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# Fraudulent NRI Marriages and the Issues related to NRI Marriages

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## ABSTRACT

*NRI marriages are understood as marriage between Indian women from India and Indian man residing outside India. Overseas Indians, regardless of their status, make up a sizable proportion of Indian society, In general, these Indians have brought with them not only their religion, traditions, culture, languages, and food habits, but traditional Indian marriages. Indian women are married with the hope to rejuvenate the Indian culture and traditions in the way they practiced in their homeland, and thus leading to acculturation.*

*However, the incidents of failed and fraudulent marriages of Indian Women with NRIs are increasing day by day. The problems in Overseas Indian marriages are complex in nature as these often fall within the purview of both the Private International Law and the homeland law, The Hindu Marriage Act, 1955.*

*In recent times dispute related to child custody has been surfaced out of the fraudulent NRI Marriages. Besides, NRI husbands abandon their wives for the termination of marriages and after such abandonment of wives in their original countries and initiate divorce proceedings in foreign lands. In many cases, the women are physically abused and mentally harassed before they are forced to flee. Another rising issue is dowry, even though it is banned in India, the groom's family seeks dowry indirectly implicating the security of the newly married couple or as a condition for the couple's marriage while the groom flees away, and his wife awaits her visa.*

*The research paper aims to throws light on the present conditions of NRI marriages and highlights the different approaches to addressing these problems one of them being mandatory Registration of Marriage of Non-Resident Indian Bill, 2019 and the author will bring upon their suggestions from the research on this topic.*

**Keywords:** *NRIs, acculturation, private laws (international & national), child custody, NRI Act, domestic violence, dowry.*

## I. INTRODUCTION

In India, NRI marriages, or the holy union between non-resident Indians and Indian citizens, have become increasingly prevalent in recent years. These marriages provide a unique platform

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for cultural exchange because they unite individuals from diverse backgrounds and experiences. Interaction between NRI marriages and acculturation, the process of adopting and integrating new cultural traits, is a fascinating phenomenon deserving of further study.

The increasing number of Indians living abroad is one of the primary contributors to the rise of NRI marriages in India. Many Indians have migrated to the foreign lands in search of better economic opportunities and a higher quality of life. Consequently, they frequently look for partners from their home country, resulting in NRI marriages. These unions unite individuals with distinct cultural identities, thereby creating an environment conducive to acculturation. In the context of NRI marriages, acculturation is a multifaceted process. It entails the NRI spouse and the Indian spouse adapting to one another's cultural norms, values, and practises. Several factors, including language, food, religion, clothing, and social customs, can influence this process. The *pardesi* partner may need to navigate and comprehend the nuances of Indian traditions, while the Indian partner may need to adjust to a more alien lifestyle.

Language is crucial to the process of acculturation. This linguistic exchange promotes a greater comprehension of cultural nuances and facilitates effective communication within the marriage. Additionally, language learning enables individuals to participate more actively in local customs, festivities, and family interactions.

Religion and spirituality play important roles in the process of acculturation. Individuals from diverse religious traditions, such as Hinduism, Islam, Christianity, Sikhism, or Buddhism, are frequently involved in NRI marriages. The couple may choose to independently practise their respective religions, or they may adopt a syncretic approach, blending rituals and beliefs from both traditions. This religious acculturation enables the peaceful coexistence of diverse religions, fostering mutual respect and understanding.

NRI marriages in India serve as a platform for acculturation, facilitating the exchange of cultural norms, traditions, and practises among individuals from various backgrounds. Through acculturation, NRI spouses and their Indian counterparts develop a shared cultural identity that reflects the blending of their respective cultures. By embracing the elements of language, cuisine, religion, and social customs, these marriages transform into thriving spaces where multiple cultures coexist and flourish.

## **II. THE ROLE OF PRIVATE INTERNATIONAL LAWS IN NRI MARRIAGES**

Private international law, also referred to as conflict of laws, plays a crucial role in regulating NRI marriages. Private international law is concerned with legal issues involving a foreign element, such as marriages between individuals from different countries or marriages that occur

outside the home country of one or both spouses. The following are several important aspects of private international law that pertain to NRI marriages:

**1. Recognition of Marriages:** Private international law determines whether a foreign marriage will be recognised as valid in each jurisdiction. Regarding the recognition of foreign marriages, various nations have distinct regulations. In the case of NRI marriages, where one or both spouses are from a different country, it is crucial to determine whether the marriage is legally recognised in the jurisdiction where the couple intends to reside or seek legal remedies.

**2. Choice of Law:** Private international law determines which country's laws should govern an NRI marriage. This choice of law may affect the validity of the marriage contract, property rights, divorce, child custody, and child support. The choice of law may be influenced by factors such as the domicile of the parties, the location of the marriage, or the marital residence.

