

Laws and Remedies Relating to Women Victims of NRI Marriages

Dr. Renu Saini

Assistant Professor, Khalsa College of Law, Amritsar

INTRODUCTION

Marriages in India may be a sacrosanct union. It's also a crucial social institution. Marriages in India are between two families, rather two individuals, arranged marriages are customary in the society. The Indian legislation plan to protect marriage within the 21st century, it's become dream of each Indian to marry a private working during a foreign nation and to settle in abroad. so as to fulfil this dream, they marry an NRI. With the ever-growing number of NRI marriages, the issues revolving in an NRI marriage has also grown and has become a matter of great concern for the country. So as to know and evaluate the law governing NRI marriages and therefore the law addressing the problems is of utmost importance to know the matter itself. Many man and woman of this land with different personal laws have migrated and are migrating to different countries either to form their permanent abode there or for temporary residence. Likewise, there's also immigration of the nationals of other countries. The advancement in communication and transportation has also made it easier for people to hop from one country to a different. it's also commonplace to return across cases where citizens of this country are contracting marriages either during this country or abroad with nationals of the opposite countries or among themselves, or having married here, either both or one among them migrate to other countries. There also are cases where parties having married here are either domiciled or residing separately in several foreign countries. This migration, temporary or permanent, has also been giving rise to varied sorts of matrimonial disputes destroying in its turn the family and its peace. 'NRI marriages' generally means a wedding between an Indian woman and an Indian man who is residing in another country (NRI-non-resident Indian), either an Indian citizen (when he would legally be an 'NRI') or as citizen of foreign country (when he would legally be a PIO Person of Indian Origin).¹

An NRI marriage is different from a normal marriage in the sense that it raises question related to the validity of the marriage, the authority of Indian courts when compared with that of host country's legal system. In this complex scenario where matrimonial disputes are placed, the legal complications get multiplied manifold when a marriage steps out of the borders of a country and therefore the boundaries of the country's legal system, in the phenomenon that has come to be known as the NRI marriages. These marriages have to then enter the domain-often called the 'maze'- of private international law that deals with the interplay and Conflict of laws of different countries, which makes the issues therein. As a widely known, numerous fake marriages are taking place because of the allurements thrown by agents, the greed or desire to settle family members in the foreign countries. However, now under the changed scenario, influenced by the globalisation policies adopted by the Indian government, the problem of NRI boys marrying girls and then running away is becoming more and more menacing. Even though this is a gender-neutral term, typically the NRI marriages, as generally misunderstood are between as Indian woman from India and Indian man residing in another country, either as Indian citizen or citizen or as citizen of that other country. The aggravated risks in such marriages, the woman being isolated far away from home in an alien land, inevitably facing constraints of language, communication, lack of knowledge of local criminal justice, police and legal system, lack of immediate and readily available monetary support. It is therefore hardly surprising that there is growing evidence today that even as the number of NRI marriages is escalating by thousands every year, with the increasing Indian Diaspora, the number of matrimonial and related disputes in the NRI marriages have also risen proportionately, in fact at most places much more than proportionately. India has announced plans to set up an international network to crackdown on fake marriages, and has vowed to aid harassed and abandoned brides at home and abroad. Sending its strongest message to date on the issue of marital fraud involving non-resident Indians, India proposes to create "special cells" in different locations in India or foreign countries. These cells will help parents verify eligibility of prospective grooms, and ensure abandoned brides receive legal and medical aid in India or abroad.

Securing justice and providing safeguards

¹Rishabh Gupta, "The NRI Laws of India: Marriage related problems and the Law" retrieved from <https://blog.ipleaders.in/nri-laws-india-marriage-related-problems-law/>, visited on September 9, 2023 at 11:15 a.m.

Some steps have been taken are being contemplated by various organs of government to contain this menace. The union ministry of overseas Indian affairs has advised all states to set up separate cells to offer counselling to women planning to marry overseas Indians. A separate cell has been set up in Punjab but it is not the women who plan to marry NRI but who have been deserted by an NRI, husband who receiving counselling. The ministry had also decided to appoint NRI volunteers who would make discreet inquiries about bachelors planning to marry Indian girls. This is a gigantic task considering that the Indian Diaspora may be approximately 20 million. Though not impossible, it will require a lot of effort, sincerity, research, planning and communication.

Rehabilitation of the Deserted Wives

Many of the girls did not have much education for them to be able to get good jobs. In fact, as mentioned earlier in the report, the employment scenario was quite bleak. Having been broken, they need support to a large extent from their parental families. All the girls and their parents were asked as to what should be done for their rehabilitation. Most of them could not suggest anything beyond wanting to get their cases solved and being given compensation either in terms of money or land. For this they suggested that governments should arrange for the erring husbands to be brought to India for the case proceedings. Very few girls saw beyond the settling of the case to life thereafter. They mentioned that they need to be trained for teaching skills, such as computers, stitching so that they can earn their livelihood.

The maintenance granted by the present laws is too insufficient for the present day situation and should be revised and enhanced to a realistic amount. On basis of the cases studies involving interviews with the deserted wives, their parents, in —laws and intermediaries and discussions with state government officials, district officials, police personnel, counsellors, representative of NGOs social workers and lawyers some measures are being suggested that can be taken in order to rehabilitate and secure justice for, these deserted wives and provide some safeguards that would ensure that these incidents do not occur in the future or are at least minimised.²

Recommendations for Rehabilitation

1. In such type of cases court should take action as soon as possible as it needs attention and should dispense justice as soon as possible. For this, Fast track special courts should be set up in order to try guilty NRI grooms for cases so that relief can be provided to aggrieved spouse and their parents.
2. An adequate amount to be given as maintenance. It should not be based on her declaration that she is a pauper. Even when the amount awarded is based on the husband's income, proof of the same is required if correct declaration of the same is no given.
3. Just as maintenance is not enough, a decent amount of compensation should be given to the girl either in terms of money or land. Half of the husband's share should be given to the wife in the cases where husband has land. Even in the cases, where boys do not have lands in their name and even if the land is in name of the father, still her husband's share should be given to her even if the rest of the land is not distributed.
4. In trauma cases, the traumatised girls should be given proper and adequate counselling to enable them to come out of the trauma and face the unpleasant situation. The Red Cross society is a cell for marital counselling for all marriages. Sometimes such cases of marriages with NRIs also come to them. Some sensitisation could be provided to these counsellors to help them with specific problems these girls face. May be meeting some other girls may help them to overcome their own circumstances.
5. Another thing which is extremely important for rehabilitation is economic independence. Such girls could be provided education or training in skills such as computer skills, stitching and sewing etc. and also entrepreneurship. Loans should be sanctioned for them by the banks on a priority basis so that they could start some small business on their own.

