

NRI Marriages: The Evolving Societal Malaise in India

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Abstract : *Wise men have said 'Physical injury is finite, emotional is infinite'. Their acumen was never challenged and perhaps will be noted in high perspicacity for times ahead. The relevance of this adage is seen in context when we bring into the fore the malady, highly social in nature, forming the core of this research, in the form of NRI Marriages or Non-Resident Indian Marriages. The predicament is not endemic to just the Indian shores, but more prevalent perhaps. Through this doctrinal research study, we endeavor to diagnose the problem and make an inquest into the root causes of this rancid 'social malaise'. Identifying the flawed, biased societal mind-sets to the lack of a policy framework on the part of the law makers, the paper sets out remedial as well as palliative measures to check and thwart this social plague. Trending in most states of India, this lamentable practice of deserting the wife has been seen to be on the upsurge. The safeguards listed out in this paper have been so devised as to not digress from the international and national legal conformities. The initiatives, if implemented will do well to withhold if not eradicate the problem.*

Keywords: *NRI Marriages, Desertion, Fraud, Child Custody, Social Ignominy*

Submitted Date 21 June 2013

Accepted Date: 26 June 2013

I. Introduction

More than a decade into the 21st Century, the world seems to be rapidly moving towards the transient definition of a 'Global Village'. With the spectrum of globalization increasing and the barriers to inter-country trade and commerce reducing, a large number of people all over the world are finding their calling in foreign countries. This trend is to be seen more so in India, where a job proposition abroad has historically been seen as a more lucrative measure of a better life.

Thus, without a scrupulous scrutiny of numbers, the most developed of countries like United States of America, United Kingdom and Australia are to be seen as the major repositories of Indians settling abroad. The upsurge in the figures estimating the number of NRIs (Non – Resident Indians) and PIOs (Persons of Indian Origin) over the years, thus, comes as no surprise. However, in light of this rapidly accelerating globalization and expansion of Indian communities abroad, it becomes relevant to discuss the implications of such an overarching phenomenon. One of the implications, which forms the cornerstone of this research paper is, NRI marriages and the lack of a legislative framework in India to address complications arising out of them.

The evolution of a global village had led to the fragmentation of the institution of marriage, to an extent, in India with high incidences of desertion of wives by NRI husbands, child abduction cases, matrimonial property disputes etc. 'NRI marriages', as generally understood, are between an Indian woman from India and an Indian man residing in another country (thus NRI – non-resident Indian), either as Indian citizen (when he would legally be an 'NRI') or as citizen of that other country (when he would legally be a PIO – person of Indian origin). The puritan social mind-sets of Indian families that prefer NRI grooms over their domestic counterparts has only aggravated the rising problem. Many Indian families prefer NRI grooms, and see them as an opportunity to advance their socio-economic status. Few families, however, run due diligence checks on the grooms. As a result, many of these marriages are turning out to be a traumatic experience for the brides once they leave India.

An increasing tendency of women is being seen where they get trapped in fraudulent marriages wherein the lure of a well-settled NRI proves too assuring for the bride's family which end up parting with a lot of dowry and the bridegroom fleeing away. It is pertinent to note that NRI marriages are not only governed by Indian Laws but laws of the other country of either party comes into play. Hence, the conviction rate is abysmally low due to the complexity that arises out of the jurisdiction involved in such cases. These fragile marriages are exposing an ugly social malaise that primarily afflicts northern states of Punjab and Delhi, and Andhra Pradesh in the south. A recent report by the Overseas Indian Affairs ministry shows that there is a month on month increase in the number of divorces filed this year. The ministry also registered a sharp increase in the number of cases registered by Indian women against harassment and desertion by their spouses: from 381 cases reported in March 14, 2012 the figure jumped to 418 by June 30. Another report by the National Commission

for Women (NCW) reinforces the overseas ministry data. The NCW report too shows that till January 31, 2011, 540 complaints related to Indian women deserted by their overseas husbands were reported and the complaints increased to 843 by February 5, 2012.

Alarmed by the conspicuous numbers of NRI marriage frauds, the Parliament constituted a Standing Committee to examine the looming crisis and release a report. In its draft report, the committee has recommended that registration of NRI marriages be made mandatory. The panel also wants the government to double the expense account for legal help abroad from \$1,500 (Rs. 84,000) to be raised to \$3000 (Rs. 1.7 lakh). It has also suggested the building of a NRI matrimonial law to categorically cover aspects such as abandonment, divorce and maintenance and child custody. Through this research paper, we shall endeavor to peruse the complications surfacing out of NRI marriages and the measures to overcome the lacuna in our legal mechanism to address such problems.

OBJECTIVE OF STUDY

The objective of this study is to investigate the milieu of Non-Resident Indian marriages, beginning from the causes which lead to them to the regulation protocols in place. With emphasis on the existing rules, this study endeavors to forward solutions addressing the major blight which continues to exist and cause increasing torment to human lives.

