

PREVENTION AND PROHIBITION OF NRI MARRIAGES: A STUDY WITH SPECIAL REFERENCE TO THE STATE OF PUNJAB

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Abstract

In India, marriage is not solemnized merely between two individuals but it establishes a bond between two families. This bond is considered to be based on love, care and trust. But for the past decade, this bond has started to face its replacement by fraud, greed, desertion and cruelty. The society is witnessing ever growing number of fraudulent cases where Indian women are being deserted after marriage by their husbands and his family who are residing in a foreign country. The husband and his family after getting huge dowry and fulfilling their purpose easily gets escaped by taking advantage of the loopholes of the existing laws and legal system, leaving the wife miserable. The research paper analyses the issues relating to NRI Marriages and puts forth suggestions for framing of a consolidated and comprehensive law relating to challenges in NRI marriages.

Keywords: NRI Marriage; Foreign Court; Fraudulent; PIO

1. INTRODUCTION

In Indian culture, marriage is considered as a sacred institution in which the groom and the bride take wedding vow “to live together until death does them apart”. In a last decade, India has been witnessing a steep rise in overseas/NRI marriage. With the solemnization of overseas/NRI marriages; India is experiencing an increasing number of frauds in such marriages. Therefore, the complications involved in overseas/NRI marriage have become a recent evil in the sacred institution of marriage. Reasons behind the complications involved in NRI marriage is the involvement of two sets of legal systems i.e. applicability of Indian Legal System and the applicability of legal system of other country in which either or both of the spouses are residing. Before proceeding further in identifying the complications involved in such marriages, first of all, it is necessary to understand the meaning of NRI marriage.

1.1 OBJECTIVES OF STUDY

The main objective of study is to analyse the background of NRI Marriages and to explore the challenges and issues faced by either spouse in general or wife in particular in such alliances. Another objective of research is to explore and analyse the legal remedies available to abandoned wives in such marriages and to put forth suggestions for framing of a consolidated and comprehensive law relating to challenges faced by parties to NRI marriages.

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2. RESEARCH METHODOLOGY

To build up the conceptual and historical understanding and to analyse the challenges in NRI Marriages, the research methodology adopted is doctrinal research and non-doctrinal research. Doctrinal research methodology includes reports, research articles, judgments and statutory laws relating to marriage and other matters related to marriage. Non-doctrinal research methodology includes interview schedule with women facing harassment in such alliances. The interviews were conducted in informal manner to ensure informal interaction so as to extract detailed and relevant information regarding the challenges faced by parties to NRI marriages.

3.1 NRI – MEANING AND DEFINITION

In general, a person who holds Indian passport and immigrate to another country for the purpose of study or employment is popularly called as NRI. Thus, the abbreviation NRI stands for Non-Resident Indian. In legal sense, the term NRI has been referred under two Indian Statutes viz. Income Tax Act, 1961 and Foreign Exchange Management Act, 1999. The enactment of Income Tax Act, 1961 does not define the term in specific but lays down the criteria as to who is Resident and who is Non Resident of India and such criteria depends on the period of stay of that individual in India.¹

¹ The Income Tax Act, 1961, No. 43, Acts of Parliament, 1961 (India) s. 6.

(1) “ An individual is said to be resident in India in any previous year, if he –

(a) Is in India in that year for a period or periods amounting in all to one hundred and eighty two days or more; or

(b) Having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty five days or more in that year.

Explanation- In the case of an individual, -

(a) Being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 for the purposes of employment outside India, the provisions of sub clause (c) shall apply in relation to that year as if for the words “sixty days”, occurring therein, the words “one hundred and eighty two days” had been substituted;

(b) Being a citizen of India, or a person of Indian Origin within the meaning of Explanation to clause (e) of Section 115 C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words “sixty days”, occurring therein, the words “one hundred and eighty-two days” had been substituted.

