

USING DOWRY DEATH LAW TO TEACH LEGAL WRITING IN INDIA

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I. INTRODUCTION

Dowry, the money, property or other goods a bride brings with her into the marriage,¹ has been part of Indian culture for centuries. Dowry was originally based on the practice under Hindu law of the bride's father giving her gifts in honor of the marriage. These gifts would remain the bride's property. Now, however, in many cases, and at all economic levels of society, the voluntary aspect of dowry and the bride's ownership of the gifts have disappeared. Rather, before marriage, the dowry price is the subject of negotiation between the families, with the groom's family in the position of power. Conflicts over dowry may have deadly results, as I learned on my sabbatical in India in the spring of 2008.

A month after I arrived in New Delhi, I noticed a small article in *The Times of India*. The headline was *Dowry Angle to Death*, and the article read:

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1. Veena Talwar Oldenburg, *Dowry Murder: The Imperial Origins of a Cultural Crime* 3 (Oxford U. Press 2002).

Under Indian criminal law, "dowry" is defined in the Dowry Prohibition Act of 1961, section 2 as

[A]ny 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 parent 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 the said parties, but does not include dowry or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

A 25-year-old woman was found dead inside her Sangam Vi-har house on Monday night. The victim, identified as Pushpa, was found hanging in her house. After her family claimed it was dowry death, a case was registered.

Police said the victim was married to Deepak Kumar, who has been working in a private company for four years, and the couple had a two-year-old son. The father of the girl alleged that his daughter has [sic] been killed. Kumar, who is the main accused in the case, has been detained and would be arrested if the postmortem report indicts him, police added.²

By then I had been in India long enough to have learned about dowry death. I had begun my seven-week association as a Visiting Professor with the Law Faculty at Delhi University on January 28, 2008. Soon after, I heard the term “dowry death” from a group of students doing a collaborative exercise in the Clinical Lawyering course at the Law Faculty in which I was teaching. Under the facts, a woman committed suicide by hanging herself shortly after her husband harassed her for bringing bad luck to him and saying his life was miserable because of her. The students were discussing the facts and considering various theories that might be applicable. Their first response was “dowry death.” That term describes a set of shocking circumstances. It occurs when the husband physically or mentally harasses the wife or the wife’s family for dowry, and in response, the wife either commits suicide or is murdered by being set afire by her husband or in-laws dousing her with household kerosene (also called “bride burning”).³

Statistics from the National Crime Records Bureau of India indicate that 7,618 cases of dowry death were reported in 2006.⁴ These deaths continue to occur despite national legislation that prohibits dowry⁵ and provides criminal penalties for those con-

2. *Dowry Angle to Death*, Times of India 5 (Feb. 20, 2008).

3. See e.g. Purna Manchandia, Student Author, *Practical Steps Towards Eliminating Dowry and Bride-Burning in India*, 13 Tul. J. Comp. & Intl. L. 305, 308 (2005).

4. *MyNation Foundation—News*, <http://Mynation.wordpress.com/2008/02/11/ncrb2006> (accessed Aug. 24, 2008). Statistics indicate a conviction rate of 33.7 percent. *Id.*

5. Dowry Prohibition Act, No. 28 of 1961.

Section 3—If any person . . . gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five

victed of dowry death and related offenses. The Indian Penal Code has three major statutes relating to this problem: section 304B dealing with “dowry death,”⁶ section 306 dealing with “abetment to suicide,”⁷ and section 498A dealing with “cruelty.”⁸ I used dowry death law to teach legal writing and analysis to Indian law students, choosing the topic for three main reasons: it was the subject of Moot Court materials put at my disposal, the students were familiar with the issues, and it was a fascinating window on Indian culture and society.

Although American and Indian law have much in common, particularly through their common law heritage, the dowry death cases showed real differences in the analytic approaches of Indian courts and, consequently, of Indian law students. When hearing appeals in dowry death convictions,⁹ the Indian Supreme Court typically gave close attention to the plain language of the relevant statutes, at times to their legislative history, and to the reasoning of prior courts. The Court would also review in great detail the facts in the case before it. However, unlike American courts, the Court would pay little, if any, attention to the facts in precedents in which the Court had previously considered if the elements of the statutes had been met. There was also less case synthesis, and more of a focus on individual cases.

Perhaps as a result, the writing of the Indian law students with whom I worked also focused on rules in precedents and rare-

years, and with fine which shall not be less than fifteen thousand rupees or the amount of such dowry, whichever is more.

6. India Pen. Code Section 304B, the dowry death statute, provides

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called “dowry death,” and such husband or relative shall be deemed to have caused her death.

7. *Infra* n. 66 (providing the complete text of abetment to suicide statute).

8. *Infra* n. 69 and accompanying text (providing the text of the cruelty statute).

9. See e.g. *State of Rajasthan v. Jaggu Ram*, No. 1133 of 2000 (Jan. 4, 2008); *Narayanamurthy v. State of Karnata*, No. 5689 of 2007 (May 13, 2008); *Appasaheb v. State of Maharashtra*, (2007) 1 S.C.R. 164; *Srinivasulu v. State of A.P.*, (2007) 9 S.C.R. 842; *Arvind Kumar v. State of Madhya Pradesh*, (2007) 8 S.C.R. 474; *Shivanand Mallappa Koti v. State of Karnataka*, (2007) 7 S.C.R. 930; *Ram Badan Sharma v. State of Bihar*, (2006) 10 S.C.C. 115.

ly referred to the facts in those precedents. Moreover, the students were more likely to write their arguments by giving a series of cases in short numbered paragraphs with quotations of the rule or reasoning from each case, rather than synthesizing the cases, as is typical in American legal analysis. Accordingly, when I taught legal writing to these students, I stressed two things. First, I focused on the writing process itself, showing how awareness of the steps in analysis could lead to writing more complete analysis. Second, I emphasized that a detailed consideration of the facts in the precedent could enrich their arguments. By considering whether the facts of their problem case were analogous to or distinguishable from the facts in the precedent, they could present their arguments more fully. This approach would also facilitate case synthesis, giving their writing greater depth.

I did not expect dramatic changes as a result of a few classes. However, I did conclude that the development of legal writing as a discipline in the United States has allowed American legal writing professors to make valuable contributions in countries where law schools are just beginning to develop their legal writing programs. These are opportunities that legal writing professionals should embrace. In addition, I noted that United States-based skills in statutory analysis, case synthesis, and analogizing are useful tools that seem to be under-utilized in India. Finally, I concluded that students are open to engaging with these tools, particularly when used in the context of a familiar legal topic.

Part I of this Essay will describe the nature of Indian legal education and the impact that has on the teaching of legal writing generally. In Indian law schools, there is no universal legal writing requirement as there is in American legal education. Not surprisingly, then, the quality of the writing instruction varies significantly among types of law schools. Without this instruction, students may only write intuitively, without the benefits that formal instruction (a systematic approach) can bring. Part II will describe the Clinical Lawyering course at the University of Delhi Law Faculty in which I taught. And Part III will discuss my use of dowry death law in my classes in the Clinical Lawyering course. In all, I concluded that when instruction emphasizes a systematic approach, it can make a valuable contribution to the students' learning. And using the law of the host country enhanced the analytic experience for the students who have a famil-

iar context in which to relate these principles to their own writing and analysis.

