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LEGAL AND SOCIAL ASPECTS OF AN NRI MARRIAGE

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Abstract

In this research paper, we will discuss the social as well as legal aspects of the NRI marriages; from the social expectations to the legal issues faced by such a couple. There will be special highlight on the legal and social issues faced by a woman in such marriages and suggestions in correspondence to each issue. This report will also discuss the social 'allure' an NRI marriage presents in India; the status, pride and reputation such a marriage brings with itself to the families and how these affect the couple itself. Legal aspects of such marriages like divorce, maintenance of the wife or custody of the child will also be discussed with relevant case studies. In the end, this report will also include the analysis of some cases based on the aforementioned sub-topics.

Keywords

NRI marriages, wife, maintenance, CPC, fraud, abuse, dowry and divorce.

Research Question

What is the social conception about NRI marriages in Indian society and what issues are faced by a woman under such marriages?

Objectives

- To discuss the social aspect of an NRI marriage in context of India;
- To discuss the issues faced by a woman in an NRI marriage;
- To analyze the legal provisions regarding NRI marriages through some case studies.

Hypothesis

NRI marriages are complicated and disadvantageous for the bride in legal as well as social regards.

Research Methodology

This is a qualitative report and the materials collected in the paper are retrieved from secondary sources of data, such as: articles, journals, books and research papers. The research design followed for this report is semi-legal (casual and doctrinal) in nature.

Introduction

In the present scenario of worldwide globalization, it is not an uncommon for people to settle outside their motherland for better job and educational opportunities. The same is for the people in India; Indian youth, given the opportunity, prefer to settle in the foreign countries. However, most of the ones who do settle outside, still lean towards Indian woman for marriage purposes. The reasons can be unanimous and different for various people. Some may feel that their life partner should share the same roots as they do and hence, organize the search in their own culture. While on the other hand, some may think that marrying an Indian woman will give them the opportunity to extract dowry and their status (living abroad) will add to the demand of the amount.

The term Non-Resident Indian is a new coinage of post-independence era. In the past, Indians migrated to foreign lands for different reasons and acquired citizenship of the country of their domicile. These people are now called as Overseas Citizens of India (OCI). During British period, Indians went abroad for higher education but mostly came back to settle in India. But, after independence, started migrating for personal or professional reasons and were subjected to cross-cultural influences.

These influences the dreamy imaginations of the NRI marriages, blindsiding the major struggles and challenges. In most of the cases, the partner residing in India becomes infatuated with all these foreign and high life standards of the overseas. Mesmerized with all that fairy-tale like life, they get trapped and suffer a life of physical and mental abuse. The newly shifted individual gets exposed to a lot of other hardships, which we will explain through this report.

The allure of NRI marriages

The allure of NRI marriages primarily reside in the supposed abundance of opportunity overseas and the misconception that the ones who live overseas earn more than the ones who live in our own land. This in-turn gives a fairy-tale effect to those who are marrying such individuals; thus, leaving them vulnerable to fraud and abuse such as fake marriages and dowry.

NRI grooms extort huge amount of money from families of Indian brides and a social system where dowry is already a legitimate demand is only too cage to comply. Likewise, the illegal immigration agents charge sky high rates for fixing up sham NRI marriages, often to the material advantage of the visa-holder and aspiring migrants are often willing to risk land and other assets to go abroad. However, these are only seen as 'small price to pay' for the 'status and pride' such a marriage can bring to the bride's family.

When the allure of living in a foreign country, added with the 'pride' of the family and supposed 'status', NRI marriages become nothing short of a high demand social norm that people will pay anything to retrieve.

Social expectations and challenges

Of the 900 women who responded to a survey, over half of them say they dream of exploring their talent and having a great career. If 26 per cent want to make a difference to the world, only a meagre 13 per cent want a loving relationship. This is one of the revelations of a survey conducted by Sheroes a social networking platform for women with about 2 million members exclusively for ET Magazine. The typical profile of a Sheroes member is an urban woman between the ages of 20 and 35.

What does this mean in context of NRI marriages? Well, it portrays how woman prefer to gain financial freedom and equal opportunity before entering into marriage, which in most of the NRI marriages is not possible as the females have to heavily depend on their partner financially and culturally due to their lack of experience in overseas. On top of it, most of these marriages are performed to boost the 'pride' of the bride's family, ignoring the said bride's feelings and comfort as they celebrate the supposed 'success' of the bride.