(2)

(3)

(4)

(5)

(6) A person is said to be “not ordinarily resident” in India in any previous year if such person is-

(a) An individual who has not been resident in India in nine out of ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more; or

(b)

Whereas under Foreign Exchange Management Act, 1999, the term NRI/Non Resident of India has not been mentioned as such but the Act gives definition of “person resident outside India”.² However, Foreign Exchange Management (Deposit) Regulations, 2000³ formulated by the Reserve Bank of India as empowered⁴ under the FEMA Act, 1999 defines the term NRI/Non Resident of India. As per Regulation 2 clause (vi) “*Non Resident Indian (NRI) means a person resident outside India who is a citizen of India or is a person of Indian Origin*”.

Unlike Income Tax Act, 1961, the definition under the Regulations is more precise and the status of an individual depends on its citizenship which gets clarified if read with Regulation 2 clause (xii). As per Regulation 2 clause (xii) Person of Indian Origin refers to that person who at any point of time had held Indian Passport or who himself or whose either of the parents or grandparents had been citizen of India according to legal provisions or whose spouse is an Indian.⁵ PIO card holders can visit India without visa for fifteen years but if their stay exceeds 180 days continuously at one time, they are required to register with Foreigner’s Registration Officer (FRO) in India. PIO’s enjoy parity with NRIs in respect of certain facilities but they do not possess any political rights and can apply for Indian citizenship after residing in India for a minimum of seven years.⁶

“A foreign national who was eligible to become a citizen of India on 26 January 1950, or was a citizen of India on or at any time after the said date or belonged to a territory that became part of India after 15 August, 1947 and, his/her children and grand -children are eligible for registration as OCIs (Overseas Citizen of India). They are exempted registration with FRO/police authorities for any length of stay in India and enjoy multiple entries with multipurpose lifelong visa for visiting India.⁷

² Foreign Exchange Management Act, 1999, No. 42, Acts of Parliament, 1999 (India) s. 2 (w). “*person resident outside India*” means a person who is not resident in India.

³ Foreign Exchange Management (Deposit) Regulations, 2000 (India), (Aug. 12, 2022, 01:05 PM), <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13255.pdf>.

⁴ Foreign Exchange Management Act, *supra* note 2, at s. 47.

⁵ Foreign Exchange Management (Deposit) Regulations, *supra* note 3, at reg. xii.

“*Person of Indian Origin*’ means a citizen of any country other than Bangladesh or Pakistan, if

a) *he at any time held Indian passport; or*

b) *he or either of his parents or any of his grand- parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or*

c) *the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b);”*

⁶ ANIL MALHOTRA, INDIA, NRI’S & THE LAW 35 (Universal Law Publishing Co, 2009).

⁷ *Ibid.*

3.2 NRI MARRIAGE

In the light of meaning of NRI as discussed in preceding paragraph, 'NRI marriages' essentially refers to that marriage in which either or both the parties to the marriage is/are citizen of India or of Indian origin and solemnize the marriage as per the Indian laws but settles down in a foreign country. Thus, there can be possibility of the following pairs in NRI Marriages:-

- a. Indian female and NRI male, or
- b. Indian Male and NRI female, or
- c. Both the parties to marriage are Indians and migrate to foreign country after marriage, or
- d. Both the parties to marriage are NRI and marriage is solemnized as per Indian laws either in India or in a foreign country, or
- e. One of the parties to marriage is Indian and other party is a foreigner and marriage is solemnized as per Indian laws either in India or in a foreign country.

3.3 NRI OBSESSION

There are different reasons that Indian people are obsessed with NRI marriage proposals. One of the main reasons to consider such proposals is money and a means to migrate abroad not just for the prospective 'bride' but for her entire family.⁸ NRIs are presumed to be wealthy and leading a luxurious life by the Indian people. The parents of the prospective 'girl' or 'boy' believe that their child would get well settled socially and financially and live happily if she/he gets married to NRI. Apart from personal interests there are some social reasons like unemployment, poverty, greed, gender-inequality, illiteracy & lack of awareness due to which NRI marriages are in trend.

Believing in the deceitful intentions of fraudulent party and in the eagerness of not to let go of such lucrative marriage proposals, the parents of an prospective 'girl' or 'boy' totally ignores common cautions that are even observed in traditional matchmaking. They do not even understand the complexity involved in such marriages. A lavish wedding is performed in a very short time. While performing such marriage, the parents also ignore the fact that in case if anything goes wrong or if any unfortunate incident happens in such marriage then the male or female's recourse to justice is greatly constrained.

