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Dispute Resolution and Litigation in NRI Property Matters: Legal Challenges and Remedies

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ABSTRACT

This Dissertation constitutes comprehensive examination of NRI Property Dispute in India generally refer to conflicts over ownership, possession, transfer and management of immovable assets in India. The dispute arises out of forged documents, Unclear titles, Partitions and encroachment. This research critically analyses the interrelationship between Indian property law, foreign exchange and regulation and practical challenges faced by the NRI in asserting, defending and transferring their property interest. The primary legislation includes Transfer of Property Act, 1882, Foreign Exchange Management Act 1999 (FEMA), the Representation of People Act, Real Estate (Regulation and Development) Act 2016 (RERA) along with judicial precedent, arbitral awards, case analysis and legal landscape of NRI property dispute resolution.

This dissertation also evaluates the Alternative dispute resolution (ADR) mechanism such as arbitration, mediation and conciliation as a solution for dispute settlement. Judicial approaches and landmark case laws are examined to understand the evolving legal disputes in NRI. The inclusion of geographic distance, delay of legal process, excessive regulatory framework and inadequate support from dispute resolution for NRI. Finally, this research provides reforms which aimed at improving access to justice for NRIs which includes digitalization of land records, fast track courts, strict regulations of property transaction and enhance legal safeguard against fraud. This study concludes that Indian legal system provides adequate remedies, effective implementation and ensure timely resolution of NRI property disputes.

This paper provides a detailed study of the legal regime includes property dispute, examining the statutory framework, judicial approach, landmark case law, remedies available for NRIs.

I. INTRODUCTION

India is home to one of the largest diaspora populations in the world with more than 32 million

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Non-Resident Indians (NRIs) and Persons of Indian Origin (PIOs) living across the globe primarily in the United States, United Kingdom, Canada, the Gulf Cooperation Council (GCC) countries, Australia, and Singapore. Despite their geographical distance, a significant proportion of this diaspora retains deep economic and emotional ties to India, most visibly through property ownership. Indian real estate has historically been one of the most preferred investments for NRIs, driven by factors such as rising property valuations, sentimental attachment to ancestral homes and the aspiration to eventually return. However, owning property in India from abroad is fraught *with* vulnerability. The most common property issues an NRI can face include illegal occupation of their property by tenants or relatives, family disputes over inheritance, and builder-related problems. Right To Law The inherent tension between geographical absence and the demands of property ownership in a jurisdiction with complex, fragmented laws creates a fertile environment for disputes, fraud, and litigation. The field of NRI property dispute resolution thus sits at the intersection of property law, constitutional rights, private international law, and alternative dispute resolution making it a rich and practically significant area of legal inquiry.

Property disputes involving NRIs arise out of different reasons, which include fraudulent sale or encumbrance of property by relatives under Power of Attorney, illegal possession by tenants, Protracted disputes and outright encroachment by third parties exploiting the NRI's physical absence².

This paper proceeds in this sequence. After establishing the regulatory framework for NRI property holdings, it examines only specific categories of legal dispute that mostly cause distress to NRI. It then critically analyses judicial approaches and landmark decisions that shaped the law. It then evaluates existing and proposed dispute resolution mechanism and concludes with recommendation for systematic reform.

II. REGULATORY FRAMEWORK GOVERNING NRI PROPERTY IN INDIA

A. Constitutional and Statutory Foundation

The Constitution of India does not differentiate between resident and non-resident citizens in respect to fundamental rights. Article 300 – A which protects the right to property, which is constitutional right, albeit not a fundamental one post the 44th Amendment, which applies equally to NRIs³. The substantive legal framework that is shaped by the FEMA and the rules

² Ministry of External Affairs, Government of India, *Annual Report on NRI Grievances 2022–23*, available at <https://www.mea.gov.in/>

³ *Constitution of India 1950, art 300-A (inserted by the Constitution (Forty-Fourth Amendment) Act 1978)*.

under the it, particularly the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulation, 2018. Under this 2018 regulation, NRI is permitted to acquire immovable property in India, whether residential or commercial through purchase or inheritance, gift from a resident or a NRI. Agricultural land, plantation property, farmhouses cannot be acquired by NRIs through purchase, though they may be inherited⁴. These restrictions exist for legally valid reasons but have also created a secondary market for fraudulent transfers and benami arrangements which predictably, give rise to litigation.

