

## **NRI Marriages: Social Legal Dimensions**

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### ***Abstract***

Marriage is a sacramental institution where both husband and wife have certain mutual rights and duties towards each other. According to Hindu shastra's wife should reside with her husband in his house. Sometime Indian women trapped in fraudulent marriages with overseas Indians and faced various social and legal problems such as desertion by their husbands, harassment in foreign country by the husband or by in laws, husband obtained the divorce by the court where he resided.

In this research paper researcher would try to explain the social and legal problems faced by Indian women when they trapped in fraudulent marriage.

**Key Words:** NRI Marriages, harassment, overseas

### **Introduction**

NRI marriages means when Indian woman marry with a person who is resident of foreign country. For the tax and other official purpose Govt. of India considers a person NRI if he is away from India for more than 180 days in a year. In general pretext any individual who born in India and have taken citizenship of other countries. According to Foreign Exchange regulation Act NRI means any person staying outside India<sup>1</sup>. Through the various studies it is found that the trend of such marriages are more in state of Punjab and Andhra Pradesh, although these are also contracted in others states also such marriages are generally arranged by the relatives and main attraction in such marriages for the bride sides are that such marriages acts as tickets to abroad

not only to bride but also for the whole family and uplift the reputation of the family in the society.<sup>ii</sup>

In such marriages grooms side demanded huge dowry and massive wedding. Such marriages generally conduct in haste without verifying the groom properly. In such fraudulent marriages bride faced many social and legal problems such as<sup>iii</sup>

- that after honey moon husband left her without taking her and she waits for visa such brides are generally known as ‘honeymoon brides’
- Some time husband and his family provided false information about themselves.
- Woman reached in her husband country then husband and his family did not accept her and she suffered alone on the land of foreign country without any means of subsistence.
- In some foreign countries laws relating to marriage and divorce are lenient as compare to India and NRI husband took benefit of such laws and obtained ex-parte divorce.
- NRI husband also refused to maintain his wife who is residing in India.
- If there is any children of such marriage then NRI husband or his family forcibly take away child from the woman
- When wife filed the petition of divorce in India or in Abroad she faced technical legal obstacles such as jurisdiction of courts, service of notices or orders by the courts.

In India there is no specific legislation which deals with such marriages and their issues. Generally such issues of marriage, divorce and custody of children are dealt under Indian private international law which is not codified but different legislations such as Code of Civil Procedure, The Special Marriage Act, the Indian succession Act and The Indian Divorce Act has the various provisions to deal with such issues. It is an established principle of Indian private international law that for a valid a marriage it must comply with the *lex loci celebrations* (law of the place where marriage is celebrated). There are provisions in different legislations which covers such issues.

The Special marriage Act, 1954 has provision that any person can contract marriage under this Act, whether one of the parties residing outside the India or both are contracting their

marriage in abroad provided parties should be Indian domiciled. This Act also has the provision of divorce through mutual consent. Parties of the marriage take benefit of provisions of such legislation.

The Foreign Marriage Act, 1969 is based on the model of English Foreign marriage, order 1964 which has provision for consular marriage in which one party should be Indian National.<sup>iv</sup>

Other major issue is when wives are abandoning in India or forced to return to India. Situations husband file the petition of divorce in abroad. In both situations wives are not able to go to abroad and contest the case husband took benefit of this and obtained the ex parte divorce from the foreign court. If wife initiate the proceedings in India, Indian court are generally unable to issue and serve the summons timely because husband is in abroad and which consume several months in such proceeding in India. Another issues when wife wants matrimonial relief the question came before court on validity of marriage which revolve around one point that to establish whether marriage is validity Indian law will be applicable or the law of the husband country where he is residing. Same is the issue for the divorce.

If husband obtained the decree of divorce from the foreign court question arose relating to enforcement and execution of foreign judgments in India. Section 13 of the Civil Procedure Code, 1908 defines when foreign judgment is not conclusive. The Court of India held such divorces invalid and observed that if the ground under which divorce was granted is not available under personal laws applicable to the parties in India then decree of divorce is invalid.