II. THE NATURE OF INDIAN LEGAL EDUCATION

Legal education in India generally is governed by the Bar Council of India (BCI).¹⁰ The BCI is similar to the American Bar Association in its functions of establishing standards of professional legal conduct,¹¹ promoting standards for professional education,¹² and accrediting law schools.¹³ However, the BCI has much greater control over the type of permissible law schools and the curriculum in those law schools. Under its Rules, the BCI permits two types of law schools leading to LL.B Degree, a five-year law school for high school graduates and a three-year law school for college graduates.¹⁴ The five-year program has two parts: Part I is a two-year pre-law course and Part II a three-year course in legal training.¹⁵ For both the three-year and the five-year programs, the BCI strictly prescribes the course of study, leaving only a little room for elective subjects. For example, the BCI mandates six compulsory subjects in Part I of the five-year program (two courses in General English, three courses in Political Science, one course in Economics, one course in Sociology, one course in History, and one course in the History of Courts and Legal Profession in India).¹⁶ In addition, the BCI mandates twenty-one compulsory courses for the remaining three years of the

10. Advocates Act No. 25 of 1961, May 19. The BCI has eighteen members, the Attorney General acting ex officio, the Solicitor General of India, acting ex officio, and sixteen other members representing the sixteen State Bar Councils. *Id.* § 4(a)-(c). See generally *Ministry of Communication and Information Technology*, <http://barcouncilofindia.nic.in/> (accessed Aug. 24, 2008).

11. *Id.* at § 7(1)(b) (stating, “to lay down standards of professional conduct and etiquette for advocates”).

12. *Id.* at § 7(1)(h) (stating, “to promote legal education and to lay down standards for such education in consultation with the Universities in India imparting such education and the State Bar Councils”).

13. *Id.* at § 7(1)(i) (stating, “to recognize Universities whose degrees in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities”).

14. The Bar Council of India Rules, pt. IV (as amended up to Nov. 30, 1998) “There shall be two streams of law courses leading to LL.B Degree viz. a five-year and a three-year law course for the purposes of enrolment as advocates as prescribed under the Rules contained in Section-A and Section B respectively given hereunder.”

15. *Id.* at § A1.

16. *Id.* at § A8(3)9.

five-year program, and mandates those same courses for the three-year college graduate program.¹⁷

The ABA, by contrast, has only a general requirement regarding substantive law (leaving it to the schools to determine what subjects are appropriate)¹⁸ and a requirement for a course in professional responsibility.¹⁹ More importantly from my perspective, ABA Standards on Curriculum explicitly require a “rigorous writing experience” both in the first year and at least once after the first year.²⁰ There is no comparable writing requirement in the curriculum of law schools in India.²¹ As a result, instruction in

17. *Id.* at § B5. These courses are Jurisprudence, Contracts I and II, Torts, Family Law I and II, Criminal Law, Criminal Procedure, Constitutional Law, Property, Evidence, Civil Procedure, Legal Language/Legal Writing including General English, Administrative Law, Corporations, Human Rights and International Law, ADR, Environmental Law, Labor Law, Statutory Interpretation, and Land Laws. Three more courses are required from a list of 14 listed subjects, e.g., Insurance Law, Women and Law, Taxation, Intellectual Property.

18. The 2007–2008 American Bar Association Standards for Approval of Law Schools, Standard 302, Curriculum, provides

- (a) A law school shall require that each student receive substantial instruction in:
(1) The substantive law generally regarded as necessary to effective and responsible participation in the legal profession.

19. *Id.* at Stand. 302(a)(5). Each student shall receive substantial instruction in “the history, goals, structure, values, rules and responsibilities of the legal profession and its members.” *Id.*

20. *Id.* at Stand. 302(a)(3). Each student shall receive substantial instruction in “writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional writing experience after the first year.” *Id.*

21. The BCI did mandate six months of Practical Training beginning in 1997, which includes practical papers in the following (1) Moot Court, Pre-Trial Preparations, and Participating in Trial Proceedings; (2) Drafting, Pleading, and Conveyancing; (3) Professional Ethics; and (4) Public Interest Lawyering. However, one commentator has suggested that while the four requirements appear adequate on their face to provide basic skills training,

in reality they have not met even the limited expectations of the Bar Council—let alone the long term goal of establishing a fair, effective and competent legal system, accessible to all citizens. . . . [M]ost Indian law schools are not able to implement these papers due to a lack of expertise; they have neither the infrastructure nor the personnel to implement them. Many law school faculty have no familiarity with the new subjects and, due to the no-practice rule, the majority of faculty members do not have the necessary practical knowledge or experience.

The four papers are, in effect, “paper tigers”; most schools have introduced these papers with only token compliance.

legal writing, analysis, and research varies greatly among law schools in India.

The quality of the instruction in writing and analysis generally depends on the type of law school. In India, these schools include numerous small law colleges, often not highly regarded;²² five-year national law schools, e.g., the National Law School of India University at Bangalore; five-year private law schools, e.g., Amity Law School; and three-year law school at government-funded universities, e.g., the Law Faculty at Delhi University.

Perhaps the most dramatic innovation in legal education in India has been the establishment of elite legal education institutions—the national university law schools, beginning with the National Law School of India University at Bangalore in 1988. The guiding force behind the National Law School of India University was Dr. N.R. Madhava Menon, a long-time member of the Law Faculty at Delhi University, who envisioned “a model law teaching institution in the country . . . to . . . act as a pace setter for reforms in all aspects of professional legal education.”²³ At this time, most of the first rate law schools in India granted LL.B degrees to students who had first completed college. Menon’s greatest innovation was his proposal to adopt a five-year integrated college-law curriculum culminating in a B.S. LL.B (Hons). The curriculum was in some ways similar to the European model. However, it was unique as it would integrate social science and humanities courses and doctrinal law courses, rather than separate them.²⁴ In addition, it would include innovations from American law schools such as the inclusion of clinical courses and the case method of teaching.

Legal Education: Cross-National Currents from India and the United States, 13 Clin. L. Rev. 165, 196–197 (2006).

22. See Bloch & Prasad, *supra* n. 21, at 177–181; see generally, Jayanth K. Krishnan, *Professor Kingsfield Goes to Delhi: American Academics, The Ford Foundation, and the Development of Legal Education in India*, 46 Am. J. Leg. Hist. 447 (2004) (providing an excellent description of developments in Indian legal education). “[T]he BCI . . . believed that for too long ordinary Indians lacked access to the legal process, and to remedy this problem, the BCI approved the opening of hundreds of new assembly-line law colleges during the 1960s and 1970s.” Krishnan, *supra* n. 22, at 473–474.

23. N.R. Madhava Menon, *Excellence in Higher Education: Some Insights from the National Law School Experience* 10 (Karnatak U. 1998) (copy on file with Author).