B. Transfer of Property Act, 1882

The Transfer of Property act,1882 governs the property transfers in India and applies to NRI transactions. Section 54 of TPA defines “Sale” and provides the formalities for valid transfer of immovable property which has been centre for numerous NRI fraud cases where alleged sale has been executed by unauthorized person⁵. The specific Relief Act, 1963 in Sections 10 and 34 deals with specific performance and declaratory relief has been invoked extensively in NRI property litigation. Additionally, the registration Act, 1908 mandates registration of document for immovable property whereas registration does not confer titles, it is merely evidence for execution⁶.

C. RERA and its implication for NRI Buyers

The Real Estate (Regulation and Development) Act, 2016 (RERA) represents the most important legislative development in the Indian real estate sector in recent decades. For NRIs who have been invested in under construction projects or who have been subject to builder defaults and delays, RERA provides a specialised regulatory forum. Section 31 of RERA allows any person, including an NRI, to file a complaint before the Real Estate Regulatory Authority⁷. The Act mandates project registration, escrow mechanisms for buyer funds, and statutory penalties for delays, all of which benefit NRI buyers who are unable to physically monitor construction progress.

III. CLASSIFICATION OF DISPUTES INVOLVING NRIS

A. Power of Attorney

NRI property dispute involves misuse of Power of Attorney, it is common for NRI to execute

⁴ *Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2018, reg 3-5 (India)*.

⁵ *Transfer of Property Act 1882, s 54 (India); DF Mulla, The Transfer of Property Act (14th edn, LexisNexis 2021) 312.*

⁶ *Registration Act 1908, s 17 (India); Indian Evidence Act 1872, s 90.*

⁷ *Real Estate (Regulation and Development) Act 2016, s 31 (India)*.

POA in favour of relatives, friends or property managers for the purpose of managing the property. The mischief arise when the POA holder, instead of managing the property uses the property to sell, mortgage or otherwise encumber the property without the knowledge or consent of the NRI⁸.

The courts have consistently held that a bona fide purchaser for value from a Power of Attorney (POA) holder cannot claim valid title against the true owner if the POA holder acted beyond or against the authority granted. Supreme Court rulings generally reject such claims in these circumstances. However, for Non-Resident Indians (NRIs), enforcing these rulings is practically challenging. They face difficulties due to the need to file suits, trace fraudulent transactions, identify the POA holder and execute court decrees, all compounded by geographical distance and complex legal procedures⁹.

B. Encroachment and Illegal Occupation

Encroachment on NRI owned land by neighbour, local authorities or organised land mafia is recurring phenomenon particularly in urban and semi urban areas where land value appreciates significantly. The NRIs absence in India is the easy target for encroachment of the property. The Code of Civil Procedure, 1908, provides the primary framework for civil suit seeking eviction and possession. However, the notorious delay in the Indian civil justice system takes a decade or more to reach the final destination. The availability of interim injunctions under Order XXXIX of the CPC has been the primary source of immediate relief for NRIs in such situations¹⁰.

C. Inheritance and Succession dispute

Intestate succession under Indian law is governed by the Hindu Succession Act, 1956 (for Hindus), the Indian Succession Act, 1925 (for Christians, Parsis, and others) and personal law for Muslims. Where an NRI dies intestate or where the validity of a will is contested, disputes over the succession to the NRI's Indian property can be protracted, especially when some heirs are resident in India and others abroad. Jurisdictional issues which court has the authority to grant probate or succession certificates complicate matters¹¹.