II. The Milieu

1. The Conundrum of Cross-Border Migration and Marriage

Many a man and woman of this land with different personal laws have migrated and are migrating to different countries either to make their permanent abode there or for temporary residence. Likewise there is also immigration of the nationals of other countries. The advancement in communication and transportation has also made it easier for individuals to hop from one country to another. It is also not unusual to come across cases where citizens of this country have been contracting marriages either in this country or abroad with nationals of the other countries or among themselves, or having married here, either both or one of them migrate to other countries.¹ There are also cases where parties having married here have been either domiciled or residing separately in different foreign countries. This migration, temporary or permanent, has also been giving rise to various kinds of matrimonial disputes destroying in its turn the family and its peace.² For many resident Indians, marrying a NRI is the easiest route for immigrating to foreign shores. It is also foreseen as an assurance for a comfortable and lavish lifestyle abroad.³ But from last several years a new problem has come on the surface that is about Indian women trapped in fraudulent marriages with overseas Indians.⁴ There are hundreds of such instances in which teenage girls were married to NRI grooms, many of whom were of their fathers' ages, with the only intention that their girls' sacrifice would pave the way for other family members going abroad and improving their economic conditions.⁵

1.1 Complications from Cross-border migration

Abandoned bride in distress due to runaway foreign country resident Indian spouse, stressed non-resident Asian parent frantically searching spouse in India who has removed their child from a foreign jurisdiction in violation of a foreign court order, desperate parent seeking child support and maintenance, non-resident spouse seeking enforcement of foreign divorce decree in India, agitated children of deceased non-resident Indian turning turtle in trying to seek transfer of property in India and its repatriation to foreign shores, anxious and excited foreign adoptive parents desperately trying to resolve Indian legal formalities for adopting a child in India, bewildered officials of a foreign High Commission trying to understand the customary practices of marriage and divorce exclusively saved by Indian legislation, foreign police officials trying to understand intricacies of Indian law in apprehending offenders of law on foreign soil: these are some instances of problems arising every day from cross-border migration.⁶

¹Shamita Das Dasgupta, Woman Abuse in a Globalizing World: Abandonment of Asian Women, *Ending Violence Association of British Columbia (EVA BC)*, Issue 2010-11, pp. 4.

²*Y. Narasimha Rao v. Y. Venkata Lakshmi*, JT 1991 (3) SCC 33.

³Memorandum on NRI Marriages and Abandoned Brides, Rakshak Foundation, 2007, pp.7.

⁴Dr. G A Solanki (2012), Fraudulent NRI Marriage and Vulnerable Brides, *Indian Journal of Research*, Vol. 1 Issue 10, pp. 91.

⁵Rajinder Kour Chhohka (2013), NRI marriages: Problems, Causes and Remedies, available at:

http://pd.cpiim.org/2006/0730/07302006_problem%20relating%20to%20nri%20marriage.htm, accessed on January 20, 2013.

⁶“Need for Family Law Legislations for Non-resident Indians”, Report no. 219, Law Commission of India (March 2009), pp. 9.

III. The Malady

1. Vices Relating to Overseas Indian Marriages

It is a common practice in some states for the parents to get their daughter married to Non-Resident Indians, assuming that such grooms would be economically well off and affluent which will not only enable their daughters to lead a life full of comforts, luxuries and prosperity but will also provide financial support to their families and new avenues for their siblings in foreign countries.⁷ But in practice, many of these marriages turn out to be failures and create everlasting problems for the bride's family. The common issues/problems relating to Overseas Indian/NRI marriages being faced by Indian Women include:⁸

- 1.1. Abandonment of the wife for various reasons, even before being taken to the foreign land where her husband resided.
- 1.2. Domestic Violence with she being brutally battered, assaulted, abused both physically and mentally, malnourished, confined and ill-treated.
- 1.3. NRI husband already married thereby her becoming a victim of bigamy.
- 1.4. Continued demands for dowry, pre and post marriage from her in-laws.
- 1.5. Lenient legal system abroad in respect of grounds for divorce etc. which is misused by her husband.
- 1.6. Raison d'être for Fraud NRI nuptials

Primarily, the antecedents of the boy and his family are not verified at the time of marriage proposal and this is the root cause for all the above-mentioned problems. From the bride's side the marriage is immediately rushed into because her parents find the proposal lucrative as laymen since on the face of it the foreign currency fetches more fortune than the national but often all that glitters is not gold. Majority of the grooms give out false information to their in-laws with respect to their legal status and smear a pseudo-optimistic picture of their employment eminence and this is not verified by the bride's family.

2. Issues at the root of Overseas Divorce

There are a number of issues associated with the faltering of uncountable overseas Indian marriages. This research paper addresses two of those most important issues which create abysmal problems in the field of Private International Law.

2.1 Lenient Legal System abroad for grounds for divorce

It is in India that marriage is seen more as an alliance between two families rather than a mere union of two individuals. Even the Indian Supreme Court has in its judgments laid out a scheme by means of which it said that divorce should be prevented and ought to be an initiative of last resort when all cases of reconciliation between the parties are in vain.⁹ General perspective is that it is easier to dissolve a marriage abroad because of the lenient legal system of divorce in foreign country and the NRI husband obtains ex-parte decree of divorce through fraudulent misrepresentations.

2.1.1 No-Fault Divorce Provision in the USA

In 1969, California became the first jurisdiction in America (and in the western world) to adopt a modern, purely "no-fault" divorce law when it passed the Family Law Act of 1969, which became effective in 1970.¹⁰ Since then fifteen states in the US have "pure no-fault" divorce laws in strict sense.¹¹ In a no-fault divorce, the spouse seeking the divorce does not have to show that the other party is at fault. The statute defined "irreconcilable differences" and "irremediable breakdown" in the broadest terms and evidence of marital misconduct was declared to be "improper" and "inadmissible."¹² Divorce is an emotional/moral subject

⁷ "Marriages with Non-Resident Indians", National Commission on Women, Chapter VIII, pp.59

⁸ "Problems relating to overseas Indian marriages: Scheme for providing legal/financial assistance/rehabilitation to Indian women deserted by their overseas Indian spouses", Standing Committee on External Affairs (2011-12), Fifteenth Lok Sabha, Fifteenth report, pp. 10.