24. See *id.* at 17. Dr. Menon proposed a total of sixty courses over fifteen semesters, not divided into pre-law and law, but “integrated across disciplines keeping the role of law in development and social justice.” *Id.*

Menon intended to raise the quality of legal education, away from what he described as the “so-called legal education which was available in abundance from way-side colleges . . . and . . . almost for nothing.”²⁵ He noted that “[p]eople were willing to spend any amount for medical, engineering or management education. Law was reserved for the rejects from other disciplines and for those who wanted it cheap and with least effort.”²⁶ The academic program at the new National Law School, in contrast, made unprecedented demands on its students (and faculty). Grades were not based solely on exams given at the end of the semester. Rather, the curriculum emphasized practical training and included project work in every subject.²⁷ Project work meant that in every course, the students would investigate problems independently and write a report of fifteen to twenty pages analyzing data and articulating their findings.²⁸

The school has been successful perhaps beyond what even Dr. Menon dreamed. It has been ranked either first or second in the country by most rankings since its inception.²⁹ Each year, thousands of students apply to Bangalore from all over the country for one of the 80 places available.³⁰ Admission is based on a nation-

25. *Id.* at 15.

26. *Id.* By contrast, at Bangalore, tuition is approximately 300,000 rupees (\$7500.00 USD) for five years. In a country where more than one quarter of the population lives on less than one dollar a day, see Jayneth K. Krishnan, *Outsourcing and the Globalizing Legal Profession*, 48 Wm. & Mary L. Rev. 2189, 2231 (2007), this is a very large sum. However the school tries to ensure that every student granted admission will be able to attend, through a combination of government scholarships, educational bank loans, and school scholarships and fee waivers. For example, the web site states, “In order to attract meritorious students from the lower socio-economic strata of society, the NLSIU attempts to provide as many scholarships as possible. Besides scholarships, in deserving cases, fee concession to the extent possible is granted on the recommendations of the Scholarship Committee.” Natl. L. Sch. of India U., Scholarships & Loans, http://www.nls.ac.in/academic_programmes_undergraduate_scholarships.html (accessed Apr. 22, 2009) (under “NLSIU Scholarships/fee Waivers”).

27. *Id.* at 18.

28. *Id.*

29. *E.g.* Sachin Malhan, *Top Law Schools in India and Abroad*, *Halsbury's Law Monthly* (LexisNexis) 13 (Dec. 2007) (National Law School at Bangalore first in Tier 1) (ranking based on such factors as industry reputation, reputation among foreign law schools, peer reputation, academic standards, performance at International Law Moot Court competitions, and IT infrastructure and library); *India Today Ranking, Top Ten Law Colleges* (May 22, 2008) (Bangalore ranked first in 2006 and 2007 and second in 2008) *India Today*, <http://www.indiatoday.digitaltoday.in/index> (accessed June 30, 2008) (ranking based on perceptual and factual scores).

30. In 1998, Dr. Menon wrote, “[t]he entrance examination . . . came to be taken by nearly 3,000 students from India and abroad” for the 80 available seats. Menon, *supra* n.

wide test.³¹ Since the school's founding in 1987, other schools across the country have been established under the national law school model: the National Academy of Legal Studies and Research University (NALSAR) at Hyderabad, the West Bengal National University of Juridical Science (NUJS) at Calcutta; the National Law Institute (NLI) at Jodhpur; the National Law Institute University (NLIU) at Bhopal; the Hidayatulla National Law University (HNLU) at Raipur, the Gujarat National Law University (GNLU) at Gandhi Nagar; and the National Institute for Advanced Legal Studies (NIALS) at Kochi.³² Each of these also admits a limited number of students in each class, typically eighty. The competition to gain admission to these schools is intense. In 2008, 10,773 candidates took the Common Law Admission Test.³³

The national law schools, though slightly varied in approach, are characterized by extensive legal writing requirements and frequent feedback. This is made possible by three factors: the small number of students in each class, typically eighty, the

24, at 23. For a general description of the school, see National Law School of India University, Bangalore, available at www.nls.ac.in/academic_programmes_undergraduate_admissions.html. By law, the law school at Bangalore, like other educational institutions, must reserve certain percentages in the class as follows: Scheduled Caste: 15 percent; Scheduled Tribe: 7.5 percent. See Clark D. Cunningham & N.R. Madhava Menon, *Correspondence: Race, Class, Caste . . . ? Rethinking Affirmative Action*, 97 Mich. L. Rev. 1296, 1303–1304 (1999). Bangalore chooses to reserve five seats for foreign nationals (SAARC and other developing countries).

There are variations on these percentages at other national law schools. For example, at NALSAR at Hyderabad, of the total of eighty seats, ten are allotted to Foreign Nationals. 30 percent of the remaining seventy seats are reserved for women, but as women candidates amount to about 50 percent of the applicants, this does not affect the seats in the general category. NALSAR, *Academic Programs*, <http://www.nalsarlawuniv.ac.in/academic-programs.html> (accessed Apr. 22, 2009). NLI at Bhopal, forty-one of the eighty-two seats are reserved for candidates from their state, Madhya Pradesh. NLIU, *Admissions, Admissions to B.A. LL.B. Course*, <http://www.nliu.com/bald%20doc.pdf> (accessed Apr. 22, 2009). At HNLU at Raipur, forty of the eighty seats are reserved for candidates from their state, Chhattisgarh. HNLU *Academic Programmes, B.A. LL.B. Programme*, <http://www.hnlu.ac.in/home/> (accessed Apr. 22, 2009) (select “Academic Programmes,” select “B.A, LL.B.,” and click on page 2).

31. Currently, admission to many of the national law schools (Bangalore, Hyderabad, Bhopal, Kolkata, Jodhpur, Raipur, and Ahmedabad) is based on the Common Law Admission Test (CLAT). NALSAR, *supra* n. 30. The test is given on the first Sunday of May at various centers. It is graded out of 200, ordinarily lasts two hours, and typically is based on objective, short answer questions. In addition, students must pass the Higher Secondary School Examination (10 + 2) and ordinarily be less than twenty years old as of July 1 of the year of admission. *Id.*

32. Bloch & Prasad, *supra* n. 21, at 179 n. 61.

33. See 2008 CLAT Rank List, <http://www.clat.ac.in/Ranklist190508.pdf> (accessed Aug. 24, 2008).

available resources,³⁴ and the commitment to writing projects as a percent of the grades in the course. For example, at the National Academy of Legal Studies and Research at Hyderabad, Examination Rules provide that for each course, out of 100 marks, 5 marks are given for attendance, 10 marks for a surprise test after one month, 10 marks for a mid-semester test, 50 marks for an end of semester exam, 20 marks for the written project, and 5 marks for the presentation of that project.³⁵ Similarly, at Bangalore, in each subject students must submit a paper which carries 25 percent of the course marks and an oral presentation for 10 percent.³⁶

Amity Law School, a private law school founded ten years ago, takes a different approach to the five-year LL.B (Hons) program, but emphasizes writing as well.³⁷ It was the first law school in the Delhi area to start a five-year program, and unlike the national law schools which are government sponsored, Amity is a private law school with tuition. There are approximately 120 students in each year. Legal writing is emphasized. For example, all first-year students must complete in an internal Moot Court competition, and are encouraged to compete in the competitions of other schools after the first year.³⁸ Amity emphasizes the success of its Moot Court teams, and indeed the success of its teams has been extremely helpful in promoting the school's reputation nationally.³⁹ Students have had significant success not only in city-wide and regional competitions, but also at the national level. In addition to the Moot Court activities, the curriculum includes a required third-semester, five-credit course in Communication and Advocacy Skills, a short (fourteen pages) pa-

34. See Bloch & Prasad, *supra* n. 21, at 208. "Law Schools need financial and intellectual support from the bench, the bar, and the government."