The most celebrated case in this regard is the decision of the Supreme Court in *Y Narsimha Rao v. Y. Venkata Lakshmi*.<sup>v</sup> Observed that the judiciary is doing its best to protect wives of such marriages from ex- parte divorce proceedings initiated in foreign court, it was also considered that India should sign such bilateral treats which deals with such matter for clear guidelines to judiciary as well as public. The Indian Courts do not accept foreign Court Judgments, which violate the Indian Code of Civil Procedure, 1908.<sup>vi</sup>

There are certain issues which are still unanswerable that whether abandon wife can obtained other remedies such as extradition, impounding of passport, cancellation of citizenship, and attachment of property. Look out orders, suit for damages, and invoking writ of Habeas Corpus. Experience shows that foreign missions and embassies in India of the respective foreign countries offer little or no help.

Parliamentary Committee on Empowerment of Women recommended that National Commission for Women will act as coordinating agency at national level for dealing with such issues. Therefore, National Commission for Women has NRI Cell which receive and process all complaints related to deserted wives by their NRI husbands. This cell renders assistance of conciliation mediation etc. This cell also carries various schemes for legal and financial assistance to deserted Indian women. This scheme helps those women who are facing divorce proceedings in a foreign country. These women should qualify certain conditions such as she should be Indian passport holder, her marriage should solemnized in India, she should reach to her husband country within 5 years of her desertion, she should obtained the decree of divorce within 10 years of marriage and case of maintenance and alimony is to be filed. She received the financial assistance limited to us\$1500 per case.<sup>vii</sup>

In spite of these there is Hauge Convention of Marriage, 1978, this Convention facilitated the celebration of marriage as well as ensure the recognition of the validity of the marriage

Today the world is global village where person can move from one continent to another continent for employment, business, and tourism and for marriage. Marriage is sensitive issue which involves the question of life of two people and reputation and relation of two families but when Indian women trapped in fraudulent marriage overseas Indian then she undergoes mental suffering as well as legal complications because in such marriages the law of two countries involved. In India such issues are dealt under private international law which scattered in various enactments as well as certain rules have been evolved by Indian Court but their approach towards matrimonial issues influenced by the English rule of private international law. Therefore, there is an urgent need to aware the people about this issue through various campaigns.

There is a need to sensitize the police because whenever women feel helpless in such cases she firstly approach the police. There should be full personnel data of the persons going aboard on the ministries/RPO website it will help to check the authenticity of the passport.

There should be certain schemes for rehabilitation of deserted women by providing them training and psychological counseling.

There should be amendment in the passport Act, 1967 to cancel the passport of the husband on fraudulent marriage

India should sign the Hauge Convention of marriage because this convention directly deals with such issues

There should provisions in Indian Penal Code of sever punishments to husband his family and the person who contracted such marriages.

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<sup>i</sup> The Foreign Exchange Regulation Act, 1973, section, 2(q)

<sup>ii</sup> National Institute of Public Cooperation and Child Development, A Study on Desertion of Married Women by Non-Resident Indians in Punjab and Andhra Pradesh. *available at:* <http://nipccd.nic.in/reports/desertion.pdf> (last visited on Dec 22,,2019)

<sup>iii</sup> Problems relating to NRI Marriages-national Commission for....*available at* [ncw.nic.in>sites>default>files>NRI Do Dont](http://ncw.nic.in/sites/default/files/NRI%20Do%20Dont.pdf) (last visited on Dec.12,2019)

<sup>iv</sup> Consular marriage and marriages under foreign law *available at* [https://www.legislation.gov.uk > ukdsi](https://www.legislation.gov.uk/ukdsi/2019/01/03/ukdsi-2019-0103/1-1) (last visited Dec 12,2019)

<sup>v</sup> (1991)3SCC451

<sup>vi</sup> The Civil Procedure Code, Sections 13, 44

<sup>vii</sup> Issues relating to NRI marriages..-Punjab police *available at* [punjabpolice.gov.in](http://punjabpolice.gov.in) > PDF viewer > Issues relating to NRI marriages-NCW (last visited on Dec 17, 2019)