Implementing Safeguards

The following steps are recommended to minimise problems emerging in such NRI marriages:

Marriage certificate should be issued in duplicate- one for the boy and the other for the girl. Since there is only one issued at present, the boy takes it away for submitting it for sponsorship and the girl is left with no documentary

²Diagnostic study of wives deserted by NRIs, M.K Jabbi, council for social development 53 Lodi estate.
New Delhi
110003

proof of her marriage. The certificate should also mention the social security number or its equivalent in case of NRIs.

It should be made compulsory for every prospective NRI bridegroom and his immediate relatives, particularly those living in India, should be made to file a sworn affidavit in the local court on the groom's marital status before solemnising the marriages with NRIs check their social security number and obtain affidavits from them regarding their marital status along with proof thereof.

Safeguards through social awareness

Creating awareness among people regarding laws and realities in other countries could be a great help in reducing the malice. Social awareness programmes to inform the people of different laws in foreign countries, laws regarding marriage, divorce, custody of child, maintenance etc. should be organised. People should be aware of the consequences of such marriages by highlighting the plight of these girls by all means. The council for social development would be glad to take up projects related to awareness creating regarding foreign laws. It will certainly have the impact of restraining such marriages without taking proper precautions.

Workshops on problem relating to NRI marriages and recommendations

The National Commission for Women during the year 2005-2006 took up this issue as a priority area, requiring immediate Intervention and solutions and conducted two workshops at Trivandrum,³ in June, September 2006, in collaboration with Ministry of overseas Indian affairs, to discuss the possible solutions to the vexed issue.

Shri Vayalar Ravi, called for greater social awareness about the NRI marriage problems. Inaugurating the regional workshop on 'problems relating to NRI marriages' he said there is need for local level awareness and education campaigns especially empowering women to address this problem. The minister said the number of cases is increasing and the problem is not confined to Punjab or Kerala alone. A number of cases are being reported from the other parts of country from states like Gujarat, Haryana, Delhi, Maharashtra and Andhra Pradesh also. Recently, west Bengal also join this list as more than 100 cases had been filed by Indian women demanding restoration of their marriages annulled by divorce decrees abroad. The nature and the dimension of such incidents vary but the central issue 'marriages to overseas Indians'.

He pointed out that at national level; the issue of marriages to overseas Indians has gained attention due to growing number of cases of failed or fraudulent marriages. Marriages to overseas Indians are like any other marriages and may go through the same ups and downs. An important difference however is that the recourse to justice is constrained by the fact that these marriages are governed not only by the Indian legal system but also by the far more complex private international laws involving the legal of the other country.

Shri Ravi further said that most of the cases pertain to woman being abandoned because of various reasons. This may even happen prior to her going to other country of her husband's residence. Sometimes, the women learn after the marriages that the husband was already married in other country to other women, whom he continued to live with. Realising the legal complexities involved in the problem, the ministry has henceforth embarked on a publicity campaign to create awareness on the issue. The chairperson of National Commission for women, Dr. Girija Vyas,⁴ stressed the need for enacting a comprehensive legislation within the framework of Indian laws to tackle the problems related to NRI marriages and for an awareness campaign to educate the people in this direction. She stated that the problems related to NRI marriages could not be tackled effectively for lack of treaties with various countries. She stated that alt certificate for NRI marriages be issued in duplicate and must include the special security number of husband and demanded rectification of the passports to include details of spouses. The commission will demand the creating of exclusive cells in every High commission and embassy to provide legal assistance and monetary support to abandoned brides in countries of residence of their absconding spouses.

There is an urgent need to comprehensively and extensively examine the International Conventions which have relevance and importance for the issues relating to NRI marriages. Review the existing laws and strengthen their scope and provisions to specifically cover situations with NRI marriages, especially the passport act, extradition act incorporating the typical offences in NRI marriages like fraud, dowry, matrimonial cruelty, IPC , CRPC, CPC etc. Dowry to be recognised as an important component of the problem and publicity campaign should also concentrate on persuading parents to insist on marrying their daughters without dowry. The different schemes of the state women commission to be coordinated. .

³Report on regional seminar on "Problem relating to NRI marriages" in Trivandrum on 13th and 14th September 2006, organized in partnership with national commission for women.

⁴ Dr. Girija Vyas, chairperson National Commission for Women, relating to NRI marriages held in Trivandrum, Kerala.

Implementation of the domestic violence act through training and involvement of lawyers, police, social workers etc, NCW to take steps to sensitise the authorities as lack of awareness is there. Participation and involvement of youth in the solutions of the problem. Help lines should be established in every district, there should be separate cells in the embassies to deal with such problem. The suggestions which emerged from discussions are as follows: -

1. NCW should identify the NGO's who can work in this area.
2. Publishing of dos and don'ts in matrimonial columns by state Women Commissions and NCW.
3. Small expert group comprising MOIA, MEA, ISIL and Ministry of law and justice to be set up in Delhi.
4. The issue to be treated as a social-legal-economic-political issue.
5. Incorporation in domestic laws immediately after signing of Hague conventions.
6. Informal MOUs with overseas NGOs to be entered into by NCW viii) Three regional cells to operate in NORKA.

RECOMMENDATIONS

There are several recommendations provided by government based on international and domestic interventions which are related to the issue of NRI marriages, requiring immediate intervention and solutions to vex the issue.

LEGAL INTERVENTIONS AT INTERNATIONAL LEVEL

1. The Hague Conventions, especially the following ones, which are related to the issue of NRI marriages, needs to be examined closely and the feasibility of signing the Hague conventions needs to be looked into Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 1965 ("Service Convention"), Convention on the Recognition of Divorce and Legal Separations, 1970, Convention on the Law Applicable to Maintenance Obligations, 1971, Convention on Celebration and Recognition of Validity of Marriage, 1978, Convention on the Civil Aspects of International Child Abduction, 1980, Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, 1996.

