

# False dowry cases on rise in City

FAIZA HANEEF

**F**ILING a dowry case is as simple as ordering a coffee in a cafeteria as there is no penalty for filing a false case.

According to police sources, of the total dowry cases filed, 50 per cent of them will turn out to be false after thorough investigations and will have nothing to do with 'dowry'.

Speaking to BVT, sources in a City police station said that there is a large scale misuse of this law and this is resulting in irreparable damage to married life.

This is happening because people find filing a dowry case is the easiest way as this section is non-bailable. Let there be any differences among the couple, the parents of the girls find it easy to file a dowry case against their son-in-law.

The other very important reason, the police points out is that, it is a mere 'shifting of burden'. Further explaining this, they say it is burden of proving in the prosecution. If there is a difference on some issue between the couple and if a case of harassment is filed by the parents, then the entire burden of proving falls on them and in order to shift this burden they easily find a way through a dowry case. In a dowry case the burden to prove lies entirely on the husband.

R CHANDRASHEKAR



Only when the investigations are done, the police finds out that there is a different angle to the story which has to be proved to show the case is false. Most of the cases filed are of dowry harassment and dowry death.

About 10 per cent of the cases are solved at the initial stages, as

soon as we find out it is false case. When the interrogation begins, they gradually accept their mistake and sort for a settlement with mere compensations, says sources from police department.

Many a time, the police has noticed the girl's parents requesting to take the boy under custody

## CASE STUDY

**Case of dowry-death filed:** Noor Jahan, was doused in kerosene and allegedly set ablaze by her husband in 2005. Noor Jahan's parents filed a case of dowry death. But, later when it was investigated, it was found out that the case had nothing to do with 'dowry' and he took this step as he suspected her fidelity. It was apparently a case of murder but the parents preferred to file a dowry case.

at least for an hour as per the section 498 (A) of the Indian Penal Code, which makes it mandatory for police to book the husband and his parents and other relatives/friends, whoever are being named on the complaint by wife or her close relatives and jail them.



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## Some brides are 'villains', not victims: lawyers

RAHUL

[ WEDNESDAY, MAY 01, 2002 12:32:02 AM ]

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KOLKATA: City lawyers claim to be surprised at the spate of 'patently unfair' cases alleging cruelty to the bride under section 498A of the Indian Penal Code, which is a cognizable and non-bailable offence meaning that the police can arrest without warrants and bails can be obtained only from a law court and not the police station.

They are also surprised to come across many cases which, they feel, are brazenly fabricated and amount to a gross abuse of a legal provision.

Once a woman lodges a complaint, the arrest of the husband is virtually routine. And if he happens to be a government servant or working in a public sector undertaking or bank, his suspension follows again as a routine.

In some cases lawyers have been appalled to find elderly relatives of the husband and even visiting relatives of the husband implicated in the case.

In some cases the husband and his family are virtually being blackmailed into coughing up money and reach an out-of-court settlement.

In one of the cases the bride is said to have won the heart of her in-laws so much that when her sister-in-law gets married, all the family jewellery are put in her lockers.

She takes the jewellery, leaves the house and promptly lodges a complaint against her husband.

Inquiries revealed that she had an earlier affair and had left to live with her love, recalls Ananda Basu, Advocate practising in the Calcutta High Court.

Eminent lawyer Bishnu Charan Ghosh says, "As a lawyer I have never come across such gross abuse of any of the provisions of any Act as I am experiencing in 498A IPC cases".

He goes on to say, "I don't mean to suggest that brides are always the villains and not the victim. In a majority of the cases, in fact, the brides are at the receiving end. But what is surprising is the large number of cases where the brides actually seem to be villainous".

Asked about the ways to check abuse of section 498A, B.C.

Ghosh and Gitanath Ganguly, the former suggests a threefold measure: (i) to convert section 498A into a bailable one, (ii) The Ld. court could

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carefully consider whether the allegations of the bride are indeed genuine at least against the in-laws or other relations of her husband when it directs investigation under section 156(3) of CrPC for an offence under section 498A and, (iii) The Ld. court could carefully take into account whether custodial detention is at all needed for the old in-laws and other relations.

Ganguly suggests that on receiving a complaint under section 498A from a woman, police should immediately approach the Magistrate instead of arresting the accused.

He asserted that the police should collect the materials, place them before the Magistrate and arrest people only with the permission of the Magistrate. He also suggests making the offence under this section a bailable one.

The lawyers also point out the irony that while women belonging to the poorer sections, for whom the section was primarily meant, are not even aware of the provision, the section is being merrily misused by a section of the urban women.



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## Dowry death a suicide

OUR CORRESPONDENT

**Jamshedpur, Jan. 5:** The post-mortem report has revealed that the woman, who was found hanging in her in-law's house yesterday, had committed suicide and was not murdered, as was claimed by her family.

The family members of the deceased, Ananti Devi (19), had alleged that her husband Ranjan Prasad, alias Dilip, and his family had murdered the woman. The wife of eight months was killed in a dowry-related incident, they claimed.

But sources in the forensic science department of the Mahatma Gandhi Memorial Medical College Hospital claimed there were no signs to suggest that the victim was forcibly hanged or even tortured.

The experts who performed the post-mortem have ruled out any possibility of the use of force in hanging the deceased.

"Investigation of the body clearly showed that the woman hung herself, contrary to the belief of her family members," said one of the experts.

The forensic experts, however, did not rule out that the woman could have been instigated to commit suicide. "This has to be investigated by the police," they added.

The deceased's family had insisted that Devi was murdered, police sources said, and so every care was taken to see if this could be true.

Generally, a single expert does the post-mortem in case of a suicide. But in this case, two doctors were appointed for this purpose and the process was recorded on video for future references.

Officer-in-charge of Birsanagar police station said Dilip, his father Kali Sah and brother Raj Kumar — who arrested on the basis of the FIR lodged by Devi's family — were forwarded to judicial custody today.

"A case of dowry torture has been registered against them. Police are investigating and if the husband and in-laws are innocent, it will become clear soon," he added.

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## [Orissa Plus]

### 'Dead' woman returns alive

Statesman News Service

KENDRAPARA, June 11: Police had proclaimed the death of a woman. Then followed the arrest of people, accused of burning her alive. Now in an ironic turnaround, the dead woman has come back alive, lending a new twist to the bride-burning case, reported in the Rajnagar police station area. The woman was allegedly killed by her spouse and in-laws during a dowry-related dispute. But the offence was never committed.

Those who authored the sinister design of slapping the dowry-death offence against the relatives, are now cooling their heels behind bars.

This episode has triggered a public outcry at a seaside village of Kendrapara district's Rajnagar tehsil.

The unsavoury incident also brings into focus oft-raised allegations that complaints of dowry torture and harassment lack substance.

"We had received a complaint that a newly-wed woman, Kuntala Mohanty, of Santhapada village was burnt alive by her spouse, Nakul and her father-in-law, Digambar Mohanty. The complainant also claimed that they had cremated the remains of the deceased.

The crux of the complaint was that the bride met her end, as she failed to bring home the dowry as demanded by the accused," police said.

After preliminary investigation, the father-son duo was booked under Section 302, IPC and Section 4 (Dowry Prevention Act).

"We should have exhumed the body. But we believed the heart-rending tale of the complainants, and went ahead and registered the



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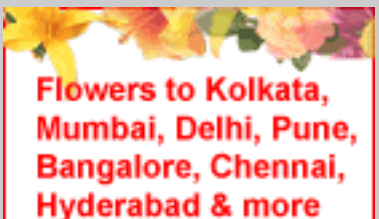
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case. Later, acting on reports that the complaint was a fabricated one, the case had been reopened for a thorough investigation. More surprise was in store for us, as the deceased was found alive in a monastery in Arua-kadaliban village near Pattamundai.

“The local court was informed of the mistake, and the accused were acquitted. The woman, along with her parents, is now behind bars for implicating false cases against her spouse and father-in-law,” police said.

As a senior police officer put it, a majority of the police stations in the district are flooded with dowry-related cases daily. A sizeable number of such cases is false. But the police have to abide by the legal provisions here, as the victims happen to be women.

### **Discussion on this Orissa Plus item**

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## Compensation to lawyer for police violations

By Our Special Correspondent

CHENNAI, SEPT. 16. The State Human Rights Commission has awarded Rs. 1.50 lakhs as compensation to an advocate for violations committed by the police, including a Deputy Commissioner, in connection with a complaint of dowry harassment.

S. Sambandham, Member, recommended that the Home Secretary pay the amount and recover it from the pay and allowances of the respondents equally.

In his complaint, T. Vignesh of Salem, said following a dowry harassment complaint from his wife in August 2003, the police started harassing him and his parents. No opportunity was given to him to explain his version. Though the court stayed his arrest, the police came to arrest him and his parents and insulted them.

They were also tortured. His parents committed suicide in October 2003 leaving a note that their daughter-in-law was responsible for their death. The police failed to register a case under section 306 IPC.

J. Bhaskaran, Deputy Commissioner, Law and Order, Salem city; K. Perumal, Sub-Inspector, Shevapet police station, and Mayavathi, Inspector, All-Women Police Station, Sooramangalam, were cited as respondents.

### 'Complaint exaggerated'

The respondents said the complaint was exaggerated and incorrect. The police neither attempted to go to the complainant's house nor arrest him.

Mr. Sambandham said as per rule 5(X) of the Dowry Prohibition Rules, the Dowry Prohibition officer should ascertain the genuineness of the complaint. Evidence from the parties should be collected.

The advocate's parents committed suicide. Though a suicide note was recovered the same day, the police did not alter the case to section 306 IPC. The advocate was compelled to move the High Court for direction.

The Member cited a High Court order which said when dowry harassment complaints are made, even innocent in-laws are arraigned as accused.

Following false complaints, some people unable to bear the accusations commit suicide. This should be taken note of by the authorities.

Mr. Sambandham said giving a complaint about dowry harassment was very convenient and an easy weapon in the hands of some unscrupulous elements. "Every innocent person should not be expected to commit suicide to prove their innocence.

The police should realise that it is not a matter between two individuals, not even between two families, but several families, such as in-laws." The police should weigh the evidence and find the truth.

