

**1301911 [2013] RRTA 523 (31 July 2013)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1301911  
**DIAC REFERENCE(S):** CLF2012/191085  
**COUNTRY OF REFERENCE:** India  
**TRIBUNAL MEMBER:** Mr Christian Carney  
**DATE:** 31 July 2013  
**PLACE OF DECISION:** Melbourne  
**DECISION:** The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependent.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants are mother and son. Only the first named applicant (mother) has made specific claims for protection; the second applicant (son) is relying on his membership of the first applicant's family and for convenience the Tribunal will refer to the first named applicant as 'the applicant'. The main applicant is a [age] year old Indian citizen who last arrived in Australia [in] 2010. She claimed to fear returning to India because her husband and his family seek to separate her from the second applicant in order to obtain the property that will be bequeathed to him; she fears they will harm both her and the second applicant and that the Indian authorities will not protect her or him from that harm. She further fears harm from men in India who will harm her because she is a single woman without male protection or family support. The delegate interviewed her and concluded that she was not at risk of being harmed by her husband or his family or anyone else in India.
3. The Tribunal must consider and decide whether the applicant has a well-founded fear of being persecuted in India for one or more of the five reasons set out in the Refugees Convention and, if not, whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of her being removed from Australia to India, there is a real risk that she will suffer significant harm. In considering these issues, it has applied the law set out in Appendix 1.

### **CLAIMS AND EVIDENCE**

4. The applicant presented her claims and other personal information in her visa application, lodged on 26 September 2012, in the subsequent statements she provided to the Department and in her interview with the delegate on 20 December 2012. She provided a number of documents to support her claims. In addition, both she and the second applicant attended a hearing before the Tribunal and gave evidence on 8 July 2013.
5. The applicant first arrived in Australia [in] 2007 on a student visa. She returned to India on three occasions for periods of between one and two months and last arrived in Australia [in] 2010. The second applicant arrived in Australia [in] 2008.
6. On 4 February 2011 the applicant lodged an application for a skilled migrant visa, which was refused on 28 May 2012 and both she and the second applicant became unlawful non-citizens on 25 June 2012, before lodging the protection application on 17 September 2012.
7. According to information provided in her application, the applicant was born in [City 1] on [date], is Hindu and can read, write and speak in Hindi and English. Her parents are deceased. She provided no information about her education or employment history or the details of her previous addresses or family members. She claims she came to Australia for further education and 'better future prospects' Her husband and his family dislike her and have threatened to harm her and her son if she does not give them her son; she has been humiliated many times by the male members of her husband's family. They want her son so they can gain control of the property he is expected to inherit from his grandfather. She fears

her son will be snatched from her. She does not think the Indian authorities could protect her and her son.

8. On 9 November 2012 the applicant gave the Department a copy of the death certificates for her parents; a copy of a letter dated 17 February 2001 from her sister-in-law to her husband, which is alleged to state that the applicant is unstable; a legal document from a court in [Town 2], which states that the applicant is a Christian and resides in [Town 2]; and a hand written statement of the applicant in English dated 1 November 2012, in which she claims:
  - (a) Her husband is a [occupation] and she was married to him for 15 years; her husband and his parents are Christians, as is she and her family.
  - (b) Her husband was in [Country 3] for four years and returned to India with large debts. She told him she did not want to use her inheritance to pay off his debts; she had inherited a house and money from her parents and had sold the house to pay off their medical expenses and loans. On his return from [Country 3] he lived with the applicants in her house in [City 1] and she was paying for all of their expenses.
  - (c) Her husband's cousin came to their house and harassed her and when she complained to her husband's family about the situation they thought she was a 'crack'.
  - (d) She did not want to use her inheritance money to pay off his debts so she made arrangements for them all to come to Australia so he could earn good money and pay off his debts. His family approved of that scenario. She initially came here by herself and then returned to arrange her son's travel and his schooling arrangements. Her husband changed his mind after their son got his visa and said he did not want to come here and he would not allow the second applicant to come; she threatened to sue him.
  - (e) Her husband's family do not want their marriage to work. They took her to the police station because she was screaming at them and they made a complaint against her to the police; the police counselled the family and her and nothing happened. The police told her that her husband's family were good people but in fact they had called her a whore. The family also took her to a psychiatrist to prove she was mental so they could take away her son; her husband's sister keeps saying she (the applicant) is mental. The last Christmas she had in India her husband abused her at his parent's home and kicked her out of the house; she could have been put in jail under false accusations.
  - (f) Her husband says that something is wrong with their son and that he needs counselling; her husband's sister's children used to bully her son and she fears they will target her son in the future. She is afraid her husband will file a case against her in India and take her son away from her.
  - (g) She is afraid that if she is alone in India people would take advantage of her.
9. According to the delegate's decision, the applicant made no claim at the interview that she had received threats from her husband or his family or that there was an issue relating to her son being bequeathed property that her husband or his family wanted to obtain.