2. Bilateral agreements need to be concluded with countries where Indian Diaspora is in large numbers. The existing legislation for bilateral agreements is available on the basis of reciprocity. These laws enable recognition and enforcement of foreign divorce decrees, maintenance orders, child custody, etc .

3. Bilateral agreements on critical issues covered by the Conventions mentioned above, especially validity and recognition of divorce decrees, maintenance, child abduction and custody and service of orders and Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters.

4. Sign reciprocal bilateral treaties, with target states, i.e. countries with large presence of Indians, such bilateral agreements on critical issues may take into account issues such as further Grounds for non-recognition being against public policy, judgment given in case where no due notice was served to the respondent in the proceedings, where a judgment given in a proceeding is irreconcilable and contrary to public policy /law of the country, particularly relating to law of marriages and divorce, child custody, etc for the issue of commissions for witness examination in criminal trials.

5. Jurisdiction has emerged as one of the significant aspects, particularly, in providing matrimonial relief for failed marriages involving non-resident Indians. The leading basis that have been considered are: domicile, nationality residence including habitual residence. The rule of habitual residence needs to be considered as a possible basis of matrimonial jurisdiction in any attempt of future legislation. The principal reason for this suggestion being, that the rule of habitual residence has struck a balance between domicile on the one hand and nationality on the other. Besides, this rule is also capable of providing a minimum common basic understanding amongst majority of the countries.

6. On the issue of recognition of foreign divorce/nullity decree, three lines of approach to be adopted to improve the present situation.

LEGAL INTERVENTIONS AT NATIONAL LEVEL

Compulsory Registration of Marriages —

Registration of marriages be made compulsory — the Supreme Court in the judgment dated 14th February 2006⁹⁹ has issued the directions that the central and State Governments shall take the following steps. Marriages of all persons who are citizens of India belonging to various religions should be compulsorily be registered in their respective states. The procedure for registration should be notified by the respective states within 3 months. Thus it is now incumbent upon the states to provide for registration of marriages which needs to be implemented in case of

NRI marriages taking place in India. Also marriage certificates for NRI marriages should be issued in duplicate copies and must carry social security number of the NRI spouse.

Enact special Indian enactments to address the various issues that arise in NRI marriages, incorporating progressive principles being evolved international on private international law, as well as through the Indian judgments, especially the issues of validity of the marriage itself and the choice of law of marriage and divorce that would be applicable in case of disputes in such marriages, the jurisdiction of courts, validity, recognition and enforceability. of orders passed by foreign courts, particularly the ex parte divorces or orders of custody or maintenance, powers of Indian courts to restrain legal proceedings of the foreign court and/ or to pass contrary judgments in India in cross-actions; service of notices, orders passed by the Indian Courts, dealing with criminal acts committed by the husband and in laws like dowry demands, battering and other forms of matrimonial cruelty, fraud or misrepresentation, adultery/ bigamy, forcibly taking away custody of or abduction of children — choice of law/ forum, subjecting offender to trial dealing with absconding, and enforcement of punishment, property rights of the deserted or ill-treated wife and children, especially in ancestral or in-laws' properties in India.

It is not uncommon that the parents tend to feign ignorance regarding the whereabouts of their son and disown the son, leaving the woman with no protection or shelter, Therefore it is strongly recommended that the Property laws be amended to allow the NRI wife to claim maintenance and share in parental properties expeditiously as also to claim rights of residence in their properties even if the NRI son has no share in it legally, if the nexus between the parents and the NRI son can be shown and also to invalidate any alienation or change in ownership of family properties after case is filed by the NRI wife. Provision of section 19 of the Hindu adoption and maintenance Act 1956 could also be looked into to in order to make it applicable in case of deserted daughter in laws.

Amend if necessary the Passport Act and add special provision for cancellation of passport of offending NRI spouse. Also include more detailed particulars of spouse in passports apart from attaching her photographs. Also add provisions for requirement of updating of passports of NRI men after marriage to include marital status, to make a stricter offence for fake/false passport. Formulate guidelines for the police and law enforcing agencies to deal with cases/complaints arising out of NRI marriages including suppression of marital status by NRI Grooms, by using existing legal mechanisms and procedures such as initiating action under Section 3 and o there relevant provisions of the IPC/CRPC such as Section 188 of Cr.P.C, Section 82: Proclamation for person absconding ,CRPC Attachment of properties (if any) in India (Section 83: Attachment of property of person absconding) initiating action against the parents and relatives who refuse to or feign ignorance on the whereabouts Of their son, etc. Further in the event of initiation of any criminal proceedings against the accused NRI husband or his relatives the provisions of section 285(3) of the Criminal Procedure Code can be put into action, The guidelines for initiating action may also include application of Section 18 Hindu Adoption & Maintenance Act, 1956 application for a stay on husband's property - whether in his name or ancestral properties and the right of the women to matrimonial home which includes the right to reside with her in laws, Examine the feasibility to recognise "irretrievable breakdown of marriage as a ground for divorce subject to safeguards.

OTHER GOVERNMENTAL INTERVENTIONS

1. "Special Cells" be set up for NRI Marriages, at the state (where the problem is serious) as well at the Central level, having representation from professionals like lawyers and counsellors and also having close cooperation with the National/State Women's Commission , to facilitate flow, legal assistance, and other necessary action on prompt basis from a single window.
2. A Special Cell be set up with Indian embassies, especially in target countries, to provide crisis assistance, legal support and information as well as all other support to Indian women abroad as well as in India.
3. There should an online access to information on the laws and procedures .and support services in other countries that an NRI wife may need to know. For this relevant laws of these countries will have to be compiled and if necessary translated into at least english, if not in important Indian languages, to begin with.
4. Networking and tie-ups with agencies (including the Indian embassies, foreign Government bodies, police and support services) abroad to advice and aid to women who are stranded there or those who are facing legal actions by husbands there. Especially provide facilities like extended.
5. Residence Permits to the NRI wife who wishes to stay on for defending her case or any other validreason, expeditiously issuing her visa for visiting the other country if served with summons or notice from the courts of that country in any legal action initiated by the NRI husband there.
6. Set up help lines to provide psychosocial counselling to wives and families who have suffered in NRI marriage.