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## The double-edged rape-ier

**Seema Kamdar**

Friday, November 04, 2005 00:37 IST

**Case 1:** A minor girl from Malad recently alleged that a gym instructor had raped her. But later, cops found no evidence to suggest that the youth had sexually abused the girl. The case is under investigation

**Case 2:** A bar dancer in Nerul accuses a policeman of raping her. Police say evidence suggests that the woman had a relationship with the accused and sex was probably consensual

**Case 3:** An executive in a Delhi PR company spent two months in Tihar jail for rape. Later, investigations established that he was having an affair with the woman for two years and she wanted him to marry her. When he refused, she filed rape charges which she later withdrew as 'false'

**Case 4:** During the 2004 World Social Forum, a South African judge of Indian origin, Sirajuddin Desai, was accused of rape by a fellow delegate from the same country. The sessions court later let him off after she withdrew her complaint and circumstantial evidence hinted at consensual sex

**Case 5:** In Bhayandar last year, a 17-year-old girl falsely accused her father of rape

In common parlance, it is called a false complaint. Legal eagles call it malicious prosecution.

While rape laws in the country are justifiably stringent, recently a few cases have indicated that the law can be misused, and has end up damaging lives in profound ways. So, if the girl is found to have filed a false complaint, what is the remedy available to the accused, who, ironically, then becomes the victim?

### But do the police act?

The general perception is that the cops don't act. But lawyers say there is no reason why the police should not ruthlessly pursue cases, which have been proved to be false. The police are duty-bound to file a final report in every case, which falls into one of the three categories:

'A final': Says the case is true but undetected (the case is left dormant till evidence possibly emerges at a later date)

'B final': Says the complaint was false (it could be followed up by prosecution of the complainant)

'C final': Neither true nor false.

Yet, there are a few cases where a false complainant is brought to book. In one instance, dating back to the prohibition, a tenant who had falsely implicated his landlady for drunken misbehaviour found himself at the wrong end of the stick when the police detected his complaint to be bogus. He was prosecuted and convicted.

Former DGP S S Puri, a law expert as well, says false complaints are more an aberration than the norm. Police say most false complaints fall under a few laws meant for weaker sections of society like Section 498 A of the IPC (dowry cases), Protection of Civil Rights Act or the Schedule Castes and Scheduled

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### SUTRA

*Don't just do something, sit there.*
**Anon**




Tribes (Prevention of Atrocities) Act.

## **Crying rape is not that rare**

While on one hand, rape remains a highly under-reported crime, on the other, there are instances of women seeking personal vendetta by crying rape. In the last year alone, there were two such instances reported in the city. But can a minor be sued by the police or by the aggrieved party?

Yes, say some lawyers. Section 82 of the IPC grants unconditional immunity to a child below seven years of age. However, the next section, 83, says, "An act of a child above seven and under 12 of immature understanding: nothing is an offence which is done by a child above seven years of age and under 12 who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion."

This indicates that anybody above seven years, and with a sound mind, can be prosecuted for an offence. However, offenders under 18 years will be prosecuted by the juvenile justice board.

Advocate Shrikant Bhatt is of the view that anybody of whatever age can be prosecuted for filing a false complaint. "For IPC offenders, it doesn't matter if he or she is a minor or major," he says. He/she does not even get the protection of section 82 and section 83."

Public prosecutor Rohini Salian, who represents the police in courts, however, says minors can be sued only as a juvenile under the Juvenile Justice Act before the Juvenile Justice Board. "Most of these cases, if convicted, end up in a remand home," she says. "The conditions in remand homes are far from ideal for corrective therapy."

A better option therefore, says advocate Raju Moray, is to introduce the idea of community service for offenders as is done in the US.

## **Why arrest an accused unless there is prima facie evidence?**

The arrest of the gym instructor has also raised a crucial point of law: is it necessary to arrest any person named in a cognisable complaint? Lawyers claim police jump the gun and promptly arrest an accused in cognisable offences. As a result of this trend, many resort to misuse.

"I know an elderly couple who has been blackmailed by their son and daughter-in-law to sell their house for fear of being arrested by the police in a false dowry case," says Moray.

Police admit to a certain degree of misuse. And the fact that police often act promptly on such complaints encourages their misuse, feel lawyers.

"It is not imperative for the police to arrest an accused on the basis of a complaint," says Bhatt. Section 157 of the IPC says if the police receive information about a cognisable offence, it "should proceed to the spot, investigate facts and circumstances of the case, and, if necessary, take measures for the discovery and arrest of the offender."

Cops, however, dispute this point. "We are damned if we do and damned if we don't," says a senior police officer. "Take this girl's case. Had we not arrested the gym instructor, there would have, probably, been a huge women's morchha to the police station."

Another police officer points out that in a complaint of rape it is important to arrest the accused. "How else can we conduct a medical examination or interrogate him?" Most importantly, SC judgments clearly prescribe arrest "in prima facie serious cases".

## **Section 177**

A false complainant can be prosecuted for knowingly furnishing false information to a public servant "regarding the commission of an offence." The section provides for a two-year jail term or fine or both. However, the police cannot start investigations under without a magistrate's permission.

## **Section 182**

The victim can also seek recourse to Section 182 of the IPC, which deals with giving false information to a public servant in order “to cause him to use his power to injure or annoy anybody”. The sentence for this offence is maximum imprisonment of six months or fine or both.

### **Section 211**

This section goes a step further and slaps a punishment of the same description on a false complainant that would be applicable on the accused had the charge been proved.

### **Section 376**

Rape carries an imprisonment of not less than seven years extending up to life and a fine. This provision is invoked in a false charge of offence meant with the intent to injure in such a manner that gets criminal proceedings launched against that person. Proving the “intention” of the complainant holds the key.

### **Section 499**

Apart from police action, the aggrieved party can also file a criminal case for defamation, under Section 499. The punishment in the latter case could go up to two years in jail, along with a fine.

### **Section 203**

A multi-causes civil suit for damages under the head of defamation causing trauma, shock damage to a career is also possible. Another provision that could be invoked on a false complainant is Section 203, which deals with giving false information concerning an offence.

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## Tortured man out of wife abuse net

OUR LEGAL REPORTER

**Calcutta, June 8:** Calcutta High Court today granted bail to a doctor, accused of torturing his wife, after it was proved that it was he who had been physically abused and not the other way round.

After hearing the petition of Ishani Kumar Ghosh, a 34-year-old medical officer of North Bengal University, Justice S.P. Talukdar said the "dangerous" practice of misusing Section 498A of the Indian Penal Code (cruelty on housewives by husbands and in-laws) should be immediately stopped.

Ishani married 30-year-old Sumana, also a doctor, on February 18 this year and the couple lived in Jalpaiguri. A few days later, Sumana began assaulting him, Ishani told the court today. She would scratch him and leave him bleeding at night.

Ishani then learnt that his wife was a psychiatric patient who was under medication.

When Sumana realised she could be in trouble, she told her husband that she wanted to go back to her parents in Asansol, where she would start her private practice.

Sumana lodged a police complaint as soon as she reached there.

Ishani was arrested in Asansol when he went there on May 31 to give Sumana her jewellery. He was produced before the additional chief judicial magistrate of Asansol the next day, who sent him to jail.

Ishani then moved the high court, which granted him bail today.

The ruling comes as a boost to lawyers who have long been demanding an amendment to Section 498A of the IPC, which allows police to arrest the persons named in FIRs without verifying the allegations.



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where inundation was heavy on account of 84.8 mm rainfall during the past 24 hours.

Apart from causing water logging, the spell of heavy rain literally destroyed the road fabric in many parts of the city.

In Sector 47, a large portion of the outer road leading towards Mohali caved due to heavy rain. The authorities reportedly jumped into action, lest there should be any damage to life and property.

Water stagnation was witnessed in most of the colonies in the city for nearly the whole day today. Roads between sectors were also affected due to rain, which was the heaviest in Chandigarh as compared to that in its nearby towns.

While Chandigarh received the highest rainfall of 129.6 mm between 8.30 am yesterday and 8.30 am today, the corresponding measurements for other cities are: Kalka (80 mm), Panchkula (20 mm), Ludhiana (46 mm), Patiala (20.5 mm), Nangal Dam (112.2 mm).

The temperature continued to drop due to heavy rain. From 24.6°C recorded on October 10, it came down to 23.6°C yesterday. This was seven degree below normal. In comparison to yesterday, the temperature rose today to 27.2°C.

Met officials said although there was no forecast of immediate rain, the night temperature would continue to dip for some more days.



### **Bail for dowry death suspect** **Tribune News Service**

Chandigarh, October 12

The Additional District and Sessions Judge, Mr Balbir Singh, today granted interim bail to Ms Krishna Devi, a suspect in the dowry death case of Reeta and the mother of Satish, who jumped to death from the fourth floor of the district court yesterday.

According to information, the police did not oppose the bail application of Ms Krishna Devi, who was granted bail till October 31.

The police had booked Krishna Devi and Satish on the charges of harassing Reeta for bringing more dowry. While Satish had jumped to death while being escorted by a police party at the courts yesterday, Ms Krishna Devi, was sent to General Hospital, Sector 16, for a medical examination.



### **Only one out of six dowry complaints genuine** **Sanjay Sharma** **Tribune News Service**

Chandigarh, October 12

Only one out of six complaints of dowry demand, are genuine Surprisingly, such complaints are being made even in those cases where there have been love marriages. Reeta who hanged herself on Sunday and her arrested husband Satish, who committed suicide on Monday, had a love marriage.

A perusal of the cases registered with the local Child and Women Support Unit (CWSU) also reveals that 75 per cent of love marriages are failing due to, among other things, complaints of dowry demand.

An interesting fact which has emerged in the cases of harassment and dowry is that only six out of an average of 70 complaints in a month result in the registration of a case and remaining one are either settled through mutual understanding or given up due to lack of evidence.



Only one in six cases, dowry demand is supported by evidence, the sources in the CWSU told the Chandigarh Tribune.

The sources said the complainants had gathered an impression that unless a demand of dowry was not made against the other party, the police would not consider entertain them.

Many cases of harassment (which includes mental torture) and dowry demand, however, are solved with a compromise if the boy's family makes a payment to the family of the girl.

Only in 30 per cent cases, there is a prima facie evidence of dowry demand but in all cases, the aggrieved party claims that the boy's family was demanding dowry and harassing the girl, the sources.

