

PROBLEMS PERSISTENT IN NRI MARRIAGES IN INDIA

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Introduction

India has an array of diverse family laws. The applicability of these laws is influenced by criteria like domicile, tribe, religion, etc. which in turn displays a wide variation with respect to each other¹. However, getting married is not confined to religion and national boundaries. Inter-country marriage is one of the remnants of the above mentioned statement. Marriage is the foundation of any family. Once the relation is formed, the law steps in and binds the two parties together. Law gives birth to various obligations and liabilities thereunder. There are many kinds of marriages in India. One such kind is NRI marriage. These days, NRI marriages are mostly a well-planned personal decision in life. These marriages traditional in appearance but in actuality and in intent are contractual in nature. Women in such marriages often face a unique set of problems. The research sheds light on one such problem which analyses the idea of migration leading to conflicts in such marriages. The study also attempts to discuss the related issue of registration of NRI marriages as this constitutes one of the major factors that give rise to problems like abandonment of the spouse. The article further provides for the steps taken by the Government of India to protect the women from facing any unwarranted situations which might cause them harm. The article also discusses whether or not the jurisdiction of such cases should lie in the hands of foreign courts. Along with the analysis of research questions, a few case laws have been put forward for enhancing the understanding of the article.

¹ FAMILY LAW, VOL I, FAMILY LAWS AND CONSTITUTIONAL CLAIMS and VOL II MARRIAGE, DIVORCE AND LITIGATION (2010). By Flavia Agnes. Oxford University Press

DEFINING THE TERM NON-RESIDENT INDIAN

A Non-Resident Indian is defined as a person who is not a resident in India. Section 2 of the Foreign Exchange Management Act, 1999² gives the definition of a person resident in India and a person resident outside India but lacks the definition of a Non-Resident Indian. According to FEMA, a person residing in India is the one who resides in India for 182 days in the preceding financial year and who comes or stays in India for any purpose. Therefore, referring to the above mentioned definition of a resident Indian, we can say that a Non-Resident Indian who resides outside of India but holds an Indian passport. This person is of Indian origin but ordinarily stays outside of India. Marriages with Non-Resident Indians or NRI marriages are a very common happening these days. Often, the motive behind these marriages is immigration to a foreign land. NRI marriages may take place between:

- a) Non-Resident male and an Indian female
- b) Both Indian spouses who later on migrate to a foreign land either together or separately
- c) An Indian spouse, either male or female, marries a foreign spouse under Indian Marriage Laws either in India or in a foreign country.

The proceedings of an NRI marriage are similar to those of any other Indian marriage and can take place under the following **conditions**:

- a) Parties belong to the same caste
- b) Parties belong to different caste
- c) One of the parties is a Non-Hindu and the marriage may proceed with or without conversion to mutual faith
- d) The party will not have to surrender overseas citizenship if married in India or acquire or not acquire a foreign citizenship if married abroad
- e) Similarly NRI groom or NRI bride who comes to India for marriage with a native spouse may be a foreign citizen of a foreign country either by adoption or by birth; a green card holder; on a work permit or on a temporary visa or may have dual citizenship as an 'Overseas Citizen of India'
- f) These marriages may be between previously unmarried individuals, remarriage of both or of either spouse after divorce or after widowhood

² Foreign Exchange Management Act (FEMA), 1999, (Act 42 of 1999), Section 2

'NRI marriage' is a gender neutral term but in India, it typically means marriage between a woman residing in India and an Indian man residing in another country (Non-Resident Indian).