SOCIAL AND AWARENESS DRIVES

At civil society and social level, take up community mobilisation and capacity building, especially by taking rigorous steps towards three crucial aspects:

Precautions, Rights of wives in NRI marriages, under Indian Laws, Rights of wives in NRI marriages, under Laws of the country where the husband is located The awareness raising could be undertaken along the following lines:

Do not take any decision in haste and do not get pressurised to do so for any reason whatsoever, Do not finalise matters over long distances, on phone or through e- mails de psychosocial counselling to wives and families who have suffered in NRI marriages. Do not blindly trust any bureau, agent, tout or middleman, do not ever agree to forge papers or enter into any fake transactions for any reason or on any pretext .Do not fall for any schemes to be able to migrate to another country, or promises for green card, through marriage .Do not finalise matters in secrecy — publishing the proposal among the near and dear ones, friends and close relatives could help you in getting vital information which you may not be able to collect otherwise. Do not agree to having only a registered marriage or to getting the marriage solemnised in a far off place. Do not agree on the marriage taking place in the foreign country.⁵

Laying down the parameters for carrying out verifications on the NRI groom's personal information particulars such as:

Marital status: if he is single, divorced, separated .Employment details: qualification and post, salary, address of office, employer and their credentials .immigration status, type of visa, eligibility to take spouse to the other country , Financial status .Properties said to be owned by him in India, residence address, Criminal antecedents, if any Family background.

1. Indicating the documents related to the NRI groom that could be checked for pre marital verification: Visa, passport, voter or alien registration card, social security number, tax returns for the last 3 years , bank account papers Property papers, Indicating the contacts would be helpful such as Indian embassy in the foreign country Local Indian associations and network of Indian citizens Local police and other support agencies.

2. Indicating the minimum formalities that must be observed such as: Compulsory registration of marriage along with social marriage. Carrying out all the paperwork for issue of visa and other required formalities at the wife's end and not at husband's end, Affidavit from the man stating his present marital status; using Right to Information Act to access the passport and visa information and status (this should accompany changes in the Passports Act to contain more information in passports).

Laying down the other Dos such as Have regular and meaningful communication with the man and his family over a period. Make sure that the two persons to be married meet personally and interact freely and frankly in comfortable atmosphere to make up their minds, as many times as they feel necessary. Publicise the marriage and have a social marriage ceremony whom to contact when in trouble, Try to arrange for an account for the woman in the foreign country for her to be able to withdraw money in emergency. Equip the woman to take help in emergencies by providing her with contact details like phone numbers and e-mail IDs of police and other state authorities, help lines and legal aid bodies in the foreign country as well as of the Indian embassy there, especially of the Indian welfare officers, if appointed there. It would also help her to know the contact details of social support groups and networks .Equip the woman with knowledge of the laws of the foreign country and the rights she enjoys there, especially against any form of abuse or neglect, including domestic violence and if she can get residence permit and-other protections as a victim of domestic violence or abuse. Equip the woman with professional/vocational qualifications and skills to be independent Equip the woman with social skills to be able to develop associations with the neighbourhood people and make friends on the foreign country .Sensitise, educate and involve media to publicise the issues of NRI marriages, the rights of the wives and children ofNRI men, and to take forward the campaign at the social level.

Outside India, involve Indian embassies to provide crisis assistance and response as well as all other support through Welfare Officers appointed specifically for this in the embassies, especially in countries with large number of Indians. Make arrangements in the other countries for grant of permanent residence status or in crisis situation extended residence permits to wives in NRI marriages, providing monetary and shelter support, access to police protection to the wife and action against the NRI husband in case of cruelty, and for prompt grant of visa for the wife for defending herself in legal action initiated by NRI husband in the other country.

Within India, provide legal advice and aid to wives in NRI marriages. Also explore tie-ups with agencies in other countries to provide legal advice and aid to women stranded there or while facing legal actions by husbands there.

⁵ Problems relating to NRI marriages, Do's and Don'ts, Report of National Commission for Women

Submission of Affidavit prepared in the foreign country where the NRI resides by the potential NRI husband stating his economic status, marital status and citizenship status with respect to his host country. This would involve the legal system of the host country as well, if the deponent defaults and attract the proceedings under laws for 'perjury' in the host country. to provide legal advice and aid to women stranded there or while facing legal actions by husbands there.⁶

INITIATIVES BY NCW (National Commission for Women)⁷

The national commission for Women during the year 2005-2006, took up the issue of NRI marriages as the priority area, require immediate intervention and solutions and conducted two workshops at Chandigarh and Trivandrum, in June and September 2006, in collaboration with the ministry of overseas Indian affairs, to discuss the possible solutions to the vexed issue. The recommendations made during these workshops are contained in the enclosed booklet titled —the "Nowhere" BRIDES. One of the recommendations of the parliamentary committee on empowerment of women (EWC) (14th Lok Sabha) on the subject plight of Indian women deserted by NRI husbands, was to evolve a well defined / coordinated mechanism to deal with the issue of problematic NRI marriages to enable the aggrieved women to get a respectable solution to the problem. This recommendation of the EWC was deliberated at an inter ministerial meeting comprising of representatives for Ministry of Overseas Indians affairs, External affairs, Law and Justice, Women and Child Development, National Commission For Women and National Human Right Commission held on 7th July, 2008 and it was decided that National Commission For Women will be coordinating agencies at the national level to receive and process all the complaints related to Indian women deserted by their Overseas Indian husbands. Accordingly, the NRI cell of NCW was formally inaugurated on 24th Sep, 2009 and is actively engaged assisting unfortunate victims by taking their cases with foreign mission abroad. Active interaction is also maintained with the Ministry of Overseas Indians Affairs, Ministry of External Affairs, Ministry of Law and Justice, Ministry of Home Affairs to sort out the procedural problem faced by NCW in giving timely relief to the victims.

