

Till dowry do us part

A growing number of NRI men allege they are victims of Section 498A, India's anti-dowry law, which they claim is used to harass them. **George Joseph** reports

When Dr Jayakrishna Ambati, his younger brother Dr Balamurali Krishna Amabati, and their mother were arrested in an alleged dowry-harassment case in November 1995, it caused an uproar in the Indian-American community, even making it to the front page of the *New York Post*. Compounding the media interest was the fact that Balamurali was a minor celebrity of sorts, being, at 17, the youngest doctor to graduate from the Mount Sinai Medical College.

Four years and a bitter legal battle later in India, the family was acquitted of all charges by the Kolar Gold Fields sessions judge K S Venkoba Rao on April 28, 1998.

And therein lies a story, one that continues to reverberate quietly through the ranks of the married NRI men who face similar dowry cases back in India, claiming they are no more than innocent victims of a well-meaning law - Section 498A of the Indian Penal Code - run amok.

The law has its origins in the horrific string of homicides in the '80s when unsuspecting brides were burnt alive for not bringing enough dowry, and their deaths passed off the husband and in-laws as due to a bursting cooking-gas stove.

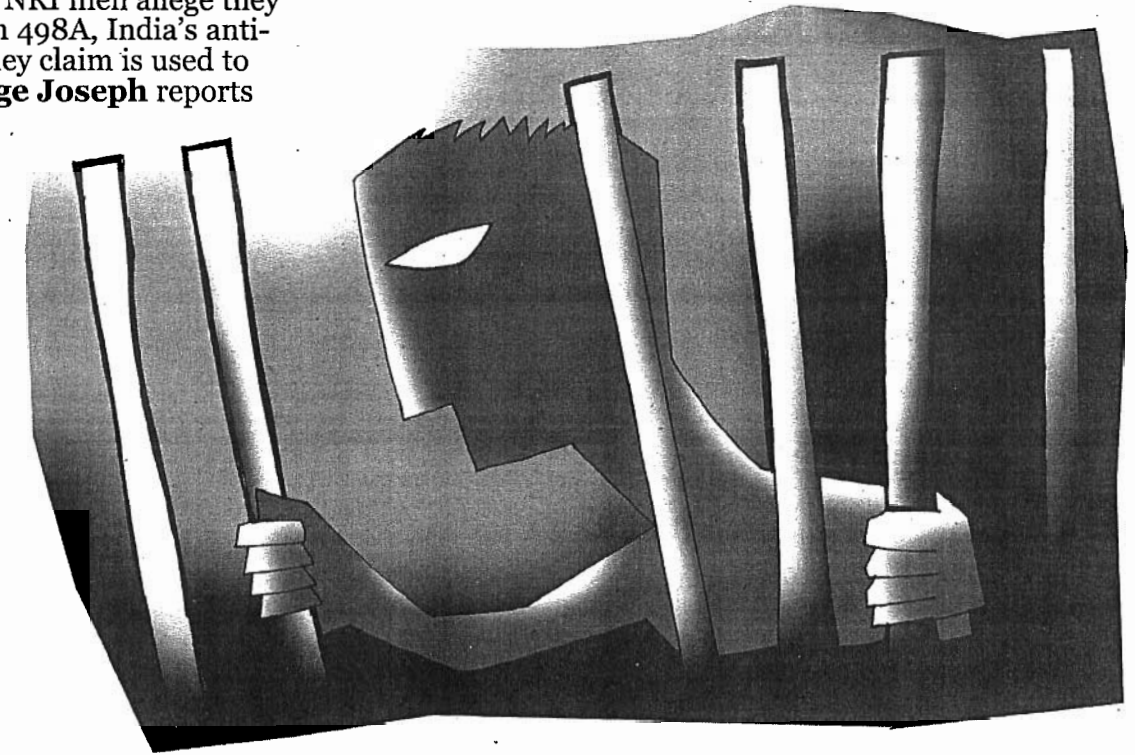
Following public outrage over the spate of deaths, the anti-dowry law was enacted, making it a crime to demand or take dowry or harass the bride and her family for the same, either before or after the wedding.

The most famous application of the law took place two years ago when a young bride-to-be called the police from the altar when her in-laws refused to proceed with the ceremony unless they were paid the dowry up front.

Increasingly, however, NRI husbands in the United States are coming forward with their stories where they claim the law is being used to harass and intimidate them, often in divorce and custody cases.