WHY NRI MARRAIGES ARE PREFERRED

Apart from conjugal matrimonial relationship, there are various motives behind every NRI marriage. Some of these motives are listed below:

- Most of the NRI marriages take place to earn immigration status for well-being, freedom and for a liberal life style. To suit the socio-economic requirements of each country, immigration rules are constantly being updated and immigrants are attracted by these foreign states as there exists the concept of cheap trained workforce. Sometimes the matrimonial advertisements exaggerate about the achievements of the boy as well as his family. Many people lie about their citizenship, earnings, family background and even current marital status to get a good match for their daughters and sons. The crucial pitfall of having such an incentive is the exploitation of the parents of the girl. They may have to bear heavy financial burden just to provide for their daughter in a distant land.
- NRI marriages act as an escape route for inter-caste and inter-religious marriages and save an individual from the wrath of their respective families.
- One of the major reasons for such marriages to take place is the non-affordability of dowry. When a girl's parents cannot meet the dowry demands, they start looking for a groom in his thirties who lives abroad.
- Unemployment and lack of opportunities is another important reason why people marry an individual residing in another country. By getting married to married to an NRI, they get a chance to choose from a wide and a better variety of occupations.
- As for many Non-Resident Indians, marrying a person from the country that they actually belong to acts as a way of staying connected to the roots of their tradition.
- An NRI might marry an Indian woman for fraudulent purposes as is commonly seen these days.

FAILURE OF NRI MARRIAGES

NRI marriages sure do sound fancy but numerous reasons turn them into failure. One such reason is migration, whether long-lasting or short term. As the world is advancing, men and women having different personal laws and regulations are migrating or have already migrated to different nations. The reason for this being either to fashion a long-lasting residence in the nation they're migrating to or for short-term property. Migration has been made easier due to the advancement in fields like communication and transportation. In today's world, it is not an uncommon sight where we can spot citizens of this nation acquiring marriages with individuals overseas or having wedded here, either both or one of them move to other nations. There are also scenarios where two individuals having wedded here have been living independently or are domiciled in different nations. This kind of migration has been providing rise to various types of matrimonial conflicts which includes ruining a relation as pious as marriage. A marriage is the foundation of a family and the base of a marriage is trust, love and obligations. Once an individual moves away from their partner, they cannot develop a bond which is required for the well-oiled functioning of a marriage. Thus a void between the two spouses is created when one of them migrates to a different country for either a short or a long-lasting duration. These differences further lead to men or women indulging in bigamy. This in turn leads to the abandonment of one of the spouses staying in a different country.

REGISTRATION OF NRI MARRIAGES

In India, for a properly solemnized marriage, caste and religion and sometimes, the ethnic contours play a major role. Inter-caste marriage is still a taboo in many places in India. Thus, there came a grave need for a law to safeguard the interests of those people who rose above these caste and religious divides. Therefore, the Parliament enacted the Special Marriage Act, 1954 which provides for a special form of marriage for the people of India and all Indian nationals in India and foreign countries, irrespective of the caste and religion they follow. This act applies to every state of India, except the state of Jammu & Kashmir. This Act extends not only to the Indian citizens belonging to different castes and religions but also to the Indian nationals living abroad i.e. NRI marriages fall under the ambit of this Act. This act provides for the solemnization of a marriage as well

as registration by marriage officer. The basic requirement for a valid marriage under this Act is the consent of both the adult parties to the marriage. If both the parties are ready to marry each other, that suffices it; here caste, religion, race, etc. cannot and do not act as a hindrance to their union.

For marriage under this Act, the parties need to file a notice expressing their intention to marry each other, with the Marriage Registrar of the district in which at least one of the parties to the marriage has resided for at least 30 days preceding the date on which such notice is being filed. The marriage is then said to be solemnized after the expiry of 30 days from the date on which such notice has been published. But if any person related to the parties objects this marriage and the Registrar finds it to be a reasonable cause of objection, then he can cancel the marriage on such grounds. For a valid marriage, it is also required that the parties give their consent to the marriage in front of the Marriage officer and three witnesses.³

The conditions required to be followed for this special form of marriage is not very different from the requirements of other normal marriages, which happen within the caste. These are the conditions to be eligible for a marriage under this Act: –

- The bridegroom must be at least 21 and the bride must be at least 18 years of age at the time of marriage. This is the minimum age limit for a boy/girl to marry, respectively.
- Both the parties must be monogamous at the time of their marriage; i.e. they must be unmarried and should not have any living spouse at that time.
- The parties should be mentally fit in order to be able to decide for themselves i.e., they must be sane at the time of marriage.
- They should not be related to each other through blood relationships; i.e. they should not come under prohibited relationships, which will otherwise act as a ground to dissolve their marriage.