The Function of NRI cell broadly consists of the following:

- a) NRI cell is the coordinating agency to receive and process all the complaints related to Indian women deserted by their overseas Indian husband.
- b) NRI cell renders all possible assistance to the complaints including conciliation, mediation between the parties and advising the complainant on related issues.
- c) Associating, networking with NGO's, community organisation in India and abroad and state women commissions for wider area coverage, so as to facilities easy reach and provide support services.
- d) NRI cell endeavour towards a coordinated response amongst various government agencies\ organisations such as state governments, the national human rights commissions, Indian embassies and mission, concerned ministries etc.
- e) Providing assistance to the aggrieved women in litigation and other issues pertaining to the complaints\ case.
- f) Maintain a data bank of cases registered with NCW
- g) Seek reports from the state governments and other authorities on the complaints filed actions taken thereon.
- h) To give advice and recommendations to the government on any policy or issue relating to the NRI marriages
- i) To analyse various legal treaties on the issue and advise the Government on the subject, wherever required.
- j) To constitute an advisory committee of reputed advocates/NGOs, both in India as well as abroad, this shall periodically review the functioning of the cell, cases filed and policy issues.
- k) To constitute a panel of experts to assist the aggrieved wife and rendering legal services and other assistance, including mediation and conciliation.

⁶Regional workshop on "problems relating to NRI marriages" in Trivandrum on 13th and 14th September, 2006.

⁷National seminar on "issues relating to NRI marriages", 2011 Vigyan Bhavan, New Delhi, organized by National Commission for Women.

⁸Committee on Empowerment of Women (2006-2007) Fourteenth Lok Sabha, Ministry of overseas Indian affairs and Ministry of External Affairs, 2007.

l) To carry out awareness campaigns for the masses on the issue. For this, all the available media services would be utilised by the cell.

m) To encourage /support research and study in the related field like issues of grievances associated with dual citizenship, enactment of new legislation or signing of international treaties ,marriage laws of other countries ,etc .

Some successful interventions by the commission⁹

Sunaina Chaudhary case: the complaint has been subjected to severe mental and physical cruelty by her husband and in law for years. She was even rescued from her matrimonial house by the New Zealand police. Her husband has attained the custody of her minor children by producing a false medical certificate proving the complaint to be an insane. When complaint comes to India the police was reluctant to register FIR as the threatening and harassment by her in laws still continues. Then the commission is still following up her complaint both in India and New Zealand.

Gurpreet Kaur case: the complaint a poor women lady was married to a British citizen. Her husband and father in law bring her Indian on the false pretext of his father's ill health while her two minor children were in U.K. her husband and father in law snatched her passport and went back and file divorce and custody of children cases in UK. Even the police was reluctant to register FIR then the complaint approached the commission.

Then the commission approached the CPV division of MEA, which helped her to get her new passport with in a day. But the plight of the poor lady did not stop their. Her sponsorship for UK was cancelled by her husband and was unable to travel their to contest the proceeding. The commission then forwarded her case to the UK COURT and make them aware of her inability to contest the proceeding. Her complaint was also forwarded to consulate general of India, London. And by the effort her case has been forwarded to a NGO, Good human foundation to contest proceeding on behalf of the complaint in UK court.

A national seminar was conducted by the commission at Lovely Professional University, Phagwara, Punjab on 30th July 2018 to create wider public awareness on the issues related to NRI marriages. A consultation meeting to deliberate on the possible measures for economic rehabilitation of women deserted by their NRI husbands was conducted by the commission at Punjab University, Chandigarh on 23rd of October, 2018.¹⁰

SCHEMES FOR GIVING LEGAL/ FINANCIAL ASSISTANCE TO INDIAN WOMEN DESERTED BY THEIR OVERSEAS INDIAN SPOUSES

OBJECTIVE

The objective bien of the scheme is to provide some financial assistance to needy women in distress **who have** deserted by their overseas Indian spouses for obtaining counselling and legal services. The term overseas would include NRIs and foreign citizens of Indian origin. The counselling and legal services would be provided through credible Indian Women's Organisations/Indian Community Associations and NGOs identified for providing such services and empanelled with the Indian Missions in the USA, the UK, Canada, Australia, New Zealand and the Gulf. The scheme is a welfare measure to support women of Indian origin in distress, through the mobilisation of the local Indian community in the endeavour and with some financial assistance from the Government.

Scope of and Eligibility for the Scheme¹¹: The scheme would be available to the women who have been deserted by their overseas Indian spouses or are facing divorce proceedings in a foreign country subject to the following conditions:

- (i)The woman is an Indian passport holder.
- (ii)The marriage of the woman has been solemnised in India.
- (iii)The woman is deserted in India or after reaching abroad within five years of the marriage.
- (iv)Divorce proceedings are initiated within five years of the marriage by her overseas Indian spouse.

⁹ 'Plight of Indian Women Deserted by NRI husbands' Twelfth report of Lok Sabha ,2007..

¹⁰Annual report 2017-2018, National Commission for Women, Non — Resident Indian marriages related issues, New Delhi -10025.

(v) An ex-parte divorce has been obtained by the overseas Indian spouse within 10 years of marriage and a case for maintenance and alimony is to be filed

(vi) The scheme would not be available to a woman facing criminal charge.

(vii) The domicile of the woman seeking relief under the scheme is not relevant for allowing the benefit. The woman may be domiciled in the country of her overseas Indian spouse or in India at the time of making the application.

(viii) Preference may be given to applicants on the basis of financial needs.

(ix) The domicile of the woman seeking relief under the scheme is not relevant for allowing the benefit. The woman may be domiciled in the country of her overseas Indian spouse or in India at the time of making the application.

(x) Preference may be given to applicants on the basis of financial needs.

(xi) Assistance will be limited to meeting initial cost and incidental charges for documentation and filing of the case by the Indian women's organisation /NGO on the woman's behalf.

(xii) The assistance will be limited to US \$1500 per case and will be released to the Indian community organisations/NGO concerned to enable it to take steps to assist the woman in documentation and preparatory work for filing the case.¹¹

(xiii) The women's organisation/NGO will make efforts to enlist community advocates, preferably women advocates, to extend further legal assistance/ appearance in court etc on a pro-bono basis or having a criminal case decided against her.