Commenting on the yesterday's incident, some police officers said matrimonial disputes had to be dealt with caution. There are chances that one of the aggrieved party can accused the police of being biased towards the other. In Reeta's case the police worked in a haste as it normally do if a girl commits suicide.

In another recent case, the Manimajra police took some time to arrest family members accused of poisoning their daughter-in-law. The police said evidence suggested that there was nobody at home at that time to hint that the girl might have been poisoned. But when the girl died in the hospital, the police had to arrest the entire family of the boy.

The sources said in a large number of a disputes dowry cases were being made to recover the money spent on the marriage.

The police officers, however, clarified that this do not mean that the evil of dowry had been eradicated as there were genuine complaints also.

Unemployment, lack of understanding, impotency, inappropriate employment, and infidelity are emerging as factors that are leading to marital discord.



## **112 suicides last year, could be more** **Tribune News Service**

Chandigarh, October 12

As many as 112 suicides were reported in Chandigarh last year. But the figure is an underestimate as a large number of suicides still go unreported, say government officials.

A continuing medical education programme on 'Prevention of suicide and co-occurring physical and mental disorders', was organised here by the local branch of the Indian Medical Association to mark World Mental Health Day.

Prof B.S. Chavan, Head of the Psychiatry Department, Government Medical College and Hospital, said many people who committed suicide had visited medical officers and family physicians for treatment of mental disorders. However, a large number of these people received either no treatment or received inadequate treatment.

A brief survey of the families of the suicide victims revealed that majority of persons who committed suicide had depression, were addicted to alcohol or drugs, faced marital discord or chronic physical illness, he said. The Department of Psychiatry, GMCH, was making efforts to initiate preventive measure, he added.

The session was chaired by Dr C.B. Bansal, Director, Health Service, UT, Chandigarh.

Dr Neeraj Nagpal, president, IMA, and Dr Ajay Duseja welcomed the members and introduced the theme.



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## SI held for taking bribe in dowry case

[ Wednesday, April 19, 2006 02:02:11 am TIMES NEWS NETWORK ]

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CHANDIGARH: The UT vigilance department has arrested a city police sub-inspector, Mohinder Singh red-handed, while demanding and accepting a bribe of Rs.1,000 from a complainant, Bir Singh.

The sub-inspector, Mohinder Singh, at present posted at the Woman and Child Support Unit of the Chandigarh police, asked for the bribe from the complainant in lieu of arresting an accused and recovery of dowry articles from him.

Enquiries by the TOI revealed that Singh was an investigating officer in an ongoing dowry case (FIR number-38, dated March 31, 2006 under Sections-406\498-A of the IPC PS\31), involving complainant, Bir Singh's daughter and her husband.

The said official had reportedly taken money from Bir Singh earlier as well, promising him to arrest his son-in-law accused and recovery of dowry articles from him.

On Tuesday, Bir Singh contacted the UT vigilance department which, on his complaint registered a case under Sections-7 & 13 (2) PC Act, PS\Vigilance.

A special team was formed to conduct a raid at Woman and Child Support Unit of Chandigarh police. Accordingly, the team conducted the raid and arrested sub-inspector, Mohinder Singh, while he was demanding and accepting an illegal gratification of Rs 1,000 from Bir Singh.

The enquiries are being made from him and search at his residence is also being conducted. He would be produced in the court on Wednesday. SSP, vigilance, Dinesh Bhatt told that departmental action would be taken against him.

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**NEWS**

**To do(wry) or not to do(wry), that is the Act**

**Nazir Ahmad Rather**

**Chandigarh, February 19:** The stringent dowry laws, meant to deter dowry-seekers, are being increasingly misused by the very people they are meant to protect. The last three years have seen a steep rise in the number of cases of harassment for dowry with the Chandigarh police.

During this period — January, 2003, to January, 2006, — cases relating to 11 dowry deaths and 250 dowry-related harassment were registered in the city. Ajaib Singh, head of the Women and Child Support Unit, says 70 per cent of the 1,000-odd cases that they receive every year pertain to dowry, but only 20 per cent of these are genuine. "It is unfortunate that more and more people are misusing the stringent provisions of the law out of sheer spite."

"People generally make use this law to facilitate a divorce. And often, it's the lawyers who advise the women to implicate their in-laws under the provisions of this Act," says Shantosh Singh, chairperson of Women Welfare Counselling Cell at Sector 17.

A police officer narrated the case of a woman who had slapped a dowry case against her husband and in-laws only because she wanted the family house to be in her name.

Often, the number of items given in dowry is inflated to claim a high settlement amount. "At times, they add car and other consumer durables to the list even if these were never given in the dowry," says a cop.

Ajaib Singh cites the case of a middle-aged woman with a 19-year-old daughter who too took recourse to the Dowry Act to seek divorce. "She insisted that her husband was demanding dowry from her parents even though she had been married to him for over 20 years."

Lawyers also admit that the stringent laws against the dowry are misused to a great extent. "There are only 10 per cent cases based on truth, and people usually come to us and ask specifically to mention the element of dowry in their divorce petitions," says Amrikh Singh Kalra, advocate at Punjab and Haryana High Court.

"Most of the cases are fabricated and the element of dowry is exaggerated in them. Basically women want to have a quick solution to their problems and the laws against dowry provide the easiest way out," says advocate Amarjit Singh Jattana.

There are many who feel that legal luminaries should find out ways to prevent the misuse of this Act. "With so many people filing cases under this Act, there may come a time when we begin to suspect even a genuine case," says Ajaib Singh.

Experts believe that there are no foolproof solutions to the problem. Sociologists look at a more holistic solution. Dr Sangeeta, a sociologist in the Women Counselling Cell at the Support Unit in Sector 17, feels people should be more cautious at the time of getting into a matrimonial alliance.

"Factors like family background, financial position, health, mindset, aspirations, previous romantic interests, et al, must be taken into account before forging an alliance. Often people marry in a hurry and repent at leisure."

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May 23, 2003

Traumatized by wife's threat of lodging a false police complaint for dowry harassment, 27-year-old school teacher committed suicide by strangulating himself on May 19. His parents and sister also attempted to kill themselves by consuming a pesticide on the same day.

The police say Janmojay Mhatre, resident of Uran, married Rajshri Patil a year back. There had been frequent quarrels between the two. Rajshri left the Mhatre household and began staying with her parents.

Janmojay had been trying to reconcile with her several times. However, Rajshri threatened to lodge a complaint against him and her in-laws of dowry harassment and since then the Mhatre household had been under stress.

On May 20, while Janmojay committed suicide by strangulating himself in his house, his shocked parents and 22-year-old sister Kalpana attempted to end their lives too by consuming Baygon Spray.

Before attempting mass suicide, the Mhatre family had scribbled on the walls of their house that Rajshri and her threats should be held responsible for their death. A letter with similar text was also found in Janmojay's pocket.

While Janmojay's parents are battling for life at Vashi's NMMC FRU Hospital, his sister Kalpana has been shifted to Indira Gandhi Memorial Rural Hospital. The Uran police are investigating the case.

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## Women trapped in divorce as parents fall for alimon(e)y

AJANTA CHAKRABORTY

TIMES NEWS NETWORK [ THURSDAY, JULY 15, 2004 12:14:43 AM ]

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July 10, 2003: Susmita Bose weds software engineer Subimal Sen.

January 2, 2004: Susmita and her parents are at the marriage counsellors' seeking a divorce.

February 3, 2004: Subimal, who was away in the US, flies down to sort things out. But the Boses are adamant. Sen is asked to make a choice: A complaint under Section 498 A of IPC (cruelty towards bride), or a hefty one-time alimony. Sen opts for the latter option.

March 21, 2004: Divorce was agreed upon, and Susmita got richer by Rs 10 lakhs that she was granted as alimony.

A pretty long tale has been cut short here to take a look at one of the latest social trend. "When it comes to choosing between their daughters' happiness and money, some parents, I'm afraid, are increasingly lured by monetary gains. They force their daughters to seek a divorce instead of sorting out trivial marital issues," said Justice Dilip Basu, chairman, Legal Aid Service (LAS), West Bengal. "We've seen at least 10 such cases over the last one year. The first word uttered by the parents is divorce," added Justice Basu.

Sociologist Ruby Sain echoed, "I've seen this happening to a colleague. She threatened to file a case under Section 498A. The groom's family got scared and settled for divorce after paying up Rs 4 lakhs as alimony."

Additional commissioner of police (I), Partha Bhattacharjee, said, "During my stint with the CID, I came across several cases where Section 498A was misused. The law is absolutely needed because a large number of women genuinely need it. But the flip side of things also must be taken into account."

According to Justice Basu, LAS has managed to stop some of these divorces by talking to the daughters. "But more and more parents are coming to us as we also help people get divorce by mutual consent. This takes only six months, whereas a normal annulment case may take five years," said Justice Basu.

Sanlap, an NGO, is currently doing a research on the misuse of Section 498A. Citing another such case in Sonarpur, Rama Sarkar, a member of Gana Unnayan Parshad, said, "The groom was ill-tempered. The couple

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often had fights. Three months after the marriage, the girl's family came here to file a divorce suit without giving the marriage a second chance. I think this is a dangerous trend."

Lawyer Bishnu Charan Ghosh, who's handled about 100 such cases, agreed. "Parents are suddenly all too eager to get their daughters divorced. Hefty alimony may be a good reason," said Ghosh.

[ajanta.chakraborty@timesgroup.com](mailto:ajanta.chakraborty@timesgroup.com)

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# A strange story of relationships on V-Day

Arunoday Mukharji  
CNN-IBN

Posted Tuesday, February 14, 2006 at 23:23  
Email Print

**New Delhi:** It was not the usual Valentine's Day love story. A 27-year-old took Rs 5000 from her friend Poonam, who was having marital problems.

The cash was to get Ramesh, Poonam's husband out of the way and the plan was simple.

The accused would go to the police and claim she had been raped by Ramesh. Even though no rape actually took place, doctors initially believed she had been sexually assaulted.

DCP, North District, Sunil Garg says, "The investigative officer reached the spot and took the alleged victim to the hospital, and the doctors confirmed that she had been sexually assaulted."