⁸ SC Sarkar, *Law of Civil Procedure (12th edn, Eastern Law House 2019)* 1021; *Bahwant Singh v Daulat Singh (Dead) by LRs (1997)* 7 SCC 137 (India).

⁹ *Suraj Lamp & Industries Pvt Ltd v State of Haryana (2012)* 1 SCC 656 (India).

¹⁰ *Law Commission of India, Report No 253: Commercial Division and Commercial Appellate Division of High Courts (2015)* 14.

¹¹ *Code of Civil Procedure 1908, Order XXXIX, 1–2 (India)*.

D. Builder Disputes and Delayed Possession

A significant proportion of NRI investment in India flows into residential real estate market in the form of purchase of apartments in under construction projects. Large volume of Disputes arise out of builder's default which includes delay in delivery, Substandard construction and outright fraud. Before enactment of RERA, NRI buyers had limited access to civil suites or consumer forum, both were suffered from generic problems of delay and inaccessibility. RERA has improved the effective enforcement of RERA orders against builders who lack sufficient assets or who operate through shell entities which remains a challenge¹².

IV. LANDMARK CASE LAWS

A. The Supreme Court on Power of Attorney and Property Transfers

The Power of Attorney in property transactions is the Supreme Court's decision in *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Another* (2012) 1 SCC 656¹³. In this case the court examined the practise of transferring immovable property through sale agreements and Power of Attorney, which is a practise in NRI transactions, held that such transactions do not confer title. The Court held that a POA is not an instrument of transfer in respect of any right, title or interest in immovable property and affirmed that the Transfer of Property Act requirements cannot be bypassed through the use of POA instruments. This decision was significant for the NRI's who transfer their property through POA based sale. It confirms that such a transfer, if not followed by a registered sale deed executed by or with the authority of the NRI, is void as against the true owner and confers no title on the transferee¹⁴.

B. Landmark Case on Fraudulent POA - Balwant Singh & Another v. Daulat Singh

In *Balwant Singh & Another v. Daulat Singh* (1997) 7 SCC 137¹⁵, the Supreme Court held that a POA holder had executed a sale deed purportedly on behalf of the principal without actual authority. Also held that POA holder cannot, in the absence of specific provision to that effect, delegate the power to another or act in a manner that goes beyond the term of the authority. This principle, though not specific to NRIs, has been widely invoked in cases of NRI property fraud where relatives have claimed authority under broadly worded Powers of Attorney.

C. The Benami Transactions (Prohibition) Act and NRI Properties

The Benami Transactions (Prohibition) Amendment Act, 2016, which strengthened the original

¹² *Hindu Succession Act 1956 (India); Indian Succession Act 1925, s 5 (India).*

¹³ *Industries Pvt Ltd v State of Haryana* (2012) 1 SCC 656 [14]–[19] (Ganguly J).

¹⁴ *ibid* [23]; see also *Kewal Krishan v Rajesh Kumar* (2011) 14 SCC 337 (India).

¹⁵ *Balwant Singh v Daulat Singh (Dead) by LRs* (1997) 7 SCC 137 [9] (India).

1988 Act. In situations when a NRI purchases a property in the name of a relative, it is a most common unlawful activity and the 2016 act introduced criminal liability for both the benamidar and Beneficial owner. The Bombay High Court, in *Pratap Govind Pai v. Initiating Officer, Benami Prohibition Unit (2020)*¹⁶, was called upon to interpret the retrospective application of the 2016 amendments and held that while the amendment could not apply to transactions completed and concluded prior to its enactment, it would apply to continuing arrangements.

