Indian government thereby would be closer to complying with Article 16(h) of the Women's Convention in a manner that comports with the government's desire not interfere in personal matters without the community's own initiative and consent.<sup>102</sup> While perhaps overly simplistic and discussed without reference to social implications, a discussion of a practical, albeit backdoor, method to diminish child marriages should not be ignored when legislative and judicial attempts to do the same have been shunned by the Indian culture.<sup>103</sup>

While it may appear that a sweeping tax incentive to restructure the property imbalance between men and women would be costly to implement, the result can be cost saving in other areas.<sup>104</sup> As women become more financially independent through property rights, the financial burden the economy faces in caring for widows will be decreased; as fewer young girls are married off at ages unsafe for intercourse and child-bearing, the health-care costs of caring for ailing adolescents will also decrease.<sup>105</sup> Fortunately, the Indian government has seen an impressive strengthening in its economy and gross domestic product over the last two decades, two decades that have undergone considerable tax reform as well.<sup>106</sup> Major changes have seen

<sup>99</sup> *See id.*

<sup>100</sup> *See id.*

<sup>101</sup> *Id.* at 410–11.

<sup>102</sup> *See* SAGADE, *supra* note 2, at 144 (discussing India's filed declaration to Articles 5 and 16 of the Women's Convention which states that the convention will be enforced only to the extent that it does not interfere in the personal affairs of any community "*without its initiative and consent*") (emphasis added); *supra* notes 52–53 and accompanying text.

<sup>103</sup> Harmon & Kaufman, *supra* note 69, at 44 (recognizing how in the early 20th Century, "[t]he thought of altering legal relationships within the family was seen as fundamentally threatening to the most basic institutional unit in society"). Professors Harmon and Kaufman go on to discuss how "[d]emands for inheritance rights for daughters, or women's equal rights regarding divorce, and an insistence on monogamy were viewed as endangering the joint family and ultimately challenging the dominant patriarchy." *Id.*

<sup>104</sup> *See id.* at 40–43.

<sup>105</sup> SAGADE, *supra* note 2, at 14–22; Harmon & Kaufman, *supra* note 69, at 40–43.

<sup>106</sup> Bernardi & Fraschini, *supra* note 20, at 3; Shankar Acharya, *India's Tax Reformers*, REDIFF.COM, Apr. 26, 2005, <http://in.rediff.com/money/2005/apr/26guest3.htm>. Statis-

a boost in spending on primary schools and health care in the hopes of benefiting the ordinary citizen.<sup>107</sup> As Sagade notes, education is central to any success in elevating the status of young girls and eliminating child marriage.<sup>108</sup> Spending increased revenue on education and decreasing taxes on spousal property will not only be offset by decreased expenditures on healthcare and welfare, but also by the increased productivity and tax paying status of educated, property-owning women.<sup>109</sup>

Child marriage is not the only Indian practice affecting women and girls that will benefit from a restructuring of the property tax laws.<sup>110</sup> Because females are culturally viewed as a financial burden, their status as daughters and widows are considered an economic encumbrance upon the parents and in-laws.<sup>111</sup> The Indian practices of female infanticide and sati, though diminishing in modern times, exemplify women's inferiority; the eradication of child marriage through more equitable property distribution will lead to women being more financially independent.<sup>112</sup>

#### CONCLUSION

In *Child Marriage in India: Socio-legal and Human Rights Dimensions*, Jaya Sagade argues that the Indian government must orchestrate a

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tics over the past two decades indicate that total GDP grew yearly at about six percent. Bernardi & Fraschini, *supra* note 20, at 3.

<sup>107</sup> See *India Unveils Anti-Poverty Budget*, BBC NEWS, Feb. 28, 2005, <http://news.bbc.co.uk/1/hi/business/4303507.stm>.

<sup>108</sup> SAGADE, *supra* note 2, at 56.

<sup>109</sup> See *id.*

<sup>110</sup> See Harmon & Kaufman, *supra* note 69, at 41–42, 53.

<sup>111</sup> *Id.*

<sup>112</sup> See *id.* Sati is the custom of a wife voluntarily sacrificing herself on her husband's funeral pyre. *Id.* at 41. In a discussion about the perception of women as financially burdensome, Harmon and Kaufman point to the Indian proverb that "raising a daughter is like watering a neighbor's plant." *Id.* at 53. Despite this seemingly light-hearted saying, they also note that the widespread availability of sex-selective sonograms results in an estimated three to five million abortions of female fetuses every year. Harmon & Kaufman, *supra* note 69, at 53. In addition, in Bihar, India's poorest state,

[m]idwives are paid fifty cents and a sack of grain for delivering a girl, more than twice that amount for delivering a boy, and as much as five dollars for getting rid of a girl. . . . [I]n some parts of Bihar, each midwife killed five newborn girls each month, using techniques including snapping the baby's spine, forcing rock salt down the baby's throat, or sealing the baby in a clay pot.

*Id.*

movement involving the legislature, the judiciary, law enforcement, educators, and the people as a whole.<sup>113</sup> Her recommendations are broad and inspiring, and certainly aim to cure child marriage and its consequences on the health, education, and overall value of girls.<sup>114</sup> Sagade recognizes that legal reforms involve changing long standing habits and behavior of humans, and that these reforms are often in opposition to personal and vested interests.<sup>115</sup> She further recognizes that it is not an easy task to achieve such a behavioral change merely through legal reforms.<sup>116</sup> The methods that Sagade suggests in addition to the requisite legal reforms would undoubtedly change India's patriarchal perspective, but these methods could encounter resistance, because they, like the legal reforms themselves, involve changing long standing habits and behavior of humans.<sup>117</sup>

In an effort to find a more effective method to erase the practice of child marriage from India's culture, this Book Review proposes several more pragmatic options. The national government, through tax incentives involving the registration of marriages and the property and inheritance laws, should create financial incentives for the people of India to change their habits and behavior. If all parties to a marriage, including the bride's parents, will enjoy a tax benefit and property protection from registering marriage and dowry gifts, then the parties to a marriage will be more inclined to wait and marry at the legal, financially beneficial marrying age. Pragmatic, economically induced behavioral changes should be made in such a way as to compliment the human rights and feminist approach that Sagade proposes. The combination of the practical and the ideal will hopefully converge so that not only is the *effect* equal footing and protected human rights for women, but also that the *aim* is an India that exemplifies an explicit commitment to gender justice.<sup>118</sup>

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<sup>113</sup> See SAGADE, *supra* note 2, at 221–22.

<sup>114</sup> See *id.* at 208–17.

<sup>115</sup> *Id.* at 225.

<sup>116</sup> *Id.*

<sup>117</sup> See Nyamu, *supra* note 32, at 409–10.

<sup>118</sup> See Harmon & Kaufman, *supra* note 69, at 46.