More than often, the bride is unable to adopt of the foreign culture and face a huge adjustment problem. While on the other hand, the NRI groom who has already adopted the culture, becomes

intolerant to the bride and thus, adds to the challenges in such marriage. The major issues and challenges faced by women trapped in these deceptive NRI marriages are the unawareness about the possibility of being abandoned by their husband right after marriage, when he refuses to take her along with him. Sometimes women are brutally abused, confined, ill-treated or assaulted both physically and mentally. In certain cases, children are forcibly taken away from their mothers, or the husband is already married to another woman. The worst scenario cases include where the husband gives false information about his status, property etc. in order to con women into paying large sums of dowry. Women mostly suffer when the husband takes advantage of lenient grounds for divorce in other legal systems, where the women have nowhere to go. And then there are several social expectations from these marriages as well, which are most often than not buried under the aforementioned challenges:

- **Money:** It is the basic need of one's living. In NRI marriages especially women admire that their living outside would be rich and can afford a lot of money and can afford anything they want. They assume that marrying a NRI would fulfil all their desires.
- **Sex/Romance/Affection:** Sexual needs or desires are the basic and most common needs in today's world. Women in NRI marriages have a feeling that living outside from home or staying alone with in laws would bring more attention of their husbands towards them.
- **Holidays/Celebrations:** Many people do have a notion that foreign countries are best for holidays and vacation. Women getting married to NRI think this is an opportunity to go outside the country and celebrate their life. They start dreaming of a new stylish lifestyle.
- **Work/Career:** Career is also an important part of life. Everybody has their career goals to achieve. Women also take NRI marriages as an opportunity to build of their career and achieve their dreamt goals. Their goal of getting good education at foreign colleges or getting a proper job with stable salary also attract them towards NRI marriages.
- **Stable future of child/a stable family:** Every woman wants a stable future for her child. NRI marriages somehow assures the benefit and returns in building their child career. The expectation of a woman to make a stable and happy family force her towards marrying an NRI.

These expectations, when not met, creates dissatisfaction in marriages, thus resulting in abandonment and other issues.

Problems faced by females in NRI marriages

Over the years, the instances of Indian women being trapped in fraudulent marriages with overseas Indians are being increasingly reported. This has indeed underscored the pressing need to build safeguards in order to protect these suffering women from such situations, and make them aware of their rights and responsibilities regarding the various defenses at their disposal against this kind of treatment, as well as the safety nets that are available for assisting them. But as these problems surface, it is despairingly noticed how little defenses females have in comparison to the problems.

These problems include, but are not limited to:

- Multiple marriages by NRI youths: They are leaving their wives in lurch, in many cases with children. Now, it is called as 'Run away marriages', 'Short Liaison', 'Holiday-Wife-Syndrome'.
- Culture: Western Countries do not discourage splitting of marriages. Obtaining divorce in USA, Europe and foreign countries is very easy. Most of our Indian are living in those countries.
- Leaving NRI in India: After a short, honeymoon, the husband had gone back, promising to soon send her ticket that never came. In many instances, the woman would already have been pregnant when he left and so both she and the child (who was born later) were abandoned. The husband never called or wrote and never came back again.
- NRI wife and children are subjected to cruelty in abroad: Woman who went to her husband's home in a foreign country only to be brutally battered, assaulted, abused both mentally and physically, ill fed, and ill-treated by him in several other ways. She was therefore either forced to flee or was forcibly sent back. NRI wife was not allowed to bring back her children along. The children were abducted or forcibly taken away from the woman.
- Huge Dowry: Woman who was herself or whose parents were held to ransom for payment of huge sums of money as dowry, both before and after the marriage.

