

Offences Against Women: NRI's Fake Marriages

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Abstract: *The institution of marriage is the very foundation of a stable family and civilized society. Marriage is a culturally approved relationship usually between a man and a woman that lays a foundation of the beginning of the family. Marriage is considered to be one of the most essential institutions of the society. One of the outcomes of these formidable changes in the institution of marriage is the NRI marriages; where in Indian women are entering into matrimonial alliances with NRIs. The increasing movement and migration of people from one country to other country for different reasons ranging from employment to business or from education to tourism has resulted in the large-scale migration of people from India to places of opportunities to earn livelihood and improve the economic conditions. The purpose of the study is to analyze the different aspects of NRI marriages. The only way to lessen instances of sham NRI marriages is to first spread awareness amongst the gullible public about the positive and negative outcomes of such marriages. Codification of laws related to Private International law is of essence. The only challenge to all of these possible solutions is unrelenting patriarchal mindset of our society, which, until the time it is made to yield to reason will not allow awareness to spread and change to occur with respect to NRI marriages and law which, perhaps inadequately, govern it.*

Keywords: Non- Resident Indian, Fake marriages, Domestic Violence, Dowry Deaths, Homicide

1. Introduction

The institution of marriage is the very foundation of a stable family and civilized society. Marriage is a culturally approved relationship usually between a man and a woman that lays a foundation of the beginning of the family. Marriage is considered to be one of the most essential institutions of the society. It is one of the most important institutions of human society. Marriage is a relation of one or more men to one or more women that is recognized by custom or law. George A. Lundberg defined Marriage as, "a set of rules and regulations which defines rights, duties and privileges of husband and wife with respect to each other".¹ In India, there are little chances of marriages by young generation to select their life partner themselves. Only few persons make marriage with their own choice and selection. They also face difficulties if the marriages are made out of caste or religion. Majority of marriages are arranged marriages and the parents mostly select the bride or bridegroom and many people believes that the 'Marriages are made in heaven' by the God and consummated on Earth. Marriage is considered one of the holiest, sacred acts in almost all religions. Marriage is very important and vital in the life of a man or woman. A man is born alone and has to depart from this platform of action alone. However, if there was no institution like family and no academy like marriage, the solitary man would have faded away. Marriage is a gift of God to man, in order to feel the essence of love relativity, togetherness and understand the world more closely.

One of the outcomes of these formidable changes in the institution of marriage is the NRI marriages; where in Indian women are entering into matrimonial alliances with NRIs. The increasing movement and migration of people from one country to other country for different reasons ranging from employment to business or from education to tourism has resulted in the large-scale migration of people from India to places of opportunities to earn livelihood and improve the

economic conditions. Over the last few years, a rapid rise in NRI marriages has been witnessed due to the increased migration of Indians to foreign countries. As a result, marriage and disputes related to such marriages on the transnational scale is on the rise and the institution of marriage is under great stress. This migration has given rise to various types of matrimonial disputes which in turn is destroying the family and its peace.²

2. Literature Survey

Literature survey of related topics act as platform for any researcher to clearly understand the actual research problem and helps to frame suitable methodology by which the study is to be conducted.

C.N. Shankar Rao, S.CHAND 2006, in his book "Principles of sociology with an introduction to social thought" included the role of women in society and social work. This book consists of fundamental principles and concepts of sociology. It includes the explanation of sociological concepts and statements of sociologists, ideas and description regarding marriages in society.

DR. Paras Diwan, 2014, in his book "Modern Hindu Law", included dynamic changes about modern Hindu society. These changes have been brought by legislature or by judicial interpretation regarding rights of women in the society. It includes sources of Hindu law which include ancient resource, Hindu philosophy, Hindu social structure, and Hindu concept of law. This book includes provisions related to Dowry offences, The prohibition of Child marriages, maintenance as a personal obligation etc.

K.D GAUR, 2016, INDIAN PENAL CODE, the code embodies the general penal law of the country. The Code covers a vast range of anti social behavior in relation to the state of society as it existed more than a hundred years ago. It provides punishment for offences against state, offences against body including offences against women which are related to domestic violence, cruelty, physical and mental

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¹Marriage, Family and Kinship, retrieved from <https://www.sociologyguide.com/marriage-family-kinship/index.php> on August 15, 2023 at 8:00 p.m.

² Law Commission of India, 219th Report on Need for Family Law Legislations for Non-Resident Indians (March, 2009)

abuse, torture, dowry demands and dowry deaths also including punishments related to the offences.

R.V KELKAR'S code of criminal procedure, 2015, mentions Procedural Law for dealing with the criminals with implementation of effective procedure. So this Act was made for effective implementation of criminal law. In the absence of procedural law, the substantive criminal law would be ineffective. Proceedings for maintenance of wives, children provide for a speedy and effective remedy that neglect and refuse to maintain their dependant wives, children and parents.

JENNIFER L. SOLOTAROFF and ROHINI PRABHA PANDE, in their book "violence against women and girls : lessons from south Asia", it includes four years and even decades, dedicated women and men in south Asia countries have been working to prevent and respond to violence against women and girls often putting their own life at risk. Those of researchers who seek to better understand the drivers of this violence and improve intervention. The human social and financial cost of violence against women and girls severely hamper countries, these cost will continue to accrue unless government and the private sector, media can coordinate to address such violence and legislation to combat.