⁹ See, *Hirachand Srinivas v. Sunanda* 2001 SCC 1285, the Supreme Court in this case held: it has to be kept in mind that before granting the prayer of the petitioner to permanently snap the relationship between the parties to the marriage, every attempt should be made to maintain the sanctity of the relationship which is of importance not only for the individuals or their children but also for the society.

¹⁰ See CAL. CIV. CODE §§ 4000-5138 (West 1983). California was not only the first American state to adopt a "pure" no-fault divorce law, it was the first jurisdiction to do so in the modern world.

¹¹ The states are Arizona, California, Colorado, Florida, Hawaii, Iowa, Kentucky, Michigan, Minnesota, Montana, Nebraska, Oregon, Washington, Wisconsin, and Wyoming. ARIZ. REV. STAT. ANN. §§ 25-312, 25-316 (1976 & Supp. 1986); CAL. CIV. CODE § 4506 (West 1983); COLO. REV. STAT. § 14-10-106 (Supp. 1985); FLA. STAT. § 61.052 (1985); HAW. REV. STAT. § 580-41 (1976); IOWA CODE ANN. § 598.17 (West 1981); Ky. REV. STAT. ANN. § 403.140 (Michie/Bobbs-Merrill 1984); MICH. COMP. LAWS ANN. § 552.6 (West Supp. 1986); MINN. STAT. ANN. § 518.06 (West Supp. 1987); MONT. CODE ANN. § 40-4-104 (1985); NEB. REV. STAT. § 42-347 (Supp. 1986); OR. REV. STAT. § 107.025 (1984); WASH. REV. CODE ANN. § 26.09.030 (West 1986); Wis. STAT. ANN. § 767.07 (West 1981); Wyo. STAT. ANN. § 20-2-104 (1986); See Herma Hill Kay, "Equality and Difference: A Perspective on No-Fault divorce and its Aftermath", 56 U. Cin. L. Rev. 1 1987-1988.

¹² "Irreconcilable differences" were defined as "those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved." Further the Act provided that even where there a reasonable possibility of reconciliation then the proceeding may be postponed to accommodate reconciliation efforts "not to exceed 30 days".

that cannot easily be discussed objectively or with disinterested detachment.¹³ Thus, it is undeniable that the basis for and method of obtaining divorce in the United States was “fundamentally altered” by the no-fault divorce reform laws enacted in the states.¹⁴ Today observers wonder whether the no-fault divorce reform movement has produced merely a shift from earlier laws that favored women to an existing system that favors men.¹⁵

2.2 Jurisdictional Predicament

In most cases an NRI marriage is solemnized in India and the bride is then taken to her husband's abode which is in the foreign land. Assuming at this juncture, an ex-parte divorce decree is obtained by the NRI husband in a foreign court. Here, the Indian spouse is left helpless, deserted on Indian shores confronted with a matrimonial litigation of a foreign court, which she neither has the means or ability to invoke which often results in despair, frustration and disgust.¹⁶ The woman is denied maintenance in India on the pretext that marriage has been dissolved by a court in another country.¹⁷

It is submitted that the jurisdiction assumed by the foreign Court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married or where the respondent voluntarily and effectively submits to the jurisdiction of the forum and contests the claim which is based on a ground available under the matrimonial law under which the parties are married.¹⁸

3. Analysis of Case Laws

In the recent case of *Sheenam Raheja v. Amit Wadhwa*¹⁹, the Delhi High Court relying on the judgment given by the Supreme Court in *Y. Narasimha Rao*²⁰ held that in instances of marriage between the parties having been solemnized and registered under the provisions of the Hindu Marriage Act, 1955 its dissolution could be effected only under the said Act.²¹

Also, since irretrievable breakdown of marriage is not a ground for dissolving the marriage under Indian law²², Indian Courts in principle do not recognize foreign matrimonial judgments dissolving marriage by such breakdown.²³ In another case the AP High Court refused to influence its decision with the divorce decree from the US court produced by the husband.²⁴ *Veena Kalia v. Jatinder N. Kalia*²⁵ was another case where the NRI husband obtained ex parte divorce decree in Canada on ground not available to him in India.

The Delhi High Court held that not only did such divorce decree not bar divorce petition by wife in India as it could not act as *res judicata*, it also did not bar applications for maintenance filed by the wife in her divorce petition. These judicial pronouncements show the intention of the honorable Indian courts to de-recognize overseas matrimonial judgments which have been given in complete ignorance of the Indian law.

*Smt. Anubha v. Vikas Aggarwal*²⁶ discussed the issue whether the decree of ‘no fault divorce’ obtained by the husband from the Connecticut Court of USA could be enforced on the wife when their marriage was solemnized as per the Hindu rites and the wife had not submitted to the jurisdiction of the Court in US and had not consented to grant of divorce. The Delhi High Court held that the decree obtained by the defendant from the Connecticut Court of USA was held to be neither recognizable nor enforceable in India.