The aggravated risk in such marriages is that woman is being 'isolated' far away from home in an alien land, facing language constraints, communication problems, lack of proper information about the local criminal justice, police and legal system. The situation gets worsened by lack of support network of friends and family and monetary constraints which leaves the woman completely

⁸ National Commission for Women, *The Nowhere Brides: Report on Problems Relating to NRI Marriages* (2011) 7-9.

helpless and stranded. The research paper mainly focuses on the position of women/ wives in NRI marriages.

3.4 NRI OBSESSION AND FRAUD MARRIAGES: A STUDY IN PUNJAB

Marriage in India is considered to be a patrilocal affair, where wives are expected to join their husbands wherever they might be living.⁹ Also, Indian families residing in a foreign country prefer Indian brides for their foreign born son with an intention to revive the emotions attached to Indian culture and traditions in a foreign land. But as a matter of fact, this is not true in every case. There are number of incidents where NRI groom come to India for marriage but with an intention to deceit, dupe and abandon the innocent girl and her family members. The parents of girl in their eagerness to relocate the girl in a foreign country purposely ignore to check the antecedents of the groom and as a result, the bride is left miserable to take any preventive steps to safeguard her rights.

As observed, Punjab alone seems to be the worst affected by the incidents of fraudulent marriage. In spite of fraud committed in these marriages, people from Punjab are obsessed in giving their daughter away to NRI husband. It was suggested in a seminar that among 25 million of Indians who are residing abroad, the state of Punjab alone counts for nine million people. Further, as per the report of standing Committee on External Affairs, 2011 a rough idea was given which mentioned that state of Punjab alone reports 14% of NRI fraudulent marriages and other grievances involved in it. The state of Punjab which is popular for its rich cultural heritage and vivid lifestyle comes in bad books when it ruin the girl's life without verifying the details of NRI proposal. The state of Punjab is divided into three regions viz. Doaba, Majha and Malwa. The region of Majha comprises of four modern districts of Punjab viz. Amritsar, Tarn Taran, Gurdaspur and Pathankot. The region lies between rivers Ravi, Sutlej and Beas and also called as 'heartland of Punjab'.¹⁰ Whereas Malwa is a region of Punjab that covers the districts situated in south to the river Sutlej. The region constitutes majority of Punjab. The districts covered in this region are Ludhiana, Sangrur, Barnala, Fatehgarh Sahib, Patiala, Bathinda, Muktsar Sahib, Ferozpur, Faizalka, Faridkot, Rajpura, Ajitgarh, Malerkotla, Mansa and Moga.¹¹ Doaba Region refers to that area which lies between two rivers i.e. Beas and Sutlej. It comprises of the districts of Roopnagar,

⁹ S. Dasgupta, *Woman Abuse in a Globalising World: Abandonment of Asian Women*, 4 INDIAN JOURNAL OF RESEARCH (2011).

¹⁰ *About Punjab*, (Aug. 19, 2022, 10:10 AM), https://www.pbrdp.gov.in/home/-/asset_publisher/JU2A2tyqP2aJ/content/aboutpunjab/pop_up?_101_INSTANCE_JU2A2tyqP2aJ_viewMode=print#:~:text=The%20Malwa%20area%20makes%20up,located%20in%20the%20Malwa%20region.

¹¹ *Malwa (Punjab)*, (Aug. 19, 2022, 10:15 AM), [https://en.wikipedia.org/wiki/Malwa_\(Punjab\)](https://en.wikipedia.org/wiki/Malwa_(Punjab)).

Nawnanshahar, Hoshiarpur, Jalandhar and Kapurthala.¹² Out of the three regions, Majha and Malwa had registered highest number of matrimonial disputes in NRI marries against Doaba region.