Loaded in favor of the plaintiff, Section 498A allows for the husband and his family, sometimes extended, to be arrested and held without bail until the case comes to a court of law.

"The law was made to protect the ordinary women in India, but it is used by the women from cities, highly educated and ambitious, to settle scores with their former husbands and fleece money from them," says Rahul Agarwal, a resident of the Bay area, California, who claims he is a victim of the misuse of Section 498A. "Professionals like me are busy with our career. We have no time to think of such things. We keep more Indianness here than these women who come from



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cities more Westernized than us and with ideas of women's liberation."

However, genuine cases of harassment for dowry still far outweigh the aberrations. Purvi Shah of Sakhi for South Asian Women, a support group for victims of domestic violence, points out that in Punjab alone, the number of women abandoned by their NRI husbands, who married for dowry, is in the region of 15,000.

"In some cases an NRI man will marry two or three times, collect dowry, and leave the brides after a few weeks," she says.

The Ambati case, however, stands out both for its profile as well as the starkest illustration of how a perfectly good law can be twisted out of shape.

Though the Karnataka High Court ruled thrice that the trial should be completed within 3 months, the case dragged on, and the family was separated for over three-and-a-half years.

Balamurali lost two years of his career because he had to wait until 1998 to start his ophthalmology residency at Harvard, which he was supposed to join in 1996.

The Ambati family also claims

that plaintiff Archana's father, a former honorary Home Guard, had undue help from the police.

Jayakrishna says he had put the episode behind him. "It was a bitter nightmare. I don't look back at things that happened. I look forward to accomplish things," he said.

He said his former wife stayed with him only for a few days. "She did not want to be here. It was an arranged marriage and she was only a high school graduate," he said. "Many people think of the Indian women as the epitome of virtues only. That generation has come and gone. They might have been there dur-

ing the generation of my parents."

Indeed, most of the cases involving NRI grooms are fallouts of arranged marriages, in which the parents decide who their son or daughter should marry. And NRI grooms are a prized commodity in India, often holding out hope for a better life.

In many cases, the arrangement does not turn out as expected; in some cases, it is the lack of support systems and services in the US, and sometimes due to the presence of the in-laws in the same house.

NRI weddings: look before you leap

Victims of abuse by women say that the draft of a booklet by the Ministry of Overseas Indian Affairs titled Information Booklet on Marriages to Overseas Indians Safely is a slap on their face and against basic freedoms.

"It is maligning and defaming all Indian immigrants in the United States," says Gope Lalwani, who is associated with the Save Indian Family movement. He has demanded an unconditional apology from the ministry, saying the booklet suggests that Non-Resident Indians are cruel arrogant and are frauds.

"The draft is completely biased towards women," says Dr Vikas Kumar, who claims to be a victim of Section 498A. "There is discussion only about women rights and no point for men rights! This clearly indicates the gender bias in making such draft."

In a post on the ministry's website, one reader wrote "Is the Indian government trying to suggest that overseas Indians are female beaters, abusers and do not have respect for their marriage and their wives? Is the government trying to prove that the NRIs who bring fame, glory and prestige for the nation are a bunch of cruel people?"

The ministry said it came out with the book-

let following the increase in incidents of women who marry NRIs being ill-treated.

On the other hand, the US State Department is aware of the problems caused by misuse of IPC Section 498A and had issued a travel advisory a long time ago that a number of US citizen men who have come to India to marry Indian nationals have been arrested and charged with crimes related to dowry extraction.

The Canadian embassy too has a warning for its citizens going to marry in India. A growing numbers of Canadian citizens have been caught up in marital fraud and dowry abuse in India. Most cases involve Indo-Canadian men who abandon their wives in India after cheating them out of large sums of money. Other cases involve misuse of India's Dowry Prohibition Act. This law, which was enacted to protect women and makes demanding a dowry a crime, is sometimes used to harass men through false charges of dowry demands.

"To avoid such problems, you are advised to register your marriage in India along with a joint declaration of gifts exchanged, as well as consider a prenuptial agreement," the embassy cautioned.

Meanwhile, India's National Commission for Women, based in New Delhi, has issued a report to the Ministry of Overseas Indians Affairs, wherein it made the following recommendations for women seeking to marry NRIs: Compulsory registration of marriage; bilateral agreements for protection of such marriages be concluded between India and such other countries where the Indian diaspora is in large numbers; concerned Indian laws to apply irrespective of the place of the filing of the petition for dissolution of the marriage, if the NRI husband has not become a citizen of the country or residence; government monitored conciliation process of settlement of matrimonial disputes be initiated and; suppression of information regarding marital status by NRI grooms be dealt with under criminal law and steps taken through extradition treaties wherever operational.

