



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Issues and Challenges related to NRI Marriages in India

Yagya Moolchandani^a

^aSymbiosis Law School, Nagpur, India

Received 27 November 2022; Accepted 08 December 2022; Published 16 December 2022

“Law cannot stand aside from the social changes around it.” This is correctly stated by William J. Brennan, Jr. This research paper deals with how NRI (Non-Resident Indian) marriages started the first place, then gradually there was a rise in NRI marriages, with the rise in marriages, consequently there arise various issues related to NRI marriages, issues are majorly subject to the women as they are generally the victims and through various case laws it is depicted that due to the absence of a specific law, the judges interpreted the matters related to NRI marriages and came up with the judgements. The paper also deals with how the Indian families get into the trap of the NRI instead of money and settle abroad which turns out to be their worst decision and the woman is the one who suffers the most in this whole fraud committed by the NRI grooms. Further, there also arises a conflict of laws between the foreign and the Indian courts in the matters of NRI marriages, the paper deals with how by invoking the laws which are already existing the judiciary takes decisions as to the jurisdiction as well as on the grounds of divorce. Followed by this some recommendations of the Law Commission of India were also made to solve this problem faced by the women in NRI marriages and other initiatives were taken by the government to deal with the issues of NRI marriages.

Keywords: *nri, conflict of laws, indian courts, jurisdiction, law commission.*

INTRODUCTION

Marriage is a social institution that bestows upon spouses reciprocal duties towards one another. In a country like India, where marriage is not just confined to two individuals rather it is between two families. In olden times the marriage between men and women has solemnized in a manner that the family chooses the groom for their daughter and similarly, on the other hand, the other family chooses the bride for their son. This kind of marriage is an arranged marriage, so the girl's family try their best that find a rich man so that their daughter will live a happy life after marriage. But as time passed society evolved and the concept of love marriages and inter-caste marriages came into the picture. With the advancement in technology, it became much easier for people to move out of the developing country like India to some other developed countries like the USA, UK etc. So, people from India gradually started migrating to other countries for various reasons like for education purposes, for better employment opportunities and many more.

Now, who is an NRI? In layman's language if an Indian citizen moves out of the country and resides in any other country for an uncertain period under certain circumstances then he/she will be termed an NRI (non-resident Indian). However, the term NRI was not defined anywhere in the Indian laws directly but it was in other ways explained in the INCOME TAX ACT, AND FEMA ACT. Recently, in 2019 the status of an NRI has been revised by the union government of India. Non- Resident Indian marriages can be solemnized between:

- A Non-resident woman and an Indian male under different situations.
- It may be with Indian spouses migrating to a foreign land either together or separately.
- Non-resident Indian spouses either marry under Indian marriage laws in India or a foreign country and lived abroad.

In a developing country like India, it is the dream of a lot of Indians to go and settle in countries like the UK and the USA and even the families of the girls now try to find an NRI groom for the marriage so that she can settle in abroad. So, the marriage solemnized between two NRIs or one NRI and an Indian residing in India those marriages can be termed an NRI marriage or trans-national marriage.

Not all marriages are successful, there can be challenges between the NRIs too in the matter of marriage but now the question arises if the wife is facing some issues in the marriage and wants to come out of the marriage so how can she go about it? As either both or one of the spouses is residing in another country then the law of which land will apply? This paper deals with every aspect of the problems related to NRI marriages in India and how the Indian courts have interpreted the same. There is no substantive or procedural law just to govern NRI marriages in India but there are different personal laws and various sections of the Indian Penal Code, 1860 and other maintenance acts which the courts have applied while dealing with the cases of NRI marriages.