But there was a twist in the tale. On extensive grilling the accused admitted she had had sexual intercourse with her boyfriend Navin just before registering the fake complaint of rape.

Both Navin and the accused are now in police custody and the search is on to arrest Poonam.

A very creative and scheming plan just to make a quick buck. Using rape as a weapon to get someone in trouble is somewhat common, but in this case, the accused really tested the limits.

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**FAKE RAPE:** A woman decided to help her friend get rid of her husband by saying the husband had raped her.

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## Anjali Gupta loses sexual harassment case

PTI

Friday, 09 December , 2005, 18:12

**Bangalore:** A day after a military court ordered Indian Air Force Flying Officer Anjali Gupta's dismissal from service, a Court of Inquiry into her charges of sexual harassment against three senior officers has unanimously concluded she has 'failed to prove her complaint', IAF authorities announced on Friday.

"The three-member Court of Inquiry, headed by Air Marshal Bandopadhyaya, in its findings, has concluded it is the unanimous opinion that Anjali Gupta failed to prove her complaint of sexual harassment," IAF's Senior Personnel Staff Officer Ground Captain Ajay Masson and its legal officer, Wing Commander PC Prakash told a press conference.

"No action needs to be taken against Squadron Leader RS Choudhary, Wing Commander VC Cyriac and Commodore A Chopra, against whom Anjali Gupta has made charges of sexual harassment," the inquiry report concluded, they said.

The IAF officials, however, refused to comment on the status of the complaint lodged by the cashiered officer at the Vimanapura police station in the city, saying, "It is for the police to give an update."

Masson sought to clarify it was incorrect to say that Anjali Gupta was the first woman IAF officer to face court martial proceedings, as records point that some women officers have faced similar proceedings but refused to give details.

Despite giving ample opportunity by the Court of Inquiry, Gupta failed to make out a case, Masson said.

On Thursday, the General Court Martial sentenced Gupta to be cashiered on five charges, which included indiscipline and insubordination.

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support had helped them a lot in trapping corrupt officials. He said a number of district level seminars and meetings had been organised to create awareness and to motivate people to curb corruption.



COMMUNITY

## Dowry cases to come under community policing plan

Jangveer Singh  
Tribune News Service

Patiala, April 2

In a major policy shift, Senior Superintendents of Police (SSPs) in all five districts and three police districts in Patiala Zone have been asked to exercise restraint while proceeding against members of families charged under various dowry crimes.

The district police chiefs have been directed by Patiala Zonal Inspector-General of Police Rajinder Singh to arrest the accused in such cases only after a comprehensive inquiry.

Sources said these directions had been passed after a survey by the police revealed that a large number of false cases were being filed by women against their in-laws.

Besides asking the district police chiefs of Patiala, Sangrur, Barnala, Fatehgarh Sahib, Ludhiana, Ropar, Jagraon and Khanna, which fall under the Patiala Zone, to exercise restraint, all have also been asked to take dowry cases under the ambit of the community policing programme.

This system has already started yielding results with 4,698 disputes being referred to various districts in the zone last year. As many as 3,673 cases were solved through reconciliation. The community cell solved another 369 cases through mutual divorce.

Zonal IG Rajinder Singh, when contacted, said it had been decided to change the police strategy with regard to dowry cases after reports that in some cases, members of the accused family had committed suicide because of the humiliation suffered by them. He said the force had been given specific directions on how they should react after a dowry case was registered.

"The SSPs have been asked not to raid the house of the accused after registration of a dowry case. Instead, the accused should be called for a meeting". He said it was also seen that sieze of dowry items did not help and that the items remained in police stations for years.

He said the police officers had been asked not to sieze such items. In order to ensure transparent functioning of the investigation officer in the case, the directions now held him responsible in case he made arrests not needed in the case.

The Investigating Officer would also be responsible for removing names of accused or relevant Sections from the FIR, if not proved, to ensure speedy and quick justice to the accused.



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## TIME OUT

## Ends of justice

*Sometimes the process never ends*

BHAI MAHAVIR

TO EDITOR EMAIL PRINT

Posted online: Saturday, February 18, 2006 at 0000 hours IST

The news headline said it all: 'Bride found hanging from a fan'. The bride's brother lodged a complaint in the police station, alleging extortion on the part of the groom's family. The deceased girl's husband applied for a CID investigation. That was easily granted.



Investigations found that there was no evidence in support of the allegation. Instead it was unearthed that the girl was having an affair with a local youth which had led to the subversion of three earlier marriage proposals attempted by the parents. The conclusion was clear: family pressure had forced the girl into wedlock and despair pushed her to take the fatal step.

And on this hangs a long tale of Advertisement

our criminal justice system's convoluted functioning. The CID moved for a closure of the case under IPC 302 and 498A. There were as many as 49 hearings over 45 months. One witness, the deceased girl's 'chachi', failed to respond to five notices over as many months. She turned up only when warrants were issued. A date was fixed for arguments, but on that date the CID took permission for producing another witness. His statement could not be recorded, however, because of the transfer of the presiding judicial magistrate.

When the new incumbent took charge, he saw the bulky file and ordered that the decision will be announced some weeks later. But on the appointed date, surprisingly enough, he asked for a gazetted CID officer to investigate the whole case afresh and report back to him in three months. An officer of DSP rank performed the job, and gave a final report. The court accepted it and wished to study it. After three monthly adjournments, the judicial magistrate decided to send the case to the Lok Adalat, although there was precious little left in the case. There the plaintiff pleaded for money for his younger daughter's marriage because the accused had "plenty of it"! For no apparent reason, except to end the case, the judicial magistrate urged the husband to shell out a lakh. It was the fifth magistrate (after four transfers) who announced the decision verbally. Curiously enough he refused to give a certified copy of his order to the accused, possibly because he did not want them to appeal against it!

Justice as an objective is fine to dream about, but difficult to define and even more difficult to ensure!

TO EDITOR EMAIL PRINT

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Tuesday, December 21, 2004

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## Etah dowry death 'victim' comes alive

*Now, we have to arrange for the security of the woman. Her husband might bump her off: Etah SP Anand Swaroop*

**AMAN SHARMA**

Posted online: Tuesday, December 21, 2004 at 0137 hours IST

FEEDBACK - EMAIL PRINT

**ETAH (UP), DECEMBER 20:** It's a story right out of the potboiler Andhaa Kanoon. A married woman disappears with her paramour and plots a conspiracy with her father to get her husband imprisoned in a case of dowry death. Five years later, Sushila resurfaces and her husband, Brajesh Kumar, is now threatening to kill her.

The UP police had put Kumar, a factory owner in Noida, and his mother behind bars for 14 months and submitted a chargesheet in court within 22 days of the FIR being filed without even tracing the body. The twist in the tale was that the case rested on the testimony of two witnesses — close relatives of the 'dead' woman. Kumar paid Rs 1 lakh to the woman's father to get the witnesses to turn hostile and the court acquitted him and his mother in the 'murder' for lack of evidence.

Police say that Sushila claims to have run off with a truck driver and bore him two children. A case of providing wrong information has been registered and Gendalal has been arrested.

"We have now got to arrange for the security of the woman. Her husband might bump her off," said Senior Superintendent of Police (Etah) Anand Swaroop. It been a major embarrassment for the police, he concedes. "There was a fundamental error on the part of the police in the investigation. We should have been more careful with the witnesses as well before arresting innocent persons."

Brajesh Kumar, who remarried last year, is seething with rage ever since he spotted Sushila near his village after five years of her 'death'.

"I can very well kill Sushila now for she is already dead in police records. She made me and my family suffer so much. We ended up being humiliated as murderers. She and her father should spend their rest of lives in jail for this," he said.

Kumar and Sushila were married for only three years when the 20-year-old woman disappeared from Kanchangari village in Etah while he was away. On November 23, Sushila's father Gendalal told the Etah police that his daughter has been murdered and her body disposed of in the river.

The same day, an FIR was lodged under Sections 498A (dowry harassment), 304A (dowry death) and 201 (destruction of evidence). The FIR claimed Sushila was being harassed for a gold necklace and a cow as dowry.

Two men, Ram Niwas and Mahavir came forward to say that they saw the body being dumped into in the river. The police arrested Brajesh and his 65-year-old mother Brahma Devi and on December 15, a chargesheet was also submitted in court. The bail applications of both mother and son were dismissed in district and sessions court; finally Brahma Devi got bail from the High Court after spending four months in jail.



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Later, both witnesses and Gendalal turned hostile in court, saying they had not filed an FIR and their signatures on the confessional statements before police were forged. On December 18, 2000, District Magistrate (Etah) Jagendra Singh acquitted Brajesh and his mother.

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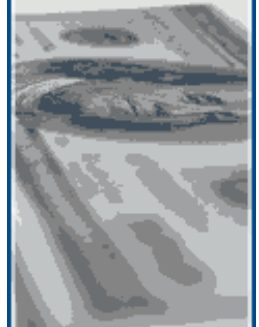
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Wednesday, February 15, 2006

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**NEWS**

**Fake rape charges: Cops arrest woman, associate**

**Express News Service**

**New Delhi, February 14:** a woman and her alleged lover have been arrested for trying to implicating two men in a false rape case.

The woman is married and was having an affair with one Naveen Vishwakarma, a resident of Mandoli extension, the police said. Officers added she was offered by Rs 5,000 by a woman named Poonam to falsely implicate her husband Ramesh and his friend Vijay in a rape case. According to the police, as Naveen was heavily in debt, the woman agreed.

On wednesday morning, around 8:57 am, Naveen made a call to the police control room from a Gopalpur STD booth in Timarpur saying a woman had been raped by two people, the police said.

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When the investigating officer sub-inspector Dharam Prakash reached the spot, he found the victim had been taken to Aruna Asaf Ali hospital. When he reached the hospital the "victim" told him that when she hired an autorickshaw from Mandoli for Ashok Vihar there was someone already sitting on the passenger seat. When the autorickshaw reached Gopalpur, the two men dragged her to an isolated spot and raped her, she said.

"There were several inconsistencies in her statement and we questioned her again. On repeated enquiry she broke down and confessed she had concocted the story," said a senior police officer.

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**Majority of dowry cases are false: SP**

[ Tuesday, August 19, 2003 01:44:06 am TIMES NEWS NETWORK ]

Hajipur: "About 80 per cent of total cases of alleged dowry deaths in Vaishali district are lodged by so-called victims' relatives for blackmailing the in-laws," says the Vaishali SP Shobha Ohatker.