D. NRI Succession and Probate- Smt. Nakara Thandavan v. Smt. Santhanalakshmi

Madras High Court extensively examined the Inheritance dispute affecting the NRI. The decision in *Smt. Nakara Thandavan v. Smt. Santhanalakshmi* assumes significance in the context of succession and probate disputes involving NRI property, as it highlights the stringent standards applied by courts while adjudicating the validity of Wills. The court held that mere production of a Will is insufficient to secure probate unless the propounder conclusively proves its execution and dispels all surrounding suspicious circumstances in accordance with the requirements of the Indian Succession Act, 1925. Emphasizing that factors such as unnatural exclusion of legal heirs, doubtful testamentary capacity, or active involvement of beneficiaries in the execution process may cast serious suspicion, the court reiterated that the burden of proof lies heavily on the propounder to establish the genuineness of the Will beyond doubt. This principle is particularly relevant in NRI property disputes, where absentee ownership often creates opportunities for misuse, thereby necessitating heightened judicial scrutiny to prevent fraudulent claims and ensure the true intentions of the testator are upheld.

E. RERA and Delhi High Court - — M/s Imperia Structures Ltd. v. Anil Patni & Another

In *M/s Imperia Structures Ltd. v. Anil Patni & Another (2020) 10 SCC 783*,¹⁷ the Supreme Court addressed the question whether RERA dismisses the jurisdiction of consumers forum in real estate disputes. The Court held that RERA provides an additional remedy and does not extinguish the right to approach consumer forums. The Court held that RERA provides an additional remedy and does not extinguish the right to approach consumer forums. This decision is of particular relevance to NRI buyers of real estate who may find consumer forums more accessible (given the NCDRC's capacity to hear appeals nationally) than state-level RERA authorities.

¹⁶ *Pratap Govind Pai v Initiating Officer, Benami Prohibition Unit (2020) Bom HC (unreported); Benami Transactions (Prohibition) Amendment Act 2016, s 3 (India).*

¹⁷ *M/s Imperia Structures Ltd v Anil Patni (2020) 10 SCC 783 [31] (India).*

F. High Court in NRI Protection- Writ Jurisdiction

Several High Court have exercised their discretion to writ Jurisdiction under Article 226 of the Constitution to intervene in NRI property disputes particularly where administrative inaction or police failed to register FIRs has denied the NRI access to justice¹⁸. The Punjab and Haryana High Court has been particularly active in this regard, given the large NRI population with roots in the Punjab region. In a significant direction, the Punjab and Haryana High Court established dedicated NRI cells within district police offices and directed that complaints by NRIs relating to property disputes must be acknowledged and investigated within a prescribed time frame.

V. SYSTEMIC BARRIERS TO JUSTICE IN NRI PROPERTY DISPUTES

A. Geographic and Temporal Barriers

The fundamental challenge in NRI property litigation is one of physical presence. Court in India still largely operate in an in-person model like witnesses are examined through viva voce, parties are expected to appear in person at critical stage of the proceedings and advocates require physical access to documents and land records¹⁹. For an NRI attending court hearing involves travel cost and potential loss of employment. These practical constraints cause delays in litigation and unsatisfactory out of court settlements.

B. Limitation Period

The limitation Act, 1963 provides strict timelines for filing civil suits. For suits in immovable property including possession, declaration and specific performance the limitation period ranges from three to twelve years, depending on the nature of the claim and the date of accrual of the cause of action²⁰. NRIs discovers a fraudulent transaction years after its commission after the limitation period, where Article 58 and Article 65 of the Limitation Act are applied strictly. Courts in some jurisdictions applied the doctrine of constructive fraud to extend the limitation period but this is not a consistent or reliable remedy.

C. Duplication and Fragmentation of Legal Remedies

NRI property dispute requires the initiation of parallel proceedings in different forums: a criminal complaint under the Indian Penal Code (now Bharatiya Nyaya Sanhita, 2023) for cheating and forgery. A civil suit for declaration and possession, proceedings before the revenue

¹⁸ *Sabha v State of Punjab, CWP No 18632/2018 (P&H HC) (India); Punjab Police Order No 14/2019 on NRI Cells.*

¹⁹ *Law Commission of India, Report No 245: Arrears and Backlog — Creating Additional Judicial (wo)manpower (2014) 8.*

²⁰ *Limitation Act 1963, arts 58, 65 (India).*

authorities for correction of revenue records and in some cases a writ petition before the High Court for police action²¹. Managing multiple concurrent proceedings from a distance which is logistically challenging and financially burden.