LITERATURE REVIEW

ARTICLES

“Conflict of Laws vis-à-vis NRI Marriages in India: An Appraisal”

By Shilpa Jain and Simarpreet Kaur Billing¹

This article has very well explained the term NRI marriages and the issues related to NRI marriages which are majorly faced by women, especially at the time of dissolution of marriage as there is no specific law related to NRI marriage dissolution. According to this article, the biggest problem with NRI marriages is that they can be dissolved easily by foreign courts even if the marriage has been solemnized as per the Indian personal laws or even as per the Special Marriage Act, 1954. Since the women are not generally aware of the laws prevailing in the foreign countries so the other party easily gets an ex-parte decree of divorce from the foreign courts.

The example of the above situation has also been construed in the article that if suppose there is a matrimonial dispute between the couple where one of the spouses is from Canada and the other is from India. Now, as per the Indian laws, there is no separate ground for irretrievable

¹ Shilpa Jain & Simarpreet Kaur, ‘Conflict of laws vis-à-vis NRI marriages in India: An appraisal’ (2021) 1 NMIMS Law Review 180

breakdown for divorce whereas, as per the Canadian laws Irretrievable breakdown is a completely valid ground for divorce. The term irretrievable marriage means that there is no possibility that a man and woman can continue to live as husband and wife. That means the marriage is so broken and there is nothing left in the marriage and there is no chance of getting back together for the spouses. So, here the husband can approach the Canadian court on this ground and get the divorce done but there arises a problem for the woman. And now if the Indian courts ignore the judgement given by the Canadian court then that will lead to conflict between the order issued by both courts. And then will arise the issue of jurisdiction and to which court has the jurisdiction to deal with these cases. Further, the article has explained how the judiciary has dealt with cases of NRI marriages through various case laws. And finally, the article concluded by explaining that curbing the conflict of laws which is arising at the international level requires a law which can be applied internationally.

“From Dream to Broken Relationship – Fraudulent Non-Resident Indian (Nri) Marriages India: A Critical Study”

By Sangita Laha²

This article has explained the frauds that are committed against the women by the NRI grooms, and how they flew away just after the marriage leaving behind the woman with her whole life at stake. As per an estimate, there are more than 50,000 cases registered against NRI husbands, out of which in many cases the deserted brides are completely clueless about how the action should be taken against them.³ As per the report 2019 -- when it comes to women's security in NRI marriages. In Telangana, the Commission received reports of at least 36 incidents of NRI marriage disputes in a single year. In reality, the State ranks fifth worst in the nation for women's

² Sangita Laha, 'From Dream to Broken Relationship – Fraudulent Non - Resident Indian (Nri) Marriages in India: A Critical Study' (2020) 12 RMLNLUJ 109

³ Rajana Kumari, 'Legislations seeks to bring absconding NRI husbands to book' (*Mint*, 10 April 2019) <<https://www.livemint.com/politics/policy/legislation-seeks-to-bring-absconding-nri-husbands-to-book-1554835436063.html>> accessed 20 November 2022

security in NRI marriages, behind Uttar Pradesh, Delhi, Maharashtra, and Haryana.⁴ The complaints about this issue are increasing day by day. According to the author, it's high time that the government should come up with laws relating to NRI marriages in India. Till the time there is no law, there will always arise issues about the jurisdiction and also the judgements were given by the foreign courts and Indian courts in the same matter.

The author has also suggested that the government not only at the centre but also at the state level has to intervene and help women to stay away from these fraudulent marriages. This can be done by way of spreading awareness in society, as there are instances where women don't even know what to do if the NRI groom has deserted them or abandoned the bride. So, a special cell according to the author has to be established in the embassies for the NRIs and they should act by the government of India another suggestion was given that NRI access to online sites relating to the procedures and supporting services should be made and this information should be given in English and as well as in other state languages spoken in India.