JYOTSNA WILLIAM SHANA, LAW RELATING TO DOMESTIC VIOLENCE AND HONOUR KILLING, In this book focus is on various enactments and it focuses on domestic violence and includes large number of acts and omissions which harms or injuries or endangers the health, safety, life or well being whether mental or physical of the aggrieved person

V.C GOVINDARAJA, C.JAYARAM, NON- RESIDENT INDIANS AND PRIVATE INTERNATIONAL LAW, in his book included conflicts of laws and a need for comprehensive legislation on problems of Non- Resident Indians.

Reports of commissions:

"ISSUES RELATED TO NRI MARRIAGES" organized by National commission of Women, mentioned about the problems of Indian women trapped in fraudulent marriages with overseas Indians are increasingly reported. This has underscored the urgent need to build safeguards to protect the women and make them aware of their rights and responsibilities. The problem include dowry and other kind of harassment of married women in foreign countries like non-consummation of marriages, marriage of convenience, lack of social security faced by Indian women on the foreign soil since there is no comprehensive or special law to govern such aspects, women are being deprived of justice with impunity.

Report on regional seminar on "PROBLEMS RELATING TO NRI MARRIAGES" in TRIVENDRUM on 13 -14 September 2006 , the ministry organized in partnership with National Commission for Women, a regional workshop on problem related to NRI marriages. The workshop was attended by representatives of Ministry

of overseas Indian affairs, ministry of external affairs explained the importance and problems related to women and said that 'women empowerment could resolve the problem to a great extent. The state government can also launch wide publicity through various channels to educate the rural people. They urged the NGOS to play the active role in educating the people on this issue. The publicity campaign by National commission for Women and Minister of oversea Indian affairs to create awareness on the dos and don'ts while going for overseas alliances through poster and pamphlets launched by Minister of oversea Indian affairs.

The National commission for Women (NCW) identified desertion of women by NRIs as one of the most serious gender issue in the Punjab and recommended that special cell for problems related to NRI marriages. They mentioned some Indian embassies had welfare officers to assist Indian women caught up in bad marriages and there were 22 organizations in United states working among the South Asian community to address the issues.

Report on Accomplishments and Initiatives of National Commission for Women 2017- 2021: Non- resident Indian marriage related issues; the National Commission for Women was nominated as the national coordinating agency by the government of India for coordinating efforts of different stakeholders for dealing with issues pertaining to NRI marriages. The Commission set up an NRI cell on 24th September, 2009.

3. Research Methodology

The main objective of this study is to critically analyze the legislative and judicial responses to change in the concept of marriage and matrimonial problems and social acceptability thereto. To make the proposed study scientific, unbiased, logical and too-pronged approach has been undertaken. Firstly, in depth study has been undertaken to critically analyze all the legislative laws along with their amendments related to marriage including NRI marriages and other matrimonial matters. The available decisions of Supreme Court and High Court or other courts have been discussed. The approach is to study and examine the actual working of administrative agencies and courts vis-à-vis the existing legislative provisions related to marriage with special reference to NRI marriages and other matters of matrimony. This method also includes about the concept of marriage from prospective brides and families, influential members of society, women organizations, social workers and Nonresident respondents. Researcher has used the personal mode of data collection, internet, law books, journals, reports, newspapers for data interpretation.

3.1 The offences relating to NRI marriages being faced by Indian women:

3.1.1 Fraudulent Marriage

"Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine."

This section punishes the offence of contracting a mock marriage, with object of achieving a dishonest or fraudulent purpose. The essence of offence is deception, whether of the other party to the marriage or the third person. The essence of the offence here is that the marriage ceremony should be fraudulently gone through. The parties to the marriage or at least one of the parties to the marriage must have knowledge that there is no marriage, in that case party could be available under this section. Section 493 and 496 the difference appears to be that under section 493 deception is requisite on the part of the man and cohabitation or sexual intercourse consequent on such deception.

Section 494 and 496:- An offence under section 494 is different from an offence under section 496 IPC.³ If the accused intends that there should be valid marriage and honesty must be there among the spouses, then it may be a case under section 494, IPC but if accused only intends that there should only be a show of marriage and dishonestly and fraudulently goes through the marriage ceremony knowing full well that he is not legally married thereby, then it is an offence under section 496 of IPC. To establish a charge under section 496 of IPC, it is not enough to show that the marriage may be set aside on the ground of fraud or declared a nullity. It is incumbent upon the prosecution to go further and to prove that the accused knew that there was no valid marriage and he has gone through a show of marriage with a fraudulent object in view.⁴

3.1.2 Abandonment by husband or desertion

Desertion means to abandon, leave or run away. Deserted women are a group of women in various communities wherein Indian women married to the NRI husbands are abandoned in India shortly after their marriage. After a short stay in India, the husband goes back to his foreign country promising to send her travel document/visa etc. but that never happens. In some cases, even if the woman somehow manages and reaches the foreign country of her husband's residence and wait helplessly at the international airport there only to find that neither her husband nor anyone else has come to meet her. The reasons for desertion are many; moreover demand of dowry after marriage and ill treatment of wives without any reason is common among various communities. Desertion means the intentional permanent abandonment of one spouse by other without other's consent and without reasonable cause. Desertion as a ground of divorce differs from the statutory ground of adultery and cruelty in that offence founding the cause of action of desertion is not complete, but inchoate until the suit is instituted. Desertion is a continuing offence.⁵