35. Examination Rules and Results, NALSAR University of Law, Hyderabad, www.nalsar.ac.in/examination_rules.pdf (accessed Aug. 24, 2008). The Rules refer to both the rough draft and the final draft of the project writing. *Id.* at 6.

36. E-mail from Sarasu Thomas, Asst. Prof. of L., Natl. L. Sch. of India U. at Bangalore, to Marilyn R. Walter, Prof. of L., Brooklyn L. Sch., *Legal Writing at Bangalore* (Aug. 8, 2008) (on file with Author).

37. Amity Law School is affiliated with the Guru Gobind Singh Indraprastha University. Amity Law School, <http://www.amity.edu/als> (accessed Aug. 24, 2008).

38. Amity Law School, http://www.amity.edu/als/infrastructure/moot_court_hall.html (accessed Aug. 24, 2008).

39. Amity Law School, Moot Court—Activities and Achievements, <http://www.amity.edu/als/mootCourt/activities.html> (accessed Aug. 24, 2008); see e.g. *Halsbury's*, *supra* n. 29, at 16, Mr. Lalit Bhasin ranked Amity as the top law school in India. Amity was ranked tenth nationally in 2007, and thirteenth nationally in 2008 by India Today. See India Today, *supra* n. 30.

per in the ninth semester, and a thirteen-credit dissertation in the final semester.

The final model is a leading law school in India offering the traditional full-time post-graduate LL.B program: the prestigious Law Faculty at Delhi University, established as part of Delhi University in 1924.⁴⁰ The goal of the Law Faculty is to educate India's students. Unlike the previously discussed national law schools and private law schools which have very small entering classes, the Faculty of Law admits 1,500 students per year (600 at Law Centre–I, 500 at Campus Law Centre, and 400 at Law Centre–II). Admissions are made through a Common Entrance Test for all three centers. Candidates must have a graduate (B.A.) degree from Delhi University or a school recognized by it. As with other law schools,⁴¹ there are reservations and accommodations established by law, what we would call quotas. For example, 5 percent of the total seats are reserved for Scheduled Caste persons, and 7.5 percent of the seats are reserved for Scheduled Tribes persons. However, unlike, for example, the national law school at Bangalore which reserves one-eighth of its places for foreign nationals, at Delhi University, the percent of reservations to foreign nationals is only 1 percent.⁴²

Although the Law Faculty does not work with a small, highly selective group of students, its reputation is very strong. In the 2008 ranking of law schools by *India Today*, the Law Faculty was

40. The Law Faculty has three centers: Law Center–I (north campus), Campus Law Centre (north campus) and Law Centre–II (south campus). University of Delhi Faculty of Law, http://www.du.ac.in/show_department.html?department_id=law (accessed Aug. 24, 2008).

41. For example, at the national law schools at Bangalore and Hyderabad, 15 percent of the 80 seats are reserved for candidates belonging to a Scheduled Caste and 7.5 percent of the seats are reserved for candidates belonging to a Scheduled Tribe. Natl. L. Sch. of India U., Bangalore, http://www.nls.ac.in/academic_programmes_undergraduate_Admisions.html (accessed Aug. 24, 2008) (under "Admissions"); NALSAR, *Academic Programmes*, <http://www.nalsaruniv.ac.in/academic-programmes.html> (accessed Aug. 24, 2008).

42. University of Delhi Faculty of Law, http://www.du.ac.in/show_department.html_id=law&coursename=LL.B.&course_id=255 (accessed Aug. 24, 2008). General candidates must have at least 50 percent marks GPA from an accredited university. Candidates belonging to a Scheduled Caste (SC) or Scheduled Tribe (ST) do not have the 50 percent requirement. For those in the Children Widows (CW) and Physically Handicapped (PH) categories, relaxation of up to 5 percent of marks in the prescribed minimum eligibility is permitted. In addition, 5 percent of the total seats are reserved for SC candidates, 7.5 percent of the seats for ST candidates, 5 percent for CW candidates, and 3 percent for PH candidates. *Id.*

ranked third in the nation, up from fifth in 2007 and seventh in 2006.⁴³ The *Halsbury's* 2007 ranking commented that the Law Faculty was a “pioneer in the field of legal education in India,” “has some of the best teachers of law in India,” and has “always commanded immense respect.”⁴⁴ It offers an LL.M. program as well as an LL.B. program. The Law Faculty is where I spent seven weeks on my sabbatical in the spring semester of 2008.

Professor Ved Kumari of the Law Centre—I Law Faculty⁴⁵ was my liaison with the school and my host for the visit. When I contacted her about teaching possibilities, she was particularly interested in my legal writing background. Ultimately, I taught legal writing and legal research in her Clinical Lawyering course, gave two workshops to the Moot Court Honor Society students,⁴⁶

43. Malhan, *supra* n. 29.

44. *Id.* at 14–15. This ranking placed the Law Faculty in Tier 3. Six law schools were ranked in Tiers 1 and 2. *Id.* at 13–15.

45. It is said that India is the land of contrasts, and that was certainly true at Law –I. For example, the faculty members with whom I worked were scholars whose work was of interest at national and international conferences. In addition, they were talented teachers, skilled practitioners of power-point demonstrations, and extremely knowledgeable about both Indian and other online research sources. Some had been Fulbright or Commonwealth Fellows. All of them, in addition to a law degree, either had Ph.D degrees, or were in the process of getting them.

Yet the facilities at the law school were very modest. At my law school, I have become accustomed to the support services provided at a modern American law school. So I was greatly surprised to find that except for the Professor-in-Charge at Law Centre–I, I was the only faculty member to have an office. Bar Council of India rules require only that each law school have an office for the Professor-in-Charge and a Teachers’ Common Room. See Schedule–1 to Rules in Sections A and B, section 4(3)(e)(f). Moreover, I had a computer in my office, but no access to the Internet. Internet access was available at two computers in the Teachers’ Common Room. However, the only printer was in the office of the Professor-in-Charge. (I often used the printer at the cyber-hut at the Bengali market near my B&B.) I also had Internet access at the B&B at which I stayed. But in general, I became dependant on my flash-drive in a way that had never been necessary when I worked either in my law school office or at home, where I have an attached printer. In fact, without the technology available today, (email, online research, laptops, power-points), my experience would have been much more difficult.