3.5 SOCIO-LEGAL COMPLICATIONS IN NRI MARRIAGES

Every NRI marriage is not a fraud marriage. There are NRI marriages that lead to a happy and healthy relationship but most of the NRI marriages have been recorded to be deceitful and fraudulent. Abandonment and violence of innocent wives have been reported to be the major effect in such marriages. Due to lack of adequate resources to get proper information of NRI party and absence of verification procedure regarding NRI marriage proposals, such issues arise in NRI marriages. Instances of social issues that arise or could arise in NRI marriages have been listed below:

- Trapping of prospective 'girl' as well as her family members in false commitments and fraudulent proposals in NRI marriage.
- NRI party/ husband giving false information about his particulars or portfolio or marital status or financial status, to prospective 'girl' and her family members.
- Family members of prospective 'girl' are being forced to perform marriage ceremonies with great pomp and show by spending huge money on account of dowry, visa work of bride, honeymoon etc.
- Woman married to NRI man, not being taken to foreign country where man is residing depriving woman to join her matrimonial home.
- Wife who manages to reach in foreign country to join her matrimonial home but husband not turning up at airport to take away her along with him.
- Wife booked by police authority or being sent to migrants asylum camp due to her illegal stay in foreign country, if abandoned by NRI husband.
- Wife residing in foreign country with the husband, physically and mentally assaulted, humiliated, misbehaved, tortured, ill-treated and forcibly sent back to India.
- Wife implicated in some false cases in foreign country by NRI husband.
- Wife sold or dragged into prostitution or being forced to compromise and make physical relation with other person for survival of her relationship.
- Wife being forcefully deprived form her children.
- NRI husband was already married to another woman in other country.
- Wife facing legal technicalities during matrimonial dispute with NRI husband in the courts such as jurisdiction of courts, service of notice/summons or orders, or enforcement of orders etc.
- NRI Husband commencing simultaneous retaliatory legal proceedings in other country.

¹² About Punjab, *supra* note 10.

- NRI Husband taking advantage of more lenient divorce grounds in the legal system of other country and obtaining ex-parte decree of divorce through fraudulent representations and/or in the absence of wife or without her knowledge.
- On obtaining divorce from foreign court of law, NRI husband taking plea of same in matrimonial litigations pending in Indian courts.

3.6 COMPLAINTS IN NRI MARRIAGES: AN ANALYSIS

The Ministry of External Affairs/Missions provides assistance in many ways to distressed Indian women facing marital issues. The Ministry has so far addressed 6369 complaints/grievances since 1st January, 2016 till the year 2020 as per the annual report issued by Ministry of External Affairs. The report has been discussed in brief below:

3.6.1 NRI Husband¹³

Ministry of External Affairs replied on given questions-

S.No	Questions	Answers
1.	Whether the Government has taken necessary steps to protect Indian Women facing abandonment or divorce or other problems from their NRI husbands	Yes, The Ministry has been receiving petitions from Indian women deserted or harassed by their NRI spouses.
2.	Number of complaints lodged by women in last three years	It has received and addressed 4698 complaints.
3.	Action taken by the Government in respect of given complaints	Multipronged approach has been adopted to give respite to victim of NRI marriage.

¹³ *Question No. 2912 NRI Husbands*, (Aug. 20, 2022, 11:15 AM), <https://mea.gov.in/lok-sabha.htm?dtl/31577/question+no2912+nri+husbands>.

The year-wise data of the complaints addressed are as below:

Number of Complaints addressed

Year	Number of Complaints addressed
2016	1510
2017	1498
2018	1299
2019 (up to 31st May)	391
Total	4,698

Government has adopted a multi-pronged approach to provide relief to wives abandoned by NRI husbands. It includes various services like what should be the mechanism to issue judicial summon to NRI husband, procedure of filing of judicial case in India, issuing of circular for look out, counselling of victim, guidance and information about legal procedures, forfeiture and cancellation of Indian passport of the victim's NRI husband. Also MADAD portal was launched to help women abandoned by NRI husband¹⁴. In addition, the Indian Community Welfare Fund (ICWF)¹⁵ guidelines were revised with the objective of providing financial and legal assistance to abandoned woman by NRI husband.¹⁶

¹⁴ The MADAD is an online grievances monitoring system launched by Ministry of External Affairs on February 21, 2015. The e-portal provides Indian citizens living abroad an online platform in which they can file consular grievances to the Indian government.