Other measures suggested include seeking the help of authorities at the workplace of the husband, attaching property in India, initiating legal action against the fraudulent spouse for compensation in India and; if withdrawal of dual citizenship to the husband, if it has been given.

Should the bride return to India, it is fairly easy to file a case: all it takes is a letter to the police. This section is non-bailable (only court can give bail), non-compoundable (complaint cannot be withdrawn) and cognizable (arrests without investigation or warrants). A non-bailable warrant does not require proof before arrest. No investigation is necessary.

Yogesh, who declined to give his full name, has been living in the US since 1997 and got married in 1999 without, he claims, any dowry. "My wife would threaten me that if I did not break ties with my family in India, she would trouble me through laws in India," he told *India Abroad*. "When I couldn't take it any more, I moved out taking only my clothes and leaving behind everything."

After he filed a no-fault divorce in the US, his wife returned to India and filed a dowry harassment case against him and his parents and sisters in India, alleging 'dowry demands, physical abuse, mental torture, and financial cheating,' despite the fact that none of the charges were raised in the US court where the divorce was granted.

"My ex-wife obtained her green card through my sponsorship and she continues to work and live comfortably here while I and my family suffer every day and are struggling to protect ourselves against false charges and legal case still pending with the police and courts in India," Yogesh said. "I cannot visit India. For my parents who have lived a truthful life, this is too much to bear. Where is justice?"

A similar case entangles Prakash, a New Jersey resident who also declined to have his full name used. Although his was also an arranged marriage, he met the girl before the wedding and ascertained that she was marrying of her own will. He left for the US two days after the wedding and his wife joined him on a H4 (non-working) visa a month later. "But she was a different person, she would not speak to me, not interact with me," he charges. "She was not interested with anything to do with me and began to insult me in my friends' circle to the point where it became unbearable."

He claims that she then told him she had had been seeing someone else before marriage and that she had consented under pressure from her family.

They went back and decided to seek a divorce. "But her family started asking for money. It was unbelievable," Yogesh says. "They demanded \$100,000. When we did not agree they filed an IPC 498a case. Now my family is going through hell. My parents who are over 60 are going through all these for no mistake of them."

"Our family goes to the court regularly, but her's does not show up. After this I am scared to marry again."

The more painful cases, however, are like those of Dr Rajeev Mehta, where children's custody is involved. Mehta, his former wife and two children are US citizens, but the Indian court accepted a case against him ignoring the fact that it has no jurisdiction, he said.

He and his wife met in 1994 and after living together briefly, got married in New York.

"Soon after our marriage, problems started becoming all too obvious. After marital counseling with three counselors failed; I filed for divorce in the US in 1998," he said. After three years of litigation, through which his wife used seven lawyers, Mehta was awarded custody of his daughters based on the recommendations of the court appointed guardian ad Litem, the court appointed psychologist (selected by his ex-wife's third lawyer) and custody evaluator, as well as the court's own findings.

His ex-wife soon presented a medical certificate saying that her father was seriously ill and wanted to see the grandchildren.

"However, as soon as she reached India, my ex-wife - who is a US Citizen, not domiciled in India and even though neither of us had been to India since 1998 - filed cases in the New Delhi courts to challenge the US divorce and custody judgments, saying that she wanted to re-litigate the divorce in India," Mehta told *India Abroad*. "For almost four years, I have challenged these cases but am facing the problem of delayed/denied justice by the Indian courts as my ex-wife's family and lawyers have postponed several court appearances using political and legal connections," Mehta said.

Three months after the US divorce, she also filed a dowry harassment case against Mehta, charging that her parents gave gifts worth approximately \$10,000 over the four years of the marriage - and average, Mehta points out, of \$1,250/year at a time when "I was earning \$425,000 a year as a specialist/medical consultant and she was earning about \$86,000 a year" - and that constituted dowry.

His ex-wife now wants the Indian court to overturn the US court's orders and give her custody of the children and also some properties.