46. Moot Court competitions, local, national, and international are an important source of prestige among Indian law schools. Indeed, success in such competitions is one factor explicitly considered in the ranking of schools. See Malhan, *supra* n. 29, at 13. Among the criteria used in rating is “Performance at International Moot Court Competitions.” In 1999, the team from the National Law School of India University at Bangalore won the Philip C. Jessup Competition. *Id.* Moot Court success is also mentioned by the schools themselves in their promotional materials. For example, in the Amity Law School 2008 Moot Court publication, the President’s message noted, “It is a matter of great pride for us that in the recently held North Indian rounds of the Philip C. Jessup International Moot Court competition, one of our students who secured the Best Speaker prize was awarded full-scholarship for pursuing her Post Graduate studies in the National Law School of Singapore.”

gave a Law and Literature workshop for students and faculty, and made an online legal research presentation at a regional faculty training conference. While in Delhi, I also visited Amity Law School on three occasions and gave two PowerPoint presentations there, one on writing research papers and one on writing persuasively.

III. CLINICAL LAWYERING

Although the exact nature of my contribution to the educational program at Law Centre—I had not been clearly defined before my visit, I did know that I would be teaching some classes in Professor Kumari’s simulation course, “Clinical Legal Education and Practical Training for the Practice of Law,” called “Clinical Lawyering.” The course was an elective, offered in the students’ final semester of law school. It consisted of classroom work and a six-week, twenty-hour per week placement in the office of a judge, an attorney, or an NGO. The goal of this placement was to have the students learn basic skills of lawyering: reading a file, doing legal research, drafting, and client interviewing and counseling.⁴⁷ Ideally, students would work on four different client files and be asked to perform research and drafting on each. Students were required to keep a journal of their field visits and observations as part of the oral exam for the course.⁴⁸ The journal was to both give an account of the student’s experience and the student’s reflections on that experience.⁴⁹

Although the structure of appellate briefs (called memorials) is similar to the structure used in appellate briefs in the United States, some terms are different. For example, a section called the Summary of Pleadings, though frequently written in point form, is similar to the United States brief’s Summary of the Argument. What Americans would call the Argument is typically called the Pleadings or the Statement of Pleadings. Other differences are more substantive. The Pleadings are typically written in numbered paragraphs. Perhaps because of this feature, the arguments did not seem to me to have the persuasive effect of a United States appellate brief. Moreover, the briefs tended to deal with cases separately rather than to synthesize them. Paragraphs may begin with “Further, in the case of . . .” or “Also in the case of . . .” instead of using the case synthesis that we emphasize in United States law schools to our students. Finally, the Statement of Issues and the Statement of Facts were frequently stated neutrally, rather than being presented from one side’s position.

47. Ltr. from Ved Kumari, Prof., U. of Delhi, Law Centre–I, to Placement Supervisors (Jan. 24, 2008) (copy on file with the Author).

48. Course introductory material of Professor Ved Kumari (Jan. 2008) (copy on file with the Author).

49. *Id.* Prof. Kumari suggests the students ask themselves questions about their experience such as, “What is exciting or surprising? What is bothering you? What are

When Professor Kumari and I met after my arrival in Delhi, she suggested that I teach a class in online research to the Clinical Lawyering students,⁵⁰ and two classes in legal writing. In addition, I would be sitting in on some classes she taught and informally co-teaching. My first co-teaching experience showed me that students would benefit from taking a systematic, rather than an intuitive, approach to their analysis. I did an impromptu segment on statutory interpretation involving some materials students were using for a simulation on Witness Handling. In this simulation, a man was charged with two sections of the Indian Penal Code: sections 354 and 509. Section 354, Assault or Criminal Force to Woman with Intent to Outrage her Modesty, provides, “Whoever assaults or uses criminal force to any woman intending to outrage or knowing it likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.” The terms “assault” and “criminal force” were defined in other statutes provided.⁵¹ Section 509 prohibits words or gestures intended to insult the modesty of a woman.

your questions . . . about lawyering and judging? What criticism or praise do you have for the legal system? What else would you like to be taking place in your experience?”

She suggests that when students observe court proceedings, they should ask themselves why they are observing the experience: is it to learn how to open arguments, how judges control the court, how counsel interacts with each other, how ethical questions are handled, how an abstract principle is applied in a real case.

50. For my online research class, I focused on LexisNexis, since the University of Delhi has a contract with LexisNexis. The all-inclusive online sources of LexisNexis and Westlaw, which United States attorneys enjoy, are not available in India. Westlaw is just beginning its program, and LexisNexis Academic, which is more established, nevertheless did not have complete coverage of Supreme Court cases after 2004. Since coverage of Indian law was limited, I decided to show them what they could look forward to when they had complete access to online research. I used my own password and gave as an example the facts of a tort problem, negligent infliction of emotional distress, set in Pennsylvania. I pointed out under United States law, there are distinct federal and state jurisdictions, in contrast to India where the courts hear both federal and state questions. Theodore A. Mahr, *An Introduction to Law and Law Libraries in India*, 82 L. Lib. J. 91, 109, (1990). Ultimately, I gave this presentation in three contexts: to the Clinical Lawyering students, to a group of faculty at a Northern India Regional Training Conference at Delhi University, and to the Moot Court Honor Society students.

In addition to LexisNexis and Westlaw, there are two, more comprehensive fee-based databases, Manupatra and Indlaw, but the schools of conference participants were unlikely to be willing to pay those fees. However, very useful free government-sponsored sources are available.

51. Section 350 of the Indian Penal Code defines “criminal force”; section 351 of the Indian Penal Code defines “assault.”

I began by asking the students to identify the elements of sections 354 and 509. To my surprise, their suggestions were very general, referring only to the facts in the simulation they were given. They did not begin by separating the two statutes, nor did they focus on the elements of each statute. So in my discussion with the class, I presented a systematic approach, focusing on the explicit steps they should take in their analysis. The first was to separate the two statutes to identify each statute's terms. The second was to identify the elements of each statute by parsing its language, seeking which elements were in the alternative, separated by "or," and which was required, separated by "and." This gave the students the large-scale organization of their analysis. The third was to identify words that were defined in other statutes, like "assault" and "criminal force" in section 354, and find those definitions. We then proceeded to parse the language of the definition statutes. From this, we were able to create an outline of the elements of the two statutes on the blackboard. I hoped that the students would be able to apply this process to other contexts in which they would be interpreting statutory language.

In preparing for and teaching the two classes on legal writing in the Clinical Lawyering course, I first thought about differences and similarities between law and law students in India and in the United States. For many reasons, teaching in India is well suited to American law professors. Most important, English is the language of the Supreme Court and the High Courts.⁵² English is the language in which many law school classes are taught.⁵³ Moreover, India, like the United States, has the legacy of the common law system.⁵⁴ Though much of Indian law has been codified by the national and state legislatures, Indian courts, like ours, customarily interpret the language of these statutes. Moreover, since 1955, scholars and foundation representatives from the United States have visited India, offering expertise, evaluation, and funds,⁵⁵ and Indian professors have visited at American

52. Jayanth K. Krishnan, *From the ALR to the ILI: The Efforts to Support an American Legal Institution*, 38 Vand. J. Transnatl. L. 1255, 1283 (2005).