III. The Remedy

1. Compulsory Registration of NRI Marriages

Registration of marriages has yet not been made compulsory in India, it has only been recommended. But such registration of marriages is the crying need of the hour and must be made compulsory in the case of overseas Indians. Such registration shall ensure that all conditions of valid marriage are complied with.²⁷ This will in turn also provide proof of marriage and act as a deterrent for bigamous practices. Section 8(1) of the

¹³ Lynn D. Wardle (1991), No-Fault Divorce and the Divorce Conundrum, *BYU L. Rev.* 79

¹⁴ H. Jacob, *Silent Revolution: The Transformation of Divorce Law in the United States* (Chicago University Press, Chicago, 1988), pp. 166.

¹⁵ See, e.g., Murray, *Family Law, Twelfth Survey of Florida Law, Part One*, 30 U. *MIAMI L. REV.* 107, 108 (1976).

¹⁶ *Supra* note 7 at 12.

¹⁷ *Supra* note 8 at 5.

¹⁸ *Y. Narasimha Rao and Ors. v. Y. Venkata Lakshmi and Anr.*, (1991) 3 SCC 451.

¹⁹ 2012 (131) DRJ 568

²⁰ (1991) 3 SCC 451.

²¹ See also, *Veena Kalia v. Dr. Jatinder Nath Kalia and Anr.*, 59 (1995) DLT 635; *Smt. Anubha v. Vikas Aggarwal & Ors.*, 100 (2002) DLT 682.

²² *Sheenam Raheja v. Amit Wadhwa* 2012 (131) DRJ 568.

²³ *Supra* note 7 at 11.

²⁴ *Venkat Perumal v. State of A.P.*, AP II (1998) DMC 523

²⁵ AIR 1996 Del 54

²⁶ 100 (2002) DLT 682

²⁷ *Supra* note 4 at 92.

Hindu Marriage Act, 1955²⁸ makes it optional for State Governments to provide for rules for providing for registration of marriages. The States in India with high migration incidence should make and notify rules under Section 8 providing for compulsory registration of marriages and incidental matters related thereto.²⁹ Simultaneously, it should be made obligatory that the NRI spouse must give intimation of registration of his marriage to the concerned Embassy / High Commission in India, in which country he is presently resident.³⁰

Parliamentary legislation on compulsory registration of marriage is therefore not only possible but also highly desirable.³¹ This will bring country-wide uniformity in the substantive law relating to marriage registration. There is no provision for registration of divorces under Hindu marriage Act, 1955, Special Marriage Act, 1954, and Indian Christian Marriage Act, 1872. The proposed law should declare failure to register a marriage or divorce as required by its provisions to be an offence punishable with heavy fines and, in default of payment of fine, with imprisonment for a prescribed period.³² It should also provide that no judicial relief will be granted in a disputed matter if the concerned marriage or divorce is not duly registered under its provisions.³³

2. Legislative Safeguard to Protect the Interests of Women

With the large number of non-resident Indians now permanently living in overseas jurisdictions, it has now become important that some composite legislation is enacted to deal with the problems of non-resident Indians to avoid them from importing judgments from foreign courts to India for implementation of their rights.³⁴ It is imminent to give them law treating them as Indians rather than having them import judgments from foreign courts to India for implementation of their rights.

The myriad issues of NRI marriages were analyzed by the honorable Supreme Court of India in the case of Neeraja Saraph (Smt) v. Jayant v. Saraph and Anr.³⁵ and it was held “although it is a problem of Private International Law and is not easy to be resolved, but with change in social structure and rise of marriages with NRI the Union of India may consider enacting a law like the Foreign Judgments (Reciprocal Enforcement) Act, 1933 enacted by the British Parliament under § 1 in pursuance of which the Government of United Kingdom issued Reciprocal Enforcement of Judgments (India) Order, 1958.”

It was further suggested by the bench that the feasibility of a legislation safeguarding interest of women may be examined by incorporating such provisions as:

- 2.1. No marriage between a NRI and an Indian woman which has taken place in India may be annulled by a foreign court.
- 2.2. Provision may be made for adequate alimony to the wife in the property of the husband both in India and abroad.
- 2.3. The decree granted by Indian courts may be made executable in foreign courts both on principle of comity and by entering into reciprocal agreements.

3. Addition of Breakdown as a Ground for Divorce

Dissolution of marriage on the ground of breakdown of marriage as an additional ground for divorce should be introduced when at least one of the spouses is an NRI subject to safeguards provided by legislation. This would require amendment of the provisions of the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. The Law Commission of India had recommended³⁶ amendments in the Hindu Marriage Act to make irretrievable breakdown of marriages a new ground for granting divorce among the Hindus. Such a ground would provide NRI spouses a judicial forum in India to seek a remedy on Indian soil rather than importing foreign judgments of alien courts on breakdown grounds and give a chance to the Indian spouse to defend on convenient and equitable terms in Indian courts.³⁷

Earlier, in *Ms. Jorden Diengdeh v. S. S. Chopra*³⁸ the Supreme Court of India observed that it is necessary to introduce irretrievable breakdown of marriage and mutual consent as grounds of divorce in all cases. Recently,

²⁸ The Hindu Marriage Act, 1955 does not apply in the State of Goa and the Union Territory of Daman and Diu. In Puducherry it does not apply to the ‘Renoncants’ (those who opted for the local Franco-Indian law at the time of the assimilation of the territory into the Indian Union in 1954).

²⁹ *Supra* note 7 at 23.