## Review application

10. The applicants appeared before the Tribunal in Melbourne on 8 July 2013 to give evidence and present arguments. The Tribunal took evidence from each applicant separately. Shortly before the commencement of the hearing the applicant gave the Tribunal a two page unsigned and undated statement in which she states the following:
  - (a) Since the death of her parents in 2006 she has been effectively alone and that being a single woman in India means she is at the mercy of everybody. If she goes back to India the judgements, the humiliation and the abuse will start again; as a single woman all alone anything could happen to her.
  - (b) Her in-laws made her relationship with her husband difficult and she fears that if she attempts to divorce him they will kill or harm her. She has only lived with her husband for about one and half years of the [number] years of their marriage.
  - (c) Her in-laws once took her to the police and filed a FIR because she was shouting at them and they later had the FIR removed from the record; her mother-in-law said she (the applicant) was mad and they could have caused her to be locked up in a mental hospital; her in-laws have a servant who is a criminal and she fears they will make him harm her.
11. The applicant produced their passports and confirmed her personal information including her place of origin and the membership of their family. She confirmed that their passports had expired and that she had not contacted the Indian authorities about renewal as she had been advised it might affect their application for protection. She grew up in [City 1] which is where her parents lived until they passed away from natural causes in 2006; her siblings live outside India. Her family are Christian. She worked in India as a [occupation] for six months in 2005. She married her husband in [the 1990's] and went to live in [Town 4] with his family but returned to live with her parents when she became pregnant and stayed with them until a few months after the birth of the second applicant in [year]. In 1997 her husband went to live overseas and she returned to [City 1], and did not live in [Town 4] again.
12. Her husband is a [occupation] and he lived and worked in various places in India and overseas. He was in [Town 2]] for about seven years and never asked her to live with him. He was in [Country 3] from 2001 to 2005. She applied to go to [Country 3] but her application was not successful. They last lived together in about 2006 or early 2007; that was in [City 1].
13. The applicants lived with the first applicant's parents in [City 1] and she looked after them while her husband was in [Country 3]. His family came to visit her once in [City 1] while he was in [Country 3] but the applicants did not go to [Town 4] to visit them while her husband was in [Country 3]. Her relationship with his family was good and it remained good when he returned from [Country 3] and she does not know why they later changed their mind about him coming to Australia.
14. Her husband was also granted a visa to come to Australia but did not end up coming. She had hoped they could come here and her husband could work and repay the debts he accumulated in [Country 3]. Her husband's family were initially supportive of him and the second applicant coming to Australia but something happened after her first return from Australia and they later changed their mind. She came to Australia by herself in 2007 for

about six months and returned to India three times. The first two times she stayed in [City 1] and the third time with a friend in [town]. She saw her husband the first time she went back but not on the other two occasions. Her son has not been back since he arrived; he stayed in Australia with her friends when she last returned.

15. When asked what she thought would happen if she went back, the applicant said she has no family in India as her parents are deceased and her siblings live overseas; she is separated from her husband and would be all alone if she returned. Life would be difficult for her and it would be difficult for her to have a relationship with her husband. He never wanted to live with her before and did not want to make plans for their future; she kept hoping it would change but it never did. When his family sent her here she was hopeful things would work out but they have left her here and he did not come. She does not know what would happen if she went back. The Tribunal asked if she speaks with her husband, and the applicant said her husband is a liar and she believed him when she was young but not anymore; her son has grown up without a father and they do not need him anymore.
16. The Tribunal asked the applicant if she feared being harmed in India. In response she said it was not right for a woman to live alone; she would be harassed. She said she cannot give particular details of what she fears would happen because she does not know but said a woman needed family protection. The Tribunal asked her if she could give details of what she feared would happen if she had no family. In response she said that once her husband's young cousin came and stayed with her in [City 1] when her husband was in [Country 3] and his cousin had harassed her and had once groped her and she said that this is what men were like; they would think they could do whatever they wanted to her because she did not have male protection.
17. The Tribunal asked the applicant if she had received any threats of harm. In response she said she had not been threatened. However, in about 1996 her mother-in-law's servants had thrown stones at the kitchen door when she was inside; the servants are criminals and she is afraid they might get her if she goes back. The Tribunal asked if she had been threatened since 1996 and she said had not been threatened since that time.
18. The Tribunal asked her if there was anything else she feared on return. She said she did not think she would have freedom in India because she is a single woman and it would not be safe for her to go around without a male companion. When asked why it would not be safe, she said women get attacked in [City 1] and they get harassed by the Muslims there. Her family home is in a mixed area of Muslims, Christians and Hindus.
19. The Tribunal asked if there was anything else she thought might happen to her or her son or anything else she was afraid of. In response, she said that that was all she was afraid of and she did not know what would happen to her.
20. The Tribunal noted that in her application she had stated that she held fears about being harmed by her husband's family who wanted to separate her from her son. In response she said that her son is about to turn [age] and she does not fear being harmed by her husband or his family or losing her son to them, and she does not want to rely on that claim anymore. The Tribunal discussed the details of the written claims she made about her fears of being harmed by her husband and his family and losing her son, and the applicant gave clear evidence that once her son turned [age] the situation would be different; her son will inherit land and money from his grandfather which is currently in his father's name. She said that

did not want to rely on these claims anymore as she did not believe or have any fear that her husband or his family would harm her or her son.

21. The Tribunal asked her about the court document from [Town 2] she had given to the Department. She said it related to her husband's family trying to make sure she did not take action against him or his property while he was in [Country 3], and that it was not relevant anymore.
22. The Tribunal asked her to comment on her written statement that her husband's family had once taken her to the police station. In response she said that was correct; it happened on her second last visit to India when there was an argument about her not bringing the second applicant here; they had his papers and were not going to give them to her and she got angry and upset with them and they got the police but the policeman was a Christian and was kind to her and nothing happened and that was the end of the matter. The Tribunal asked if her husband or his family had ever filed any legal proceedings against her or taken legal action against her and she said they had not. There are no outstanding police or legal matters in India.
23. She last spoke to her husband about four months ago. They are still married and she had not taken any steps to divorce him but she wants to. The Tribunal asked if she held any fears in relation to seeking a divorce from her husband and in response she made no comment and said they did not have jointly owned property and that her son would be entitled to receive money from her husband's family. Her son's relationship with her husband was good.
24. The Tribunal asked the applicant where she would live if she returned. She said the family house she had previously lived in had been rented out; her brother owns the house and he would not allow her to live in it because they had fought after their parent's death because he had broken their mother's heart by not returning to India. The Tribunal noted that she had lived in that house for the two years after her parent's death and had stayed in it on two of the three occasions she returned to India from Australia, and asked why the situation would be different now. The applicant said that she had lived in that house before but she thinks her brother would not let her stay in it now however she is not sure.
25. The applicant said that she would have no support if she went back and she could be taken advantage of and she would be vulnerable. The Tribunal noted that the independent information before it did not indicate that single women or single mothers or divorcees or women without male protection or family support were singled out and subjected to serious harm in the [City 1] area; the Tribunal noted that while there were reports of random acts of violence against women the Tribunal needed to be satisfied that there was a real chance or risk that she would be subjected to serious or significant harm or that she would be denied protection from that harm by the authorities for those reasons, and that the information before it did not indicate that there was a real chance or risk of that occurring. In response the applicant said the media did not report it but it still happened and it was her fear.
26. The Tribunal noted that her evidence indicated that she is an educated woman with experience in the work force; that she is from a relatively wealthy family from which she had inherited property and money; she had travelled back to India three times; she can speak at least three languages, has a family home in which she would most likely be able to live in and that she would be with her son who would most likely be over [age] when she returned, so she would not be alone; further, she would return to [City 1], which is [one of the] most populous city in India with [a] largest economy, and the independent information indicated