A marriage in India is required to be registered in most of the cases. The state governments have made the registration of marriage compulsory in all the cases. A marriage certificate is also required in most cases for visa purposes. NRI marriages are to be registered under the Special Marriage Act, 1954 in India. This act applies to all citizens irrespective of their religion, requires the registration of marriages by a marriage officer. Not registering one's marriage is another cause of abandonment of spouse. There have been many cases where a

³ Madaan & Co. Attorneys at Law

Non-Resident Indian man has abandoned his bride after two to three months or in some cases, just one month.

Registration of marriages must be made necessary. This will in convert make sure conformity of conditions of a valid wedding, offer proof of wedding and act as an obstruction for bigamous methods. Section 8 of the Hindu Marriage Act, 1955 makes it optionally available for Condition Government regulators to offer for guidelines for offering for signing up of marriages. It is opined that with essential NRI migration must be created marriage registration which should be necessary particularly when one of the partners is an NRI. At the same time, it should be created essential that the NRI partner must give intimation of signing up of his wedding to the concerned Embassy / Great Percentage in Indian, in which nation he is presently resident.

A Supreme Court Bench headed by Justice Arijit Pasayat, directed all states and union territories to come up with a proper legislation within three months making registration of marriages compulsory. The Bench had also asked the states and Union territories to file a compliance report along with a deadline after the deadline of three months. Compulsory registration of marriages in India, experts opine is the need of the hour and would go a great way in reducing the crime against women, particularly it would check the cases of Non-resident Indians (NRIs) duping Indian girls. Without proper documentation, it is very difficult to prove the marriages in courts abroad. In many cases, Indian women are forced to live like domestic helps as they do not have the documents to prove that they have been tricked⁴. It is to be noted that a large number of Indian girls, particularly in Punjab and other North Indian states are quite eager to marry outside and migrate to foreign shores. However, there have been an increasing number of cases in which NRI men and even women have abandoned Indian spouses and left them in lurch and sometimes, even accusing them in various counts. The Nation Commission for Women (NCW) in order to push for making marriage registration a compulsory step had proposed the draft bill 'Compulsory Registration of Marriage Act 2005'. This act has been implemented in all states. Every state has its own Registration Act (common form of registration for all the religions). In this act the commission recommended for the enactment of a uniform law relating to marriages, providing for compulsory registration of marriages. According to a Guidance Booklet issued

⁴ Women and Law in India: An Omnibus comprising Law and Gender Inequality, Enslaved Daughters, Hindu Women and Marriage Law by Flavia Agnes, Sudhir Chandra, Monmayee Basu

by Ministry of Overseas Indian Affairs in January 2007⁵ for the general public, this law helps in *ensuring a minimum age for marriage, preventing marriages without the consent of both parties, checking bigamy and polygamy and deterring people from buying and selling young girls under the pretence of marriage.*

Therefore, registering the marriage will help in deciding over cases of bigamy as both men and women will have certificates to prove their point in the court of law.

RIGHTS OF NRI SPOUSES

To protect the rights of the Indians who are interested in having overseas marriages, the Government of India has taken a few steps⁶. Some of the general rights of the NRI spouses include:

- i) Right to equality and equal protection of the laws (Article 14 of the Indian Constitution)
- ii) Right to life (Article 21 of the Constitution of India)
- iii) Right to have one's own citizenship/nationality
- iv) Right to possess independent domicile
- v) Right to own/possess property independently or jointly
- vi) Right to travel
- vii) Right to enforce proper foreign decrees

Now, here are a few women's specific rights:

- i) Right against physical/sexual/economic exploitation
- ii) Right to compensation against desertion⁷
- iii) Right to keep the children below 5 years under the custody of the mother
- iv) Right to take back matrimonial presents and streedhan
- v) Right against dowry
- vi) Right against cruelty, bodily harassment, torture, etc.
- vii) Right against domestic violence

Virtually, these are the rights that Indian women are given even in their own homeland.