VI. DISPUTE RESOLUTION MECHANISM AND REMEDIES

A. Civil Litigation for Declaration and Possession of Suits

The standard remedy for an NRI whose property has illegally transferred or occupied is a civil suit the Specific Relief Act, seeking a declaration that the impugned sale or transfer is void, along with a consequential relief of injunction restraining the defendant from dealing with the property, remains the most commonly adopted remedy²². Where the NRI seeks recovery of possession under Section 6 of the Specific Relief Act provides recovery of possession of an immovable property.

B. Arbitration and Alternative Dispute Resolution

The Arbitration and Conciliation Act, 1996 was amended in 2015 and 2019 for arbitration of property disputes where the parties have agreed to refer disputes to arbitration²³. This mechanism has been progressively employed in NRI property transactions specifically in commercial property arrangements, by incorporating arbitration clauses in property agreements. Arbitration offers several advantages for NRIs: the parties can agree to conduct hearings virtually, the proceedings are confidential and the award is enforceable under the New York Convention in the NRI's country of residence.

Mediation was given a statutory recognition in India through the Mediation Act, 2023 which offers another viable pathway for NRI property dispute in family or succession where preserving relationship may be consideration. The Mediation is also done through online which is beneficial for the NRIs who cannot travel to India for face-to-face mediation sessions.

C. Consumer Forum under Consumer Protection Act, 2019

For NRI who has been victimised by the builder defaults or real estate fraud, the Consumer Protection Act, 2019 provides remedy. The Act defines “consumer” and the definition encompasses NRI purchasers of residential property for personal use. The National Consumer Disputes Redressal Commission (NCDRC) has jurisdiction over dispute involves over one crore

²¹ *Bharatiya Nyaya Sanhita 2023, ss 316, 336, 340 (India) (replacing Indian Penal Code 1860, ss 415, 463, 471).*

²² *Specific Relief Act 1963, ss 6, 10, 34 (India).*

²³ *Arbitration and Conciliation Act 1996 (as amended by Acts of 2015 and 2019), s 7 (India); Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), art III.*

rupees, which encompasses NRI real estate purchases²⁴. Importantly, the 2019 Act contemplates e-filing and online hearing — a significant procedural advance for NRI litigants.

D. Criminal Remedies - IPC and Bharatiya Nyaya Sanhita

NRI property disputes involve fraud, forgery, cheating, criminal remedies are available under the BNSS, 2023. Section 316 (cheating), 340 (forged documents) are commonly invoked²⁵. Criminal prosecution in NRI property cases creates legal records, compel the attention of revenue authorities and may prevent further encroachment or manipulation of property records.

5. NRI cells and Grievance Portals

State Government such as Punjab, Uttar Pradesh, Andhra Pradesh and Kerala have created dedicated NRI cells within their police station and revenue administration. The Punjab Police have a dedicated NRI helpline and a NRI property unit which handles property complaints from abroad²⁶. The Ministry of External Affairs of the Government of India has MADAD portal that is Consular Services Management System which allows NRI to register complaints regarding to property dispute and other legal matters.

VII. EMERGING JUDICIAL TRENDS IN NRI PROPERTY LAW

The Indian Judiciary has progressive protective orientation towards NRI property rights over the past two decades. First, the courts have scrutinized the standards governing transactions based on Power of Attorney (POA) requiring clear and specific authorisation for any act including alienation of property. Second, courts have been willing to grant anti-suit injunction and interim orders in NRI property cases. Third, there is growing judicial recognition that delay in NRI cases caused by the procedural multiplicity and administration delay leads to denial of justice. The Supreme Court under its jurisdiction of Article 142 passed orders to restore possession of property to NRIs pending for final adjudication. This willingness to exercise equity jurisdiction proactively reflects the Court's recognition that the ordinary civil justice system, with its attendant delays, cannot adequately address the NRI's position.