³⁰ *Id.*

³¹ “Laws on Registration of Marriage and Divorce - A Proposal for Consolidation and Reform”, Report no. 211, Law Commission of India (October 2008), pp. 34

³² *Id.* at 38.

³³ *Id.*

³⁴ *Supra* note 7 at 22.

³⁵ (1994) 6 SCC 461.

³⁶ “The Hindu Marriage Act, 1955 - Irretrievable Breakdown of Marriage as a Ground of Divorce”, Report no. 71, Law Commission of India (March 2009), pp. 34

³⁷ *Supra* note 7 at 24.

³⁸ AIR 1985 SC 935, para 7.

the Supreme Court in *Naveen Kohli v. Neelu Kohli*³⁹ recommended to the Union of India to seriously consider bringing an amendment in the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce. The need for this amendment must be strongly mooted by the States with high NRI population to the Government of India since inter-country migration from such States is significant and in large numbers.⁴⁰

The foundation of a sound marriage is tolerance, adjustment and respecting one another. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it.⁴¹ 'Irretrievable breakdown of marriage' is a ground which the Court can examine and if the Court, on the facts of the case, comes to the conclusion that the marriage cannot be repaired/saved, divorce can be granted. The grant of divorce is not dependent on the volition of the parties but on the Court coming to the conclusion, on the facts pleaded, that the marriage has irretrievably broken down.⁴² The power of the Court to grant divorce on the ground of irretrievable breakdown of marriage should be exercised with much care and caution in exceptional circumstances only in the interest of both the parties.⁴³ The Indian Courts have time and again denied decree of divorce on the ground of marriage having been irretrievably broken down, in the absence of one or more grounds mentioned under Hindu marriage Act, 1955.⁴⁴ The concept of irretrievable breakdown of marriage cannot be used as a magic formula to obtain a decree for divorce where grounds for divorce are not proved.⁴⁵

4. Ex-parte Divorce by Foreign Courts be Barred

It has already been depicted how, with minimal effort, a divorce can be obtained in a foreign court owing to a lenient legal system for grounds for divorce. In most of the cases, a cheating husband obtains divorce, often ex-parte, in the foreign country behind the back and the information reaches to the wife or her relatives too late and by that time, she has already been exploited by her husband bodily and mentally.⁴⁶ But a marriage can only be dissolved under a law according to which it was solemnized in the first place⁴⁷ and that is the fundamental law of the land. Hence if a marriage is annulled under foreign jurisdiction then the proceeding would become void ab initio and the divorce decree would have no value.⁴⁸

*Harmeeta Singh v. Rajat Taneja*⁴⁹ saw the Delhi High Court dispose of the interim application by the wife by passing an order of restraint against the husband from continuing with the proceedings in the US court in the divorce petition filed by the husband there and also asking him to place a copy of the order of the High Court before the US court. The Court made some other observations while passing this order, mainly that even if the husband succeeded in obtaining a divorce decree in the US, that decree would be unlikely to receive recognition in India as the Indian court had jurisdiction in the matter. Therefore, grant of ex-parte divorce by foreign courts should be barred in the case of marriages solemnized in India as per Indian law. The Indian courts have also made this very clear in their own pronouncements that they will not simply mechanically enforce judgments and decrees of foreign courts in family matters.⁵⁰ Hence, a divorce decree obtained ex-parte from a foreign court will not be enforceable in India.

5. International Conventions and Bilateral Treaties

The problem of abandoned brides as with any other case involving Private International Law rules need to be solved on a case by case basis and often result in great disparity in judgments produced as each country has its own private international law rules. With nearly 70 Members (68 States and the European Union) representing all continents, the Hague Conference on Private International Law is a global inter-governmental organization with the mission of working for the "progressive unification" of these rules.⁵¹ The issues related to the marriage and divorce of couples whose lives are connected to more than one legal system were among the first topics to become the subject of international treaties established by the Hague Conference on Private International Law at the turn of the 19th century.⁵² Since 1902 a number of treaties and conventions

³⁹ AIR 2006 SC 1675.

⁴⁰ *Supra* note 37.

⁴¹ Mayne's Treatise on Hindu Law & Usage (16th Ed.) Revised by Justice Ranganath Misra (2008), pp. 292.

⁴² "Irretrievable Breakdown of Marriage - Another Ground for Divorce", Report no. 217, Law Commission of India (March 2009), pp. 9.

⁴³ *Supra* note 41 at 293.

⁴⁴ See *V. Bhagat v. D. Bhagat* AIR 1994 SC 710, *Tapan Kumar Chakraborty v. Jyotsna Chakraborty* AIR 1997 Cal. 134, *Kanchan Devi v. Pramod Kumar Mittal*, AIR 1996 SC 3192.

⁴⁵ *Supra* note 31 at 14.

⁴⁶ *Supra* note 8.

⁴⁷ *Supra* note 18.

⁴⁸ *Sheenam Raheja v. Amit Wadhwa* 2012 (131) DRJ 568.

⁴⁹ 102 (2003) DLT 822.

⁵⁰ *Supra* note 21.

⁵¹ Tanya Elizabeth John (2010), "A Study of Fraudulent Migratory Marriages in Canada and India", pp. 22.

⁵² Outline – Hague Divorce Convention, The Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, available at: <http://www.hcch.net/upload/outline18e.pdf>.

have been drafted specifically to address the issues of marriage, divorce, and maintenance and child abduction.