⁵ Marriages to Overseas Indians: A Guidance Booklet 2007

⁶ Marriages to Overseas Indians by Ministry of Overseas Indian Affairs

⁷ 1994 6 SCC 641

CASE LAWS:

Neeraja Saraph v Jayant Saraph⁸ unfolds the tragic tale of a newly-wed girl at the hands of a treacherous and unscrupulous NRI husband. In this case, the appellant wife who got married to a software engineer employed in United States was still trying to get her visa to join her husband who had gone back after the marriage, when she received the petition for annulment of marriage filed by her NRI husband in the US court. She filed a suit for damages in such circumstances as she had suffered not just emotionally and mentally but had also given up her job in anticipation of her departure to the US. The trial court passed a decree of Rs. 22 Lakhs. The High Court in appeal stayed the operation of the decree pending final disposal on the condition of deposit of Rs. 1 Lakh with the court. On appeal by the wife the Supreme Court modified the High Court's order in favour of the wife by enhancing the deposit amount to Rs. 3 Lakh. Even though the order was on a limited ground in an interim application, this case shows the feasibility of suit for damages by wife in such cases. It is also pertinent that the Court passed some obiter observations, which were as follows:

"Feasibility of a legislation safeguarding interests of women may be examined by incorporating such provisions as-

No marriage between a NRI and an Indian woman which has taken place in India may be annulled by a foreign court; Provision may be made for adequate alimony to the wife in the property of the husband both in India and abroad. The decree granted by Indian courts may be made executable in foreign courts both on principle of comity and by entering into reciprocal agreements like Section 44-A of the Civil Procedure Code which makes a foreign decree executable as it would have been a decree passed by that court."

In **Narasimha Rao v Venkata Lakshmi**⁹, both husband and wife were married under the Hindu Marriage Act in India. After the marriage, the husband went back to USA and obtained a decree of divorce from the State of Missouri. The husband alleged to the court that he was a resident of the state of Missouri for 90 days preceding the institution of petition and obtained a divorce decree on the ground that the marriage has been 'irretrievably broken down'. The Supreme Court of India held that both on the issue of jurisdiction and the ground on which the foreign decree was passed were not in accordance with the Hindu Marriage Act

⁸ (1994) 6 SCC 461

⁹ 1991 3 SCC 451

under which the marriage took place. The Supreme Court, thus, held that the decree was not enforceable in India.

In **Harmeeta Singh v Rajat Taneja**¹⁰, the wife was deserted by her husband within six months of marriage as she was compelled to leave the matrimonial home within three months of joining her husband in the US. When she filed a suit for maintenance under the Hindu Adoptions and Maintenance Act in India, the High Court disposed of the interim application in the suit by passing an order of restraint against the husband from continuing with the proceedings in the US court in the divorce petition filed by the husband there and also asking him to place a copy of the order of the High Court before the US court. The Court made some other observations while passing this order, mainly that even if the husband succeeded in obtaining a divorce decree in the US, that decree would be unlikely to receive recognition in India as the Indian court had jurisdiction in the matter and the jurisdiction of the US courts would have to be established under Section 13, Civil Procedure Code (CPC). The Court then said that till the US decree was recognized in India, he would be held guilty of committing bigamy in India and would be liable to face criminal action for that. The court also said that since the wife's stay in the US was very transient, temporary and casual, and she may not be financially capable of prosecuting the litigation in the US court, the Delhi courts would be the forum of convenience in the matter.