For the offence of desertion, two essential conditions must be there, namely: 1. Factum of separation 2. The intention to bring cohabitation permanently to an end (animus deserendi) Similarly, two elements are essential so far as the deserted spouse is concerned [i] the absence of consent [ii] absence of conducts giving reasonable cause to the spouse leaving the

matrimonial home to form the necessary intention aforesaid. Desertion must be a voluntary act by the other party. If the husband throws out the wife and closes the door of his house to her. In dealing with human relation, one has to keep in view the fact that social position of an abandoned women is quite inferior in Indian society. There are large numbers of cases reported in various communities wherein Indian women married to NRI are abandoned. The husband never calls or never returns to his wife. The in-laws who would still be in India would either plead helplessness or refuse to help the innocent girl. Moreover, the wife does not ordinarily abandon the husband. Young girls seldom leave the society of the husband unless forced to do so. All the ingredients of desertion should be proved. In 2007, the number of abandoned spouses of NRI men was estimated to more than 13,000 in Gujarat and 25000 in Punjab.⁶

3.1.3 Violence against Women

Violence against women is widespread, gender-based violence is clearly based on unequal power relations between men and women. The United Nation Commission on the status of women defines violence against women to include "any act of gender-based violence that results in or is likely to result in physical, mentally sexual or psychological harm or suffering to women."⁷ The definition is understood to encompass, but not be limited to physical, sexual and psychological violence occurring in the family and outside it. Gender based violence, including wife-beating, rape, sexual abuse, and dowry related murder is widely prevalent in India. Dowry harassment is a form of violence against women. The traditional concept of dowry in the Indian context was the practice of giving married girls share of parental estate in the form of 'streedhan'. In the year 2002 the national crime record bureau registered 1878 cases under the dowry prohibition act and 794 incident of dowry death. The dowry prohibition act enacted as early as 1960 government has made various measures such as setting up women's cell in police stations, recruitment of more women public officers, media campaigns for generation of public awareness to curb the practice of dowry. The modernization of tradition from 19th century onwards did not help to improve things till date. Discrimination, degradation, drudgery depict the deplorable situation of women. The changing social structure, instead of controlling gender violence has helped in institutionalizing women values and belief systems.

3.1.4 Domestic Violence

Domestic violence encompasses diverse forms of women's abuse in India. A very large part of domestic violence is treated as strictly private affair. There is no authentic national account on domestic violence. Dehumanization is a fact of life for millions of women and girls in rural and urban households in India. The government of India has enacted some laws to safeguard the interest of women in India. However, her status in her matrimonial home has deteriorated as there has been no just and effective legal

³Lok Sabha secretariat, standing committee on External affairs ,2011-2012, 15th Report, p.1

⁴ K.C Chakraburty v. Emperor, AIR 1937 Cal.214.

⁵ Sagar Chand Jain – The law relating to marriage and divorce (1986) Universal Law Publishing Co. Ltd, ed.4th,2004, p-24

⁶ <http://www.hindustantimes.com/india-news/govt-will-help-women-trapped-in-abusive-marriages-to-nri-menmaneka/story-q6BfulfFSBUHTsVOze4oM.html> visited on September 3rd ,2021

⁷ Prof.Sarita Vashistha, "Crime against Women" , KK Publications New Delhi-110002,p-1

remedy to guarantee her physical, mental stability, her financial and economical welfare and custody of children. Acts such as mental abuse, sexual abuse, physical abuse constitute domestic violence. The devastating effects of domestic violence in India compelled women activists to prepare a model bill on prevention of domestic violence in 1994. Domestic violence includes "physical abuse" includes hurt of any kind, assault, criminal intimidation and criminal force. "Sexual abuse" such as conduct of a sexual nature such as forced sexual intercourse, forcing the aggrieved person to watch pornography and other obscene material. Aggrieved person has right to file a complaint simultaneously under section 494A of Indian Penal Code. With the rise in cases of domestic violence and abandonment against women who had married NRI, a 29-year-old woman from Nashik⁸ filed for divorce and a case of domestic violence against her NRI husband based in Sydney. After multiple hearings during which the husband did not appear before the court despite summons. A week later, she migrated to Australia where her husband's family lives. She alleged my in – laws knew everything, adding that she was also forced to perform all domestic chores. In other case a 40-year-old woman Kolhapur is fighting for the custody of their seven-year-old child who lives at chandler, US with her husband.

- a) **Instances of physical abuse:** - Every woman has the right to lead her married life with dignity and freedom, care, support from her spouse, without abuse and violence [emotional, mental, physical] neglect, fear or humiliation of any kind. Physical abuse includes: - hair pulling, limb twisting, slapping violently, and punishing, cutting, stabbing, confinement to a room, usage of weapons and firearms, repeatedly forcing abortions and miscarriages
- b) **Instances of mental/emotional abuse** Blackmailing, coercion, threat, pressure, accusing the woman of loose morals, breaking household goods, killing family pets, threatening to hit or harm children & close relatives
- c) **Instances of verbal/social abuse** Abusing and derogatory name calling, maligning in front of peers and friends, insulting in front of others, abusing her parents, friends, family, enforcing isolation. Physical confinement, controlling movement restricting familial contacts, generally treating badly
- d) **Instances of Economic abuse:** - Controlling all family income and limited access to finance. She is forced not to take up, employment, forcing financial dependency. not providing sufficient funds for household expenditure, accusing of misuse or misappropriation of finances.