53. Krishnan, *supra* n. 22, at 447.

54. Arthur Taylor von Mehren, *Law and Legal Education in India: Some Observations*, 78 Harv. L. Rev. 1180 (1965).

55. See generally Krishnan, *supra* n. 52; Krishnan, *supra* n. 53; von Mehren, *supra* n. 54.

law schools.⁵⁶ There is one significant difference, however. Indian courts are far less likely than American courts to focus on the facts in precedent. Rather, they rely primarily on the rules and reasoning of previous decisions, even when dealing with a question of fact.⁵⁷

Before deciding what to teach, I needed to get a sense of the students' writing skills and then decide what type of teaching materials to use.⁵⁸ To get an understanding of the students' ability to do sophisticated legal analysis, I concluded it would be better to use Indian law. Therefore, my first challenge was to learn enough about an area of Indian law to use it in teaching. For this I relied on the briefs submitted in the February 2008 All Delhi Moot Court Competition sponsored by my host, the Law Faculty at Delhi University.⁵⁹ They not only indicated the Indian students' writing and analytic skills, they also provided me with background in an area of Indian law that became very important in my teaching—dowry death.

In addition to deciding what type of materials I would use, I needed to decide what to teach in my two classes. I decided to ignore sentence-level problems and focus on the broader and more important issues of organization and analysis. The first class would deal with large-scale organization,⁶⁰ and the second class would deal with small-scale organization.⁶¹ Accordingly, my first class dealt with how to identify the issues in a statutory or common law claim, and how to use those issues to organize a written analysis. Here I primarily used United States law and examples, focusing on a systematic approach.

- First, separate the legal claims.⁶²

56. *E.g.* von Mehren, *supra* n. 54, at 10.

57. *See e.g. supra* n. 9 (citing Indian Supreme Court cases on dowry death).

58. Knowing that I would be teaching in Professor Kumari's course, I brought various materials with me on a flash drive and had print materials and books sent ahead.

59. I reviewed the two briefs submitted by the Moot Court Honor Society at the Law Faculty (one of which was recognized as the best brief of the competition), and a sampling of briefs submitted from the other schools. These materials identified the relevant statutes, the cases interpreting the statutes, and the legal arguments.

60. Helene S. Shapo, et al., *Writing and Analysis in the Law* ch. 4 (5th ed., Found. Press 2008).

61. *Id.* at ch. 5.

62. As an example of separating legal claims, I used the two criminal statutes regarding assault or gestures that intended to insult the modesty of a woman. This exercise was based on the materials they were using in the Clinical Lawyering course and that I had

- Second, with a statutory claim, analyze the terms of a statute to determine if the statute applied to your case. If it does, then identify the elements of the statute. The elements will become the legal issues you must analyze.
- Third, with a common law claim, identify the elements of the claim and synthesize the case law on each element.

To do this last exercise, my materials described a series of cases in which the Pennsylvania courts developed the tort of negligent infliction of emotional distress. The students were lively participants.⁶³ However, my assessment of the success of the class was overwhelmed by one thing—the students' lateness. Although I had observed this phenomenon in classes I audited, this was the first time that I had to teach a class in which only a handful of students were there on time. It was frustrating. Many of the students eventually came to the class, but I felt they had missed important material by being late. Their lateness also puzzled me as it was inconsistent with their general attitude towards faculty, which was respectful and warm.⁶⁴ However, lateness was not a problem in my second class in which I used Indian law as the basis of my instruction.

IV. DOWRY DEATH

My second class on analysis was based on the Indian law topic of dowry death. The materials were based on the fact pattern in the All Delhi Moot Court Competition of February 2008 and two Indian Supreme Court cases on dowry death.⁶⁵ The purpose of this class was to continue the in-class work on statutory interpretation and to instruct the students on the important topic of

discussed with them briefly in an exercise on statutory interpretation. *Supra* pp. 230-231.

63. Through reading one case at a time, we were able to identify the elements of the tort, list them, and for each, identify the cases analyzing each element. I showed them how this provided an outline from which a detailed analysis could be based. To aid them in focusing on issues and not cases, I also distributed a chart in which I had identified the cases down the left side and the issues across the top. I had completed all but one case in the chart and had them complete the chart in class.

64. For example, students would stand up when the professor entered the room. I noticed this respectful attitude in other contexts as well. When faculty were sitting and chatting in the Teachers' Common Room, they, too, would stand up when a senior faculty member entered the room.

65. *Satvir Singh v. State of Punjab*, (2001) 8 S.C.C. 633; *Hans Raj v. State of Haryana*, (2004) 1 L.R.I. (Crim. App.) 947.

small-scale organization (analyzing case law, synthesizing cases, and comparing the facts in the problem to the facts in the precedent). The complicated statutory framework of the dowry death statutes provided the basis of a very challenging class in which the students would have to resolve questions of law and questions of fact. But the use of Indian law enabled the students to learn analytic principles in a familiar context.

I began the class on analysis by having the students tell me the relevant facts of the problem case and its procedural history. According to the fact pattern, Sanjana and Manoj Kumar were married on January 23, 1993. After their marriage, Manoj taunted Sanjana for bringing insufficient dowry to the marriage, though her father had given Manoj Rs.50,000 (\$1,250 US) a few days after the marriage so he could start a business. Manoj squandered that sum and made a further demand of Rs. 2 lakhs (Rs. 200,000), which Sanjana's father refused. Sanjana's ill treatment and harassment by Manoj and his family became worse when she was not able to conceive. In addition, Manoj's parents told her that their son was planning on marrying another woman. Some years later, in 1999, Sanjana gave birth to a daughter. Soon after, however, Manoj was paralyzed in an accident. Following this incident, Manoj told Sanjana that she brought bad luck to him and his family. On their seventh wedding anniversary in January 23, 2000, Manoj told Sanjana that while she enjoyed her life, he was living in hell because of the bad luck that she and her daughter brought. At 2:00 a.m. on January 25, Sanjana committed suicide by hanging herself from the ceiling fan in her home. No suicide note was found.

Manoj and his parents were charged under three statutes in the Indian Penal Code dealing with the death of a married woman under abnormal circumstances: sections 304B (dowry death), 306 (abetment of suicide), and 498A (cruelty). The trial court convicted them of violating sections 306 and 498A, but not section 304B. The High Court (intermediate appellate court) set aside the claim under the abetment of suicide statute, section 306,⁶⁶ but

66. The High Court's reasoning in rejecting the abetment to suicide charge included the statement that "[i]t often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. This, however, in our opinion would not by itself and without something more attract Section 306 IPC." This language was directly taken from *Bhagwan Das v. Kartar Singh* (2007) INSC 556 (May 14 2007), the case on which this Moot Court competition was based.

affirmed the section 498A cruelty conviction and held that section 304B relating to dowry death was inapplicable because the death occurred more than seven years after the marriage date. To have the students consider the possible result in the Kumar case in an appeal to the Indian Supreme Court, I then discussed with them the two Indian Supreme Court cases, *Satvir Singh v. State of Punjab*,⁶⁷ and *Hans Raj v. State of Haryana*.⁶⁸ In these cases, the Court analyzed the meaning of the three statutes dealing with the death of a married woman under abnormal circumstances. Each of the statutes included terms defined in other statutes. In determining how these cases related to the Manoj Kumar case, I again used a structured, systematic approach. I instructed the students to use this general pattern:

- First, analyze the statutory language to interpret the statute and identify the legal issues.
- Second, analyze the facts and reasoning of the cases interpreting the statute.
- Finally, compare the facts of your own case to the facts in the precedent and conclude.