¹⁵ ICWF, set up in 2009, is aimed at assisting Overseas Indian Nationals in times of distress and emergency in the most deserving cases on a means tested basis. The guidelines would cover three key areas namely Assisting Overseas Indian nationals in distress situations, Community Welfare activities and Improvement in Consular services.

¹⁶ In September, 2017, the amount of legal & financial assistance to distressed Indian women has also been increased to US\$ 4000 per case. The assistance is released to the empanelled legal counsel of the applicant or Indian Community Association / Women's Organisation/NGO concerned to enable it to take steps to assist the woman in documentation and preparatory work for filing the case.

3.6.2 NRI Wife¹⁷

Ministry of External Affairs replied on the following questions:

- a) In the last five years there has been an increase in the number of complaints in cases of abandoned Indian women by NRIs, so whether the Indian government is aware on this matter or not?
- b) What is the data in respect of complaints received, resolved and pending for that period?
- c) Does the Indian government provide any online consular services in abroad for wife deserted by NRI husband?
- d) Is there any future government policy for the benefit of women abandoned by NRI husbands, and if so, the details?
- e) Is any law to protect the abandoned wife and the mechanism to serve judicial summons to accused NRI husbands and if so, the details thereof.

The year-wise data of the complaints addressed are as below in response of question (a) and (b):

Data on Complaints of NRI Wives

Year	Number of Complaints received	Number of Complaints addressed	Pendency
2015	796	796	0
2016	1510	1510	0
2017	1498	1498	0
2018	1299	1299	0
2019 (up to 31st October, 2019)	991	991	0
Total	6094	6094	0

¹⁷ Question No. 688 Complaints of NRI Brides, (Aug. 21, 2022, 11:15 AM), <https://mea.gov.in/loksabha.htm?dtl/32054/question+no688+complaints+of+nri+brides>.

In answer to question (c), it has been mentioned that MADAD¹⁸ is an online service provided by the Government of India for the abandoned wife by an NRI husband in abroad.

In answer to question (d) it has been replied that government has adopted multipronged approach to solve the problem. In order to identify the legal challenges faced by NRI marriages and to find solutions or amendments in the existing laws or formulate new policies or regulations, an expert committee was constituted. And the INA¹⁹ was established on the recommendation of the Expert Committee.

In response to (e) and (f) the Central Authority of India has two authorities to deal with the issue of judicial summons, outside India. The services of judicial process outside India for criminals in criminal cases are issued by the Ministry of Home Affairs and in civil matters by Ministry of Law & Justice. Despite various efforts of the Government of India, it is felt that the need of the hour is to enact a special law to deal with the problem of wives abandoned by NRI husbands. In fact a bill was introduced in Rajya Sabha in year of 2019 titled as "The Registration of Non-Resident Indian Marriages Bill". But, still there is a need to search for better solutions to the problems relating to NRI marriages.

3.7 NRI MARRIAGES: JUDICIAL APPROACH

Indian Courts time and again have made significant observations while dealing with the matters relating to NRI marriages. The Apex Court in a landmark case of Neeraja Saraph v. Jayant Saraph²⁰ made the following observations:

1. *"No marriage between a NRI and an Indian Woman which has taken place in India may be annulled by a foreign court.*
2. *Provision may be made for adequate alimony to the wife in the property of the husband both in India and abroad*
3. *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 passed by that court".*

Deciding on the legal issue, if Indian courts are bound to give recognition to divorce decrees granted by foreign courts, the Supreme Court in a landmark

¹⁸ *Ibid.*

¹⁹ The Integrated Nodal Agency (INA) is headed by Secretary, Women & Child Development. The Agency provides a single window timely solution to the problems of Indian women married to Overseas Indian spouses. So far, INA had sixteen sittings and issued eight Look Out Circulars against erring spouses.