- Bigamy: Woman who learnt on reaching the country of her NRI husband's residence that he was already married in the other country to another woman, whom he continued to live with.
- Denial of maintenance: Woman who was denied maintenance in India on the pretext that the marriage had already been dissolved by the Court in another country
- Technical legal obstacles: NRI wife has to face obstacles related to jurisdiction of courts, service of notices or orders, or enforcement of orders.
- Trial of criminal case held up: Woman who sought to use criminal law to punish her husband and in-laws for dowry demands and/or matrimonial cruelty and found that the trial could not proceed as the husband would not come to India and submit to the trial or respond in any way to summons, or even warrant of arrest.
- Indian Courts have limited jurisdiction: Woman who was coaxed to travel to the foreign country of the man's residence and get married in that country, who later discovered that Indian courts have even more limited jurisdiction in such cases.
- VISA problems: In USA, NRI spouses on H4 or F2 visa are prohibited from any employment. Some countries impose employment restrictions on spouses of overseas Indians who are on work/student visa. According to Immigration Laws in USA, H4 dependent-visa holders are not eligible for a social security number. Without this number, the individual faces great difficulties in opening a bank account or to secure a driver's license and cannot be gainfully employed either.
- Fraudulent NRI marriages: "OUR MISSION YOUR SUCCESS"
- ❖ Broken marriage: All broken marriages are not fraudulent marriages. Here, Dowry expectation, bigamous intention, incapability of spouse to cope with mutual differences etc.
- ❖ Fraudulent marriage: Concealment of material facts about marital status, education, age, and medical/health conditions, etc.
- Citizenship: Law Commission of India in its 65th Report has proposed that the domicile of woman should be determined independently of that of husband, in conformity with the spirit of the Indian Constitution. Our Constitution does not permit dual citizenship or dual nationality

except for minors where the second nationality was involuntarily acquired. Under Section 5 (1) (c) of Citizenship Act, 1955, a woman married to a citizen of India does not automatically become an Indian citizen, though she may make an application and be registered as a Citizen of India.

Divorce of the NRI couple

Earlier, the cases of NRI marriages used to be very less. But after the on growing trend, Indian men and women both desire to marry foreign based Indian. They wish to settle in a foreign country to have better quality of life. Even most of the Indian parents want to marry off their daughter to foreign based Indian.

However, many of such marriages end in divorce. Though, to seek divorce people must know about the legal provisions regarding NRI marriages in India. Under Hindu Marriage Act, 1955, section 13 (b), if both the spouses are residing in any foreign country, they can seek divorce by mutual consent under the country's divorce laws related to foreign marriages. The Indian legal system will recognize the divorce only if it is with the consent of both the parties. There are situations when NRI spouse initiate ex parte proceeding seeking divorce. Here is the judgement for the same section 13 of code of civil procedure:

- Section 13 of code of civil procedure:

This applies to judgement from countries with whom India does not have any treaty or agreement on mutual enforcement of judgements. The Supreme Court in the case of Y Narasimha Rao¹ read Section 13 to address this problem.

Y. Narasimha Rao and Y. Venkata Lakshmi married in Tirupati in 1975 as per Hindu customs. They separated in July 1978. The appellant had filed a petition for dissolution of marriage in the Circuit Court of St. Louis County Missouri, USA on the ground of irretrievable breakdown of marriage. The respondent had sent her reply from India under protest. The Circuit Court passed a decree for dissolution of marriage on February 19, 1980 in the absence of the respondent. On 2 November 1981, the appellant married another woman. The respondent filed a criminal complaint against him for the offence of bigamy. The Supreme Court refused to accept the

¹ Y. Narasimha Rao & Ors. vs. Y. Venkata Lakshmi & Anr, 1991 SCR (2) 821

divorce decree granted by the court at Missouri, USA, on the ground that irretrievable breakdown of marriage is not a ground of divorce *Y. Narasimha Rao & Ors. vs. Y. Venkata Lakshmi & Anr*, 1991 SCR (2) 821 recognized under Hindu Law. So, under sec 13 of code of civil procedure only divorce through mutual consent would be considered because foreign judgements are not conclusive.

- Section 44A of code of civil procedure:

This applies to countries with whom India has reciprocal enforcement agreements (Reciprocating Territories). Sec 44A allows the enforcement of judgments outside the Indian territory as if it is passed in India. This can be obtained by filing a duly certified copy of the said judgment in the appropriate court, which will then be executed in accordance with the laws on enforcement and execution of Indian judgments and orders.

- Maintenance of wife and child

Maintenance is financial assistance given by husband to wife at the time of divorce or after divorce, where she is unable to sustain herself and her child financially. It's done to restore the position of wife's comfort and lifestyle at the time she was married. The amount of maintenance is not fixed; it is decided by court on a case-to-case basis.

Section 18 of the Hindu Maintenance and Adoption Act, 1956 provide some conditions in which wife is entitled for maintenance. Some of the conditions include that husband has treated her with cruelty, has any other wife living, has converted religion without the consent of wife, any other reason which can be justified, maintenance in case of the death of the husband. If her husband dies, she is entitled to get maintenance from her husband's estate.

Section 125 of code of criminal procedure, provides for maintenance rights to a woman during marriage, divorce proceedings and post the divorce. It is a secular provision and can be availed by all women irrespective of religion. A 'wife' who is unable to maintain herself and is not maintained by a husband having sufficient means can bring about a suit under this act. Section 128 allows the magistrate to give direction for the enforcement of the maintenance order.