3.2 Violence related to dowry

As prevalent in India, our country is well known for its cultural norms and practices it follows yet someone or other culture may find some of the cultural practices as Regressive. One of them about which we are quite aware which is considered regressive practice is 'Dowry System'. It is and can be considered as one of the root causes of domestic violence in India. In Ancient India or prior to the

society get modernized, dowry was originally designed to safeguard the woman and it was the provision of 'stridhan' (stri meaning woman and dhan means wealth) in the form of money, property or gifts.

Dictionary definition of dowry defines 'dowry' as being "an amount or property or money brought by a bride to her husband on their marriage."⁹ In India not only there an apparent increase of dowry related deaths from kitchen fires but some of led to psychological torture, suicides, murder of married woman, desertion by their husbands, cause of inability to provide dowry. Also, the whole concept of successful marriage is based on amount of Dowry brought by the bride. So if the bride and her family are unable to fulfill unnecessary dowry demands of groom's family, then as a result domestic violence ensues and creates a havoc for bride and her family but bride had to suffer more.

In spite of the Indian government banning practices of dowry harassment, extortion and demands through its provisions of the Dowry Prohibition Act, as a preventive means to abolish dowry deaths.¹⁰

3.2.1 Dowry Prohibition Act 1961: - 'Dowry' is a word that is very prevalent and common in Indian households. It is a practice that has become a parasite for the Indian society and which has eroded the beautiful institution of marriage. Several laws have been enacted to prohibit the practice of dowry, but the legal clutches are weaker than the ambit of the practice of dowry.

According to section 2 of Dowry Prohibition Act, 1961, the term "dowry" means any property or valuable security given or agreed to be given either directly or indirectly.

- a) By one party to a marriage to the other party to the marriage, or
- b) By the parent of either party to a marriage or by any other person, to either party to the marriage or to any person, at or before [in connection with the marriage of the said parties, but does not include] dower or mehr in the case of persons to whom the Muslim Personal Law.

According to section 3 of the Dowry Prohibition act, 1961 it is an offence to both take dowry and give dowry. So the family of bridegroom would be liable for taking dowry so would the family of bride to be to consent to give dowry. Penalty for giving and taking dowry, if any person after the commencement of the act give or takes, abets the giving and taking of dowry shall be punished with an imprisonment for a term not less than five years and with fine which shall not be less than fifteen thousand rupees or the amount of the value of dowry, whichever is more.

The Supreme Court held in *Pandurang Shivram Kawathkar v. State of Maharashtra*¹¹ that the more demand of dowry before marriage is an offence.

⁸<http://indianexpress.com/article/india/centre-preparing-bill-to-properties-of-nri-husbands-in-domestic-violence-cases-5303557/> visited on September 5, 2021

⁹ <https://www.lexico.com/en/definition/dowry>

¹⁰ K.D GAUR, Poor victim of uses and abuses of criminal law and process in India, 35:4 JILI, pp.183,196(1993)

¹¹ 2001 Cr LJ 2792(SC)

3.2.2 Provisions related to Dowry Death 304B, IPC

The offence of dowry death has not come or evolved in the society automatically as an independent evil. It developed through various stages. The greed in the mind of this type of families goes to the level that they make the bride a 'mohra' of chess to make themselves wealthy through this antisocial way. Some poor parents of the bride have to sell their valuable property, ornaments, agricultural land and also up to their house to fulfill the demands of their daughter's in-laws so that they can save their daughter from harassment and make her life happy. So, when the parents of bride become unable to fulfill the demands of their daughter's in-law or they oppose to make payment or bride denied or opposed to talk about the demands to her parents, then her in-laws increase the torture with her up to the level of death of her in very barbaric way. It is a matter of day-to-day occurrence that not only married woman is harassed, humiliated, beaten, forced to commit suicide and to leave husband etc. But thousands are even burnt to death because of dowry demands by husbands.¹² In this way, it is the death to which in legal language we call by name of 'Dowry Death'.

3.2.3 Dowry- Death [section 304B] IPC: (1) Where the death of a woman is caused by burns injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death" and such husband or relatives shall be deemed to have caused her death.

EXPLANATION: - For the purpose of this sub section "dowry" shall have the same meaning as in section.2 of the Dowry Prohibition Act, 1986(28 of 1961) (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

3.2.4 Scope of the section: - Inserted by Dowry Prohibition Act, 1986 with a view to combat the increasing menace of dowry deaths, section 304B lays down that where the death of woman is caused by burns or bodily injuries or occurs under normal circumstances within seven years of marriage and it was shown that she was subjected to cruelty and harassment by her husband with any demand of dowry, such deaths shall be called "dowry deaths".

Section 113B of Evidence act¹³ says that when the question is whether a person has committed the dowry deaths of woman and such woman has been subjected to cruelty or harassment for or in connection with, any demand for dowry, the court shall presume that such person has caused the dowry death under section 304B, IPC.