CASE LAWS

*Y. Narsimha Rao v Y. Venkata Lakshmi*⁵

It is a landmark case where the marriage between the Indian bride and the NRI groom was solemnised as per the Hindu Marriage act. After the marriage, the husband went back to the U.S.A. (the place of his residence). And to get a divorce, he alleged in the Circuit Court of Missouri, USA that he has been residing in the U.S.A for 90 days before filling for divorce petition and since he was able to prove the same, an ex-parte decree of divorce was granted to him by the court. The Hon'ble Supreme Court of India held that this decree of divorce is not enforceable in India. The reasoning behind it was given that the marriage took place as per the

⁴ Donita Jose, 'Out of sight, out of mind? Women at risk in NRI marriages' (*The Indian Express*, 22 April 2019) <<https://www.newindianexpress.com/states/tehrangana/2019/apr/22/out-of-sight-out-of-mind-women-at-risk-in-nri-marriages-1967283.html>> accessed 20 November 2022

⁵ *Y. Narsimha Rao v Y. Venkata Lakshmi* (1991) 3 SCC 451

Hindu Marriage act but the jurisdiction and the ground on which the divorce is granted is not by the Hindu Marriage Act.

Smt. Anubha v Vikas Aggarwal⁶

In this case, the wife was asking for divorce and maintenance on the ground of desertion and cruelty, while deciding this case, the case of Y. Narsimha Rao v Y Venkata Lakshmi was referred by the court and it was held that the foreign judgements on Matrimonial cases will get recognition in India only when the relief is granted on those grounds which are mentioned in the laws under which the parties had solemnized the marriage. And the court granted the decree of divorce and the wife was also entitled to claim maintenance from the husband who was residing in the U.S.A.

Dipak Bannerjee v Sudipta Bannerjee⁷

In this case, the revisional petition was filed by the husband who claims himself to be a citizen of the United States of America, so in this petition, the husband has questioned the jurisdiction of the Indian Courts to entertain the maintenance case as he is contending himself to be a citizen of U.S.A and the wife was also residing with him in his place of residence i.e., U.S.A. The court decided that if there arises a conflict between the laws of the two countries then the decision must be taken keeping in mind only the Indian laws. The court further held that the rules of private international laws will not be applicable in Indian courts mechanically.

Sheenam Raheja v Amit Wadhwa⁸

The Delhi High Court ruled on this case and determined that the defendant's divorce order was invalid since it was acquired despite the Superior Court of California's judgement not being enforceable in India. Additionally, it was decided that the Hindu Marriage Act, of 1955, was the

⁶ *Smt. Anubha v Vikas Aggarwal* (2003) Del 175

⁷ *Dipak Bannerjee v Sudipta Bannerjee* (1987) Cal 491

⁸ *Sheenam Raheja v Amit Wadhwa* (2012) 131 DRJ 568

only law that may be used to dissolve a marriage that had been solemnised and registered by its terms.

ISSUES RELATED TO NRI MARRIAGES

As the number of NRI marriages is increasing day by day, there are various issues which are majorly faced by the women after the marriage has been solemnized. The NRI population is of different castes like -Hindu, Muslim, Sikh, Christian, etc. residing in various countries of the world, if there arises any dispute in the NRI marriage then it becomes difficult to deliver justice to the victims as there is no specific law governing NRI marriages in India. As the bond between the parties starts turning sour there arises certain issues and these issues arising out of the NRI marriages are increasing since NRI is not a gender-specific term rather it is a gender-neutral term but still as in the cases described above it can be observed that the victims are generally the women, they are the ones who are facing challenges in such kind of marriages. Some of the main issues related to NRI marriages are-

Dowry Demand: Dowry is something which is given by the bride's family to the groom's family. In some cases, the husband asks the wife to pay a huge amount of money to continue to stay in his home. If there is a failure of payment then the bride is being treated with cruelty and but unfortunately, the reality is that if she files a complaint against it, then that complaint will be of no relevance because if the husband is residing abroad and does not come so, the courts cannot give the ex-parte decision in such cases. So, a lot of women who are taken abroad after the marriage are treated with cruelty and are being abused by the husband as well his family because of non-payment of the dowry amount.

Domestic Violence: In some instances, the wife is being tortured by the husband so brutally that it has caused bodily as well as mental injury to the wife. And even the children born out of that marriage are treated in the same manner as the wife.