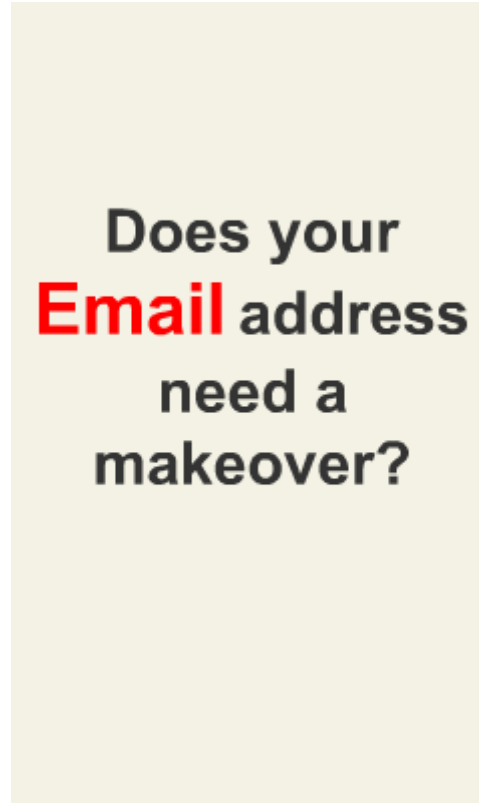
Talking to TNN here recently, the SP said that there is a trend of levelling allegations of demand of money as dowry in most of the cases. Married women often do this under the pressure of their "greedy" parents, she added.

"This is all because of a lack of social protest against the lodging of false cases. The district police have now initiated action against people whose cases for dowry murder or harassment were found "false" during the investigation," said Ohatker adding that, at least four women, declared "killed" for dowry by their in-laws, were recovered "alive" by her from different parts of district during her stint here as SP.

According to official figures, as many as 60 cases of dowry death were registered in the district in 2002 and out of them, more than 20 cases were found totally false by police. Ohatker said that six dowry death cases out of 25 lodged up to July this year were found false after probe.

About 75 cases for harassments for dowry were registered in 2002 in the district and more than one third of them were found false, the SP added.

Besides, a new trend for lodgings the cases of kidnapping through the court complaints has also been witnessed. "Whenever young girls elope with their 'lovers' for marriage in Vaishali district, their parents, in a bid to save their social prestige, lodge a case of kidnapping," added Ohatker.



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In 2002, 28 cases of girls' kidnapping were lodged in the district. Of them, police investigation found 10 cases as completely false. "The rest 18 cases were declared "true", but not because they were cases of kidnapping in true sense but because the girls in question, though had eloped with their lovers, were found minor," she said.

As many as 12 cases of girls' kidnapping had been lodged in the district till July this year, and six of them have been found false, the SP said. She added that rest of the cases were of elopement with consent but the girls in questioned were found minor.

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Tuesday , April 12, 2005

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**NEWS**

**Man freed after daughter files false rape case**

**Express News Service**

**New Delhi, April 11:** A CITY court has acquitted a man accused of raping his daughter after the complainant withdrew the charges, saying that she had filed a false case because her father beat her up for not doing well in her studies.

The 17-year-old had filed an FIR at the Vasant Vihar police station on January 7, alleging that her father, Raqeeb, had repeatedly raped her at their house between April 2001 and February 2003, after she had been brought from their house in Bihar.

Police had then arrested Raqeeb. Charges had been framed on March 29. All the witnesses in the case were formal witnessess of police officials and doctors and there was no other evidence to support the prosecution.

Acquitting Raqeeb of rape charges, Additional Sessions Judge D.S. Pawriya explained the quick decision, citing a Supreme Court observation on the burden of pending cases in lower court.

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## 'Mom forced me to frame papa on rape charge'

[ Friday, November 25, 2005 08:47:06 am TIMES NEWS NETWORK ]

### Citibank NRI Offer

NEW DELHI: Fact can, indeed, turn out to be stranger than fiction. Check out this real-life story.

A man was sentenced to five years' rigorous imprisonment by a lower court for raping his daughter. The high court found hole prosecution story and acquitted him.

The case moved to the Supreme Court and the apex court said such a crime couldn't go unpunished, awarding the accused a

And now the daughter, on whose complaint the father is in prison, has confessed in a sworn affidavit that her dad was innocen

She said she had framed him at the instance of her mother whose relationship with her father was strained. This bizarre case—say they've not heard of a more weird twist to a case—has raised several questions.

What happens to the punishment given by the SC now that its very basis has been dissolved? Will the daughter and the moth punished for misleading the court and tormenting the man?

**How common is abuse of the law in shocking cases like rape and dowry?** How rigorous is police investigation into such compl that of Asha Ram, about whose alleged crime an anguished Supreme Court had expressed outrage, saying he had destroyed sacred relations".

Only last week it had awarded him a life term, setting aside a Himachal Pradesh high court judgment which had disbelieved th story and had acquitted him.

Wife may get away lightly

In the West, perjury, that is, lying on oath before a court, is considered a serious crime. Millionaire author Jeffrey Archer was p term of one year and a fine of 1,75,000 pounds in the UK.

But it is doubtful if Asha Ram's wife, accused by her own daughter in an affidavit of forcing her to level rape charges against h as stiff a penalty as Archer, because in India the punishment is not severe.

Under Indian laws, one who abets commitment of perjury (in this case Asha Ram's wife) could face punishment as if she had the offence (Section 108 of the Indian Penal Code).

The Criminal Procedure Code (Section 344) provides that anybody accused of lying on oath or giving false evidence (in this c daughter) could face a summary court trial and, if convicted, could face a jail term of up to three months and a fine of Rs 500. minor at the time of trial could escape punishment.

### 'Cops too framed my father'

NEW DELHI: The daughter of a man, sent to jail for life for raping her, has now denied that he committed the act. The twist to about when a two-page affidavit by the 'victim', was annexed to the father's fresh petition before the apex court seeking a revi holding him guilty of the offence. He had all along claimed that he had been framed at the behest of his wife.

Narrating the facts before convicting Asha Ram, the apex court in its judgment had noted that on the intervening night of Aug

he had come home around midnight and asked one of his daughters, who was staying with him, to bring him dinner to his room. When she entered the room, the prosecution alleged, he had bolted the door and raped her after gagging her.

The daughter, now 31 (she was 14 at the time of the alleged rape), happily married and living with her husband and two children in the Nawanshah district of Punjab, has taken a considerable risk in making a sworn affidavit, for if it is proved that the affidavit is false, she will be in jail.

She said in her affidavit, "As there was a matrimonial dispute between my mother and father, my mother wanted to take revenge and compelled me to lodge a false case against my father...I was also compelled by my mother, under whose custody I was living, to depose in the court against my father that he committed rape. Accordingly, I deposed in the trial court against him."

She repeated in the statement that her father was innocent and said, "The police, in connivance with my mother, fabricated false evidence, such as salwar and underwear, which did not belong to me as my father never committed rape upon me."

If her statement is true, it would hit at the root of the prosecution case and finally the judgment of the SC. Added to this is her statement that on the day of the incident, she had never even been into her father's room. The apex court was livid with the acquittal by the HC despite what it thought was clear evidence against the accused.

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**Living Positively with HIV**

# AIDS AWARENESS GROUP

## Is Section 376 IPC Being Abused ? A REPORT BY AAG

### **Reasons Responsible for Mis-Use of Law**

1. The girl had consensual sex, but subsequently, claimed that she was raped, under parental pressure.
2. When she was caught red handed in a compromising position
3. When the girl got pregnant, but the boy refused to marry her.
4. When the girl eloped and married the boy of her choice against her parents' wishes. The parents coerced her into claiming she was raped, and filing a complaint in the police station. The parents did not approve of the boy because of differences in caste, creed, religion or status. They used the loopholes in the law to take revenge.

**1. She had consensual sex, but subsequently, under pressure, claimed that she was raped.**

#### **Jindu Vs State of Punjab (1979) XXXI Punjab L.R.194, 195**

The prosecutrix was taken to a room upstairs in the appellant's house. There, they had sexual intercourse. To save her reputation, she lodged a false case of rape, against the appellant. But the appellant was acquitted on the ground of voluntarily consent.

- It was found that the door was not bolted from inside.

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- The prosecutrix did not give any bites to the appellant and she did not push him aside, preventing him from committing sexual intercourse. The sexual intercourse took place with the consent of the prosecutrix.

### **Bethala Samaya Vs State of A.P.1996 (3) Crimes 221 (HC).**

The appellant accused, accosted the victim (a married woman), in a garden at about 2.00 p. m. on 23 Aug 1989. He dragged her to a place under a mango tree and raped her in the presence of the victim's cousin sister, a child aged about 8 years. The accused was acquitted because the court held that this was a case of voluntary consent:

(a) The circumstances that lent support to the suggestion by the defence that either the prosecutrix, knew the appellant from before and had consented to the act, or that the act had not taken place;

(b) If the accused were a stranger to the victim, it would not be possible for her to take her father in law to meet him and confront him with the offence.

It was observed in the judgment that "**Evidence of rape victims should normally be believed, but if there is an inherent contradiction in the evidence and credibility of the identification of accused was in question, conviction could not be sustained**".

### **Surinder Kumar Vs State 1996 (3) Crimes 367 (Delhi HC)**

Pushpa disclosed in her statement that she had visited the market, along with Surinder Kumar. The appellant, (Surinder Kumar) had purchased some gifts for her. She had accepted the gifts. It was therefore difficult to believe that Pushpa was being detained against her wishes at Ghaziabad. Rather, her statement, read as a whole, leaves no doubt that force or compulsion was not applied. Pushpa was not a minor and thus her consenting behaviour assumed importance. The accused was acquitted.