there would be numerous work opportunities. The Tribunal noted that the independent information did not indicate that single women or single mothers or divorcees or women without family support were denied employment or discriminated against by the government or private sector with regard to employment or accessing services in a way that might cause her to suffer significant economic harm. Indeed, in these circumstances it did not appear that she would be discriminated against in these ways and that she would be able to access employment if necessary. When asked to comment, the applicant said that was all true but she was not sure if her brother would let her live in their house and it might be difficult for her to work again. She said she would be judged and mistreated as a single woman. The Tribunal noted that it was prepared to accept that she would be subjected to a degree of moral judgment and social ostracism by the conservative Indian community but the independent information before it did not indicate that such ostracism and moral judgement rose to the level of serious or significant harm. In response she said that anyone could do anything to her and she would be all alone.

27. The Tribunal noted that the independent information did not indicate that single women or single mothers or divorcees or women without male protection or family support were unable to access the legal system or that they were discriminated against in the legal system with regard to accessing divorce or property settlements, or in accessing police protection. In response the applicant said that it's a façade and that the truth is never reported and that women are unable to get a divorce. The Tribunal asked her if she had any particular information or evidence about those claims. In response she said she had no particular information to give but that she knew what Indian society was like. The Tribunal noted that information from the Canadian Refugee Board indicated that the situation for single women or single mothers or divorcees or women without male protection or family support was changing in India as the number of women in those situations increased and became more normal and accepted, and those women were able to access government support and housing and other benefits. In response the applicant said that [City 1] is conservative and different. She said she wants to live as a dignified person; she is [age] and has never got what she wanted and has never settled in her life because of her husband.
28. The Tribunal asked the applicant if she had any further evidence to give and she said no. The Tribunal noted that she had told the Department that she had fears relating to her political views and asked if she wanted to say anything about that. She said that she does have views about political matters and issues but did not fear being harmed because of those opinions; she is not an activist and would not be involved in political activities if she returned. She was never involved in any group or political organisation and was never harmed or threatened because of her views.
29. The Tribunal then took evidence from the second applicant. He confirmed that he would turn [a certain age]. The Tribunal asked how he felt about going back to India. In response he said that his father would try and put him in a boarding school if he went back; the Tribunal asked him to explain why he thought that would happen and in response he said that his father had once told him that it would happen. He speaks to his father every now and then. He would live with his mother (the applicant) if he went back; he did not want to live with his father. The Tribunal noted that he would soon turn [age and circumstances]. The applicant agreed with this and said that he did not want his father to make decisions for him. The Tribunal asked if he feared being harmed in India and he said no and the Tribunal asked if he had ever been threatened and he said no. When asked if he had anything else to say he said no.

30. The applicant said that her son was too young to work in India. The Tribunal noted that the independent information before it did not indicate that [males of a certain age] were not able to work in India or that there was discrimination against [males of a certain age] in accessing services or gaining employment. In response the applicant repeated that the second applicant was too young to work and when the Tribunal asked him to comment the second applicant said nothing.

## **FINDINGS AND REASONS**

### **Assessment of the applicant's claims and evidence about past events**

31. The Tribunal's first task in determining whether the applicant is owed protection is to make findings of facts on relevant matters. The task of fact-finding often involves an assessment of an applicant's credibility. In this context, as set out in Appendix 1, the courts have made it clear that the Tribunal must be sensitive to the potential difficulties faced by asylum seekers in putting forward their claims, and that the Tribunal should adopt a reasonable approach to making its findings with regard to credibility and afford the benefit of the doubt to asylum seekers who are generally credible but unable to substantiate all of their claims. However, the Tribunal is not required to accept uncritically any and all claims made by an applicant.
32. In assessing her claims, the Tribunal has taken into account the information in the Department's file, including the application for the Protection visa, the record of her interview with the delegate and the delegate's decision. It has also taken into account the evidence both applicants gave when they appeared before the Tribunal on 8 July 2013 and the information from independent sources in Appendix 2.

### *Country of nationality*

33. The applicant has consistently maintained that she and second applicant are citizens of India. She produced to the Tribunal the passports she and the second applicant used to enter Australia. On the evidence before it and in the absence of any evidence to the contrary, the Tribunal finds that the applicants are nationals of India and has assessed their claims against India.

### *The applicant's general background*

34. On the basis of the applicant's consistent evidence the Tribunal accepts the following:
- (a) The applicant is a [age] year old Christian woman from [City 1].
  - (b) Her parents passed away in 2006 and she inherited property and money from their estate. Her [siblings] currently live outside India. The family owns a house in [City 1] in which the applicant lived prior to her departure to Australia.
  - (c) She married her husband in [the 1990's] and their son, the second applicant, was born in [City 1] in [year]. Her husband is a [occupation] and has lived apart from the applicant for all but one and a half years of their marriage. He lived and worked in [Country 3] from about 2001 to 2005 and returned to India with a large debt that he was unable to finance.



- (d) While her husband was in [Country 3] his cousin came to stay with the applicant in [City 1] and while there he harassed her and on one occasion inappropriately touched her with his hand and ‘groped’ her.
- (e) The applicant and her husband made arrangements to come to Australia in order to work to pay off his debts.
- (f) The applicant arrived by herself in Australia in [2007] and returned to India [later that year] for two months; she flew back to Australia by herself in [2008] and remained here [for about five months] and returned to India. She returned to Australia in [2008] with the second applicant. In [2010] she flew back to India by herself, leaving the second applicant with a friend in Australia, and returned to Australia [the following month in] 2010.
- (g) Her relationship with her husband has broken down and she does not want to live with him again and intends to seek a divorce from him.