**3. Divorce and Dissolution:** Private international law plays a crucial role in determining the jurisdiction where an NRI couple can file for divorce or seek dissolution of their marriage. The law of the country in which the divorce is sought will govern the procedure and determine issues such as divorce grounds, property division, alimony, and child custody. In situations where spouses reside in different countries or have ties to multiple jurisdictions, private international law assists in determining the appropriate divorce forum.

**4. Child Custody and Child Support:** Private international law governs child custody and child support issues in NRI marriages. When parents from different countries separate or divorce, custody of children and the enforcement of child support obligations can become contentious. Private international law provides frameworks, such as the Hague Convention on the Civil Aspects of International Child Abduction, to address these issues and facilitate international cooperation in resolving custody and support disputes involving children.

**5. Private international law regulates the recognition and enforcement of judgements pertaining to NRI marriages. If a court in one country issues a judgement regarding matters such as divorce, property division, or child custody, the question of whether that judgement will be recognised and enforced in another country arises. Private international law provides rules and procedures for the recognition and enforcement of foreign judgements, ensuring the effectiveness and uniformity of decisions across jurisdictions.**

It is essential to recognise that private international law varies among jurisdictions and that the specific rules and principles can vary from country to country. In order to navigate the complexities of private international law and ensure the protection of their rights and interests,

it is crucial for individuals involved in NRI marriages to seek legal counsel from professionals knowledgeable in the relevant jurisdictions.

In the *Deepak Banerjee v. Sudipta Banerjee*<sup>2</sup>, the court emphasised that 'residence' for the purpose of conferring jurisdiction for maintenance includes the wife's residence, as she cannot be expected to travel long distances to foreign jurisdictions in order to obtain justice when she is claiming destitution.

Besides, In *Y. Narasimha Rao & Ors. vs. Y. Venkata Lakshmi & Ors.*<sup>3</sup>, both parties married in Tirupati in accordance with Hindu traditions. The petition for dissolution of marriage was filed by the appellant in the Circuit Court of St. Louis County, Missouri, U.S.A., based on the irretrievable breakdown of the marriage. The respondent submitted her response in opposition to the petition. The divorce decree was issued by the Circuit Court without the respondent present. The appellant wed a second woman. The defendant filed a criminal charge for bigamy against the appellant. The Supreme Court ruled that irretrievable breakdown of the marriage is not a ground for divorce, and since both the appellant and respondent were married in accordance with Hindu custom, Section 13 of the Civil Procedure Code<sup>4</sup> stipulates that divorce in an overseas nation is only permissible if both parties consent. Thus, the Supreme Court of India ruled against the decision of the Circuit Court of St. Louis County, Missouri, United States.

The decision of the court made it clear that that no foreign court can revoke or nullify a marriage between a NRI spouse and his Indian wife.

### III. LEGAL ISSUES RELATED TO FRAUDULENT NRI MARRIAGES

#### (A) Child Custody

Child custody is a complex legal issue that can arise in a variety of circumstances, including divorce or separation. However, when fraudulent NRI marriages are involved, child custody can become even more difficult and emotionally charged. In this article, we will examine the custody issues that may arise in cases of fraudulent NRI marriages.

Fraudulent NRI marriages occur when the non-resident Indian marries a person in India with the intention of exploiting the spouse and family for financial gain or obtaining permanent residency in India. Frequently, the NRI spouse will return to their country of origin, leaving their spouse and children in India.

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<sup>2</sup> Dipak Banerjee vs Sudipta Banerjee, 1987 0 CALLT 491 HC, 92 CWN 352

<sup>3</sup> Y. Narasimha Rao and Ors vs Y. Venkata Lakshmi and Anr., 1991 SCR (2) 821, 1991 SCC (3) 451

<sup>4</sup> Civil Procedure Code, 1908, § 13, No. 05, Acts of Parliament, 1908 (India)

When these types of marriages fail, child custody can become a contentious issue. The NRI parent may attempt to use their financial resources to gain an advantage in court proceedings, making it more difficult for the other parent to fight for child custody. In some cases, the foreign parent may even attempt to remove the children from India without the other parent's consent, making it extremely difficult for the other parent to exercise their parental rights.

In these cases of fraudulent marriages, the lack of available legal remedies is one of the greatest obstacles. The Indian legal system is infamous for its slow and ineffective response to such cases, leaving the victim and their children vulnerable and uncertain. In many instances, the victim may lack the financial means or legal knowledge to fight for custody in court, particularly if the NRI parent resides abroad.

In cases of fraudulent NRI marriages, the NRI parent's lack of cooperation can also be a problem. They may refuse to participate in court proceedings or provide any financial assistance for the children, leaving the other parent to shoulder the entire burden. This can have a devastating effect on the well-being of the children, as they may lack access to food, clothing, and education.

There is a need for increased cooperation between the Indian and foreign legal systems in order to address child custody issues arising from NRI marriage fraud. To ensure that NRI parents are held accountable for their actions, the Indian government should strengthen its legal framework for handling such cases and establish better communication channels with foreign governments.