The Courts have found different ways of responding to this challenge regarding jurisdiction. The most significant of these cases is *Satya v. Teja Singh*², which emphasized that though residence requires more than a fleeting visit, it may be a temporary or permanent abode.

Decrees obtained abroad in cases of NRI marriages will not be held conclusive in India under Section 13(e) of the CPC, if they have been obtained by fraud of facts relating even to jurisdiction, and not only the merits.

*Deepak Banerjee v. Sudipta Banerjee*³, in 1987 stressed the proposition that 'residence' for the purpose of conferring jurisdiction for maintenance includes the residence of the wife, since she cannot be expected to travel long distances, to foreign jurisdictions to obtain justice when she is claiming destitution. The Court reiterated *Satya v. Teja Singh* to this effect, and also stressed the ratio in *Shah Bano Begum*⁴ that Section 125 of the Code of Criminal Procedure is independent of the nationality and personal law of the parties. Accordingly, the suit does not involve a question of conflict of laws at all, even if the husband resides in abroad.

Custody of Child

Whenever the question of child custody arises, the priority is given to welfare of the child. The factors that constitute welfare of child includes, safe keeping, ethical upbringing, good education and economic well-being of the guardian. An important point to note is that simply because a parent earns more does not mean that the other disqualifies from getting the custody. Economic well-being means that the guardian is capable of fulfilling the necessary needs of the child, it has nothing to do with earning more.

If both parents seem incapable of taking the responsibility, other relatives can seek custody strictly out of compassion towards the child. The court can also assign a third party as the guardian.

In cases of NRI marriages, if the child is very young then it is more likely for the mother to get the custody with father getting the visitation rights, however, this does not mean that that custody cannot be granted to the father.

² 2 1975 AIR 105

³ 1988 CriLJ 1627

⁴ Mohd. Ahmed Khan vs. Shah Bano Begum and Ors. 1985 AIR 945

The earliest case of child custody in NRI marriages was *Marggarate Pulparampil v Dr. Chacko Pulparampil*⁵, here, the Kerala High Court decided to grant the custody of the child to the mother residing in the West Germany, even though it meant that the child will be out of the jurisdiction of the court. The court also passed several directions to balance the conflicting interests of the parents. In essence, these directions asked the mother to bring the child to India after every three years, to inform any change of residence in Germany and produce a report from the third party regarding the health and welfare of the child. The father was granted visiting rights if and when he visits Germany but only after proper permission.

In *Dhanwanti Joshi v Madhav*⁶ under, the NRI husband was already married to another woman and during the subsistence of the earlier marriage had married the second wife appellant who had a son from him and when the child was just 35 days old, she left and came back to India with her infant son. The Supreme Court had the occasion to decide the custody of the child when he was more than 12 years old and decided that even though the father may have obtained custody from the US court, the best interests of the child demanded that the child be allowed to continue to stay with the mother in India who had brought up the child singlehandedly in India, subject to visitation rights of the father.

In many cases, the principal challenge for NRI wives, however, remains the jurisdiction – where the spouses reside in different countries, any judicial decisions passed by a foreign court, more or less becomes unenforceable.

Currently, there is no provision recognizing foreign matrimonial judgments or matters on any other family law legislations the recourse is to Section 13 of the Code of Civil Procedure, 1908 (CPC). Our whole legal work for providing relief to abandoned brides is completely dependent on this provision. An exception to this is however 'Reciprocating Territories', as defined in Section 44A of the CPC.

In the judgment of *Narasimha Rao v Venkata Lakshmi*⁷, the Court explained the implications of each clause of Section 13. Clause (a) of Section 13 states that a foreign judgment shall not be recognized if it has not been pronounced by a court of competent jurisdiction. This may be

⁵ AIR 1970 Ker 1

⁶ (1998) 1 SCC 112

⁷ AIR 1991 SCR 821

interpreted as “a court will be a court of competent jurisdiction which the Act or the law under which the parties are married recognizes as a court of competent jurisdiction to entertain the matrimonial dispute”.

Clause (b) of Section 13 states that if a foreign judgment has not been given on the merits of the case, the courts in this country will not recognize such judgment. This may mean that the decision of the foreign court should be on a ground available under the law under which the parties are married, and that the decision should be a result of the contest between the parties.