### **Madan Lal Vs The State of Punjab 1997 (3) Crimes 210**

On 15 January 1995 Madan Lal of Railway Department told the prosecutrix that he was going, to Allahabad for training. The prosecutrix expressed her desire to accompany him. On 8 Jan 1995, at about 6.30 p.m., the prosecutrix left her house giving the excuse that she was going out to ease herself. She secretly took out her suitcase. When she did not return, her mother, Surinder Kaur, lodged a report with the police on 14 Jan 1995 on the basis of which a formal F. I.R. was lodged u/s 363/366 IPC. During the process of trial, Section 376 IPC also added. The accused was acquitted u/s 376 as the evidence of prosecutrix revealed that she had left her house of her own without any invitation from the appellant. The Hon"ble judge relied on the precedence set in the case of **S. Vardarajan**, "where the minor left her father's protection voluntarily, honouring, and having the capacity to know the full impact of what she was doing. She joined Madan Lal, the accused. The accused cannot be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian".

The fact of the prosecutrix accompanying the appellant and living with him in one room was enough to infer that she was a consenting party to the sexual intercourse.

### **Chinta alias Chint Ram Vs State of H.P. 1997 (4) Crimes 343**

The prosecutrix went to see the Dushera festival along with her friend. After attending the festival, while returning, she entered the nearby forest to ease herself. According to her statement, at that time, the appellant forcibly dragged her to a nearby cave. He then had sexual intercourse with her twice in the night. He further detained her for almost a month, taking her to different places, sometime at his aunt's place. The accused was acquitted on the following grounds:

The circumstances show that she was a consenting party. This fact, coupled with other circumstances which were on the record, it was clear that the prosecutrix was a consenting party. She had not only accompanied him from place to place but she had had sexual intercourse with mutual consent.



## 2. To save her reputation when caught red handed,

The Rape law is most commonly misused when the boy and the girl, are found in a compromising position by a third party (which may be her mother or relative, or anyone known to the girl). The girls often allege that they were raped in order to protect their reputation. The following cases would illustrate this observation. The following cases are taken from the recorded judgments from different High Courts and also the Supreme Court.

### **Arun kumar Vs State of U.P. 1992 UP G R 190 at 191**

It was alleged by Meena Kumari that she had been raped in the waiting rooms of Lucknow and Delhi. Meena Kumari, on the prosecution's own showing, had returned back within 6-days. The Medical Officer had not found any injury on the private or any part of Meena Kumari's body. In the medical report she was shown to have been used to sexual intercourse. If the accused had indulged in sexual intercourse with Meena Kumari against her wishes, during the six days she was in the waiting rooms, the Medical Officer would have found evidence of it on her person. The defence counsel's argument that it was not possible for the accused to have sexual intercourse in the public waiting rooms of Lucknow and Delhi carried weight. The rape alleged by the prosecution between 15th July 1984 and 21st July 1984, could not be established, if the two at all indulged in sex, it must have been continuing with the consent of Meena Kumari. She was more than 17 years of age at the time of the alleged rape; it could not be held that her consent was immaterial. The accused was acquitted of the charge of rape under Section 376 of the Indian Penal Code.

### **Biram Soren Vs State of West Bengal. 1992 Calcutta CrI. 378 at pp 384, 385 (Cal)**

There was an interesting football match. Most of the villager's were away to see the football match. Some of the girl's relatives residing in her house also went to see the match. Her parents had gone to the market. She was alone with the boy she was in love with. It gave them an opportunity to have sex, which they both wanted. So they had sex. She was afraid of her mother discovering that she had had sexual intercourse, so she alleged that she had been raped. A complaint was filed in the police station.

The fresh tear of hymen and the extensive laceration of the vagina were due to the fact that this was her first sexual intercourse. An absence of any other injury on any part of the prosecutrix gave a lie to her statement that there was a scuffle as a result of which the blouse, she was wearing, was torn. Non-disclosure of the incident of sexual intercourses and the name of the appellant at the earliest opportunity, even though she was found conscious and talking to her parents on the way to the hospital and the absence of any injury, such as nail marks on her breasts, or scratches and abrasions on her thighs, buttocks, back etc suggest consent.

The High Court was aware of the note of caution sounded by the apex court in the case of "**State of Maharashtra Vs. Chandra Prakash**". On the same basis, the court evaluated her evidence, the Calcutta High Court shuddered at the injuries sustained by the prosecutrix in her private parts and yet was constrained to hold that it was not a case of rape and acquitted the accused.

### **Sudharmay Nath alias Bachhu Vs State of W.B 1999 Cr.L.J. 4482 (Cal.HC)**

The appellant was a private tutor of the prosecutrix, and secretly became physically close to her on assuring her that he would marry her. She indulged in a sexual relationship with the appellant. The girl became pregnant. When her pregnancy was running into the third month, the girl's pregnancy could no longer be kept a secret. On enquiry, she revealed the aforesaid facts. On medical examination it was discovered that she was 17 to 19 years old. **It was held that it was not a case of rape, as there was consent.** The girl had full knowledge of the nature and the implications of such an act. She was fully aware that the person (accused) concerned was not yet her husband, even, if he had proposed to marry her.

## 3. When the girl gets pregnant but the boy refuses to marry her.

If a girl gets pregnant as a result of a sexual relationship, to save her reputation either she herself, or her family allege that she was a victim of rape.

There are certain cases, where there is a sexual relationship between the accused and the prosecutrix. If the prosecutrix conceives and the accused refuses to marry her, the family

members, as well as, the prosecutrix, rope him u/s 376, as this section gives ultimate power to the women over the man. This is quite evident in following cases.

### **M.C. Prasanan App. Vs State Respondent 1999 Cr.L.J. 998 (Cal.HC)**

The prosecutrix was a student of the appellant. Consequently they became close to each other. They used to have sexual intercourse. The prosecutrix believing that he would marry her, continued her sexual relationship with the accused. Later the accused refused to marry the prosecutrix. As a result the family and the prosecutrix filed a case u/s 376. The case was filed 3 months after the alleged incident, when the pregnancy of the prosecutrix was visible. The girl was a minor and her consent cannot normally be accepted. Since neither definite corroboration, nor evidence, was available about the correct age of the girl, an acquittal was granted because there was consent.

### **Jayanti Rani Panda Vs State 1984 (Cr.L.J. 1535 Calcutta)**

"Where a full-grown girl consents to the act of sexual intercourse on the promise of marriage and continues to indulge in such an activity until she becomes pregnant, it is an act of promiscuity on her part and not an act induced by misconception of fact.

"This is a gross misuse of the Section 376 as it was not approved by the parents of the girl. In the particular situation of India the parents never digest that their daughter is having a sexual relationship or love affair with a boy of the girls choice so when they come to know about the alleged alliance between the two, they force the girl to fabricate a case of Section 376. As **according to this section the statement of the prosecutrix under Sections 161 and 164 of evidence act is enough for conviction of the accused, whether he is innocent or not.**"

A woman may have consented to have sex with some ulterior motives in her mind. It is quite often to blackmail, and to extort money. One cannot deny this fact that modernized, well educated women or women with loose morals are perfectly capable of crying rape falsely. Some times these women use the rape related laws to take revenge. This is evident in cases of women who have been seduced and later abandoned.

### **Mujia alias Mauji lal & others vs. State of M.P. 1998 2 Crimes 418**

The man had won the Panchayat election. His opponent made his wife file a false case of rape in retaliation. The Honourable High Court acquitted the accused holding that "rape may have been alleged" falsely.

### **Tapan Ghosh Vs State 1987 3 Crimes 108**

The accused started a signature campaign asking the prosecutrix and her family to vacate the premises in a railway quarter, where they were staying unauthorisedly. The prosecutrix filed a rape case against the accused and he was convicted. In the appeal in the High Court the defence lawyer contended that this was the reason for the charge of rape against the accused. A division bench of the Calcutta High Court, while acquitting the accused on his appeal against the conviction, observed, "**no finding can be arrived at on the basis of an isolated fact or proposition regarding a particular course of conduct or behaviour pattern.**"

### **State Vs H s/o S (Handled by AAG) F.I.R. No.414/2000 u/s 376, 377, 382, 452, 506 IPC**

#### **4. When the girl elopes and marries the boy of her choice against her parents' wishes**

The parents coerce her into claiming she was raped, and filing a complaint in the police station. The parents do not approve of the boy because of differences in caste, creed and religion or status. They use the loopholes in the law to take revenge.

### **Oroos Fatima alias Nisha and Another Vs Senior Superintendent Of Police 1992 (3) Crimes 97 (SC).**

In this case a Muslim girl married to a Jain boy. The girl's family objected to this and they alleged rape. The boy was acquitted on the grounds that the girl was a consenting party.

**State Vs A R s/o I (Handled by AAG) F.I.R. No.323/99 u/s 366, 376, 34 IPC P.S. Pahar Ganj**

Please see page 23, first para for details.

**State Vs. V S/O A. Singh.(Handled by AAG) F.I.R NO. 8/98 u/s 363,366, 376 IPC P.S. Nangloi**

A Muslim girl aged about 20 years and a Hindu boy decided to get married in spite of the objection from the girl's father. The father, it appears, used to maltreat the girl. A year after registration of FIR by the father, the girl went back to meet him. He promptly complained to the police at the police station at Nangloi. He coerced his daughter into making a false complaint of rape On the basis of investigations and the same statement made by her under Section 164 before a Magistrate, the prosecution laid charges of Kidnapping (363), Kidnapping with intention to marry (366) and rape (376). The ossification test of the prosecutrix showed her age to be 20 years. After the charge sheet was filed for prosecution and the case was committed to the court of sessions, charges under relevant Sections of the Penal Code were framed against the accused. The marriage between the couple was performed under civil law and the prosecutrix was in communication with her accused husband during his incarceration in jail. After almost one year, the trial court acquitted the accused holding that "**the prosecution has miserably failed to bring home guilt of the accused**". The accused had to remain in jail without bail during this time. His wife had to fend for herself alone till her Husband was let off from the Case. The couple is facing difficult times to adjust in the society because of the stigma attached due to the husband's yearlong stay in jail.

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**Laws against domestic violence**

Underused or Abused?

Madhu Kishwar



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The birth of MANUSHI in 1978 coincided with the unfortunate rise in reported cases of domestic violence and murder. Some of these appeared to be linked to dowry demands. When we organised one of our first demonstrations, in early 1979, to protest against the police gang up with the murderer's family by registering the death of the newly-married Tarvinder Kaur as a case of suicide, nearly 1500 people of the neighbourhood joined us in calling for a social boycott of the family. This protest received widespread publicity in the media. As a result, MANUSHI and other organisations who joined in that protest were flooded with cases of married women, seeking redress against abusive and violent husbands, as also parents, whose daughters had been murdered by their in-laws, seeking our help in getting justice from the police and courts. However, the experience of approaching the police and law courts turned out to be a very disappointing one for most women's organisations.