Pattern assistance:-

Under the scheme Indian Missions in the countries concerned would empanel credible Indian Women's Organisations/ Indian Community Associations/NGOs and their member advocates, preferably women, to provide legal aid to the victims in distress and whose names have been approved by the Ministry of Overseas Indian Affairs. The applications for providing legal aid received by the Missions would be examined by an officer designated by the Head of the Mission on case-to-case basis and approved by Head of Mission/Deputy Chief of the Mission. The applications received in the Ministry of Overseas Indian Affairs will be examined by an internal committee consisting of a legal advisor and an officer of the rank of Director Deputy Secretary and approved by Secretary. Thereafter, the Ministry will recommend the case to Mission concerned to provide legal aid support. The applicant would also be informed to approach the Mission concerned in this regard.

In *Harmeeta Singh v. Rajat Taneja*, The wife was deserted by her husband within 6 months of joining her husband in 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 proceeding in the US court in the divorce petition filed by the husband there and also asking him to place a copy of order of the High Court before the US court.

The Court made some other observations while passing this order, mainly that even 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 in US courts would have to establish under section 13, CPC. The Court also said that since the wife's stay in 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. Foreign Marriage Act, 1969 An NRI marriage can be solemnised under the Foreign Marriage Act 1969, which lays down the conditions for marriage to be followed by both the parties in section 4, A marriage between the parties one of whom at least is a citizen of India may be solemnised under this act by or before a Marriage officer in a Foreign Country, if, at the time of the marriage, the following conditions are fulfilled namely:

- a) Neither party has a spouse living.
- b) Neither party is an idiot or a lunatic,

¹¹ National seminar on "Issues relating to NRI Marriages", 2011, organised by National Commission for Women in collaboration with Ministry of Overseas Indian Affairs, New Delhi.

The bridegroom has completed the age of twenty one years and be bride the age of eighteen years at the time of marriage, and Provided that where the personal law or a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnised, notwithstanding that they are within the degrees of prohibited relationship.¹²

Section 14 of this act talks about the certificate of marriage

(1) Whenever a marriage is solemnised under this act, the marriage officer shall enter a certificate thereof in the form specified in the third schedule in a book to be kept by him for that purpose and to be called the marriage certificate book, such certificate shall be signed by the parties to the marriages and the three witnesses.

(2) On a certificate being entered in marriage certificate book by: the marriage officer, the certificate shall be deemed to the conclusive evidence of the fact that a marriage under this act has been solemnised and that all formalities respecting the residence of the party concurred previous to the marriage and the signature of witnesses have been complied with.

Section 17(6) of this act talks about the Registration of foreign marriages

A marriage registered under this section shall, as from the date of registration, be deemed to have solemnised under this Act.

A law enacted in 1969 offers a ray of hope for distressed women facing harassment in NRI marriages, a parliamentary panel has been told. The Rajya Sabha Committee of petitions by the facing problems abroad in most of the cases reported, the husband is already married and marries law ministry that foreign marriage act 1969 has provisions to help women married to NRIs again in India. In certain cases husband marries another woman abroad and abandons his first wife. Abuse for dowry is another problem facing by women's after marriage matrimonial relief for The government has decided to set up committee to formulate a standard operating procedure to be followed while dealing with cases of NRI men abandoning their wives in NRI marriages.

The Registration of Marriage of Non-Resident Indian Bill, 2019

Ministry external affairs Introduced in RAJYA SABHA;

Highlights of the bill:

1. Every NRI who marries a citizen of India or another NRI shall register his marriage within 30 days. In case fails to register the marriage within 30 days, the passport authority may impound his passport.

2. The bill adds a provision to code of criminal procedure (CrPC). If summons could not be served to a person, it may be served by uploading it on designated website. If the person summoned does not appear before the court, it may upload a warrant for the arrest on the website Key issues and Analysis

The Bills does not allow a late registration beyond the 30-day period. Non-registered could result in impounding of passport which may have consequences such as deportation.

The bill amends the CrPC on the process of summons. This amendment is not restricted to offences under the bill, but will cover all matter under the CrPC.

An NRI is defined as an Indian citizen who resides outside of the India. Unlike other laws, the bills do not specify the minimum number of days abroad to qualify as an NRI.

In India, a marriage certificate is proof that two individual are married to one another and therefore allows them to claim various rights related to the marriage. If the claim marriage is not registered it may be difficult to prove its validity. All states have passed laws making it compulsory to register marriages that occur within the state. However, there is no central law requiring registration of marriages of NRIs solemnised outside India.

The Standing committee on empowerment of women (2007) and the law commission of India (2009) have recommended that registration of marriage for NRIs be made mandatory.

They pointed out that failure to register a marriage can affect issues including those related to child custody, divorce Proceedings initiated in the foreign country or to instances where a spouse is previously married. The Registration

¹²The Foreign Marriage act 1969- Bare acts in India, LEGAL SERVICES India(july21 ,2012)

Of marriage of Non Resident Indian bill, 2019 was introduced in Rajya Sabha on February 1, 2019. It was referred to the standing committee was scheduled to submit its report in May 2019.¹³

Section 15 of this Act speaks of the validity of foreign marriages in India, and states that such marriages solemnised under this Act shall be good and valid in the eyes of law. Aside from the

Foreign Marriage Act, 1969, the other Acts under which an NRI marriage can be solemnised are:

I. The Hindu Marriage Act, 1955,

2. The Special Marriage Act, 1954, And any other personal law or custom governing the spouses in regard to marriage.

These are the laws which govern an NRI marriage, but more often than not, dispute suits in foreign Courts are filed, and issues related to the applicable law crop up. English Law faced this dilemma related to conflicting jurisdictions once upon a time, It was called the "Conflict of laws," but later on the English law makers came up with something called "Private International Law"¹⁴ which dealt with the questions of jurisdiction and enforcement of foreign orders passed by foreign courts. India however, is yet to develop this class of legislation called Private International Law.²⁰ Therefore, in cases related to NRI marriages, Indian Courts turn to Sections 13, 14 and 44 A of the Code of Civil procedure.

Section 13 of the CPC, 1908, states the course of action when a foreign judgment is not conclusive or final, and lays down certain exceptions when Indian Courts can intervene and give their own judgment related to the case. The petitioner (or in such cases, the one who has been ordered by the foreign court) has to initiate and enforcement proceeding and wait for the Court's judgment. After the proceedings are done with, the Court can pass a judgment for the enforcement of the foreign order through an execution petition. Thus, a foreign judgment is turned into a domestic judgment so as to allow its enforcement.