*Claims relating to her husband and his family*

- 35. The applicant claimed that following her return to India from Australia, her husband and his family changed their attitude towards him and the second applicant coming to Australia, which was when her relationship with her husband and his family deteriorated. She claimed that her husband refused to allow the second applicant to come with her and only relented and agreed after she threatened to take legal action. She claims that she became angry at his family and shouted at them and they sought police intervention to calm her down, and they also took her to see a psychiatrist because they thought she was mentally unstable. She claims she was humiliated many times by the male members of her husband’s family.
- 36. In her written statement and application, she claimed that the reasons for her husband and his family treating her poorly and not allowing the second applicant to come to Australia with her was for financial reasons, in that they sought custody and control of the second applicant because he stood to inherit property that they wanted for themselves. She claimed that her husband and his family would harm her and the second applicant if she went back, in their attempt to gain custody and control of the second applicant, and that the second applicant might be snatched from her or that her husband’s family would cause their servant, who is a criminal, to harm her; she claimed that his family might make false allegations against her or have her declared mentally unstable so she would be locked up; she also claimed that her husbands’ sister’s children had previously bullied her son and she fears they would target him in the future; the fear of losing her son and of him and her being harmed by her in-laws was the central part of the applicant’s claims (in addition to being a single woman with no family support).
- 37. However, at the hearing, the applicant gave clear evidence that she did not want to rely on any of these claims anymore; she stated that the second applicant would be [age] and said there was no continuing issue with regard to her husband or his family seeking custody and control of her son and she did not fear losing him anymore or that she or her son would be harmed by her in-laws. Indeed, despite being asked by the Tribunal on numerous occasions if she feared being harmed in India, the applicant made no claim or reference to fearing harm from her husband or his family or their agents for any reason (the only claim she made at the hearing was the general claim with regard to being a single woman, which is discussed below). Her evidence was that she had not received a threat or been threatened in any way

since 1996 when her husband's family servants had thrown stones at the kitchen door while she was inside. The Tribunal accepts the applicant's evidence at the hearing that she does not want to rely on the earlier claims she made in relation to her son and his inheritance and the associated fears of being harmed by her in-laws and their agents she had expressed in her written statements. Accordingly, on the evidence before it, the Tribunal does not accept that there is a real chance the applicant or second applicant would suffer harm on return to India from her husband or his family or their agents, including the servants, in relation to the custody and control of the second applicant or the inheritance he is due to receive.

38. The applicant gave clear evidence to the Tribunal, which it accepts, that there are no current or outstanding legal proceedings in relation to her that had been filed or commenced by her husband or his family, nor are there any unresolved police complaints made against her by her husband or his family and, accordingly, on the evidence before it, finds that there is not a real chance the applicant would suffer harm on return to India in relation to legal proceedings or police complaints filed or made against her by her husband or his family.
39. In her written claims the applicant stated that she feared that her husband's family would seek to harm or kill her if she sought a divorce from him. However, at the hearing, the applicant said she wanted to obtain a divorce and her claims of fearing harm from his family fell away as she gave no evidence in response to the Tribunal asking her if she had any fear of being harmed in relation to seeking a divorce. Indeed, her clear evidence to the Tribunal was that she held no fears of being harmed by her husband or his family in relation to any matter, and accordingly, the Tribunal does not accept her written evidence on this matter and finds that that there is not a real chance she would suffer harm from her husband or his family or their agents, including the servants, in the event she sought a divorce.
40. The applicant also claimed that she would not be able to obtain a divorce in India as women are not permitted to divorce their husbands and that she would be discriminated against in any legal proceedings because the legal system treats women and single women differently and favours men. When asked to provide further details and particulars of these claims the applicant said that she had no particular information to give but that she knew what Indian society was like. As discussed with the applicant at the hearing, the independent information before the Tribunal indicates that women are allowed to apply for and obtain a divorce from their husbands and that information did not indicate that single women or single mothers or women without male protection or family support were unable to access the legal system or that they were discriminated against in the legal system with regard to accessing divorce or property settlements, or in accessing police protection. The Tribunal has considered the applicants evidence on these matters including that the Indian government maintains a façade and that the truth is never reported. However, the Tribunal considers reliable the information set out in Appendix 2 and does not accept the applicant's claims in this regard. The Tribunal finds that the applicant could initiate and obtain a divorce from her husband if she desired to do so and on the evidence before it does not accept that there is a real chance she would be discriminated against by the legal system or during the processing of a divorce application or that she would suffer serious harm in seeking to obtain a divorce in India in the reasonably foreseeable future.

*Claims with regard to being a single woman without family or male support*

41. In her written statements the applicant claimed that if she is alone in India people would take advantage of her; she said that since the death of her parents in 2006 she had been effectively alone and that being a single woman in India means she is at the mercy of everybody. She

stated that if she goes back to India the judgements, the humiliation and the abuse will start again; as a single woman all alone anything could happen to her. At the hearing she stated that her siblings live overseas; she is separated from her husband and would be all alone if she returned and that life would be difficult for her; she said it was not right for a woman to live alone; she would be harassed and would not have freedom because it would not be safe for her to go around without a male companion. When the Tribunal asked her to provide details of what she feared would happen and to particularise what it was she feared, the applicant repeatedly said that she could not provide details because she does not know what would happen. She said that women get attacked in [City 1] and are harassed by the Muslims. However, she made no claim to having ever been harassed or mistreated in the past, despite having lived without her husband for all but one and a half years of their [number] year marriage. The only incident the applicant referred to was when her husband's young cousin harassed and groped her; she said that is what men are like and that men think they could do whatever they wanted to her because she did not have male protection.