There is an urgent need to comprehensively and extensively examine these international conventions and bilateral treaties which have relevance and importance for the issues relating to NRI marriages. Marriages solemnized in India must be dissolved in accordance with Indian Laws. This inter-country arrangement must be resolved by bilateral agreements for protection of such marriages where the Indian Diaspora is in large numbers.⁵³

5.1. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Criminal Matters, 1965 (Service Convention)

This convention was framed with the object of creating the appropriate means to ensure that judicial and extrajudicial documents to be served abroad are brought to the notice of the addressee in sufficient time and to improve the organization of mutual judicial assistance for that purpose by simplifying and expediting the procedure. Where a writ of summons or an equivalent document has to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that – the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or that the document was actually delivered to the defendant or to his residence by another method provided for by this Convention, and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.⁵⁴ Since India, US, Canada and Australia (countries with maximum Indian migrants) are parties to this convention therefore this section is helpful in mitigating cases of ex-parte divorces where the women have not received proper and timely notice of the initiation of divorce proceedings in a foreign state.⁵⁵

5.2. Convention on the Recognition of Divorce and Legal Separation, 1970

The Convention stipulates that a divorce decree or legal separation obtained in a contracting state will be recognized by another contracting state if at the time of the proceedings, it was the respondent or the petitioner's habitual residence.⁵⁶ Further it mentions that if, in the light of all the circumstances, adequate steps were not taken to give notice of the proceedings for a divorce or legal separation to the respondent, or if he was not afforded a sufficient opportunity to present his case, the divorce or legal separation may be refused recognition.⁵⁷ Furthermore, a Contracting State may refuse recognition where such recognition is manifestly incompatible with its public policy. Therefore even this section of the convention is helpful in mitigating cases of ex-parte divorces. But neither Canada nor India have ratified or acceded to this convention.

5.3 Convention on the Laws Applicable to Maintenance Obligation, 1973

Article 5 mentions that Recognition or enforcement of a decision may, however, be refused if the recognition or enforcement of the decision is manifestly incompatible with the public policy ("ordre public") of the State addressed; or if the decision was obtained by fraud in connection with a matter of procedure. This article therefore refuses recognition to a decision in favour of the NRI husband obtained in the country of his residence, by fraud in connection with a matter of procedure or if it is manifestly incompatible with public policy.⁵⁸ Article 6 of this convention is also relevant for ex-parte divorces as, it states that, a decision rendered by default shall be recognized or enforced only if notice of the institution of the proceedings, including notice of the substance of the claim, has been served on the defaulting party in accordance with the law of the State of origin and if, having regard to the circumstances, that party has had sufficient time to enable him to defend the proceedings.⁵⁹ Neither Canada nor India has ratified this Convention.

5.4. Convention on Celebration and Recognition of Validity of Marriage, 1978

Article 11(1) states that a Contracting State may refuse to recognize the validity of a marriage, when at the time of the marriage, under the law of that State one of the spouses was already married. Further, Article 14 states that a Contracting State may refuse to recognize the validity of a marriage where such recognition is manifestly incompatible with its public policy ("ordre public"). These provisions refuse recognition to bigamous

⁵³Background Note of the National Seminar on "Issues Relating to NRI Marriages", National Commission of Women, accessed on January 22, 2013, pp. 25.

⁵⁴Service Convention, 1965, Art. 15.

⁵⁵*Id.*

⁵⁶Convention on the recognition of divorce and legal separation 1970, Art 2.

⁵⁷*Id.* Art 8.

⁵⁸Convention on the Laws Applicable to Maintenance Obligations, 1973, Art 5.

⁵⁹*Id.* Art 6.

marriages entered into by the NRI husbands in their country of residence, while they remain married to the spouses they abandoned in India. Both Canada and India are not parties to this convention.⁶⁰

6. Policy Initiatives

The number of women affected by NRI marriages is quite high and the exact number is not known. Consequently, the Centre felt it appropriate to draft a policy so that offices abroad can tackle such cases. Concerned over the plight of deserted NRI women, the Government of India recently finalized a policy to protect them as well as provide them with financial help to fight legal battles.⁶¹ A scheme was launched in 2007 to provide legal /financial assistance to the deserted or divorced overseas Indian women through the Indian Missions/Posts. The term “Overseas Indian” would include NRIs and PIOs (foreign citizens of Indian origin). The scheme was revised and brought into effect from November, 2011.

6.1. Legal and Financial Assistance to Affected Women

The scheme is a welfare measure to support women of Indian origin in distress, through the mobilization of the local Indian community in the endeavor and with some financial assistance from the Government.⁶² The scheme would be available to Indian women who have been deserted by their overseas Indian / foreign husbands or are facing divorce proceedings in a foreign country, subject to the following conditions⁶³:-

6.1.1. The woman is an Indian passport holder.

6.1.2. The marriage of the woman has been solemnized in India or overseas with an overseas Indian or a foreigner.

6.1.3. The woman is deserted in India or overseas within fifteen years of the marriage; or

6.1.4. Divorce proceedings are initiated within fifteen years of the marriage by her overseas Indian / foreign husband; or

6.1.5. An ex-parte divorce has been obtained by the overseas Indian / foreign husband within twenty years of marriage and a case for maintenance and alimony is to be filed by her.