The students and I first analyzed the statutory language to determine the issues in the problem. We began with section 306 dealing with abetment to suicide. Section 306 provides that “If any person commits suicide, whoever abets [the] suicide [is liable] for imprisonment . . . and fine.”⁶⁹ “Abetment” is defined in section 107 as instigating or engaging with others in conspiracy.⁷⁰ Where there is no direct evidence, the prosecution may rely on section 113-A of the Indian Evidence Act that permits a court to presume, “having regard to all the circumstances of the case,”

67. (2001) 8 S.C.C. 633.

68. (2004) 1 L.R.I. (Crim. App.) 947.

69. India Pen. Code Section 306, Abetment of Suicide, states, “If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

70. India Pen. Code Section 107, Abetment of a thing, states, “A person abets the doing of a thing, who—First, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy; and in order to the doing of that thing; or Thirdly, intentionally aids, by any act or illegal omission, the doing of that thing.”

that a married woman's suicide within seven years of her marriage was abetted by her husband.⁷¹ The presumption is rebuttable and proof must be made beyond a reasonable doubt. Courts use the definition of "cruelty" provided in section 498A, that is "any willful conduct . . . likely to drive the woman to suicide or to cause grave injury" or "harassment of the woman . . . with a view to coercing her or any person related to her to meet any lawful demand for any property or valuable security."⁷² There is no requirement in section 306 that the action of cruelty occur soon before the woman's death (as is the case with section 304B).

After we analyzed the terms of the statute on abetment to suicide, the second step was to consider how the terms were interpreted by the courts. The *Hans Raj* case was particularly helpful. The prosecution had alleged that Hans Raj's wife, Jeeto, committed suicide by poisoning because Raj assaulted and harassed her. Allegedly, Raj was addicted to drugs and beat his wife whenever she attempted to prevent her husband from taking them. The case was based on the evidence of Jeeto's father and brother. Although they did not so testify in the proceedings below, at trial, the two offered additional evidence to the effect that Raj used to taunt Jeeto because she was not good-looking and said he would remarry, and that Jeeto had come to the father's house in an injured condition. The trial court imposed the presumption under section 113-A of the Indian Evidence Act, concluding that Raj had not offered a suitable explanation of the circumstances under which Jeeto committed suicide, and convicted him. The High Court affirmed. The Supreme Court, however, reversed, concluding that the original factual record was weak and did not support a conviction under section 306. But the Court's reasoning in this case focused on a question of law where factual comparisons would not be relevant: the interpretation of the presumption under section 113-A. It concluded that section 113-A must be applied strictly.

71. Indian Evidence Act Section 113-A, Presumption of Abetment, states, "When the question is whether the commission of a suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the circumstances of the case, that such suicide had been abetted by her husband or by any such relative of her husband."

72. India Pen. Code § 498A: Cruelty.

The Court's method of statutory interpretation was familiar. It first gave a "bare reading" to the language of the statute (like the United States plain meaning rule). It then quoted a precedent that gave the legislative history of the statute. The Court stated that the statute had been enacted by the Criminal Law (Second) Amendment Act, 1983, and its purpose was

to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house.⁷³

However, the Court noted that the presumption was rebuttable.⁷⁴ Because it operated against the accused in the field of criminal law, a foundation had to exist. The statutory language "having regard to all the other circumstances of the case" suggested the need to find a cause and affect relationship between the suicide and the cruelty.⁷⁵ Moreover, the charges had to be proven beyond a reasonable doubt.⁷⁶ Since the evidence at trial went beyond previous statements of the witnesses, and other evidence was irrelevant, the Court set aside the decision below relating to the conviction under section 306. The facts were enough to prove cruelty under section 498A, a lesser charge, but not a violation of the more serious charge under section 306.

The final step in the analysis with the class was to apply the reasoning in the precedent to the facts in the *Kumar* case. The Court's reasoning in *Hans Raj* and its conclusion in light of those facts suggest that the facts in Kumar's case would not be sufficient to raise the presumption of abetment of suicide. Although Manoj Kumar said Sanjana and his daughter brought him bad luck, he had made that statement before, and the reference to his living in hell and bad luck could have referred to his paralytic condition. His role in her suicide was not sufficiently active and there was no suicide note to show a connection. Nor did Manoj

73. *Hans Raj*, (2004) 1 L.R.I. (Crim. App.) 947 at 9 (quoting *Ramesh Kumar v. State of Chhattisgarh*, (2001) 9 S.C.C. 618).

74. *Id.* at 10 (citing *Sanjay Singh v. State of M.P.*, (2002) 5 S.C.C. 371).

75. *Id.*

76. *Id.* at 10 (quoting *State of West Bengal v. Orilal Jaiswall*, (1994) 1 S.C.C. 73).

suggest to Sanjana that she commit suicide as had happened in the *Satvir Singh* case.⁷⁷ Accordingly, after this discussion, the class and I concluded that the Supreme Court would affirm the High Court's reversal of Kumar's conviction under section 306 (even if it affirmed the conviction under section 498A).

I went through a similar process with the class in discussing Manoj Kumar's possible conviction under the Dowry Death statute, section 304B. This statute, even more than the others, reflected a grave Indian problem and the government's attempt to deal with it. The initial effort of the government of India was the Dowry Prohibition Act of 1961.⁷⁸ Because of the Act's failure to solve the problem, the Indian Parliament added section 498A (the abetment to suicide statute) in 1983, and section 304B (the dowry death statute) in 1986. To strengthen these Penal Laws, the Indian Evidence Act was amended in 1983 with section 113-A⁷⁹ creating a presumption of guilt under section 498A, and, in 1986, with section 113-B⁸⁰ creating a presumption of guilt under section 304B. Nevertheless, despite extensive national and state legislation, one commentator recently noted that dowry was "a major social evil and . . . a burning problem of today. It is a curse vitiating and undermining the family peace, harmony and growth."⁸¹

Again in the class, I emphasized a systematic approach. The class and I first considered the elements of section 304B, and then we analyzed the cases interpreting the statute. Section 304B(1) of the dowry death statute requires the prosecution to prove the following elements:⁸²

- the death of a woman
- caused by burns or bodily injury, or
- which occurs otherwise than under normal circumstances
- within seven years of marriage, and
- soon before her death,

77. *Satvir Singh v. State of Punjab*, (2001) 8 S.C.C. 633.

78. See Dowry Prohibition Act of 1961 (Act No. 28 of 1961) (May 20, 1961).

79. See Indian Evidence Act § 113-A.

80. Indian Evidence Act Section 113-B, states: "Presumption of dowry death: When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death."