Concealment of Facts: In many cases, NRI's spouse provides false information about his worth, the job that he is doing, his educational qualifications, place of residence, etc. If the bride's family believes all the information to be true and relevant they go ahead with the marriage.

Ex-Parte Divorce: In some cases, the groom and his family very well know about the foreign laws, and in many foreign countries, marriage is considered to be a matter between two individuals and unlike India, no other person is involved except for the husband and the wife. So, that means there is more flexibility in laws related to marriage in other countries than in India. So, the groom and his family take this advantage and take the decree of ex-parte divorce from the court through fraudulent representation though the wife remains completely unaware of all of it.

Technical and Legal Complications: The very first question while deciding on the issues of NRI marriages is which court will have the jurisdiction? Whether the Indian court or the foreign court has the jurisdiction to decide on the matter? The question is to the enforcement of orders given by the Indian courts to the husband whereby the husband has already initiated the legal proceedings in the foreign court. And even, in many cases, the wife has been denied maintenance in India because the marriage has already been dissolved by the foreign court.

Abandonment of Wife: The major problem faced by the women in this kind of marriage is the abandonment by the NRI husbands. What the husbands do is, they marry the girl in India and after a few days of marriage, the husband flew to the country of their residence and never comes back, meanwhile, the wife remains in India only. In so many cases, the husband after the night of the marriage, the very next day leaves the country, such instances led to a new category of miserable brides which are now popularly known as "Honeymoon brides". There are even instances where the women get pregnant and both woman and the child are abandoned.

Maintenance and Custody of Children: If anyhow the divorce is granted then there arise various issues related to the maintenance of the wife and also who will get the custody of the children.

LAWS RELATING TO NRI MARRIAGES

*Y. Narsimha Rao v Y. Venkata Lakshmi*⁹ is a landmark case in which the court ruled that internal unity and stability cannot be surrendered to preserve consistency in the laws and agreements with other countries. The honourable Supreme Court also considered the applicability of section 13 of the Civil Procedure Code of 1908 in the context of the recognition of foreign judgments in marriage disputes, referring to the 65th report¹⁰ of the law commission. The Indian Contract Act, CPC, 1908, and other Indian laws all can be linked to the principles of international law, as the courts have discovered and emphasised. But when it comes to personal laws the laws related to the dissolution of marriage are very stringent in India, and it's not like the other western countries where marriage is the affair of two individuals and they can come out of it whenever they wish so. Probably, this is the reason that the NRI spouse with the help of a foreign court gets the decree of divorce. While dealing with the cases of NRI marriages the Indian courts generally invoke section 9¹¹, section 13¹², section 14¹³, and section 44A¹⁴ of the Civil Procedure Code, 1908.

As per section 9 of the Civil Procedure Code, if the marriage is solemnized in India, performed in Indian land, the spouses lived in India or the marriage has been solemnized as per the Indian Laws although they are residing in any part of the country, the Indian courts will have the jurisdiction in the matrimonial dispute. Section 13 of the Civil Procedure Court, 1908 deals with the recognition of foreign judgements in the Indian courts. In the case of *Satya v Teja*¹⁵, the scope of Section 13 of the Civil Procedure Code, 1908 was discussed.

According to section 13(a) of CPC, 1908 if the judgement is given by a foreign court and if that court does not have jurisdiction, then the judgement will not be recognized in India. According to section 13(b) of CPC, 1908 if the judgement has not been given on the merits of the case, then

⁹ *Y. Narasimha Rao v Y. Venkata Lakshmi* (1991) 3 SCC 451

¹⁰ Law Commission, *Recognition of Foreign Divorces* (Law Com 65, 1976)