3.2.5 Essentials of dowry deaths: - A careful analysis of section 304B, IPC shows that section has the following essentials:

- Death of woman should be caused by burns or bodily injury or otherwise than under normal circumstances;¹⁴
- Death should have occurred within seven years of her marriage;
- The woman must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- Cruelty or harassment should be for or in connection with the demand for dowry;
- Cruelty or harassment should have been meted out to the woman before her death. Clause (1) of the section 304B, IPC defines 'dowry death' and clause (2) prescribes punishment for dowry death.

In *Vemuri Venkateshwara Rao v. State of Andhra Pradesh*,¹⁵ the court has laid down the following guideline for establishing an offence under section 304B and they are.

- That there is a demand of dowry and harassment by the accused,
- That the deceased had died,
- That the death is under unnatural circumstances. Since there was demand for dowry and harassment and death within 7 years of marriage, the other things automatically follow and offence under section 304-B is proved.

This is not a rare case. In this case, Gurmit Kaur from Punjab got the shock of her life when she discovered the truth of her husband. She married Manjit Singh in 2000 thinking he was NRI settled in U.S. He took Rs 4.5 lakhs in Dowry and another 1.5 Lakh from Gurmit's relative while going abroad promising to send her immigration papers. The papers never came. Instead, she learnt that he was already married and had a son. He was not living in the U.S. but was unskilled worker in Seoul. She finally filed a criminal complaint.¹⁶ Indian women marrying NRIs, glamorous though it sounds, has recently become a cause of serious concern. The reason for this is the alarmingly high rates of desertion of women marrying NRIs. One of the main obstacles that arise in such cases is how to serve COURT NOTICES to the errant spouse. The main reason it happens is because of wrong addresses given by spouses so problem arises here is how to serve to the given address which is found not valid or correct, so it is difficult to serve court notices to them. Also, many spouses have used the foreign laws because the foreign laws are lenient, in order to obtain Ex parte Divorce from these foreign courts. So as a result, they use this as a weapon to deny Maintenance to the women who were deserted or dumped in India by their alleged husbands living in the foreign countries. Since the spouses in foreign try to get divorce from their alleged wives residing in India by using foreign laws, the women or their

¹² See Times of India, May 20, 2000. The latest report of National Crime Record Bureau stated at New Delhi, with 126 incidents of dowry deaths in 1998. In 1999, 31.2 per cent deaths at national level were reported by Uttar Pradesh alone followed by Bihar 15.2 per cent.

¹³ The evidence act, 1872, sec.113B, Presumption as to dowry death, inserted by act 43 of 1986, sec.12 (w.e.f.5-1-1986)

¹⁴ (2003) 1 SCALE 30, A two judge bench of the supreme court Y.K Sabharwal and H.K Sema, delivered the judgment.

¹⁵ 1992 Cri. LJ. 563 A.P.

¹⁶ Amitabh Srivastva and Asir Jolly, The Nowhere wives, February 24, 2012 <http://indiatoday.intoday.in/story/woman-deserted-by-nri-national-commission-of-women-1/175188.html>. visted on September, 5, 2021

alleged wives came to know about this only when a divorce notice is served to them by foreign courts. So, a need was felt to enter into agreements with such foreign countries in order to catch the NRI duping INDIAN women after marriage. So, Telangana State Commission along with NCW (National Commission for Women) have recommended the above suggestion of entering into agreements with foreign countries in order to catch such fraud committing and duping Indian women after marriage. So at the national level, vide an order in 2008, the NCW was nominated as the Coordinating agency for issues related to NRI marriages. The Ministry of External Affairs (MEA) also has a scheme for providing legal/financial assistance to Indian women deserted by their overseas Indian/foreigner husbands. In a circular, the MEA has stipulated that Indian married in India or abroad, who want to remove or change the name of spouse after a foreign court has granted divorce will now has to submit a declaratory order from an Indian court. This means that Indian court order will be essential before applying for changes in the passport. Earlier, an authentication from MEA or a divorce decree granted by foreign country's court sufficed. 3.1.6 Cruelty by Husband or relatives of Husband: - Prior to 1983, there was no provision in Indian legislation to deal specifically with Domestic Violence. When the Indian Penal Code, 1860 was amended in 1983, Section 498-A was inserted. This section deals with 'Matrimonial cruelty' perpetrated on a woman.

Section 498A: Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.- For the purpose of this section, "cruelty" means- (a) any willful conduct which is such of a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.¹⁷

An idea about the gravity of the problem can be had from the large number of reported cases of cruelty and torture by the National Record Bureau during 1997(36592), 1999(43823) respectively this demonstrate an increase of 5.9 per cent. To make the offence deterrent, section 498A prescribes a sentence of three years and also a fine for the husband or relatives of husband¹⁸. The offences under section 498A of the Indian penal code is concerned, the offence is subjected a woman to cruelty by husband or relatives of husband has been defined. For the purpose of this offence under section 498A IPC, cruelty means willful conduct which is of such a nature as is likely to derive a woman to commit suicide or to cause injury or danger to her life, health. If a woman is put to harassment with a view to

coerce her or her relatives to meet any unlawful demand for property or valuable security or on account of failure to meet such demand then such harassment is also covered under the definition of cruelty. Section 498A, IPC and section 4 of Dowry Prohibition Act do 1956, not attract double jeopardy.¹⁹ Section 498A provision is distinguishable from section 4 of the Dowry Prohibition Act, because in the latter mere demand of dowry is punishable and existence of element of cruelty caused to the newly married woman.