81. D.C. Manooja, *The Dowry Prohibition Law: An Appraisal*, 2003 Crim. L. J. 45, 45.

82. Elements are often referred to as ingredients in India.

- the woman was subjected to cruelty and harassment
- by her husband or any relative of her husband
- in connection with a demand for dowry.⁸³

If the elements are proven, the husband is presumed to be guilty under section 113B of the Evidence Act.⁸⁴ The Explanation (official interpretory language) to section 304B adopts the definition of “dowry” in section 2 of the Dowry Prohibition Act,⁸⁵ that is, property given by one party or the parents of one party to the marriage at or before the marriage and in connection with the marriage.

In the second case I gave the students, *Satvir Singh v. State of Punjab*,⁸⁶ the Indian Supreme Court considered a case brought under section 304B and, again, strictly interpreted the statute (though the Court again affirmed the conviction under the cruelty statute, section 498A). Here the Court was presented with both a question of law and a question of fact. In this tragic case, the wife threw herself in front of a railway train and suffered major injuries, leaving her in a vegetative state. The court hypothetically considered (since she did not die from her injuries) whether the prosecution could prove a violation of section 304B. According to the facts, the wife’s family gave the husband dowry at the time of the marriage, but the husband and his parents started harassing the wife five months after the wedding for not including a house and car as part of the dowry. Over the next two and a half years, she gave birth to two children. Three years after the marriage, the wife’s father gave the husband Rs.20,000, possibly so he would desist from harassing the wife. One night, five years after the marriage, the husband and his parents criticized the wife for putting too much salt in the food at dinner. The husband and parents were angry and said to the wife, “Why not end your life in front of one of the trains running nearby?” She did so and was

83. India Pen. Code Section 304B(2) provides penalties of imprisonment for a minimum of seven years to life.

84. Indian Evidence Act Section 113-B, Presumption, provides, “When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.”

85. See Dowry Prohibition Act of 1961 (Act No. 28 of 1961) (May 20, 1961).

86. (2001) 8 S.C.C. 633.

grievously injured. The Supreme Court, however, reversed the husband's conviction for dowry death, requiring strict adherence to the terms "in connection with the marriage" and "soon before her death."

First, the Court reasoned that no harassment specifically regarding dowry occurred after the fifth month of marriage. The later payment of Rs.20,000 by the wife's father was not necessarily "in connection with the marriage," since that payment occurred after the birth of the second child. More important, the demand for dowry must be made "soon before her death." The Court noted that the phrase was "an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it." Nevertheless, the Court suggested that the legislative intent in enacting those words was "to emphasize the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment." The Court strictly construed this language, noting that "the proximity to her death is the pivot indicated by that expression" and that there should be a "perceptual nexus between her death and the dowry related harassment or cruelty inflicted on her." Where the interval is wide, the Court reasoned that a court would assume that the harassment would not have been the immediate cause of her death.⁸⁷

At this point in the opinion, I would have expected that the Court would refer to examples from precedents where the courts determined that the events either were or were not "soon before her death," a step an American court would likely take. But that approach is far less common in Indian law and did not occur in this case. Later courts interpreting the phrase "soon before her death" quoted the reasoning from *Satvir Singh*, but made no references to the facts in that case or its result.⁸⁸ Ultimately, the *Satvir Singh* Court found insufficient evidence under the facts to show harassment for dowry soon before the wife's suicide attempt.

After the class discussion of the meaning of section 304B, instead of comparing the facts of *Satvir Singh* with the facts of Manoj Kumar's case, in the remaining class time I asked the students to write a summary of the facts and reasoning in the *Satvir*

87. *Id.*

88. See, e.g. *Narayanamurthy v. State of Karnataka*, No. 5689 of 2007 (May 13, 2008); *Ram Badan Sharma v. State of Bihar*, 10 S.C.C. 115 (2006).

Singh case. Putting the exercise in context, I told them this would be part of a brief in which they would be arguing that the High Court correctly concluded that Manoj Kumar was not guilty of violating section 304B. My observation from reading sample Moot Court briefs from various law schools was that students tended not to treat the facts and reasoning in the precedent in detail. Therefore, I decided that requiring each of them to write a summary would be useful. Since the remaining time was not sufficient, I asked the students to e-mail me their summaries and said that I would comment on and return them.⁸⁹ This seemed more helpful to the students, would give me a good sense of their writing and analytic skills, and enable me to give them individual as well as in-class feedback.⁹⁰

I concluded this exercise by returning the students' answers along with two comment sheets. The first was my own summary of the three steps in analysis I was suggesting for them: the analysis of the statute, the analysis of the facts and reasoning in the relevant precedent, and the comparison of the facts in their case with the facts and reasoning in the precedent. The second was a sample answer that included the third step, that is, the comparison of their facts with the facts in the precedent.

89. I returned the summaries to the students with my comments, which were incorporated using Track Changes.

90. The students' factual descriptions of the *Satvir Singh* case varied, but there were some general problems: the omission of important facts and the drawing of unwarranted conclusions—problems we have all seen in students' work in the United States. For example, some students did not include the date of the marriage, but the dowry death statute only applies when the wife dies within seven years of the marriage. In addition, some students concluded that the Rs. 20,000 gift, given after three years of marriage was a dowry gift, when that was one of the issues the court had to decide, and the money could also have been a gift connected with the birth of the two children.

However, the students' analysis of the reasoning in the *Satvir Singh* case was quite well done. All of them realized the significance of the elements of the statute and all based their analysis on the statute in one way or another. This focus on statutory language may be the result of the court's focus on it. Some students organized their analysis as I would have suggested: start with the statutory language, summarize its elements, and then relate the facts of the case to these elements in turn. Others did not have an overview of the statute, but used the elements of the statute as the organizing principle of their analysis and then related the facts to the specific elements as they went along. Not all of the students of the students realized the significance of the Court's analysis of section 304B. Since the victim did not die, the Court could have simply stated that and dismissed the charge. However, the court apparently wanted to make a point about how the statute should be interpreted—likely the meaning of the phrase “soon before her death.” The stronger students included this in their analysis.

I reflected on this class later, asking myself why it seemed more successful than the first one. I was certainly pleased that more students were both in class on time⁹¹ and in attendance generally. But I think my using Indian law was much more significant. To teach large-scale organization, the American law case summaries on negligent infliction of emotional distress worked well. But my using Indian law to teach analysis was more meaningful to the students. They were able to focus on the analysis itself, rather than on an unfamiliar area of law.

V. CONCLUSION

In India, I felt that I was part of an international legal education community as well as a particular legal educational institution. I learned a great deal from both students and faculty and am grateful for their kindness, interest, and support. I also learned about a fascinating area of Indian law that enabled me to teach Indian law students using materials that were relevant to them. I saw the similarities and differences between American and Indian law and realized the gap between them was not large. My knowledge and experience teaching American law was certainly transferrable to the Indian context. Finally, I realized that legal writing professionals have something valuable to offer to students and faculty in law schools around the world.

91. One of the students in the class invited me to her home for dinner, and as we rode together on the bus, I asked her about the persistent lateness in classes. (I noticed the same thing when I was participating in the Regional Teachers' Training Conference, so the custom was not limited to students.) Her explanation was that in college, students were closely supervised in class and so they relished the freedom that they had in law school to come when they chose. In addition, I noted that although 60 percent class attendance was mandated, attendance was taken at the end, not the beginning of the class.