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Marigolds and Domestic Abuse

My journey from an Indian wedding to the courts

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Challenging India's legal system that privileges the father for custody of a child was a painful process. However, much was gained. My case was a legal first in India for women.

In the language of semiotics, marigolds are code for *shaadi*, the Indian wedding. The marigolds, which look like sunbursts, bring warmth and light to the festive occasion of a wedding. For me, Mira Nair's film *Monsoon Wedding* provided a visual of the impact that this little flower makes in the *shaadi*. This floral import from Mexico quickened my heartbeat. My heart ached for the pulsating Bhangra beat and the arresting display of colour of an Indian wedding. So, for my *shaadi*, the wedding planner decked my parents' house in marigolds of yellow and orange; and I, wearing a red lehenga, grooved with my groom to the then-popular track of "Desi Girl".

The lesser known semiotic of the marigold is grief, which permeated the air of my wedding. I ignored it and smiled. I am, after all, a West Indian woman.

The stench of grief, however, was quite dogged in its demand to be recognised. It kept getting smellier and smellier. Yet I was resolute in my disregard. The stench and I continued this way until my son was born. On the day of my son's birth, the stench came to me with a beautifully wrapped gift. "Finally, the stench is accepting defeat," so I thought to myself. I opened the gift. Its contents instantly unfurled my sense of smell. I could no longer ignore the noxious stench.

The faces of abuse

Abuse wears many faces. Abuse does not only come in the form of a woman with a black eye, which is the image most of us visualise when we hear the word. *Any* act which violates us is abuse. Not knowing the face of abuse kept me in a marriage to an abusive man for many years.

It was not until I had a child did my husband's abusive nature become obvious to me.

The abuse came in the form of his attempt to purloin my mind. After spending my maternity leave in India, I returned to the US, where I was a tenured professor of English, to resume work. Sanjay*, my husband, and my son remained in India. Two weeks after I left, Sanjay began putting conditions upon my return to India and to meet my son.

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One of these conditions was that I receive psychiatric treatment, which he detailed in an email to me: "Psychiatric evaluation, therapy, and medications to be taken by her to deal with her mental health problems. At least 90 day intensive treatment to make our relationship possible. Medical records to be sent to me for perusal." In addition to me being mentally evaluated in the US, Sanjay also wanted me to be evaluated by an Indian psychiatrist, "to check fitness for motherhood and wifehood once she comes to stay with me." I refused these conditions and instead travelled to India and filed for ex-parte custody of my son. A trial court granted me custody.

The story should have ended here.

I failed to see at the time, though, that Sanjay was obstinate in his attempt to fictionalise me as mentally ill. After I approached the court, Sanjay convinced me to drop the legal proceedings and to seek marital counselling instead. I succumbed because I did not want to end the marriage if there was a ray of hope, no matter how faint, that the marriage could be saved.

Medical fictions

We met with a doctor in India whom Sanjay selected. During the two sessions we had we only discussed the problems in our marriage and possible solutions. We left the doctor's office with a plan of me returning to the US to finish the school semester and Sanjay

staying in India with the baby. Sanjay agreed that he would give me and my son uninterrupted time together when I returned to India at the end of the semester.

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Two months later when I returned to India, however, Sanjay would not allow me to have any contact with my son. I sought legal help again. During the ensuing court case, I learnt that the same doctor who had provided marital counselling had provided the court with a written diagnosis labelling me as bipolar. This, even though the doctor and I had no conversation about my medical history. The doctor did not conduct any psychological tests on me, nor did the doctor even ask me to take any psychological evaluations.

The doctor's report was merely a fictional narrative that Sanjay used in court to legitimise his attempt at parental alienation. Apparently, in India this practice is common. However, this time, it did not work: the court rejected it.

Unable to fictionalise me as mentally ill, Sanjay sought ways to bring about my mental collapse. During the custody trial, I had to testify. I took the stand in July 2017 and finished in November. I was kept in the witness box for a minimum of one hour Monday through Thursday for three consecutive months. I was asked if I gave my son vitamins. I was asked if I had consulted with a paediatrician before giving my son vitamins. I was asked to tell the court about the kinds of meals I cooked. I was asked if I ever attended wine tastings. I was asked if I allowed alcohol to be served at my wedding reception. The questions, prepared by Sanjay, were meant to mentally break me.