To begin with, the police would put all manners of hurdles in even registering cases of domestic violence, even when the victims feared for their very lives. In cases where wives had been murdered, the police were found to play an active role in destroying evidence and passing off these cases as suicides or accidental deaths – simply because they had been suitably bribed. The story in the law courts was not very different. Husbands and in-laws got away with torture and even murder, because the women and their families found it difficult to “prove beyond doubt” that they were victims of violence and extortion.

From that experience many concluded that what we needed were stringent laws. By comparison, far less importance was given to figuring out ways of making our law enforcement machinery behave lawfully. But most important of all, domestic violence and abuse came to be seen as a one-way affair, largely because most of those whose cases reached women's organisations, police stations and law courts, happened to be wives who had complained against their husbands. Our laws do not recognise the possibility of daughters-in-law maltreating old in-laws or other vulnerable members of their husband's family.

**Demand for Stringent Laws**

As a result of determined campaigning and lobbying by women's organisations, significant amendments were made to the Indian Penal Code, the Indian Evidence Act and the Dowry Prohibition Act, with the intention of protecting wives from marital violence, abuse and extortionist dowry demands. The most notable ones are sections 304B, 406 and 498A of the Indian Penal Code, and Section 113 A of the Indian Evidence Act.

However, the actual implementation of these laws has left a bitter trail of disappointment, anger and resentment in its wake, among the affected families.

On the one hand, many victims of domestic violence, as well as many women's organisations feel that despite the existence of supposedly stringent laws, that enshrine the dual objective of helping the woman gain control over her *stridhan* and punishing abusive husbands and in-laws, in reality most victims fail to receive necessary relief. This is due to the unsympathetic attitude of the police, magnified by their propensity to protect the wrong doers, once they are adequately bribed.

A survey of cases, in which wives had been murdered or had committed suicide, carried out by *Vimochana*, a Bangalore-based women's organisation, also indicates that the police and other law enforcing agencies are willfully avoiding use of the stringent laws against domestic violence. In most cases, even where the circumstantial evidence clearly indicates that the wife was killed, the police seemed to go out of their way to convert her death into a case of suicide. In many instances, families of victims found it difficult to register an accurate F.I.R., or have the case properly investigated. There are widespread allegations that the police usually collaborate with the murderers in producing false post-mortem and forensic reports, even destroying circumstantial evidence so that the accused can easily secure acquittal (see report by **Vimochana** in Manushi 117).



Similarly, a study, based on police records, to evaluate the functioning of section 498A of the Indian Penal Code, conducted by a group of women activists associated with the Tata Institute of Social Sciences in Mumbai, indicated that 40 per cent of women were dead by the time their families came to lodge complaints against their violent husbands.

Thus, numerous women continue to suffer humiliation and battering, many even to the point of death, despite the existence of stringent laws in their favour. On the other hand, there is a growing and widespread feeling that these laws are being used by most police officers and lawyers to help unscrupulous daughters-in-law hold their in-laws to ransom.

### **The Tide Turns**

In the first decade of MANUSHI's existence, most of those who came to us for legal aid were women who alleged abuse in their marital home. In the last few years, a good proportion of the cases coming to us involve complaints by in-laws and husbands about the misuse and abuse of laws, especially sections 498A and 406. Wherever I travel, in India or abroad, such cases are invariably brought to my notice, not only by aggrieved families and their friends, but more often by members of women's organisations themselves.

Things have come to this pass, not just due to police and judicial corruption but also because the laws, as they are currently framed, lend themselves to easy abuse.

During the 1980's, far reaching changes were introduced in our criminal laws to deal with domestic violence. Prior to 1983, there were no specific provisions to deal with marital abuse and violence. But husbands could be prosecuted and punished under the general provisions of the Indian Penal Code dealing with murder, abetment to suicide, causing hurt and wrongful confinement. Since marital violence mostly took place in the privacy of the home, behind closed doors, a woman could not call upon any independent witnesses to testify in her favour and prove her case "beyond reasonable doubt" as was required under criminal law. Therefore, women's organisations lobbied to have the law tilted in women's favour by bringing in amendments which shifted the burden of proof on the accused and instituted fairly stringent, pre-emptive measures and punishments against the accused.

All these amendments placed draconian powers in the hands of the police without adequate safeguards against the irresponsibility of the enforcement machinery. The truth is that there were adequate provisions in the IPC Sections 323, 324, 325 and 326 for use against anyone who assaults a woman or causes her injury. But the police would in most cases not register a complaint against a husband under these sections, even where there was clear evidence that the wife's life was in grave danger. This was partly because, as habitual users of violence, policemen, more than any other section of our population, find it easy to condone beatings and even murder of wives by husbands. Given their track record in routinely brutalising people who fall into their clutches, it is reasonable to assume that the propensity of our policemen to beat up their wives would be much higher than that of the average citizen. Add to this their entrenched habit of patronising criminals as a way of garnering extra income and it would be, indeed, naive to presume that they would turn into compassionate rescuers of women in distress, simply because more stringent laws had been put at their disposal.

No new principles of accountability were added to the Police Act. The only new innovation we witnessed was that special Crimes Against Women Cells were created in select police stations to handle women's complaints. And, in some places, Family Courts were put into operation.

However, since the new police cells for women are run by the same police personnel, barring a few exceptional officers, the rest have had no compunction in making a mockery of the new laws by systematic under use or abuse — depending upon which offers better money-making opportunities.

### **The New Amendments**

Let us examine the new provisions to see how they facilitate this process: The Indian Penal Code was amended twice during the 1980s — first in 1983 and again in 1986 — to define special categories of crimes dealing with marital violence and abuse.

In 1983, Section 498A of the IPC defined a new cognizable offence, namely, "cruelty by husband or relatives of husband". This means that under this law the police have no option but to take action, once such a complaint is registered by the victim or any of her relatives. It prescribes imprisonment for a term which may extend to three years and also includes a fine. The definition of cruelty is not just confined to causing grave injury, bodily harm, or danger to life, limb or physical health, but also includes mental health, harassment and emotional torture through verbal abuse. This law takes particular cognisance of harassment, where it occurs with a view to coercing the wife, or any person related to her, to meet any unlawful demand regarding any property or valuable security, or occurs on account of failure by her, or any person related to her, to meet such a demand.

During the same period, two amendments to the Dowry Prohibition Act of 1961, enacted in 1984 and 1986, made dowry giving and receiving a cognizable offence. Even in this case, where a person is prosecuted for taking or abetting dowry, or for demanding dowry, the burden of proof that he had not committed an offence was placed on the accused.

However, no punitive provisions were added for those making false allegations or exaggerated claims. There is, of course, the law against perjury (lying on oath). But in India, the courts expect people to prevaricate and lawyers routinely encourage people to make false claims because such stratagems are assumed to be part of the legal game in India. Therefore, the law against perjury has hardly ever been invoked in India.

### **Partners in 'crime' let off**

A person guilty of giving or taking dowry is punishable with imprisonment for a term ranging from six months to two years, plus a fine, or the amount of such dowry. Needless to say, no case is ever registered against dowry "givers." It is only dowry "receivers" who are put in the dock. Not surprisingly, the law is invoked very selectively. The very same family which would declare at the time of marriage that they only gave "voluntary gifts" to the groom's family, does not hesitate to attribute all their "gift-giving" to extortionist demands, once the marriage turns sour and is headed for a breakdown.

Section 406 prescribes imprisonment of upto three years for criminal breach of trust. This provision of IPC is supposed to be invoked by women to file cases against their husbands and in-laws for retrieval of their dowry.

Furthermore, another Section 304B was added to the IPC to deal with yet another new category of crime called "dowry death". This section states that if the death of a woman is caused by burns or bodily injury, or occurs under abnormal circumstances, within seven years of her marriage and it is shown that just prior to her death she was subjected to cruelty by her husband or any relative of her husband, in connection with any demand for dowry, such a death would be called a "dowry death", and the husband or relative would be deemed to have caused her death.

The person held guilty of a "dowry death" shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. By inserting a new section 113B in the Indian Evidence Act, the lawmakers stipulated that in cases that get registered by the police as those of "dowry death", the court shall presume that the accused is guilty unless he can prove otherwise.

Under section 304B, in the case of a "dowry death", where allegations of demand of dowry or non-return of dowry are made, the accused are frequently denied anticipatory, or even regular bail.

The burden of proof is shifted to the accused party. The basic spirit of Indian jurisprudence is that a person is presumed innocent till proven guilty. However, in all such cases a person is assumed guilty till proven innocent.

This is understandable in cases of death because the unnatural demise of a woman through suicide or murder is in itself proof that something was seriously wrong in the marriage. But problems arise when the same presumption applies to cases of domestic discord where the underlying cause of conflict is not due to a husband's violence or abuse but due to the couple's inability to get along with each other.

### **Misuse of Section 498A**

Way back in 1988, I had pointed out, in what came to be a very controversial article, that there was already a distinct trend to include dowry demands in every complaint of domestic discord or cruelty, even when dowry was not an issue at all (see MANUSHI 48). The police as well as lawyers were found to be encouraging female complainants to use this as a necessary ploy to implicate their marital families, making them believe that their complaint would not be taken seriously otherwise. With the enactment of 498 A, this tendency has received a further fillip. Mentioning dowry demands seems to have become a common ritual in virtually all cases registered with the police or filed in court.

For years after the new law had come into existence, the police would refuse to register cases under 498A unless specific allegations of dowry harassment were made. However, determined action by some women's organisations ensured that this section came to be used in all situations of cruelty and violence — not just confined to dowry related violence. But, in places where there are no vigilant organisations taking up such cases, policemen and lawyers are often found encouraging complainants to add dowry demands as the main cause for cruelty. This has created an erroneous impression that all of the violence in Indian homes is due to a growing greed for more dowry. This makes the crime look peculiarly Indian, but the truth is that violence against wives is common to most societies, including those which have no tradition of dowry.