Once the Court is satisfied that the foreign court was competent to give the decision in the case, then the Indian Court will not further scrutinise the foreign judgment, but if it is vice versa, then the foreign decision will not be given any weight.¹⁵

Section 14, CPC, 1908, speaks of certain assumptions in regard to foreign judgments. A certified copy of the foreign judgment produced before the Court will be considered to have been passed by a foreign court. It goes to the extent of competent jurisdiction, about but it is not an absolute piece of evidence.

Section 44 A of the code of Civil Procedure is quicker when compared to Section 13 of the same Code when matters of conflicting jurisdiction arise, as it allows for the direct adaptation and enforcement of foreign judgments by using the instrumentality called an execution petition without engaging in unnecessary preliminary case proceedings. This depends on two essentials Procedure, 1908:-

Section 13 of the CPC must be completely applicable, i.e., all the conditions from 13(a) to 13(f) should be satisfied. There should be a harmonious allegiance or understanding of the principle of comity between the two nations whose jurisdictions are in question.¹⁶

The case of Satya (Smt.) v Teja Singh¹⁷ is an example here. In this case, the appellant filed an appeal in the Supreme Court of India after her husband had acquired a divorce order/decree from a court in Nevada, USA. He had been looking for a convenient option to divorce his wife Satya. The Court held that the elements of facts (separation of wife and husband) and animus (intention to abandon spouse) must be present to grant validity to the divorce. Since the respondent had moved to Nevada just to get a convenient divorce from his wife, and later moved to Nevada just to get a convenient divorce from his wife, and later moved out of Nevada, the divorce is without those two elements, and hence is not valid in the eyes of the law in India.

¹³<http://ncw.nic.in/ncw-cells/legal-cell/new-bills-laws-proposed/legal-amendments-proposed/foreign-marriage-act1969> visited on 14 September, 2021.

¹⁴Supra.n.12 at p.186.

¹⁵Supra n.12 at p.189.

¹⁶Supra n. 12 at pp.189-191

¹⁷ AIR 1975

The Court stated that the principles of Private International Law are drastically different in different territories or countries of the world, hence, the understanding of Private International Law must be founded upon the genuineness of divorce and our notion of justice. The Court agreed that there is an absence of Indian legislation with regard to Private International Law, but also stated that in matters related to matrimonial and familial disputes, Sections 13 and 14 of the CPC, 1908, will be given prime consideration and effect.¹⁸ Even the Indian Penal Code, 1860, has provisions for matters which invoke different jurisdictions. These are:

1. Section 3 of the IPC states that if a person commits an offence outside the territorial limits of India, the nature of which is such which can be tried by an Indian law, then that person can be tried and by use of the provisions mentioned in the Indian Penal Code as if the offence had been committed within the jurisdictional boundaries of India itself.

2. Section 108 A of the IPC reads thus verbatim:

Abetment in India Of offences outside India — a person abets an offence within the meaning of this code who, in India abets the commission of any act without and beyond [India] which would constitute an offence if committed in [India].

Another remedy available to the wife party to an NRI marriage in cases of marital discord and ill- fitment is mentioned under Section 10 of the Passports Act 1967. This provision provides for the seizure and revocation of the passport of the NRI husband if he doesn't present himself in the Court when a summons notice is sent to him. This was held in the case of *Rajiv Tayal v Union of India and Others*.

3. Such marriages among prospective brides and their parents are being handled by the Ministry of Overseas Indian Affairs in tandem with the National Commission for Women.

4. When the Committee desired to know, whether the Ministry of Overseas Indian Affairs, being the nodal for all matters relating to NRIs have initiated any steps to evolve coordination among the various agencies dealing with the issue of fraudulent NRI marriages, the Ministry replied as under:-

'Whenever it is felt necessary the Ministry of Overseas Indian Affairs consults Ministry of Women and child Development, National Commission for Women, National Human Rights Commission and state government etc. on the issues relating to NRI The Ministry have held Seminars and National level Consultative Meetings with representatives of these Ministries & State Commissions for Women to evolve uniformity of opinion and better coordination in this regard. Pravasi Bhartiya Diwas (PBD) 2006 held in January, 2006, National Consultation in February 2006 and Regional workshop held in Thiruvananthapuram in September, 2006 are some examples'.

5. In response to a query regarding whether the Ministry of Overseas Indian Affairs felt it necessary to consult other agencies, it has been replied that in view of the commonality of interest, the Ministry consults other agencies concerned on the issue of NRI marriages. Currently, steps are being taken to convene an inter-ministerial meeting of the Ministries/Departments viz. Ministry of Women and Child Development, Ministry of Law and Justice, Ministry of External Affairs, Ministry of Home Affairs, National Commission for Women¹⁹, National Human Rights Commission and Indian Society of International Law.

6. On a similar query, regarding coordination with the Ministry of External Affairs, it is replied that the Ministry of Overseas Indian Affairs and Ministry of External Affairs coordinate regularly on a whole range of issues through correspondences and meetings. They are also receiving complaints from the National Commission for Women about NRI marriages. These are attended to with due care..

LEGAL INTERVENTIONS - SCOPE AND LIMITATIONS

Matrimonial disputes are one of the most challenging and complex area for legal interventions within any system. In the Indian context, the absence of uniform civil laws and the abundance of personal laws of various religious communities make it further complex. Such legal complications get multiplied when a marriage steps out of the borders of a country and thus, the boundaries of a country's legal system.

¹⁸Supra n. 12 at pp. 199-200.

¹⁹Accomplishments and initiatives of National Commission for Women Report 2017-2021, New Delhi.