¹¹ Civil Procedure Code 1908, s 9

¹² Civil Procedure Code 1908, s 13

¹³ Civil Procedure Code 1908, s 14

¹⁴ Code of Civil Procedure Code 1908, s 44A

¹⁵ *Satya v Teja* (1975) 1 SCC 120

it will not be recognized. As per section 13(c) if the judgement which is given by the foreign court is not by the law the under which the parties were married as to the jurisdiction as well as the ground then that judgement will not be recognized in India. As per section 13 (d), the judgement will not be enforceable if it goes against the principles of natural justice. While Section 44A of the Civil Procedure Code, 1908 deals with the implementation of decisions passed by Courts in the reciprocating territory, Section 14 of the Civil Procedure Code, 1908 deals with the presumption as regards foreign judgement. The other problem is how to protect the NRI partner in NRI marriages. By using the provisions of Section 10 of the "Passport Act, 1967," which addresses the modification, seizure, and revocation of passports and travel papers, it is feasible.¹⁶

INITIATIVES TAKEN BY THE GOVERNMENT

There are some government institutions like the National Commission for women; the ministry of women and child development, the law commission of India, etc. which are continuously working to eradicate all these issues which are arising out of NRI marriages. Some of the initiatives taken by the government are given below-

1) Formation of Integrated Nodal Agency(INA)

To curb the problems related to NRI marriages this agency has been formed by the ministry of external affairs to discuss the problems arising in NRI marriages on a day-to-day basis. This agency was formed in collaboration with the ministry of women and child development and the ministry of law and justice. So, firstly all the disputes will be given to the National Commission for Women and then it will be further recommended to the INA to look into the matter.

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

The Ministry of External Affairs, the Ministry of Home Affairs, the Ministry of Law and Justice and the Ministry of Women and Child Development came together, drafted and proposed the

¹⁶ Passport Act 1967, s 10(3)

bill named as- “THE REGISTRATION OF NON-RESIDENT INDIAN BILL,2019.”¹⁷ This bill aims at protecting Indian wives from abandonment by their husbands and this bill mandates the compulsory registration of marriage within 30 days of solemnization of marriage and also the incorporation of passport-related details of the NRI.

3) Recommendations Given By The Law Commission Of India

The Law Commission of India has always recommended the compulsory registration of NRI marriages. Further, in the 217th report¹⁸, the Law Commission of India recommended that ‘Irretrievable breakdown’ should be given as a ground for divorce in India as well as this will keep both spouses on the same footing and any of them can get the decree of divorce under this ground. In its 219th report¹⁹, the Law Commission of India recommended that not just the registration should be made compulsory and Irretrievable Breakdown should be given as a ground for divorce but also there should be a separate law to formulate the family law legislation for Non- Resident Indians, to minimise the number of cases which are increasing rapidly.

CONCLUSION

As per the current scenario, there still exists so many issues with regards to NRI marriages and the husbands are getting so much advantage of it and which is hampering the whole life of the women and her reputation also gets affected due to the same. So, the very purpose of the NRI marriage that was explained above i.e., the bride’s family thinks that marrying an NRI will make their daughter’s life heaven on earth but it is resulting in making their life hell. Where, they are not even able to get the decree of divorce, get abandonment and many more which is being elaborated on in the research paper.

Though the government has initiated taking corrective measures for the same still there is need for a proper codified law dealing with NRI marriages so there arises no confusion as to the

¹⁷ Ambika Pandit, ‘Parliamentary panel approves bill on compulsory registration of NRI marriages’ (*The Times of India*, 13 December 2020) <<https://timesofindia.indiatimes.com/india/parliamentary-panel-approves-bill-on-compulsory-registration-of-nri-marriages/articleshow/74618373.cms>> accessed 20 November 2022

¹⁸ Law Commission, *Irretrievable Breakdown of Marriage* (Law Com 217, 2009)

¹⁹ Law Commission, *Need for family Law Legislation for Non-resident Indian* (Law Com 219, 2009)

jurisdiction, punishment, grounds of divorce etc. And the legislation will truly help the women to get out of this chaos other than that various awareness camps can also be set up by the government informing them about the situation prevailing in the country and that they should marry after verifying all the details about the NRI groom. In this way, the issues and challenges related to NRI marriages can be reduced and the sanctity of the marriage will remain confined.