²⁰ (1994) 6 S.C.C. 461 (India).

case of Satya v. Teja Singh²¹ refused to apply the English old doctrine that during marriage the domicile of wife without exception follows the domicile of husband and held that no rule of Private International law could compel wife to accept the decree obtained by husband fraudulently. Elaborating the scope of Section 13²² of Civil Procedure Code, 1908 further, the Division Bench of the Supreme Court in the case of Y. NarasimhaRao v. Y. Venkata Lakshmi²³ explicitly described exceptions contained in Section 13. The Apex Court laid down following golden rule which has been repeatedly followed by the courts:

“The jurisdiction assumed by foreign court as well as grounds on which the relief is granted must be in accordance to matrimonial laws under which parties are married. However the rule is subject to the following exceptions:

1. *Where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which parties are married.*
2. *Where respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under matrimonial law under which parties are married*
3. *Where the respondent consents to the grant of relief although the jurisdiction of the forum is not in accordance with the matrimonial law of the parties”.*²⁴

The principles laid down in the above case were followed by Delhi High Court in Veena Kalia v. Jatinder N. Kalia²⁵ where NRI husband was successful in obtaining ex parte decree from foreign court. The Delhi High Court refused to consider the decree as res judicata against the divorce petition filed by wife in Indian Court and further accepted wife’s claim of maintenance in her divorce petition. Therefore, the above cases show that judiciary has been pro-active even in the absence of comprehensive law in protecting the interests of victim spouses of NRI Marriages.

3.8 PUNJAB STATE GOVERNMENT ON SUGGESTIONS RELATING TO NRI MARRIAGES

a. Awareness Programmes :

In most of cases it has been observed that lack of awareness in validation and verification of NRI matrimonial alliance plays a vital role in causing & increasing the matrimonial disputes in NRI marriages. Authorities like

²¹ 1975 S.C.R. (2) 97 (India).

²² “When foreign judgment not conclusive”.

²³ 1991 S.C.R. (2) 821(India).

²⁴ Para 13, *supra* note 25.

²⁵ A.I.R 1996 Del 54 (India).

Information & Public Relation Department should take appropriate steps to make aware the public at large. Embassies should regulate and launch an easy step to step procedural program for thorough verification of matrimonial alliance. Only proper verified NRI matrimonial alliance shall be published in newspaper. Public at large shall also be made aware for consequences of pre marriage & post marriage issues and complexities in NRI marriages. Authorities, Agencies, NGO's working for welfare of society shall also come forward to make people aware for such issues involved in NRI marriages.

b. Special legislation on NRI Marriages:

Since there are various legal and procedural technicalities involved in present judicial system to cop-up with problems involved in NRI marriages, thus, a new comprehensive legislation on NRI marriages is a need of the hour. The present judicial system dealing with matrimonial issues are facing legal barriers of jurisdiction, service of summons, etc. The proposed legislation should contain special provisions, avoiding all legal barriers to curb the matrimonial issues involved in NRI marriages. Provisional powers shall be made therein for pre-marriage verification of NRIs, with special provisions for overlapping the barriers in sharing private information of individuals. Any offence relating to NRI marriages should be made cognizable so as to put deterrent effect among the members of society. The legislation should be punitive in nature and offenders of an overt act should be made punishable as per relevant provisions of proposed law.

c. International Conventions and Bilateral Treaties:

To overcome the legal barriers such as service of summons, enforcement of decree, ex-parte orders etc. involved in NRI marriages, International treaties and convention shall be adopted including special provisions in facilitating agencies or authorities to pursue and assist the parties to matrimonial disputes in NRI marriages.

d. Registration of NRI Marriages:

Registration of NRI marriages should be made compulsory and special central authorities should be appointed for registration of NRI Marriages. The registration of marriage certificate should be linked with passport of both the parties to the marriage which would help the woman/wife abandoned by NRI husband to establish her identity and validity of legal documents in a foreign country as well. The up gradation of marital status on passports of NRIs should be done only after registration of marriage or cancellation of certificate of marriage.

e. Conciliation and Legal Assistance Schemes:

The present legal system of India recognises the alternative dispute resolution methods viz. Arbitration, Mediation and Conciliation and the concept of legal

aid. Special provisions should be added in the proposed Act to provide the facilities of mediation, conciliation or legal aid to the parties in need at the district level in each state to settle the cases of NRI marriage.

f. Speedy trial in Family Courts:

Special provisions shall be made to provide speedy trial in family courts for disposal of NRI matrimonial disputes. The family courts shall be conferred with special powers to avoid unreasonable delay in execution of orders of maintenance & alimony of spouses, child custody and child support as also settlement of matrimonial property particularly in the matters of NRI marriages.