3.3 An Overview of Section 498-A: Case Report

The declaration on the elimination of violence against women defines, "violence against women" as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."²⁰ A subset of violence against women, is domestic violence, defined as, "violent or aggressive behavior within the home, typically involving the violent abuse of a spouse or a partner".²¹

A study by 'LEELA VISARIA'- Violence against women in India Evidence from "Rural Gujarat" showed that two-thirds of the married women out of 450 surveyed, reported some form of psychological, physical or sexual abuse. Of the total sample, 42% experienced physical beatings or sexual assault. An additional 23% suffer abusive language, belittlement and threats. About 36-38 % of women in Tamil Nadu study and 42-48% of women in an Uttar Pradesh study reported violence.²² According to NCRB data, domestic violence figures at the top in violence against women in 2018. Majority of cases under crimes against women, out of total IPC crimes against women were registered under 'cruelty by husband or his relatives' (31.9%). The crime rate per lac women population is 58.8% in 2018 in comparison with 57.9% in 2017.²³

¹⁹ Dowry Prohibition Act, 1961, sec.4: penalty for demanding dowry: If any person demands, directly or indirectly from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which may extend to ten thousand rupees. Provided that the court may, for adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months. Explanation- The bride shall not be punishable for demanding dowry but every person who abets her to demand dowry shall be punishable under this section.

²⁰ United Nations: Human Rights: Office of the High Commissioner- violence against women <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/VAW.aspx>

²¹ https://www.lexico.com/definition/domestic_violence visited on 7 september, 2021

²² L. Visaria N. Mitra V. Poonacha D. Pandey Domestic violence in India: A Summary Report of Three studies. International Center for research on women Washington, DC 1999 Washington, DC <https://www.icrw.org/wp-content/uploads/2016/10/Domestic-violence-in-India-1-Summary-Report-of-Three-Studies.pdf>.

²³ NCRB Data- Crime in India-2018 <https://ncrb.gov.in/sites/default/files/crime%20in%20India%202018%20volume%201.pdf> visited on 7 september, 2021

¹⁷ K.D Gaur, Indian penal code, CHAPTER XXA' cruelty by husband or relatives of husband' ed.5th, universal law publishing, p.850 74

¹⁸ See Crime in India-2005, Crime Record Bureau, Government of India, p.202

Total number of cases registered under Cruelty by Husband or his Relatives (sec 498A) were 104165 in 2018 all over India while those registered under dowry deaths (section 304B IPC) was 7277 and under Abetment to Suicide of women (sec 305/306IPC) was 5266.²⁴ A 1999 study published by American journal of Epidemiology identified so-called “stress factors” that are critical to understand varying rates of domestic violence. These stress related factor include low – educational levels, poverty, young age the time of the marriage, having multiple children, socioeconomic class, educational level of both victim and perpetrators, and family structures.²⁵ Domestic violence trends in India published by Kimula, based on the 2005-2006 India national family health survey-III (NFHS-III) data on the 69,484 married women of ages from 15 to 49 from all regions of India. They report 31% of respondents had experienced minor to major form of physical violence in the 12 months prior to the survey, while the sexual violence prevalence rates experienced by the woman was about 8% women who lived in the cities, had higher household wealth, were Christian and educated had significantly lower risk of physical and sexual domestic violence. In contrast, wives of men who drank alcohol had significantly higher risks of experiencing both physical and sexual violence.²⁶

3.4 Isolation

Keeping women in isolation as wives in America by NRIs is another problem women have to face. Even they are restricted to contact their home their parents, no meetings and no letters, or access to the mailbox. Some women are also deprived of financial support for their basic needs and forcing them for abortions or emotionally abusing them during pregnancy in order to force them to abort their child in case if it is female fetus. The fear of isolation and care for their child also prevent them from complaining about the abuse they are facing and to speak about it. Many women even have to lose the support of community they belong to just because they chose to not suffer the abuse silently and they chose to speak against it.

3.5 Violence related to desertion of wives by NRI Husband

Girls marrying youths settled abroad and later being cruelly deserted by them has become a frequent phenomenon now, especially in the villages of Punjab. This problem where NRI groom are deserting their legally wedded wives is increasing at a rapid speed irrespective of regional, religion, caste and other socio-economic background. Even cases related to domestic violence in these type of marriages by NRI groom are rising in number, says the Delhi Commission for Women (DCW). The commission report says that they are receiving more than 10 cases since the beginning of the

year. According to Chairperson of DCW, Kiran Walia, It does not matter whether the women belong to middle class or is educated or not educated or whether they belong to a progressive family or not, domestic violence is all pervasive and is on rise among NRI mates. Also, Shri Harbhajan Singh Mann also speak up for all brides who got dumped by their respective NRI Husbands in Punjab. He said, Police stations in Punjab are flooded with complaints of fraud by NRI what?? In exchange of some ransom dowry from the women’s families but were abandoned within few days or months.