VIII. REFORMS AND RECOMMENDATIONS FOR SYSTEMIC DISPUTE CONTROL

A. NRI Property Tribunals

The formation of specialised tribunal with jurisdiction over NRI property disputes which was modelled on the Debt Recovery Tribunal established under the Recovery of Debts due to Bank

²⁴ *Consumer Protection Act 2019, s 2(7), s 58 (India).*

²⁵ *Bharatiya Nyaya Sanhita 2023, ss 316, 336, 340 (India).*

²⁶ *Ministry of External Affairs, 'MADAD Consular Services Portal' <https://madad.gov>, accessed 20 April 2026.*

and Financial Institution Act, 1993²⁷ which address the justice deficit. Such tribunals may operate on a virtual-first hearing framework which adhere to streamlined timelines for adjudication and cultivate specialised expertise in the distinct legal and evidentiary complexities inherent in NRI property disputes.

B. Mandatory E- verification for NRI Property Transaction

A mandatory electronic verification system linked to the NRIs Aadhaar, passport, PIO/OCI for any transaction alleging transfer or encumber NRI transfer or encumber NRI owned property which automatically reduce the POA based transfer. These systems were integrated with the existing property registration infrastructure under DILRMP (Digital India Land Records Modernisation Programme)²⁸, the registered owner required to verify any transfer done through digital platform before it is affected.

C. Time-Bound Resolution through Lok Adalat

Lok Adalat was established under the Legal Services Authorities Act, 1987 which has been used for settlement of property and motor accident dispute. An NRI specific Lok Adalat track Indian consulates and high commissions abroad with connectivity to Indian revenue and civil courts that could facilitate speedy resolution for NRI property dispute that admits settlement. The award of Lok Adalat is final and binding decree of civil court²⁹.

D. Legislative Amendments

Two specific legislatives were amended which needed to better to protect NRIs. First, Section 5 of the Limitation Act, 1963 which needed to be updated that is to provides condonation of delay for the NRI to recognize fraudulent transaction much later. Second, the Registration Act, 1908 should amend transfer of property owned by NRI the document should be executed either personally or before the Indian consular officer. Also an electronic registration process should be created through the Ministry of External Affairs to make the process easier³⁰.

IX. CONCLUSION

The legal challenges in NRI in the context of Indian property ownership are not transient or peripheral. They lack in structural deficiency in India's land administration, civil justice system and legislative framework that impacted the community in access to legal Remedies. In

²⁷ *Recovery of Debts Due to Banks and Financial Institutions Act 1993, s 3 (India).*

²⁸ *Ministry of Rural Development, Digital India Land Records Modernisation Programme, Annual Progress Report 2023.*

²⁹ *Legal Services Authorities Act 1987, s 19 (India); National Legal Services Authority, Lok Adalat Statistics 2022–23.*

³⁰ *Limitation Act 1963, s 5 (India); Registration Act 1908, s 32 (India) (proposed amendment context).*

judiciary the Supreme court has responded with admirable awareness, progressive jurisprudence, judicial intervention alone cannot reform the system. The combination of dedicated tribunal framework, digital verification, overseas Lok Adalat mechanism offers achievable reforms which redress the access to justice for NRI property owners. India's constitutional promise of equality before the law along with its goal of attracting global investment, requires that NRIs receive the same practical and effective protection of property rights as residents and ensuring basic fairness and justice under the legal system.

Indian courts combat with the evolving factual and legal complexities in NRI property dispute from digital fraud to cryptocurrency linked transaction to cross border succession. The need for proactive, adaptive and NRI legal framework to be updated. The landmark cases reviewed in this paper demonstrate that the doctrinal foundations are already in place; what is now required is the institutional architecture to give those principles practical effect.

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