42. As discussed with the applicant at the hearing, the independent information before it did not indicate recent reports of single women or single mothers or divorcees or women without male protection or family support being singled out and subjected to serious harm in the [City 1] area, and that the weight of information did not indicate that there was a real chance of her being subjected to serious harm for any or all of these reasons. When asked to comment on that information the applicant said that the media did not report it but it still happened and she was afraid that she would be subjected to harm. The Tribunal has carefully considered the applicant's evidence and claims in this regard, however, the Tribunal considers that the weight of independent information before it does not indicate, and the Tribunal does not accept, that there is a real chance the applicant would suffer serious harm because she would be a single woman or a single mother or a divorcee or would be without male protection or family support. Further, as discussed with the applicant at the hearing, she would not be alone and without male support, as the evidence before the Tribunal clearly indicates that the second applicant would live with her and he is about to turn [age].
43. With regard to the other claims raised by the applicant, that life would be difficult for her if she was alone and that [City 1] is conservative and she would be judged and mistreated as a single woman, as discussed with her at the hearing, the information before the Tribunal does not indicate that single women or single mothers or divorcees or women without male protection or family support were denied employment or discriminated against by the government or private sector with regard to employment or accessing services in a way that might cause her to suffer significant economic harm. As discussed with the applicant, the Tribunal accepts that she would suffer a degree of moral judgement and social ostracism from members of the community in India, however, the independent information before the Tribunal indicated that the situation for single women or single mothers or divorcees or women without male protection or family support was changing in India as the number of women in those situations increased and became more normal and accepted, and those women were able to access government support and housing and other benefits. Furthermore, as discussed with her, the applicant is an educated woman with experience in the work force, is from a relatively wealthy family and has independent wealth from her inheritance; she can speak at least three languages, has a family home in which she would most likely be able to live in and that she would be with her son who will soon be [age] and she would not be alone; and that [City 1] is India's [numerical ranking] most populous city in India with the [numerical ranking] largest economy, with numerous work opportunities for a person in her circumstances. The Tribunal has carefully considered the applicant's claims

and evidence on these matters, however, on the evidence and independent information before it, does not accept that there is a real chance the applicant would suffer serious harm in these ways in India in the reasonably foreseeable future because she would be a single woman or a single mother or a divorcee or would be without male protection or family support. Even if she is not able to live in her family home as claimed might be the case, the Tribunal considers that in her circumstances, the chance of her suffering harm as a result of that event is remote, as the applicant has independent wealth and has the skills to obtain employment to secure housing and support herself and her son if necessary; the independent information before the Tribunal does not indicate that housing is unavailable in [City 1] to single woman or a single mother or a divorcee or a woman without male protection or family support.

44. With regard to the issue of her political opinions, the Tribunal accepts the applicant's evidence at the hearing that that she is not an activist and had never been involved in any group or political organisation in the past, that she had never been harmed or threatened because of her views in the past and that she would not be involved in political activities if she returned, and that she did not have any fears of being harmed for reasons relating to her opinions and views on political matters. For these reasons, the Tribunal does not accept there is a real chance the applicant would suffer harm in the reasonably foreseeable future for reasons of her political opinions.
45. With regard to the implicit claim made by the applicant in relation to the second applicant, inferring that as [a certain age] he would be discriminated against and unable to find work because he is too young, as discussed with the applicants at the hearing, the independent information before the Tribunal does not support that claim, and accordingly, on the evidence before it, the Tribunal does not accept that there is a real chance the second applicant would be discriminated against in seeking employment for reasons of him being a young man or that there is a real chance that he or the applicant would suffer serious harm in that way for those reasons. Although not raised by the applicants, the Tribunal has also considered whether there is a real chance the second applicant would suffer serious harm for reasons of his age or his membership of the particular social group of his family, including from his father or members of his father's family or their agents; however, on the evidence before it, the Tribunal does not accept that there is a real chance he would suffer serious harm for those reasons or any other reason.

*Summary of findings in relation to refugee criterion*

46. On the basis of the above findings, and having considered all the applicants' claims individually and collectively, the Tribunal finds that there is not a real chance that either applicant would suffer Convention-related serious harm in the reasonably foreseeable future if they return to India. Accordingly, neither applicant has a well-founded fear of persecution in India for a Convention reason.

**Complementary protection criterion**

47. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative, complementary protection criterion in s.36(2)(aa) and has had regard to 'PAM3 Refugee and Humanitarian - Complementary Protection Guidelines'.
48. With regard to the applicant's claims to fear harm from her husband and his family, in light of its earlier reasons with regard to there not being a real chance that this would happen to

her, the Tribunal considers there are no substantial grounds for believing that there is a real risk she will suffer significant harm in that way.

49. With regard to her claims to fear harm from men and other members of the Indian community because she is a single woman or a single mother or a divorcee or would be without male protection or family support, in light of its earlier reasons with regard to there not being a real chance that this would happen to her, the Tribunal considers there are no substantial grounds for believing that there is a real risk she will suffer significant harm in that way.
50. With regard to her claims that her life would be difficult and she would be vulnerable to harm and be discriminated against by the community, the government, the police and the legal system, in light of its earlier reasons with regard to there not being a real chance that this would happen to her the Tribunal considers there are no substantial grounds for believing that there is a real risk she will suffer significant harm in that way.
51. With regard to her claims that she would not be able to obtain a divorce, in light of its earlier reasons with regard to there not being a real chance that this would happen to her the Tribunal considers there are no substantial grounds for believing that there is a real risk she will suffer significant harm in that way.
52. With regard to the implicit claims made in relation to the second applicant, that as [a male of a certain age] he would be discriminated against and unable to find work because he is too young, or that he might suffer harm in that way or from his father or members of his father's family or their agents, in light of its earlier reasons with regard to there not being a real chance that this would happen to him the Tribunal considers there are no substantial grounds for believing that there is a real risk he will suffer significant harm in that way.
53. Having considered the applicants circumstances singularly and on a cumulative basis, the Tribunal finds there are no substantial grounds for believing that, as a necessary and foreseeable consequence of them being removed from Australia to India, there is a real risk that either applicant will suffer significant harm.

## **CONCLUSIONS**

54. The Tribunal is not satisfied that either of the applicants is a person in respect of whom Australia has protection obligations under the Refugees Convention, and the applicants do not satisfy the criterion set out in s.36(2)(a).
55. Having concluded that the applicants do not meet the criteria in s36(2)(a), the Tribunal has considered the alternative criteria in s.36(2)(aa). The Tribunal is not satisfied that either of the applicants is a person in respect of whom Australia has complementary protection obligations under s.36(2)(aa).
56. It follows that the applicants are also unable to satisfy the criterion set out in s.36(2)(b) or (c) and accordingly, the applicants do not satisfy the criterion in s.36(2) for a Protection visa.