Clause (c) of Section 13 states that where the judgment is founded on a refusal to recognize the law of this country in cases in which such law is applicable, the judgment will not be recognized by the courts in this country. The marriages which take place in this country can only be under either the customary or the statutory law in force in this country.

Clause (d) of Section 13 which makes a foreign judgment unenforceable on the ground that the proceedings in which it is obtained are opposed to natural justice, states no more than an elementary principle on which any civilized system of justice rests. However, in matters concerning the family law such as the matrimonial disputes, this principle has to be extended to mean something more than mere compliance with the technical rules of procedure. If the rule of audi alteram partem has any meaning with reference to the proceedings in a foreign court, for the purposes of the rule it should not be deemed sufficient that the respondent has been duly served with the process of the court. It is necessary to ascertain whether the respondent was in a position to present or represent themselves and contest effectively the said proceedings. This requirement should apply equally to the appellate proceedings if and when they are filed by either party. If the foreign court has not ascertained and ensured such effective contest by requiring the petitioner to make all necessary provisions for the respondent to defend including the costs of travel, residence and litigation where necessary, it should be held that the proceedings are in breach of the principles of natural justice. It is for this reason that we find that the rules of Private International Law of some countries insist, even in commercial matters, that the action should be filed in the forum where the defendant is either domiciled or is habitually resident. While this provision gives some sort of protection to these women, but no proper legislation is available.

The Registration of Marriage of Non-Resident Indian Bill, 2019 was introduced to create more accountability and offer more protection against exploitation by implementing the following:

- Registration of marriages: Every NRI who marries a citizen of India must get his marriage registered in India within thirty days.
- An amendment to the Passport Act, 1967 which allows impounding the passport in case of failure to fulfill the above.
- Issuing summons and warrant to the NRI husbands residing abroad.
- Allowing the court to order attachment of the property belonging to the proclaimed offender

Another remedy available to these women is under Section 10 of the Passport Act for impounding and/or revocation of the passport of her NRI husband if he failed to respond to the summons by the Indian courts.

In *Rajiv Tayal v. Union of India & Ors.*⁸, NRI husband had filed a writ petition seeking to quash the order passed by Consulate General of India, New York, USA, on the directions of the Ministry of External Affairs, Government of India, New Delhi, for impounding his passport.

The court held that acceptance of such a plea would give a premium to the accused husband just because he happened to be abroad. Merely by going abroad a person could not claim a status superior to that of a citizen of India. The court therefore held that there was no merit in the husband's plea as to the invalidity of Section 10(e) & (h) of the Passport Act being violative of Articles 14, 19 and 21 of the Constitution and the plea of constitutional validity of such provisions thus stood rejected.

Conclusion and Suggestions

In recent years, media coverage of Indian women, married and deserted by NRI husbands as well as that of fake marriages based on the lure of spousal visa has prompted the Indian government and legal system to take several corrective and preventive measures.

⁸ 124 (2005) DLT 502; 2005 (85) DRJ 146

Among the measures taken by government agencies like The Ministry of Overseas Indian Affairs and the National Commission of Women are creating awareness in the population especially in rural and semi-urban areas of the risks of an overseas marriage without proper checking on the NRI partner's background. The Indian legal system is in favor of compulsory registration of marriages which will go some way in tracking and providing relief in cases of fraudulent NRI marriages.

There have also been efforts to increase co-operation between the embassies as well as voluntary organizations of India and foreign countries in cases where the NRI husband is absconding or where the bride has been deserted on foreign soil. In absence of definite laws relating to NRI marriage in the Indian legal system and the difficulty of enforcing those which already exist, preventive measures are the best bet for partners seeking marriage with a Non-Resident Indian. The National Commission of Women website has useful suggestions on the dos and don'ts for women looking forward to marry NRI men. Similarly, those entering into fraudulent NRI marriages with the bad intention of obtaining entry into a foreign country should remember that increasingly tight immigration laws in those countries could land them in jail or at least leave them at the mercy of strict law enforcement agencies.

However, the only way to stop these kinds of abuse is by dissipating the social misconception about NRI marriages. As the saying, 'Not all that glitters is gold' goes, not all NRI marriages are stable or secure and can more often than not, lead to abuse and violence on the failure of expectation.

The unfamiliarity of the social as well as legal aspects of these marriages also makes the brides prone to abandonment and abuse. Thus, the first step needed to be taken against such marriages is to spread awareness about the risks as well as the legal defenses both the bride and groom can take in case they have been stuck in such unfavorable marriage in a foreign land.

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