4. FINDINGS OF THE STUDY

Be it a Municipal law or International Law, the duty of law is to set the norms as strong as possible. Such law should not only be preventive in nature but should also be punishable in nature so as to give a deterrent effect to the fraudulent people. If one goes through the definition of an ‘Offence’ as defined under law, it states that any act which is prohibited by law and if committed is punishable by law is an offence. Thus, the main purpose of imposing a punishment for an offence is to cause fear in the mind of violator or offender. This imposition of punishment acts as a preventive measure thereby ‘nipping the evil in bud’. Therefore, dire need of the hour is to make an effective law on the subject. But, before the enactment of any such law, following are the research questions which need consideration-

- What should be the nature of such law?
- Which aspect of NRI marriages need to be included in law?
- Whether there should be any provisions in the Act on the following issues:
 - ❖ Jurisdiction of court
 - ❖ Maintenance and custody of children
 - ❖ Whereabouts of groom who has absconded deserting his wife
 - ❖ Compensation to bride on being deceived or assaulted
 - ❖ Grant/validity of ex-parte decree

The researcher is of opinion that law to be enacted must be on pre-conditions and post-conditions of NRI marriages as already settled in our existing personal laws i.e. Hindu Marriage Act, 1955 and Special Marriage Act, 1954. The nature of law should be prohibitive as well as preventive. It must be both punishable as well as compensatory in nature.

In simple words, the NRI marriage must not get dissolved merely by obtaining ex-parte decree either by wife or by the husband either in the Indian Court or in the foreign court rather the validity of such marriage (NRI) must be given due consideration. Just as we have special law on minor marriages i.e. Prohibition of Child Marriage Act, 2006 which seeks to prohibit child marriages by making

specific actions punishable with imprisonment and fine and also lays down provisions determining the validity of child marriage either as voidable or void under special circumstances, similarly, a special law on NRI marriages should be enacted preventing fraudulent NRI marriages and making it punishable with strict punishment for the person who breaches the pre-conditions of marriage or who deceitfully or fraudulently solemnizes or knowingly abets the solemnization of such marriage. The law must impose strict punishment and heavy fine for post marriage consequences also such as in the case of desertion, domestic violence etc. Either party to the marriage who deserts his/her spouse without any valid reasons must be punished. The law should further lays down special conditions under which the victim spouse, instead of obtaining divorce may get the marriage annulled from the court either by making it voidable or void. The law should also provide for maintenance and residence of the victim wife till her remarriage. Therefore, a comprehensive law is required so as to prevent and punish fraudulent NRI marriages.

5. SUGGESTIONS AND CONCLUSION

In order to prevent fraudulent NRI Marriages, following suggestions are given so as to improve and deal with the existing challenges in NRI marriages:

- a. A comprehensive legislation for NRI marriages should be drafted in light of existing personal laws viz. Hindu Marriage Act, 1955; Special Marriage Act, 1954; Prohibition of Child Marriage Act, 2006 and CARA guidelines. The legislation can be named as “Prevention and Protection of NRI Marriage Act”.
- b. For the purpose of jurisdiction, undoubtedly in the absence of clear guidelines, it is difficult to deal with issues relating to jurisdiction of courts being one of the parties to marriages present in a foreign country. To deal with such issues necessary changes can be done in Code of Civil Procedure, 1908, Code of Criminal Procedure, 1973 or specific provisions relating to jurisdiction of courts may be laid down in the new law viz. “Prevention and Protection of NRI Marriage Act”.
- c. The scope of Private International Law must be extended by entering into treaties or bilateral agreements with foreign countries explicitly providing for the jurisdiction and competency of courts to hear the matrimonial litigations of NRI couples.
- d. The Act must be made criminal in nature by including punishments for violation of the provisions of “Prevention and Protection of NRI Marriage Act”. Unless such step is taken, the scope of asylum and extradition of deserter under International Law cannot be given effect in true sense. Although such act seems to be a sudden strict liability demanded on defaulting parties/offenders in NRI marriages but it is also a matter of fact that much loss has been caused to the helpless and abandoned wives in NRI marriages in the absence of strict laws dealing with such issues. It is a matter of concern that a girl child who is neither

safe even before her birth and if saved in the womb of mother, then slaughtered like an innocent and miserable animal in social abuses such as infanticide dowry, domestic violence, sexual assault or fraudulent NRI marriages. Therefore, these measures and laws must be appropriate to the gravity of offence committed in NRI marriages as it is not only the bride but also the children who face the dire consequences.