## **DECISION**

57. The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.

Christian Carney  
Member

## APPENDIX 1 - RELEVANT LAW

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58. Section 65(1) of the Act provides that a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a Protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other ‘complementary protection’ grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a Protection visa.
59. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration, ‘PAM3 Refugee and Humanitarian - Complementary Protection Guidelines’ and ‘PAM3 Refugee and Humanitarian - Refugee Law Guidelines’, to the extent that they are relevant to the decision under consideration.

### Refugee criterion

60. Section 36(2)(a) provides that a criterion for a Protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention. Generally speaking, as a party to the Refugees Convention, Australia has protection obligations in respect of people who are ‘refugees’ as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
- ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
61. The High Court of Australia has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51. Sections 91R and 91S of the Act qualify certain aspects of Article 1A(2) for the purposes of the application of the Act and Regulations to a particular person.
62. There are four key elements to the Convention definition. Firstly, an applicant must be outside his or her country. Secondly, the applicant must fear persecution, which, according to s.91R(1) of the Act, must involve ‘serious harm’ and ‘systematic and discriminatory conduct’. The expression ‘serious harm’ includes, for example, a threat to life or liberty; significant physical harassment or ill-treatment; or significant economic hardship or denial of

access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2). The High Court has said that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or condoned or be incapable of being controlled by, by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.

63. Thirdly, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition: race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a).
64. Fourthly, an applicant's fear of persecution for a Convention reason must be 'well-founded'. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have a genuine fear founded on a 'real chance' of being persecuted for a Convention reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
65. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

#### *State protection*

66. Harm from non-state agents may amount to persecution for a Convention reason if the motivation of the non-State actors is Convention-related, and the State is unable to provide adequate protection against the harm. Where the State is complicit in the sense that it encourages, condones or tolerates the harm, the attitude of the State is consistent with the possibility that there is persecution: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ at [23]. Where the State is willing but not able to provide protection, the fact that the authorities, including the police, and the courts, may not be able to provide an assurance of safety, so as to remove any reasonable basis for fear, does not justify an unwillingness to seek their protection: *MIMA v Respondents S152/2003* per Gleeson CJ, Hayne and Heydon JJ at [28]. In such cases, a person will not be a victim of persecution unless it is concluded that the government would not or could not provide citizens in the position of the person with the level of protection which they were entitled to



expect according to international standards: *MIMA v Respondents S152/2003* per Gleeson CJ, Hayne and Heydon JJ at [29]. Harm from non-State actors which is not motivated by a Convention reason may also amount to persecution for a Convention reason if the State withholds or denies protection for a Convention reason: *MIMA v Khawar* (2002) 210 CLR 1.

### *Relocation*

67. The focus of the Convention definition is not on the protection that the country of nationality might be able to provide in some particular region, but on a more general notion of protection by that country: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-1. Depending on the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of ‘practicable’, to expect him or her to seek refuge in another part of the same country. What is ‘reasonable’ in this sense must depend on the particular circumstances of the applicant and the impact on that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights. The Convention is concerned with persecution in the defined sense, and not with living conditions in a broader sense: *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.

### **Complementary protection criterion**

68. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) (‘the complementary protection criterion’). The Tribunal notes the explanation of the ‘risk threshold’ in the ‘PAM3 Refugee and Humanitarian - Complementary Protection Guidelines’, however, in considering s.36(2)(aa) it has proceeded on the basis that the ‘real risk’ test imposes the same standard as the ‘real chance’ test applicable in the context of the assessment of the refugee definition in accordance with the decision of the Full Court of the Federal Court in *MIAC v SZORB* [2013] FCAFC 33.
69. ‘Significant harm’ for these purposes is exhaustively defined in s.36(2A). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. ‘Cruel or inhuman treatment or punishment’, ‘degrading treatment or punishment’, and ‘torture’, are further defined in s.5(1) of the Act.
70. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer

significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B).

### **Credibility**

71. The Tribunal's task of fact-finding may involve an assessment of an applicant's credibility. In this context, the Tribunal is guided by the observations and comments of both the High Court and Federal Court of Australia in a number of decisions including *Minister for Immigration and Ethnic Affairs v Wu Shan Liang & Ors* (1996) 185 CLR 259, *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559, *Abebe v The Commonwealth of Australia* (1999) 197 CLR 510, *Randhawa v MILGEA* (1994) 52 FCR 437, *Selvadurai v MIEA & Anor* (1994) 34 ALD 347, *Minister for Immigration and Ethnic Affairs and McIllhatton v Guo Wei Rong and Pam Run Juan* (1996) 40 ALD 445, *Chand v Minister for Immigration and Ethnic Affairs* (unreported, 7 November 1997), *Kopalapillai v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 547 and *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220. In these and other decisions, the courts have made it clear that it is important the Tribunal is sensitive to the difficulties faced by asylum seekers and that it adopts a reasonable approach in making its findings of credibility.
72. In *Minister for Immigration and Ethnic Affairs and McIllhatton v Guo Wei Rong and Pam Run Juan* (1996) 40 ALD 445, Foster J stated at 482 that "care must be taken that an over-stringent approach does not result in an unjust exclusion from consideration of the totality of some evidence where a portion of it could reasonably have been accepted." Numerous decisions have endorsed the principle that the benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims.
73. The Tribunal has also had regard to the decision of *Minister for Immigration and Ethnic Affairs v Wu Shan Liang & Ors* (1996) 185 CLR 259, and the comments of the High Court on the correct approach to determining findings on credibility. Kirby J observed at [39]:

First, it is not erroneous for a decision-maker, presented with a large amount of material, to reach conclusions as to which of the facts (if any) had been established and which had not. An over-nice approach to the standard of proof to be applied here is not desirable. It betrays a misunderstanding of the way administrative decisions are usually made. It is more apt to a court conducting a trial than to the proper performance of the functions of an administrator, even if the delegate of the Minister and even if conducting a secondary determination. It is not an error of law for a decision-maker to test the material provided by the criterion of what is considered to be objectively shown, as long as, in the end, he or she performs the function of speculation about the "real chance" of persecution required by Chan.
74. The Tribunal is not required to accept uncritically any or all allegations made by an applicant. Nor is it required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out, or obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality. In *Chand v Minister for Immigration and Ethnic Affairs* (unreported, 7 November 1997), the Full Court of the Federal Court observed that "where there is conflicting evidence from different sources, questions of credit of witnesses may have to be resolved. The RRT is also entitled to attribute greater weight to one piece of evidence as against another, and to act on its opinion that one version of the facts is more probable than another." Nevertheless, as Burchett J counselled in *Sundararaj v Minister for Immigration and Multicultural Affairs* [1999] FCA 76, it is necessary to:

... understand that any rational examination of the credit of a story is not to be undertaken by picking it to pieces to uncover little discrepancies. Every lawyer with any practical experience knows that almost any account is likely to involve such discrepancies. The special difficulties of people who have fled their country to a strange country where they seek asylum, often having little understanding of the language, cultural and legal problems they face, should be recognised, and recognised by much more than lip service.

75. Indeed, as the Full Court noted in *Sujeendran Sivalingam v Minister for Immigration and Ethnic Affairs* (unreported, 17 September 1998) “refugee cases may involve special considerations arising out of problems of communication and mistrust, and problems flowing from the experience of trauma and stress prior to arrival in Australia.” On this point, the Tribunal also takes into account the comments of Professor Hathaway in *The Law of Refugee Status* (1991, Butterworths) at pages 84-86. Nevertheless, there is no rule that a decision-maker may not reject an applicant’s testimony on credibility grounds unless there are no possible explanations for any delay in the making of claims or for any evidentiary inconsistencies: *Kopalapillai v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 547 at 558-9. Nor is there a rule that a decision-maker must hold a ‘positive state of disbelief’ before making an adverse credibility assessment in a refugee case. However, if the Tribunal has ‘no real doubt’ that the claimed events did not occur, it will not be necessary for it to consider the possibility that its findings might be wrong: *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220 per Sackville J (with whom North J agreed) at 241. In addition, if the Tribunal makes an adverse finding in relation to a material claim made by an applicant but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true: see *MIMA v Rajalingam* (1999) 93 FCR 220. The Tribunal is also mindful of the observations of Gummow and Hayne JJ in *Abebe v The Commonwealth of Australia* (1999) 197 CLR 510 at [191]:

... the fact that an Applicant for refugee status may yield to temptation to embroider an account of his or her history is hardly surprising. It is necessary always to bear in mind that an Applicant for refugee status is, on one view of events, engaged in an often desperate battle for freedom, if not for life.

## APPENDIX 2 – INFORMATION FROM EXTERNAL SOURCES

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76. According to the US Department of State, the law in India includes a number of provisions which provide women with protection against all forms of domestic abuse and the right to police assistance, legal aid, shelter, and access to medical care.<sup>1</sup>
77. In 2010, India's Cabinet approved measures to stem delays in seeking an early end to failed marriages, and approved "irretrievable breakdown of marriage" as grounds for couples to separate. The legislation is also meant to "eliminate harassment of either party in the case and abuse of the existing law on dissolving marriages". Under earlier laws based in Hinduism, both estranged partners had to appear at court proceedings for settlement of their lawsuit for divorce by consent.<sup>2</sup> Recent years have seen increased legal protection of divorced women from their ex-partners. In 2006, India's Minister for Women and Child Development, Renuka Chowdhury, stated that "divorced wives and girlfriends were deliberately included within the ambit of" India's new domestic violence law "to cater to situations in which a man violates his custodial rights or his restraint order". The Minister added that the law would protect women who have been "removed from their houses, from being threatened, forced and coerced"<sup>3</sup>
78. Divorced women still face challenges stemming from negative attitudes in society; a representative of a women's NGO in New Delhi stated that "divorced women have secondary status in society" due to the importance of marriage in Indian society.<sup>4</sup> A scholar at the Centre for Development Studies in Kerala stated that in most segments of Indian society "divorce was still stigmatised", and that "you can get out of the marriage but it does not mean your problems are over", as a woman's standing in society is based largely on her marital status.<sup>5</sup> Divorced women face financial problems "with few, if any, social security options" according to a 2008 survey of women involved in the National Rural Employment Guarantee Act in Jhalawar district, Rajasthan.<sup>6</sup>
79. Some recent reports indicate that divorce is becoming more accepted and common in India, especially in urban areas. For example, in 2008 the *Washington Post* reported that "petitions for divorce" were rising "[a]cross the country's teeming urban centres" and there was a sense among many that this was a sign of increasing female empowerment.<sup>7</sup> *Time* said that the divorce rate in urban India had "doubled" over the previous five years, and "one reason for the rise... is that educated [middle-class] Indian women" now had the "option" to divorce, due to greater financial freedom.<sup>8</sup> The *New York Times* reported that "divorce and remarriage are

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<sup>1</sup> 'Country Reports on Human Rights Practices 2010 – India', *US Department of State*, 8 April 2011, Section 6.

<sup>2</sup> 'India gets liberal with divorce', *CNN*, 11 June 2010.

<sup>3</sup> 'No change in domestic violence law: Renuka', *Times of India*, 11 November 2006.

<sup>4</sup> 'Report of the fact finding mission to India – 11-24 July 2004 – Women in India', *UK Home Office*, 2004, Paragraphs 3.5, 9.2-9.20.

<sup>5</sup> Buncombe, A, 'Monsoon Divorce', *The Independent*, 22 April 2008, available at <http://www.independent.co.uk/news/world/asia/monsoon-divorce-813342.html>

<sup>6</sup> Bhatta, K., 'Falling through the cracks', *The Hindu*, 16 March 2008.