The ensuing court trial revealed much more of Sanjay's abusive nature. When I walked by him in court, he drew up his saliva as if to spit on me. This became his calling card in my presence. During a court-appointed visitation, he was brazen enough to grab hold of a door and repeatedly hurl it into my face.

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The entire trial for custody testified to Sanjay's attempt to coercively control me, which unfortunately is not yet legally recognised as a form of abuse in India. Sanjay monitored my activities and made sure that I was isolated. He filed weekly applications in court against me. The intent of most of his applications was to harass, intimidate, and control me. I had committed no crime, yet through the duration of the litigation, I lived as a shackled woman.

During most of the trial, my passport was with the courts, so I could not leave India. For over eight years I did not see my family, all of whom live in the United States. Within India too, my travel was restricted. Despite having a strong support system in Mumbai, I was forced for over six years to live in Goa, a place where I knew no one. Each time I wanted to travel outside the state, I had to approach the court to obtain permission to leave. Even further restrictions were placed on me regarding where I could live in Goa. I had to live in the jurisdiction of the trial court, which encompassed a very small area. These restrictive measures made it impossible for me to access employment.

Silent screams

My story unfortunately is not unique to the condition of Indian women. Many women in India, like me, live shackled lives. Like me, many women suffer abusive marriages. India remains one of 36 countries which does not criminalise rape when it occurs between husband and wife. It is common that despite the abuse, family members outwardly conduct their lives in a manner that meets society's standards of normal behaviour. The abused woman bears the burden of successfully peeling off the veneer of respectability that the abusive family has masterfully created. This is a hurdle many women feel incompetent to face.

|| When an abused woman speaks out, her efforts are often futile. Her family will silence her by laughing, by telling others that she is crazy, or by rewriting her truth.

Like me, many women feel intimidated to speak and fear the repercussions that come with speaking their truths. They fear that they will lose custody of their children, they fear they will have no income, they fear that a life of struggle will become their constant companion. When an abused woman speaks out, her efforts are often futile. Her family will silence her by laughing, by telling others that she is crazy, or by rewriting her truth. Like me, many fear approaching the courts for justice. Indian courts are infamously known for their slowness.

Despite the hurdles, women want to be able to lift off from their necks the foot which keep them from breathing.

A victory for female autonomy

Justice, for me, was attained through Indian courts. On 17 February 2015, the Supreme Court of India awarded me interim custody of my son Thalbir Sharma, who was then two years old. The ruling, in short, was that the mother retains the custody of the child who is under five unless the father provides evidence to show that the child's welfare is at risk by being with the mother.

|| The court rejected the traditional male privileging in the law and ruled that being the father was not enough grounds to claim guardianship of a child.

It was a landmark judgment. Under Indian law on custody of children and the protection of their rights, the natural guardian of a minor is the father and only after him, the mother is considered the natural guardian of the child. This means that while the father is alive, the mother could not claim natural guardian status. In my case, the Supreme Court rejected the traditional male privileging in the law and ruled that being the father was not sufficient ground to claim guardianship of a child. Thereafter, the court evaluated my standing with regard to guardianship. My education and financial self-sufficiency were its criteria to decide this aspect. In doing this, the court recognised female autonomy. Lastly, the court took the evidence of my husband's abuses seriously and held him accountable.

Challenging India's legal system was a painful process, one which took over eight years. I incurred a myriad of losses by fighting this case. However, much was gained. My case was a legal first in India for women. I was eventually given full custody of my son. My son and I live in a home filled with love, and my son is a witness to the strength of his warrior mother.

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I encourage women in India to use the courts as a tool to attain female agency. Courts will only become responsive to our unique challenges when we force them to adjudicate our matters. As more women step forward, we will gain more advantages.

An important advantage is gaining knowledge about the myriads of obstacles we may face in our quest for justice. These obstacles include our weakness resulting in us avoiding the courts or dying by suicide when the court rules against us. No, keep fighting.

I share this story with you so that you will fight. My experience was not an easy one. But the precedent that came out of the legal sparing will make your fight an easier one.

* *Name has been changed.*