In **Veena Kalia v. Jatinder Nath Kalia**¹¹, the appellant wife and the respondent were married in India according to the Hindu rites in 1968. Thereafter in 1972, the first respondent left for England for higher studies and went to Canada from there. In 1975, he filed a petition for divorce in the Supreme Court of Nova Scotia in Canada on the ground of 'irretrievable breakdown of marriage'. The petitioner could not participate in the proceeding having no means to go to Canada. The Canadian court granted a divorce decree in favour of the husband. It also granted Rs. 1000/- per month for wife's maintenance including children with effect from 1976. When the maintenance was not paid, the appellant wife approached the Canadian court by a letter for legal aid. The husband deposited Rs. 5000/- with the court and left for USA. Main issue before the High Court concerned with the recognition of foreign *ex-parte* divorce decree. The court considered provisions of Section 13 of the Civil Procedure Code, 1908 as well as the Supreme Court rulings in **Satya v. Teja**¹², **Y. Narasimha Rao v.**

¹⁰ 102 (2003) DLT 822

¹¹ AIR 1996 DEL 54

¹² AIR 1975 SC 105

Venkata Lakshmi and Surinder **Kaur Sandhu v. Harbax Singh Sandhu**¹³. According to the court, the Supreme Court of Nova Scotia was not the court of competent jurisdiction. The silence of the wife could not confer jurisdiction on that court. The silence here was not because of her own volition but because of the constraints which she could not overcome to contest the proceedings there¹⁴. The court also pointed out that the husband neither domiciled nor habitually or permanently resided within the jurisdiction of the Supreme Court of Nova Scotia. Also the ground on which the decree of divorce had been granted by the foreign court is not a ground on which such a decree could be granted in India. Since the wife was not in a position to contest the proceedings in a foreign court the rules of natural justice stood violated. The court therefore held that the foreign decree had no legal validity in this country.

DISSOLUTION OF NRI MARRIAGES

There are various grounds available for divorce in an NRI marriage. Some of these are:

- When one spouse-
 - i) Enters into sexual relationship/adultery with another person who is not his/her spouse
 - ii) Deserts for more than two years
 - iii) Inflicts physical or mental cruelty on the spouse
 - iv) Converts to another religion after marriage
 - v) Has leprosy which cannot be treated
 - vi) Has become mentally unsound to the extent that no treatment can help him
 - vii) Has venereal disease
 - viii) Has disappeared/is not found for more than seven years
 - ix) Has renounced the world and become a saint
 - x) Husband has been convicted for committing rape and bestiality
 - xi) Repudiation of child marriage

The guidelines provided by the government also incorporate provisions for divorce by mutual consent. They are discussed below:

- i) No grounds are to be given if divorce is by mutual consent

¹³ *Supra Note 28*

¹⁴ *Supra note 42 & 59*

- ii) The husband and wife should be husband and wife staying separately for the preceding one year prior to giving a joint application for divorce by mutual consent
- iii) Both are agreeing to the reality that they cannot stay with each other
- iv) The judge after receiving a mutual divorce request will issue a notice after six months intervening period
- v) If the couple do not change their mind even after six months and still admit in seeking divorce, the same shall be granted to them
- Judicial Separation:
 - i) One can ask the court for judicial separation on the same grounds which entitles him/her to divorce
 - ii) Divorce puts an end to marriage whereas judicial separation does not
 - iii) The husband and wife are merely staying apart; and if ever they want to come together, they can and they would be staying as husband and wife
 - iv) After divorce one has to remarry to stay as husband and wife
- Provisions including the right to seek restitution of conjugal rights:

If the husband has deserted the wife and vice-versa without any valid reason and does not fulfil the marital obligations, he/she can be ordered by the court to join back his/her family.

