

## Concept Note

### NRI Marriages: Issues, Challenges and Way Forward

In 2015, India had the largest diaspora in the world.<sup>1</sup>As more and more people are seeking employment and residence in foreign countries, there has been a concomitant increase in the number and complexity of disputes arising out of such migration and relocation. Marriages between resident Indians and non-resident Indians (NRIs) give rise to particularly thorny issues of justice and fairness. There has been a rise in cases of Indian women being deserted after marriage or duped into fraudulent marriages by husbands who are residents or citizens of a foreign country. Other issues and problems that frequently arise in such marriages are women being subjected to domestic violence or dowry harassment in the foreign country of residence, women being abandoned in India after their marriage, women who are abandoned in the foreign country where they have no financial, social or legal support, and women duped into bigamous marriages. In many cases, husbands are able to obtain ex-parte divorce decrees from the courts in the foreign country without giving a chance to the wife to defend her position in court. Further difficulties arise when children are involved in these marital disputes. The husband and/or his family might forcibly remove the children from the custody of the mother or obtain an ex-parte custody order from the foreign country of residence. Such cases pose serious challenges to obtaining any remedy for the women, their children and families because of issues of jurisdictional conflicts in judicial decisions, lack of knowledge of the language or laws of foreign countries and lack of any kind of support for deserted or abused Indian women in foreign countries. A large number of such fraudulent marriages have been reported from Punjab.<sup>2</sup>

Various recommendations and policy proposals have been made to combat the pernicious impacts of deceitful or violent 'NRI marriages'. Compulsory registration of marriages, inclusion of 'irretrievable breakdown of marriage' as a ground for dissolution of marriage,

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<sup>1</sup> United Nations, *International Migration Report 2015*, available at [http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015\\_Highlights.pdf](http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf)

<sup>2</sup> See for example <http://indianexpress.com/article/india/india-news-india/dowry-desertion-parliamentary-panel-seeks-ways-to-tackle-fraudulent-marriages-with-nris-2905831/>

amendments in personal laws relating to child custody, maintenance and matrimonial property for cases where one spouse is a NRI and ratification of the Hague Convention on the Civil Aspects of International Child Abduction 1980 are some recommendations made by the Law Commission of India.<sup>3</sup>

According to section 13 of the Code of Criminal Procedure, 1973, a foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except.

- a) where it has not been pronounced by a court of competent jurisdiction.
- b) Where it has not been given on merits of the case:
- c) Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable;
- d) Where the proceedings in which the judgment was obtained are opposed to natural justice;<sup>4</sup>
- e) Where it has been obtained by fraud;
- f) Where it sustains a claim founded on a breach of any law in force in India.

It is important to note that fraud vitiates all judicial acts. In *Satya vs. Teja Singh* AIR (1975) SC 105, where the husband successfully invoked jurisdiction of the Nevada court through trickery, the Supreme Court held the divorce granted by the Nevada Court was not binding.

The Supreme Court of India has also issued guidelines for recognition and validity of decree of divorce issued by foreign courts in marriages solemnized under Indian law.<sup>5</sup>

Responding to the gravity of the situation, the Government of Punjab has also taken several steps to respond to the issue. The Punjab Compulsory Registration of Marriages Act 2012 makes it mandatory to register all marriages solemnized in Punjab between Indian nationals or between an Indian national and a non-resident Indian or foreign national,

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<sup>3</sup> Law Commission of India, *Need for family law legislations for Non-resident Indians*, Report no. 219

<sup>4</sup> Ex parte decrees would fall under the category of being 'opposed to natural justice'

<sup>5</sup> *Narasimha Rao v Venkata Lakshmi*(1991)SCR(2) 821

irrespective of religion, caste, creed or nationality. The Act also provides that where one of the parties is a NRI or a foreign national, information pertaining to passport number, name of issuing country and its period of validity, permanent address in the foreign country of residence, and formal identification issued by foreign country shall be recorded in the marriage certificate and marriage register. The NRI Affairs Cell of the Punjab Police has also issued a list of do's and don'ts for Indians seeking to marry NRIs or foreign nationals.<sup>6</sup>

However, there continue to be several challenges including provision of legal and financial support to deserted wives in foreign countries, service of judicial processes issued by Indian courts to the husband and/or his family in the foreign country and extradition of such husbands.

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<sup>6</sup>[http://nripunjabpolice.com/dos\\_dont\\_nri\\_marriages.php](http://nripunjabpolice.com/dos_dont_nri_marriages.php)