Fake promises of taking with: - over a thousand of victims stand abandoned and alone faces an uncertain future. For an Indian girl psyche, it is life dying a slow, painful death. She was married on feb.26,2002 to an NRI boy. After the couple of months, he started torturing her mentally and she was brought to India on the pretext was that his sister was ill. He demanded for money then he just left. She doesn’t know where he has gone.

In the case of *Sunita Kumari Kashyap v. State of Bihar & another 2011*²⁷ held in view of the specific assertion by the appellant wife about the ill- treatment and cruelty at the hands of the husband and his relatives at Ranchi and of the fact that because of their action, she was taken to her parental home at Gaya by her husband with a threat of dire consequences for not fulfilling their demand of dowry. The supreme court was of the opinion that in view of section 178 and 179 of the Crpc, the offence was a continuing one have been committed in more local areas and one of the local areas being Gaya, the learned Magistrate at Gaya has jurisdiction to proceed with the criminal case instituted therein. In the other words, the offence was a continuing one and the episode at Gaya was only a consequence of continuing offence of ill- treatment and humiliation meted out to the complainant, clause(c) of section 178 is attracted. Further, from the allegations in the complaint, it appeared that it is a continuing offence of ill- treatment and humiliation meted out to the appellant by all the accused persons in such offence, on some occasion all had taken part and no other occasion one of the accused, namely, husband had taken part, therefore, undoubtedly clause(c) of section 178 of code is clearly attracted.

In her opinion, DIG of Police, Hyderabad Ms. Anjana Sinha was also the same. She says, more than 500 NRI cases were registered in her office (Women Protection Cell, Hyderabad) for seven months in 2004, ever since she took over charge. According to the National Commission for Women (in India), they recently identified desertion of women by NRIs as one of the most serious issues in Punjab. The Commission also proposed a draft convention on custody of children and distribution of property from such failed marriages. Also, according to Sardar B.S Ramoo Walia, Former M.P and Social Activist, “Indian women were financially and physically exploited by NRI grooms, and ironically, the victims have no laws to protect them”. He said Punjab police had instructed their men to help such aggrieved women but

²⁴NCRB Data- Crime in India-2018 <https://ncrb.gov.in/sites/default/files/crime%20in%20India%202018%20volume%201.pdf> visited on 8 September ,2021

²⁵R Choudhary MKaithwas G Rana Domestic Violence against Women’s in India – A study PANACEA int res J201414955

²⁶Sri Kimuna YK Djamba G Ciciurkaite S Cherukuri Domestic Violence in India: insights from the 2005-2006 National Family Health Survey Interprets Violence 2013284773807 <https://indiankanon.org/doc/538436> visited on september,8,2021

²⁷Criminal appeal no.917 of 2011(Arising out of S.L.P (crl.) no.8078 of 2010).

unless a proper law was enacted, justice could not be delivered.

Here we will discuss some true horrible stories of deserted innocent wife's by their fraudulent NRI husbands: - Ashima Lal - This is not a usual story. A happy girl from Jalandhar got decked in bridal finery to be married to Anil Kumar. Her father had spent a lot of money to make sure his favorite daughter cherished the special day. Not just that he even poured loads of money as dowry; he fulfills all the demands of Anil's family had made. Anil and his family extremely unhappy with the gifts they would humiliate ashima for bringing insufficient dowry. Almost seven years after marriage there came a big demand. They asked Ashima to get Rs. 2 lakhs from her father. Her parents, however, expressed their inability to pay up that much. This nonpayment of money completely changes Anil's attitude toward Ashima. She was thrown out of the house, Anil not only refused maintenance but he also left for the US without informing Ashima. Court granted her divorce and she lost the custody of their children.²⁸

3.5.1 Holiday grooms and Charges of Rape

The rise in number of sham weddings by NRIs with local girls, the state police have decided to apply section 376IPC on the complaint if investigations find that the 'groom' has no intentions of getting married. NRIs who came here to enjoy holiday marriage can be checked by this charge. NRIs that leave their wives and families in the lurch here would also be declared absconders and would have to face extradition from countries where they were settled. Grooms having abroad without a backward look at their brides are a common story here. The wives, offspring born to them, are generally left to fend for themselves. Police officials said the real number of desertion cases by NRIs could even be about 10,000 as many affected families did not come forward to formally complain. In many cases, the NRIs were found guilty of bigamy. Violence against women is undoubtedly a reflection of woman's subordinate position in society. Most of these marriages which are solemnized in hush rush situation, ending up being treated as a honeymoon marriage. The phenomenon of women being abandoned by the bridegroom of Indian origin is not new, earlier also there have been instances of bigamous marriages, entered into by men. The NRI husband tends to hide his marriage to a foreign spouse and his visit to India, under pressure of his parents marries a girl of their choice, only to abandon her after a brief honeymoon. The pattern of abandonment of Indian women of NRI marriages falls into three types:

- A woman residing with her husband in a foreign country suddenly finds her husband has disappeared leaving her in the lurch;
- A woman residing abroad with her husband is either deceptively and/or coercively taken back to India and left there without her passport, visa, money and thus without any way of rejoining her husband; and
- A woman married in India and after the marriage her husband migrates to a foreign country, but is not sent sponsorship for a visa to join him.