The scheme would not be available to a woman having a criminal case decided against her, provided that a criminal charge of Parental Child Abduction shall not be a bar if the custody of the child has not yet been adjudicated upon. The assistance will be limited to US\$ 3000 per case in developed countries and US\$ 2000 per case in developing countries and will be released to the empanelled legal counsel of the applicant or Indian Community Association / Women’s organization / NGO concerned to enable it to take steps to assist the woman in documentation and preparatory work for filing the case.⁶⁴ 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.⁶⁵ 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.

7. Role of Ministries and Co-ordination Between Them

Various agencies viz. Ministry of Overseas Indian Affairs, Ministry of External Affairs, Ministry of Women and Child Development, National Commission for Women, National Human Rights Commission and State Governments are dealing with the issue of problematic NRI marriages. It is recommended that a special cell could also be setup with the Indian Embassy in different countries to provide assistances during the emergencies. The National Commission for Woman was nominated as the Coordinating agency at the National level for dealing with issues pertaining NRI marriages by Government of India vide Ministry of Overseas Indian Affairs order dated April 28, 2009. In furtherance of this, the NRI Cell was set up⁶⁶ deals with complaints received from India and abroad resulting from cross country marriages wherein there is any deprivation of women’s rights or any issue involving grave injustice to women.

⁶⁰ *Supra* note 51.

⁶¹ “Initiatives on Safeguards of Deserted NRI Women”, available at: <http://iasyes.in/attachments/article/313/Initiatives%20on%20Safeguards%20of%20Deserted%20NRI%20Women.pdf>, accessed on January 22, 2013, pp. 2

⁶² *Supra* note 53, pp. 13.

⁶³ Press Information Bureau, Government of India, February 3, 2012, available at: <http://pib.nic.in/newsite/erelease.aspx?relid=80095>, accessed on January 22, 2013.

⁶⁴ *Id.*

⁶⁵ *Supra* note 53, at 14.

⁶⁶ “NCW sets up NRI Cell to address plight of abandoned wives”, available at: <http://www.indianexpress.com/news/ncw-sets-up-nri-cell-to-address-plight-of-abandoned-wives/507941>, accessed on January 25, 2013.

7.1. Functions of NRI Cell:-⁶⁷

The functions of the NRI Cell broadly consist of the following:-

- 7.1.1. NRI Cell is the coordinating agency to receive and process all the complaints related to Indian Women deserted by their Overseas Indian husbands.
- 7.1.2. NRI Cell renders all possible assistance to the complaints including conciliation, mediation between the parties and advising the complainant on related issues.
- 7.1.3. Associating, networking with NGO's, community organisations in India and abroad and State women Commissions for wider area coverage, so as to facilitate easy reach and provide support services
- 7.1.4. NRI Cell endeavor towards a coordinated response amongst various Government agencies/ organisations such as State Governments, The National Human Rights Commission, Indian Embassies and Mission, concerned Ministries etc.
- 7.1.5. Providing assistance to the aggrieved woman in litigation and other issues pertaining to the complainant/case.
- 7.1.6. Maintain a data bank of cases registered with NCW
- 7.1.7. Seek reports from the State Government and other authorities on the complaints filed and action taken thereon.
- 7.1.8. To give advice and recommendations to the government on any policy or issue relating to the NRI marriages.
- 7.1.9. To analyze various legal treaties on the issue and advise the Government on the subject, wherever required.
- 7.1.10. To constitute an advisory committee of reputed advocates/NGOs, both in India as well as abroad and this shall periodically review the functioning of the cell, cases filed and policy issues.
- 7.1.11. To constitute a panel of experts to assist the aggrieved wife and rendering legal services and other assistance, including mediation and conciliation.
- 7.1.12. Planning of training modules & carrying out training on sensitization on the subject to the various agencies entrusted with the task of providing justice, viz. Judiciary, police, administration, etc.
- 7.1.13. To carry out awareness campaigns for the masses on the issue. For this, all the available media services would be utilized by the cell.
- 7.1.14. 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.
- 7.1.15. To look into complaints and take suo-moto notice on any issue brought to the notice of the NRI Cell in accordance with Section 10 (1)(f) of the National Commission for Women Act, 1990 read with sub-section 4 of Section 10 and Section 8 of the Act.
- 7.1.16. Perform any other function as assigned to it by the Commission/Central Government.

8. Awareness Initiatives at Various Levels

Ministry of Overseas Indian Affairs has brought out a guidance booklet on "Marriages to Overseas Indians"⁶⁸ which contains information on safeguards available to women deserted by their NRI spouses, legal remedies available, authorities that can be approached for redressal of grievances.⁶⁹ A pamphlet entitled "Thinking of the marriage of your daughter with an NRI?"⁷⁰ has also been brought out by the Ministry highlighting the precautions to be taken before entering into marriage alliance. Apart from this, National Commission for Women (NCW), the coordinating agency at the National level for dealing with the issues pertaining to NRI marriages has brought out a pamphlet entitled "Problems Relating to NRI Marriages-Dos and Don'ts".⁷¹ It describes the problems related to NRI marriages and suggests precautionary dos and don'ts for Indian women considering marriage to a Non-Resident Indian (NRI) or a Person of Indian Origin (PIO).⁷² NCW has also brought out a report on problems relating to NRI marriages, titled "The 'No-where' Brides"⁷³.

9. Amendment of Existing Legislations

The Passports Act 1967 and rules made thereunder can contain special provisions for cancellation of passport of an offending NRI spouse if he is an Indian Passport Holder. Likewise, the Citizenship Act, 1955 can

⁶⁷ "Functions of NRI Cell", available at: <http://ncw.nic.in/frnNRIFunctions.aspx>, accessed on January 25, 2013.