JURISDICTION OF FOREIGN COURTS ON MARRIAGES SOLEMNIZED IN INDIA

The jurisdiction of foreign courts on granting *ex parte* decree of divorce to the Indians whose marriage was solemnized in India is not very apt. As we have seen in cases **Narasimha Rao v Venkata Lakshmi** and **Veena Kalia v Jatinder N. Kalia**, the Indian Courts have dismissed the judgements by the foreign courts and said that *a foreign judgment shall not be recognised if it has not been pronounced by a court of competent jurisdiction. This clause should be interpreted to mean that only that court will be a court of competent jurisdiction which the Act or the law under which the parties are married recognises as a court of competent jurisdiction to entertain the matrimonial dispute. Any other court should be held to be a court without jurisdiction unless both parties voluntarily and unconditionally subject themselves to the jurisdiction of that court. The expression "competent court" in Section 41 of the Indian Evidence Act has also to be construed likewise.* Henceforth, foreign courts should not be allowed to grant divorce to NRIs with a marriage solemnized in the Union of India. The court further talks about the *Section 13 of the Civil Procedure Court which states that if a foreign judgment has not been given on the merits of the case, the courts in this country will not recognise such judgment. This clause should be interpreted to mean (a) that the decision of the foreign court should be on a ground available under the law under which the parties are married, and (b) that the decision should be a result of the contest between the parties. The latter requirement is fulfilled only when the respondent is duly served and voluntarily and unconditionally submits himself/herself to the jurisdiction of the court and contests the claim, or agrees to the passing of the decree with or without appearance. A mere filing of the reply to the claim under protest and without submitting to the jurisdiction of the court, or an appearance in the court either in person or through a representative for objecting to the jurisdiction of the court, should not be considered as a decision on the merits of the case. In this respect the general rules of the acquiescence to the jurisdiction of the court which may be valid in other matters and areas should be ignored and deemed inappropriate.*

The closely related issue of jurisdiction of courts has been specifically dealt with by the Indian courts in several judgments and in progressive manner, as will be clear from the following judgement:

In **Dipak Bannerjee v Sudipta Bannerjee**¹⁵, the husband questioned the jurisdiction of Indian court to entertain and try proceedings initiated by wife under Section 125 for

¹⁵ AIR 1987 Cal 491

maintenance, contending that no Court in India had jurisdiction in international sense to try such proceeding as he claimed to be citizen of United States of America and his wife's domicile also followed his domicile. The Court held that where there is conflict of laws every case must be decided in accordance with Indian Law and the rules of private international law applied in other countries may not be adopted mechanically by Indian courts. The Court felt that keeping in view the object and social purpose of Sections 125 and 126, the objection raised by husband was not tenable and the jurisdiction of Indian Court was upheld as it was the court within whose jurisdiction she ordinarily resided.

In **Mrs. M v Mr. A I**¹⁶, in an appeal filed in Bombay, the High Court the appellant wife had prayed for a decree of nullity of her marriage solemnised at Huston, U.S.A. Alternatively, she prayed for a decree of divorce on the ground of cruelty. The petition was originally filed before the Court at Bombay under the provisions of the Special Marriage Act, 1954, which applied to the parties by virtue of the provisions of Section 18 of the Foreign Marriage Act, 1969. The trial Judge dismissed the petition on the ground that the court was not vested with the requisite jurisdiction as it is a requirement of law that the petitioner should have been residing in India continuously for a period of 3 years immediately preceding the presentation of the petition. The High Court held that the section refers to a period of not less than 3 years immediately preceding the presentation of the petition and that the learned trial Judge was not justified in having grafted on the word "continuously". The difficulty that had arisen in this case centred around the fact that the petitioner had left India in December 1986 and returned in August 1987 and the petition was filed on April 1988. The court also took into account the fact that the petitioner had not emigrated from India which was established by the fact that she had gone out of the country only on a "tourist visit" and she did, in fact, return and has been permanently domiciled and resident in India all through. The court said that in matrimonial statutes in this country, the law confers local jurisdiction on a court if the party concerned is in fact resident there and not on the basis of casual short-term visits.

¹⁶ 1993) DMC 384

CONCLUSION

With the increase in Indian Diaspora and consequently overseas marriage, the number of matrimonial related disputes in such marriages have also risen proportionately, and at some places, much more than proportionately. The Government of India has tried to come up with a lot of solutions to protect the women of our country from being exploited and have provided the women with NGOs like MARG, Human Rights Law Network, Jagori, Women Power Connect to prevent causing any harm to them.