²⁸Anu Peshawaria; The immigrant's Dream, Indian vision foundation, New Delhi, January 1, 2009.

The problem is not included only about the woman being abandoned in India but includes demand of dowry, cruelty, forms of harassment; abandonment of the woman in foreign countries, non-consummation of marriage, marriage of convenience, concealment of a pre-existing marriage, ex parte divorce etc.²⁹

3.6 Suicide or Homicide

Suicide is self-murder and the person committing suicide is beyond the reach of the law. A man encouraging and abetting other to commit suicide is certainly criminal and his act is punishable under section 306,IPC. Section 306, IPC creates a specific offence and the liability arises only when the suicide is committed. Section 306,IPC will not apply in case of an attempted suicide, which will attract section 309,IPC. The punishment in such a case may extend up to ten years of imprisonment of either description and also fine.

3.6.1 Suicide by US NRI's Deserted Wife: - The wife of a NRI computer engineer committed suicide by hanging herself at her parents' place at Ramanthapur. The reason she was unable to bear the harassment of her in-laws. The Uppal police said on Tuesday that T. Rajshree was married to M. Srinivasulu, a native of Bhavni Nagar, Warangal on November 20,2003. Nearly 30 tolas of gold and a flat worth Rs.8 lakhs had been given as dowry to Srinivasulu. On Monday, Rajshree's father found her hanging in the bedroom of their house in Srinivasapuram. The women's parents told the police that Rajshree was harassed from the third day of her marriage. On nov.29, 2003, her husband took Rajshree with him to the US but an uneasy calm persisted over there.

The couple came to India on 8th October; this year after Srinivasulu's mother fell ill. When Rajshree's parents went to Hanamkonda, they were asked to pay the additional Rs.5 lakh or take their daughter back. Rajshree's parents brought their daughter along with them, while Srinivasulu flew back to US on October 25. This left Rajshree heart broken and depressed. A case of dowry death has been registered against Rajshree's in-laws.

3.6.2 Death whether suicidal or homicidal: -Forty-seven-year-old Kamikar Singh Dhillon has been arrested in Canada for the murder of his daughter-in-law, Amandeep Kaur. She was found dead with stab injuries on neck in the family run grocery store in Mississauga, Ontario, January 1.³⁰ Kamikar firmly charged with first degree murder. Kirandeep, who is a resident of Brampton claimed that Amandeep had shared her pain with her, 'she told me that she was under the constant surveillance of her father-in-law, who did not allow her to go anywhere independently. She was not even allowed to make telephone calls. Meanwhile, to help the parents of Amandeep get justice from the Canadian government, social and religious organizations of Canada. Amandeep Kaur of

²⁹The book titled "Abandoned Indian woman trapped in NRI marriage-The Way Out", National Commission for Women 4, Deen Dhyal Upadhyaya marg, New Delhi- 110 002

³⁰<http://indianexpress.com/article/cities/chandigarh/fatherinlaw-of-punjabi-girl-killed-in-canada-arrested/> visited on 10 september,2021

issue village was allegedly stabbed to death on New Year day by her in-laws. They did not even inform her parents about her death.

4. Conclusion

Marriage as a social institution is losing its original concept and the legislative law as well as the courts are aware of this social upheaval. Just as drug abuse and attacks on internal security are external criminal threats to Indian society, matrimonial discord and changing matrimonial ethos are internal destabilizing factors in civil society. Legislative law and court procedures have a significant role to play in strengthening and streamlining the most important social institution of marriage. Thus, marriage laws and other measures for the welfare of women have become the focus of attention of the Indian legislature as well as Courts at all levels. NRI marriages are essentially inter-country marriages with ramifications of legal validity, jurisdiction, and recognition of foreign decree and enforcement of law. There is no legislative law in India compared to 'Private International Law' or 'Conflict of Law' as in some western countries. The problems faced by law enforcing agencies in dealing with the complaints of NRI marriages include lack of clarity in defining jurisdictional boundaries, variations in legal systems of different countries and the physical distance between the victim's home country and her matrimonial home. The need of the hour is proper implementation of existing laws in the wake of Supreme Court guidelines, framing of proper regulations, creation of Family Courts and Fast Track Courts and amendment of existing statutory legislation on marriage and other family laws; and to enact laws to address the various issues that arise in NRI marriages, specifically covering issues like validity of the marriages in the NRI context choice of personal law of marriage and divorce, jurisdiction of court, enforceability of foreign courts orders, offences relating to marriages and the right of the abandoned spouse to property. Registration of marriage should be made compulsory and an entry should be made in the passport of the married persons including name and other details of the spouse. Suppression of information regarding marital status by NRI grooms should be dealt with under criminal law.

The purpose of the study is to analyze the different aspects of NRI marriages. The only way to lessen instances of sham NRI marriages is to first spread awareness amongst the gullible public about the positive and negative outcomes of such marriages. They need to make aware of their rights. The Indian constitution provides for a Fundamental Right which allows women to gain benefit of special laws made for them. Codification of laws related to Private International law is of essence. The only challenge to all of these possible solutions is unrelenting patriarchal mindset of our society, which, until the time it is made to yield to reason will not allow awareness to spread and change to occur with respect to NRI marriages and law which, perhaps inadequately, govern it.

Author Profile



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