Often, highly exaggerated or bogus claims are made by unscrupulous families who demand the return of more than was

given as *stridhan*, using the draconian sections 498A and section 406 of the IPC as a bargaining tool. Sometimes the goal is reasonable — the woman wants the return of all items that legitimately belong to her, but she is encouraged to overstate her case and to demand an enhanced settlement as a pre-condition for divorce by mutual consent.

A large number of cases registered under 498A are subsequently withdrawn, though not necessarily because they were false. Bombay based lawyer, Flavia Agnes, points out that the "complexities of women's lives, particularly within a violent marriage, have to be comprehended beyond the context of popular ethics. The conviction and imprisonment of the husband may not be the best solution to the problems of a victimised wife." Her limited choices and constrained circumstances often "make it impossible for her to follow up the criminal case." As Agnes point out: "Since the section does not protect a woman's right to the matrimonial home, or offer her shelter during the proceedings, she may have no other choice but to work out a reconciliation. At this point she would be forced to withdraw the complaint as the husband would make it a precondition for any negotiations. If she has decided to opt for a divorce and the husband is willing for a settlement and a mutual consent divorce, again withdrawing the complaint would be a precondition for such settlement."

Agnes adds: "if she wants to separate or divorce on the ground of cruelty, she would have to follow two cases — one in a civil court and the other in a criminal court. Anyone who has followed up a case in court would well understand the tremendous pressure this would exert, specially when she is at a stage of rebuilding her life, finding shelter, a job and child care facility. Under the civil law she would at least be entitled for maintenance which would be her greater priority. So if she was to choose between the two proceedings, in most cases, a woman would opt for the civil case where she would be entitled to maintenance, child custody, injunction against harassment and finally a divorce which would set her free from her violent husband." Thus, many women end up dropping the criminal proceedings. In most cases, criminal proceedings are "quashed" as a result a settlement or compromise by presenting, with mutual consent, a joint petition/ in the High Court u/s 482 Cr. P.C.

### **Instrument of Blackmail?**

Sadly, there are also any number of cases coming to light where Section 498A has been used mainly as an instrument of blackmail. It lends itself to easy misuse as a tool for wreaking vengeance on entire families, because, under this section, it is available to the police to arrest anyone a married woman names as a tormentor in her complaint, as "cruelty" in marriage has been made a non-bailable offence. Thereafter, bail in such cases has been denied as a basic right.

Many allege that such a drastic paradigm shift has lent itself to gross abuse, because arresting and putting a person in jail, even before the trial has begun, amounts to pre-judging and punishing the accused without due process. Although a preliminary investigation is required after the registration of the F.I.R, in practice such complaints are registered, whether the charges are proved valid or not, and arrest warrants issued, without determining whether the concerned family is actually abusive, or they have been falsely implicated. For example, there are any number of cases where the problem is mutual maladjustment of the couple rather than abuse by the entire joint family. However, a host of relatives, including elderly parents, who are not necessarily the cause of maladjustment, have all been arrested and put in jail for varying lengths of time before the trial begins. Lawyers have cited several cases where judges have refused bail unless the accused family deposits a certain sum of money in the complainant's name as a precondition to the grant of bail.

### **Held Guilty Without Trial**

Scared by these developments, many apply for anticipatory bail at the slightest likelihood of a wife lodging a complaint with the police. I also know of several cases where the lawyer advised his client to pre-empt his wife from registering a case of cruelty against him, by filing a divorce petition before the wife could reach the police. Husbands could then reasonably argue that the charges of cruelty were a malafide retaliation against the husband's petition for divorce. Thus, instead of finding redressal for her grievances, a woman ends up fighting a defensive divorce case.

The law was recast, heavily weighted in the woman's favour, on the assumption that only genuinely aggrieved women would come forward to lodge complaints and that they would invariably tell the truth. In the process, however, the whole concept of due process of law had been overturned in these legal provisions dealing with domestic violence.

### **Police and Lawyers Mislead**

During the preliminary investigations carried out by MANUSHI, several lawyers provided us with instances of the police using the threat of arrest to extort a lot of money from the husband's family. Likewise, people allege that the police threatened to oppose or delay granting of bail unless the accused family coughed up fairly hefty amounts as bribes. Others allege that many lawyers encourage complainants to exaggerate the amounts due to them as *stridhan*, assuring them that they would get them a hefty settlement from the husband, provided they got a certain percentage as commission for their services in coercing the husband's family.

Many cases have come to our notice whereby the woman uses the strict provisions of 498A in the hope of enhancing her bargaining position vis a vis her husband and in-laws. Her lawyers often encourage her in the misguided belief that her husband would be so intimidated that he will be ready to concede all her demands. However, once a family has been sent to jail even for a day, they are so paranoid that they refuse to consider a reconciliation under any circumstances, pushing instead for divorce. Thus, many a woman ends up with a divorce she didn't want and with weaker, rather than strengthened, terms of bargaining.

Several women's organisations, with long years of experience in intervening in such cases, find to their dismay that their help was being sought in patently bogus cases. Several police officers also admit that a good number of cases are of dubious standing.

The cases in which these provisions have been exploited cover a large spectrum. In an instance brought to our notice by the Delhi based organisation, *Shaktishalini*, a young woman who happened to have married into a much wealthier family than her own, used the threat of 498A to pressure her husband into giving money to her brothers for investing in their business. In yet another case, a woman wanted a divorce because she was having an affair with a doctor from whom she was also pregnant. Yet, she sought a divorce alleging cruelty at the hands of her husband and charged him with being impotent - all so that she could coerce him into giving her a sum of money. *Shaktishalini* also mentioned a case they had to deal with in which a wife refused to consummate her marriage because she was involved in an incestuous relationship with her own father. Yet this father-daughter duo filed a case under 498A and demanded ten lakhs from the groom's family as a pre-condition to uncontested divorce.

I personally know of instances where the main point of discord between the couple was that the wife wanted the husband to leave his parent's home or an old widowed mother and set up a nuclear family. Since the man resisted this move, the wife used 498A as a bargaining device, without success though. In one instance, the young wife being the only daughter of a wealthy businessman, wanted her husband to move in with her parents because his income allowed middle class comforts, not the luxuries she was used to. Since he did not succumb to the pressure of leaving his parents, she got both her father and mother in-law arrested and put in jail for several days under 498A, at a time when her husband had gone visiting his sister in the US. The man himself dared not return even to come and bail out his parents, before he got an anticipatory bail from the court. Needless to say, all these cases ended in divorce rather than in the wife getting her way.

### **Are These Stray Cases?**

The question to ask is: are these stray examples or do they represent a growing trend? Opinions differ. Some lawyers will tell you that more than 90 per cent of cases under 498A are false or are based on questionable grounds. A lawyer, who handles the cases of *Sabla Sangh*, told me that in Punjab, on any random day, 75 per cent of the cases listed for hearing in criminal courts are registered under section 498A, and of these more than 90 per cent are malafide. Sumitra Kant of *Punjab Istri Sabha* confirms that the proportion of such blackmail cases is growing fast in Punjab and cited several cases personally known to her.

Nobody has established as yet whether the abuse of these laws is as rampant as it is made out to be. Some think that the scare caused by isolated cases of misuse has caused a reaction in our society, making people exaggerate the damaging consequences of these laws. They dismiss the charges of abuse by pointing to the very low rate of convictions under 498A.

While it is true that very few people have actually been given sentences under 498A there is no doubt that a large number of families have been locked up in jail for a few days or weeks, some even for months, following the registration of a police F.I.R. That is punishment enough for most. In many instances, out-of-court settlements are made using 498A as a bargaining point by the woman's family. Many cases do not go far because the charges are so exaggerated that the cases fall through. All these and other factors may be contributing to an abysmally low conviction rate.

However, many feminists think that Section 498A has indeed served women well and proved extremely useful as a deterrent. They argue that women can not be in a position to see their complaint through to its logical end. But this is not to deny its usefulness in bringing the husband to the negotiating table. Since the offence is non-bailable, the initial imprisonment for a day or two helps to convey to the husbands the message that their wives are not going to take the violence lying down.

No doubt, some women feel compelled to use this method, to arrive at a speedy divorce and settlement of alimony because they feel that they won't get justice through the civil courts, given their tardy and unpredictable functioning.

But this in itself amounts to using the law as a weapon of intimidation rather than a tool of justice. I would condone its use thus, if it were true that lawyers used it judiciously to effect dignified settlements for women with legitimate



complaints. But in a good number of cases, least in metropolitan cities lawyers are actively distorting the spirit and purpose of the law.

The basic problem with the present laws dealing with domestic discord and marital abuse is that instead of providing effective remedies through civil laws, the whole matter has been put under the jurisdiction of criminal laws, with very draconian provisions to make their implementation stringent.

This is what scares many women from approaching the police or the courts for protection, because once they put their husbands behind bars, they know then that they are in a fight to the finish. Most women are not prepared for that. Instead, they prefer to approach organisations that can mediate on their behalf and work out a better solution for them. In some cases, where the Crimes against Women Cell personnel are sensitive and honest to their job, they do perform the role of mediators well. But in most cases, the police make such cases an occasion to make money by squeezing the husband's family, in return for the woman withdrawing her opposition to grant of bail.

### **Need For Workable Laws**

One of the tragedies of independent India is that we have not yet learnt to distinguish between reasonable and unreasonable laws, between implementable and unimplementable laws, just as we have failed to create a law-enforcement machinery capable of providing genuine recourse to all those whose rights have been violated.

By a great deal of struggle and hard work, women's organisations have won a measure of social legitimacy in persuading our society, especially lawmakers, to recognise the serious threat to women's lives due to domestic violence. However, if instances of manipulation of such laws become common, we will get less and less sympathy for the plight of women in our society, even for those women who are facing threats to their lives. We need to sift the grain from the chaff and check out whether the allegations of abuse are indeed genuine, or they are exaggerated and altogether malafide. Those of us who are concerned about expanding the horizons of women's freedom and strengthening their rights, both within the family and in the public domain, ought to be taking note of these developments as they arise.

**We invite our readers, those who may have personal knowledge of such cases as well as those who are handling cases of matrimonial disputes through women's organisations, to send us their feedback on how these laws are being put to use in their respective areas, so that we can initiate systematic investigations in order to arrive at a realistic assessment of the situation and work out timely corrective measures.**

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