<sup>7</sup> Wax, E, 'In Tradition-Bound India, Female, Divorced and Happy', *The Washington Post*, 19 September 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/09/18/AR2008091803911.html>

<sup>8</sup> Robinson, S, 'Divorce and Remarriage – Indian-Style', *Time*, 5 July 2007, available at <http://www.time.com/time/world/article/0,8599,1640200,00.html>

slowly gaining acceptability” and the “divorce boom partly reflects changes that have made it easier to leave marriages ... taboos waning, laws loosening and women gaining financial independence.”<sup>9</sup> Another article in the *New York Times* stated that “growing numbers of educated, working women, confident and financially secure,” were refusing to do what so many generations of Indian women had done before them – going “to any length necessary” in order to save a marriage.<sup>10</sup>

80. In 2008 *The Independent* reported in ‘Monsoon Divorce’ that:<sup>11</sup>

While official national statistics are unavailable because divorce proceedings are dealt with at a local level, studies in some of the country's major cities have indicated a massive rise in the number of couples undertaking divorce proceedings at family courts. "A study of recent trends showed that such cases are significantly rising in small towns and semi-urban areas. Many young couples, particularly women, have been filing petitions for separation, which was unheard of in the 1970s," K K Patel, a supreme court lawyer, recently told *The Tribune* newspaper.

In Kerala, India's most literate state, the number of such filings has increased by 350 per cent in the past 10 years. Even in Punjab and Haryana, both traditional agricultural states, divorce proceedings are rising. Some estimates reckon the national divorce rate to be as high as 6 or 7 per cent.

"Women are economically more independent. They have started working. They are also more aware of their rights," said Vandana Sharma, the president of the Women's Protection League, a Delhi-based campaign group that provides counselling and assistance. She added: "Also families are changing. You used to have joint families with everyone living together and sharing their problems" ...

Yet for middle-class Indian women, the past two decades have seen an undoubted change in the opportunities afforded to them. And such changes have been accompanied by a shift in attitude among these women when it comes to getting married. While arranged marriages still account for more than 90 per cent of the total, the spread of cable television and Western influence has resulted in women having greater expectations for their marital relationships and what they might achieve in their lives. By contrast, Indian men have been slow to change and often reacted negatively to their newly empowered wives.

"Women used to start with the lowest expectations. Now they are demanding more physically, sexually and financially," said Ranjama Kumari, the author of *Brides Are Not for Burning* and the director of the Centre for Social Research, a women's support group based in Delhi.

And while one may have expected the rising divorce rate to be a phenomenon associated with the educated elite of Delhi and Mumbai, it appears that it is happening across India, even if it remains more common in urban areas. Vivek Pahwa, director of *SecondShaadi.Com*, a matchmaking website for divorcees that was set up last year, said that 60 per cent of the 25,000 or so people who have signed up lived outside India's five largest cities. A third lived outside its 20 biggest cities.

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<sup>9</sup> Mahmood, S & Sengupta, S., ‘As Mores Evolve, India’s Divorced Seek Second Chance’, *The New York Times*, 14 February 2008 available at <http://www.nytimes.com/2008/02/14/world/asia/14remarry.html>

<sup>10</sup> Giridharadas, A, ‘With India’s new affluence comes the divorce generation’, *The New York Times*, 19 February 2008, available at <http://www.nytimes.com/2008/02/19/world/asia/19iht-divorce.1.10178712.html>

<sup>11</sup> Buncombe, A, ‘Monsoon Divorce’, *The Independent*, 22 April 2008.

"Remarriage in India has always been a topic best left untouched," says his website.  
"Through the ages, society has dealt with divorcees, widows and widowers with a different eye. SecondShaadi.com is our humble attempt to eliminate all such biases and provide an effective platform for individuals ... yearning to start a new life."

81. In recent years there has been a growth in employment opportunities for women in India, which has resulted in more young and single women joining the workforce, with a rise in the number of female workers in urban areas. An article from *The Tribune*, published on 9 March 2011, referred to a rising trend of women deferring marriage for one or two years to pursue a career, and of women being employed in industries that were previously the domain of males. The article highlighted in particular the opportunities available to women in banking, human resource management, the computer industry, animation and multimedia, catering, corporate communications and psychology/counselling.<sup>12</sup>
82. A May 2011 research response from the Canadian *Immigration and Refugee Board (IRB)* provided information from the works of two academics which highlighted the opportunity for financial independence that call centre employment in India has offered to young, single women who are able to speak English. One of these academics reported that the average monthly wage earned by female employees of these call centres being ten times the national minimum wage, "approximately twice as much as other employment options open to college-educated women" While call centre work does carry a "social stigma" in India, there are cases of female call centre workers being able to live independently due to the remuneration they receive from this work.<sup>13</sup>
83. A report from *The Times of India*, published on 14 July 2009, provided a statement from an *International Labour Organisation (ILO)* researcher who indicated that while women in the Indian workforce had traditionally been older and married, single and unmarried women had begun to join the workforce. The researcher stated that while some were delaying marriage in order to do this, others were doing it because their family was in need of money. It was reported that there had been a small measure of growth in female participation in the Indian workforce, with it growing from 1.34% in the period between 1983 and 1994 to 3.25%
84. Single women who live alone away from their families are subject to pejorative societal attitudes. In a 2010 book, Reena Patel, a scholar from the University of Texas, indicated that single women who live away from their family are stigmatised, particularly if their family is living in the same city. An October 2009 *Inter Press Service* report indicated that women who live alone are "ostracised" by their communities.<sup>14</sup>

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<sup>12</sup> Albuquerque, U., 'Eve's options', *The Tribune*, 9 March 2011, available at <http://www.tribuneindia.com/2011/20110309/jobs.htm#1>

<sup>13</sup> 'Whether women who head their own households without male support can obtain housing and employment in Delhi, Mumbai and Chandigarh; government support services available to female-headed households in these cities; violence against women in these cities', IND103726.E – India, *Immigration and Refugee Board of Canada*, 9 May 2011, available at [http://www.irbcisr.gc.ca:8080/RIR\\_RDI/RIR\\_RDI.aspx?id=453434&l=e](http://www.irbcisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453434&l=e)

<sup>14</sup> Bahuguna, N. J., 'Single Women Break Their Silence, Challenge Societal Norms', *Inter Press Service*, 22 October 2009, available at <http://ipsnews.net/news.asp?idnews=48953>