⁶⁸ The booklet is available online at: <http://moia.gov.in/services.aspx?id1=302&idp=302&mainid=17>, accessed on January 22, 2013.

⁶⁹ *Supra* note 63.

⁷⁰ The booklet is available online at: <http://moia.gov.in>, accessed on January 22, 2013.

⁷¹ The booklet is available online at: ncw.nic.in/pdffiles/nridodont.pdf, accessed on January 22, 2013.

⁷² *Supra* note 63.

⁷³ The report is available online at: <http://ncw.nic.in>, accessed on January 22, 2013.

entail penalties for matrimonial frauds. The Extradition Act, 1962 can be amended to seek return of matrimonial offenders for trial in India who have settled in foreign countries. Additionally, the law of matrimonial maintenance in India both in family law legislations and the Criminal Procedure Code must be amended for making special provision for providing matrimonial maintenance and settlement of matrimonial property for the abandoned Indian spouse in accordance with the income and living standards of the husband living in the foreign jurisdiction.⁷⁴

10. Other Miscellaneous Remedies

Recent steps of the Ministries of Women and Child Development Overseas Indian Affairs to have a mandatory certificate of marriage on the wife's passport will provide her documentary evidence and proof of her marriage on being abandoned. The wife's passport must specifically mention her marital status and the credentials of her husband. More detailed particulars of wife with photograph must be mandatorily added in the husband's passport.⁷⁵

Insofar as maintenance, the currency of the habitual residence of the NRI should be a standard benchmark for award of maintenance in NRI marriages which have broken down or there is a case of willful abandonment. It is only then that the Courts will be able to grant fitting matrimonial decrees which would effectively act as precedents and keep a check on fraud NRI marriages.⁷⁶

As part of their consular obligations, it should be mandatory for consular divisions to have designated nodal officers who can supply relevant information regarding offending NRI husbands to aggrieved spouses abandoned in India. Reciprocal arrangements, bilateral treaties and MOUs can be arrived at by the Indian government with countries of high NRI migration for setting up of such facilities.⁷⁷

It may also be worthwhile to suggest that under Section 3 of The Family Courts Act, 1984, the respective State Governments where Family Courts have not been established should be directed to provide for Family Courts. The States with high NRI population which essentially needs Family Courts as a matter of dire urgency should immediately create such Courts to deal with family law problems and give priority to settlement of family law issues where parties are NRIs.⁷⁸

V. Conclusion

A final glance of this issue presents us with the simple knowledge that as the world is shrinking, expanding, or remaining the same metaphorical size, it is clear that how we communicate across physical and cultural boundaries is changing at an accelerated rate. This can either be harnessed in a purposeful manner or be used in pernicious ways. One of the damaging ways finds itself in the cultural transgression which manifests into failed NRI marriages. It is not so much for an endemic problem confined to India, as the psyche behind such occurrences world over. The society is replete with cultural diffusions which give rise to changes in plethora.

With these changes comes a responsibility, as humans, to consider the implications of our shifting realities. Without an objective and inclusive analysis of these issues, we will be unprepared for the rollercoaster of cultural mayhem that could inevitably ensue. If we are in fact becoming a global village, will we be able to reach some sort of consensus about how these issues should be addressed in order to benefit all members of our village equally? If we cannot determine respectful cultural boundaries in the simplest manner with regards to language, economy, and basic means of survival, it is presumptuous to assume that we can identify as a global village at all. Awareness at certain levels through mediums of mass media is already being created.⁷⁹ It is imperative that victims of an NRI marriage desertion possess the valor and pluck to heal their emotional and social inflictions if not actually be successful. One such story of resolute courage was seen recently in the Indian State of Gujarat where a girl abandoned by her NRI husband, 15 days into the marriage and disowned by her in-laws, made the cut into the toppers of the Union Public Service Commission (UPSC), by far the most coveted and sought after post in the nation.⁸⁰

How cognizant are societies to such decisive awareness is only a question to be second guessed. The institution of marriage needs to be revered in its paramount form of purity and the clarion call of semblance needs to be answered before cacophony of uncontrollable proportion ensues. The wheat from the chaff, fact from the fiction, dreams for despair and reality from hopes needs to be separated, on the mend, for the world to be a better and happier place to live in. A symbiosis, perhaps.

⁷⁴ *Supra* note 53 at 26.

⁷⁵ *Supra* note 53 at 25.

⁷⁶ *Id.* at 27.

⁷⁷ *Id.* at 26.

⁷⁸ *Supra* note 7 at 25.

⁷⁹ <http://indiatoday.intoday.in/story/gurbani-all-about-runaway-nri-grooms/1/256856.html>, accessed on May 23, 2013.

⁸⁰ <http://www.morningcable.com/home/top-stories/32123:gujarat-girl-abandoned-by-husband-clears-upsc.html>, accessed on June 14th 2013.

Acknowledgement

This paper was presented at the National Workshop on “Non-Resident Indian (NRI) Marriages: Need for a New Legal Regime” conducted by NALSAR University of Law, Hyderabad on February 2, 2013. The authors would like to extend their gratitude towards Prof. (Dr.) Vijender Kumar (Head, Centre for Family Law, NALSAR University of Law, Hyderabad) for his inputs and advice during the deliberations at the workshop.

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