Though the victims of fraudulent marriages, harassment or desertion can take recourse to legal proceedings against their overseas Indian spouses and/or their in-laws, under the provisions of section 498A, 406, 506 and 34 of the Indian Penal code and under the Dowry Prohibition Act, solution to the problem in an NRI marriage becomes highly complex because of the lacunae in the existing domestic laws and it falls within the purview of Private International Law. Private International Law while elaborating the term Private International Law, Ministry of Overseas Indian Affairs have stated that the rules of Private International Law resolve the issues concerning conflict of laws²⁰ which arise because of differences between the law of the country of nationality of a person and that of in which that person may reside, or of which he may acquire nationality. These issues most frequently arise in relation to personal matters such as marriage and divorce, custody of children, abduction of children, adoption and succession. These rules are mainly based on court decisions. In case of India, difficulties also arise because of personal laws relating to these matters determined by the religion of the individual. The Committee have been informed that to address this persisting difficulty and to bring as much uniformity among the various systems of private international law, the principle of comity of nations has been increasingly employed by the countries in the sense of laying down a uniform and accepted code of etiquette that governs the interactions of courts in different countries and whereby certain rules are recognised as common to all civilised jurisdictions. This has been done through a series of international conventions which have been signed by the member countries, many of them also following it up by domesticating the principles agreed therein, into the municipal statutes. For countries that have not signed such conventions or for situations that are not covered by any of them, the courts in each country have been adopting or evolving principles to adjudicate upon disputes involving a foreign complexion.

The Hague Conventions

The Committee have been informed that the, The Hague Conference on Private International Law, an inter-governmental organisation with its Headquarters in The Hague, Netherlands is engaged in developing multilateral legal instruments on issues of private international law including those related to person, family, or commercial situations, connected with more than one country, where there are differences in the legal systems.

Elaborating on the same, the Secretary, Ministry of Overseas Indian Affairs, during evidence stated as under:-

Presently in each country the law is different and a country's law cannot govern the marriage issues in another country. Under The Hague Convention, something is possible in which we have already initiated action countries with the Ministry of Law and Justice, the following reply has been furnished :-

Presently, there is no proposal under consideration of the Ministry of Law and Justice or External Affairs to have bilateral agreements/protocols to deal exclusively with cases of fraudulent NRI marriages. Such cases can, however, be considered under extradition treaties/arrangements or agreements on Mutual legal Assistance where such agreements exist. An inter-ministerial meeting in this regard is being planned through the concerned Ministry which is the Ministry of External Affairs and they have already taken action in that direction. However, when the Committee desired to know that keeping in view the increasing cases of fraudulent NRI marriages, whether the Ministry of Overseas Indian Affairs have been pursuing the matter of signing bilateral treaties with other to discuss the clauses which can be inserted into bilateral agreements to help victims of fraudulent NRI marriages, suggestions for which have already been called from all concerned Ministries.,²¹

Extradition Treaties

The Committee were informed that the Ministry of External Affairs cannot suo motu initiate penal action against an Indian national abroad on the basis of a complaint from his wife/relatives in India, but the request for extradition has to come from a Court or investigating agency concerned. On being asked to furnish details about the cases in which the Ministry have received request for extradition of husbands of fraudulent marriages from courts or investigating agencies concerned, the Ministry of External Affairs in their reply stated as under:-

In 2006, the Ministry of External Affairs received 7 extradition requests directly from the Hon'ble Courts/investigating agencies. The cases pertain to extradition of the person(s) for committing offences of cruelty to a married woman (Section 498-A), criminal breach of trust (Section 406), and criminal intimidation (Section 506) of the Indian Penal Code and Section 3 and 4 of Dowry Prohibition Act. However, none of these requests could be complied with by this Ministry due to non-conformity to prescribed procedure, including incomplete documentation, incorrect address etc. These cases were returned to the concerned courts/investigating agencies for completion of extradition documents'. Both the fraudulent marriages and the dowry issue are real problems. As I said, part of the problem with the dowry issue is that it is a crime in India but it is not a crime in those societies. Extradition is only

²⁰SaiRamaniGarimella, Private International law (conflicts of laws), central law publications, 2018.

²¹ Twelfth report, Committee on Empowerment of Women 2006-2007, Lok Sabha Secretariat, New Delhi

possible in most of the extradition agreements if the act is a crime in both the countries. This is one problem which affects most of our cases. What we do there is this. Outside the legal framework we work with NGOs or community or community organisations. The Ministry of Overseas Indian Affairs have so far organised two regional workshops one at Chandigarh in June, 2006 and another at Thiruvananthapuram in September, 2006 in collaboration with the National Commission for Women. The objective of the regional workshops was to create awareness among women in different parts of India on the problems relating to fraudulent marriages and to involve State Governments and commissions, lawyers, members different concerned Ministries, law enforcement agencies and NGOs in the solution to this problem and to increase the coordination between all concerned. The Ministry launched the Malayalam version of information pamphlets to educate and sensitive prospective Indian brides and their families and planned to launch pamphlets in Hindi, English and other regional languages for distribution in relevant State. It may be essential to actually increase the awareness through various media channels. We should make them aware that everything is not rosy on the other side when arranging such alliance. Therefore, they should be careful, and verify the particulars of the person.

CONCLUSION

Marriage is essential part of person life. The relationship through marriage is basis of creation and formation of new society. The husband and wife relationship boost the interdependency to men and women. As per every religion marriage place important ritual which is made essential for formation of religion. But actually in practice the women treated on inferior position and weak compare to men and she will treat badly after marriage. The harassment of women after marriage is common practice in family. The position of women worst when she marries with NRI person and fly to other countries. In foreign countries she will not able to access and take help from her parents and relative who leads towards to face various form of cruelty and bad treatment by husband. The attraction towards foreign countries leads the harassment and ill treatment to women particularly in NRI marriages. Additionally the women faces so many challenges and issues which sometime leads towards the death of married women.

Time has alarming to make aware every woman about her rights and privileges guaranteed by the personal laws and constitution of India. Every woman has fundamental rights and other civil rights to enjoy her life with fullest satisfaction. The time has come to provide equality to women and protect her right by leaving patriarchal mind-set of man. No doubt the government of India continuously striving for solving the complication in NRI marriage and framed various legislation and signed various international instrument for the protection of women but still it is need to provide more proactive approach against the failure cases of NRI marriages. Marriage is an institution that ought to be honoured with the greatest purity. Numerous physical and cultural in fractions as well as unsuccessful NRI marriages need government`s involvement and various social awareness campaigns. Specialised cells should be established at both national and state levels. The national State women commission corporation is critical in facilitating legal head. Numerous criteria needed to be introduced for the verification of personal details of NRI grooms claiming to live abroad. Additionally, the grooms and are documentation such as his passport visa, voter, registration car and Social Security number must be Authenticated.