The Superior Court of New Jersey subsequently issued a criminal arrest warrant after she refused to return the children to the US, following which the Federal Bureau of Investigation issued a Unlawful Flight to Avoid Prosecution warrant. The US State Department intervened unsuccessfully with the Indian Government



■ Purvi Shah, executive director of Sakhi for South Asian Women

'Everyone deserves life free of violence'

Purvi Shah, executive director of Sakhi for South Asian Women, a New York based organization working for preventing violence against women, says there could instance of the abuse of section 498-A by some women.

"I feel sorry for the men who are taken advantage of. No one deserves to be subjected to unjust claims or violence," Shah said.

However, she pointed out that the "the number of men who face unjust treatment is far overshadowed by the number of women who face domestic violence or abandonment by NRI husbands, there is far greater gender discrimination and violence in the community against women."

"For example, the number of women abandoned by their NRI husbands has caused concern in many regions in India," she said. "In Punjab alone, it is reported that 15,000 women have been abandoned by NRI husbands. In some cases an NRI man will marry

two or three times, collect dowry, and leave the brides after a few weeks."

Shah welcomed the proposed manual by the Ministry of Overseas Indians on how to marry an NRI since it provides useful tips for assessing whether the marriage is safe.

Shah said fake marriages are an issue our communities need to address. A few weeks after the marriage, grooms who abandon their wives can leave the place and cut off all communication. "In these situations, women suffer because they believe they are still married and bound to a relationship that simply doesn't exist for the husband."

Given Sakhi's work is based in the US, Shah admits she has not met any woman who filed a case based on 498-A or a victim of it. But she is against scrapping the law. "Such laws are needed to protect women," she said. "If somebody misuses it, there should be safeguards in the implementation

of it. For every woman who has the courage to file the complaint, there are many others who do not report the violence in their lives for fear of family, community, or police retribution."

In India, many women and their families think that marriage with an NRI is more desirable. Some may want to live in the West also. "But once they are in the foreign country they may face violence," she pointed out. "Yet many women will not report violence or pursue a divorce fearing the social stigma attached to it - and because they believe they will bring shame to their families."

Shah indicated that for violence to end, the community needs to re-define how it treats men and women. "We need to support healthy relationships and understand that everyone deserves respect and a life free of violence. If we do take a stand against violence, our communities will be stronger for it."

"What makes it worse," says Mehta, "is the bias of the NRI ministry and the Ministry of External Affairs against NRIs," and the ludicrous length they can go in their efforts to secure justice for women.

If that sounds draconian, it can be, depending on how it is used. Indian Penal Code 498A, the linchpin on which all these cases turn, is a criminal law stating that "Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."

The law can only be invoked by wife/daughter-in-law or her relatives, and can be filed even after a divorce.

However, only two percent of the cases have reached conviction, with some being for blackmailing the husband's family, victims point out. The Delhi High Court once dubbed it 'legal terrorism.'

However, even if the defendants are acquitted, the case can take up to four or five years, if not more, to resolve. Even those who are not part of the 'day-to-day' family life can be named and arrested on the basis of a single complaint, which can also include pregnant women and children.

Victims say that most of the cases are filed because the husband refuses to throw his parents out of the house at the wife's demands. They also allege that with the law weighted in favor of the wife's side, police and lawyers often advise the husband to settle the matter financially out of court, and sometimes try to fleece the defendant.

Many victims consider the women's rights organizations responsible for such a situation.

A committee under Justice Malimath, former chief justice of Karnataka and Kerala High Courts recommended making 498A available and compoundable.

Indeed, in Punjab, Patiala Zonal Inspector-General of Police Rajinder Singh recently went so far as to direct senior superintendents of police to exercise restraint while proceeding against members of families charged under various dowry crimes.

Singh was quoted in the Indian media that in some cases, members of the accused family had committed suicide because of the humiliation suffered by them.

Meanwhile, the Ministry of Overseas Indian Affairs has proposed an information booklet on 'Marriages to Overseas Indians Safely.' The National Commission for Women in New Delhi has also prepared a report on the problems of NRI marriages and a proposed Draft Convention (See Box).

Interestingly, though, while the ministry recognizes that dowry is one of the causes of failed and/or fraudulent marriages, it also notes that sometimes failed marriages are an outcome of 'lack of modernization amongst rural brides to respond to the Western way of life.'

Nonetheless, the issue being a state subject, the ministry has advised states to formulate their own responses. Additionally, it has advised that Indian diplomatic mission abroad, whenever they receive a complaint of torture or desertion of Indian wives by their NRI-husbands, 'render all possible assistance with a view to bringing about an amicable settlement.'