- e. Registration of NRI marriages should be made mandatory and the provision relating to compulsory registration may be included in special law itself i.e. "Prevention and Protection of NRI Marriage, Act". Amendments can also be made in the existing laws to bring all the laws in tune and avoid any kind of ambiguity.
- f. Prohibition of Child Marriage Act, 2006 provides for the appointment of certain authorities to prohibit and prevent child marriages, a similar provision can be added in special law also i.e. "Prevention and Protection of NRI Marriage, Act" prohibiting the performance of fraudulent NRI marriage in first instance and if, failed at this stage then prevent the innocent party at the time of registration.
- g. The cross verification of NRI proposals should not be made in cursory manner, rather the concerned NGO's/agencies/individual through whom such marriages are fixed should be made part of the inspection to substantiate the evidence.
- h. On violations of any of the essential pre conditions or post conditions of marriage, the status of marriage can be declared as void or voidable as per special laws suggested above.
- i. There should be specific guidelines on the issuance of process, look out notices and other procedural technicalities involved in judicial process against accused NRI husbands.

In addition to the above suggestions, the following guidelines may be observed and incorporated in statute for the purpose of ensuring that NRI marriages do not lead to abuse or exploitation of either spouse:

- First of all, the Government of India should, with the assistance of the Government of the States, prepare a list of recognised social welfare agencies/NGO's with their names, addresses and other particulars and send such list to the appropriate department of the Government of each foreign country so that the social welfare agencies licensed or recognised by the Government of such foreign country could coordinate with social welfare agencies in India smoothly and effectively to regulate and monitor NRI marriages.
- Any person who desires to marry NRI/PIO must make an application to recognised social welfare agency or NGO India providing the details of prospective match residing abroad for verification.
- The recognised social welfare agency or NGO in India shall forward the application to social welfare agencies licensed or recognised by the

Government of foreign country where prospective match is claimed to be residing. No application requiring the verification of prospective match shall be considered by the licensed or recognised social welfare agencies of foreign country unless it is forwarded through the recognized authority or agency of India.

- The licensed or recognised social welfare agencies of foreign country on the receipt of application shall prepare a report to provide relevant information in regard to Employment details, Immigration details, Criminal antecedents, family background (if family is also residing in the same country) or any other information which the Agency thinks fit to form a basis for the selection of prospective match and help the applicant to take the decision wisely.
- After verification, the licensed or recognised social welfare agencies of foreign country shall submit its report to the social welfare agencies/NGO's as recognised by the Government of India.
- Every social welfare agencies/NGO's as recognised by the Government of India must maintain a register in which the names and particulars of the prospective match must be entered for the future references.
- On the solemnization of NRI marriage, the Ministry of Overseas Indian Affairs, Government of India shall maintain a register containing names and other particulars of such marriage.

Any marriage solemnised in contravention of the above guidelines shall be made voidable by the decree of the court at the option of the petitioner, if the consent of petitioner is obtained by force or misrepresentation or coercion. In addition to make such marriage voidable, the person who fraudulently performed or abetted the solemnization of such marriage shall be punished with rigorous imprisonment extending to one year and fine amounting to Rupees two lakhs.

5.1 EXPECTATION FROM LAW

The guidelines suggested above are a part of doctrinal or non-empirical study which is based on the failure of Nodal Agencies to fix the problem and curb the menace. The entire responsibility to solve the issue lies on the strict law which is not in existence and any efforts to draft it seems to be appropriately ignored. Thus, the researcher intends to give much emphasis on preventive, prohibitive and protective nature of law on the existing situation, which may also be called as "NRI Marriages (Prevention and Protection of Rights) on Marriage Act". **To conclude**, we can say an open vision and a huge set of law is required to curb the atrocities faced by brides in NRI marriages.

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