In addition, there is a need for increased public awareness of the risks associated with fraudulent NRI marriages. Potential victims should be educated on the warning signs of such unions and given resources to protect themselves and their children. This includes services such as legal aid, counselling, and support groups.

It can be said that child custody issues in cases of fraudulent NRI marriages can be extraordinarily complex, and there is a growing need for laws to address child custody issues within the context of fraudulent NRI marriages. The issue of the *pardesi* husbands dissolving their marriages in their home countries and initiating divorce proceedings abroad has become a source of concern and legal complication. This practise, commonly referred to as "forum shopping," permits NRI husbands to exploit legal loopholes and gain an advantage in divorce cases, leaving spouses, particularly women, vulnerable and at a disadvantage. In this article, we will examine the issues that arise when NRI husbands initiate divorce proceedings abroad.

***Mrs Elizabeth Dinshaw v Mr Arvand M. Dinshaw and Anr***<sup>5</sup>

This case involves the custodial rights of both parents of their minor child, Dustan, following their separation and divorce. The father is an Indian citizen, and the mother is an American citizen of the United States of America. They had a child in the state of Michigan, where they had settled after their wedding. When disagreements between the couple led to their divorce, the mother was awarded custody of the minor child and the father was granted visitation rights. The issue arose when the father surreptitiously took the infant to India from the United States of America. Who is going to custody a minor kid if the father is an Indian citizen residing in a foreign state with a permanent immigration visa, married to a foreign citizen, and their child is born there? Which law will prevail—Indian or foreign? Does the Guardians and Wards Act of 1890 address the guardianship and custodial rights of Indian parents abroad? Were some of the issues that had to be tackled.

J. Balakrishna Eradi delivered the verdict promptly after hearing the arguments of both parties. The petition for a writ was granted, and the court ordered the immediate return of Dustan to his mother, the petitioner. The petitioner was permitted to return with her infant to the United States of America, where the child will become a ward of the court in the state of Michigan. Consequently, the minor's passport was restored to his mother. If advised to do so, the defendant could petition the court in Michigan for a review of the child custody arrangement. According to the orders issued by the Supreme Court of India, the relevant authorities of the Government of India will assist the petitioner in returning her infant to the United States by providing all necessary assistance.

**(B) Problems in navigating the Jurisdiction**

One of the central issues in these cases is the question of jurisdiction. Even when the marriage took place in their home country, NRI husbands frequently file for divorce abroad. This is done in order to take advantage of the legal systems in those nations, which may be more favourable to their interests. This can lead to legal battles in multiple jurisdictions, making it difficult for the spouse to navigate the complex legal processes and protect their rights.

The spouse's financial burden is another issue that arises in such situations. It can be costly to initiate divorce proceedings in a foreign country, especially for a spouse with limited financial resources. They may be required to travel to the foreign country multiple times, retain solicitors in both countries, and bear the costs of legal proceedings. This financial burden can exacerbate

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<sup>5</sup> Mrs Elizabeth Dinshaw v Mr Arvand M. Dinshaw and Anr., 1987 SCC (1) 42

the spouse's disadvantage and place them at a significant disadvantage in the divorce proceedings.

In addition, when divorce proceedings take place in a foreign country, there can be significant cultural and linguistic barriers. The spouse may be unfamiliar with the legal system and lack access to competent legal counsel. They may have trouble understanding the proceedings, translating documents, or effectively presenting their case. This can lead to an unfair power imbalance, with the NRI husband having a distinct advantage due to his familiarity with the legal system and available resources.

When non-resident alien husbands initiate divorce proceedings in foreign countries, child custody becomes a crucial issue. The spouse may fear losing custody of their children, particularly if the foreign country's legal system is biased or unfamiliar with the cultural and social context of the spouse's country of origin. Fighting for custody rights in a foreign jurisdiction can be difficult for the spouse, further complicating the emotional and legal aspects of the divorce.

To address these issues, it is essential to enhance legal cooperation and establish clear jurisdictional guidelines for international divorce cases. Both the domestic and foreign governments must collaborate to ensure fairness and safeguard the rights of all parties involved. They should establish mechanisms for sharing evidence and information and for enforcing judgements across borders. Additionally, legal aid services should be made available to the disadvantaged spouse to ensure that they have access to adequate legal representation and support throughout the divorce proceedings.

Thus, the problems associated with NRI husbands dissolving their marriages in their home country and initiating divorce proceedings abroad demonstrate the need for comprehensive legal reforms and international cooperation. Efforts must be made to protect the rights of all parties, ensure fairness in divorce cases, and provide assistance to the disadvantaged spouse, especially in child custody matters.

### **(C) Dowry**

Under the CrPC, dowry is a social issue for which specific provisions have been enacted to combat its practise and the crimes associated with it. Dowry is the money, property, or gifts given by the bride's family to the groom's family at the time of marriage. In some societies, it is a deeply rooted custom, but it frequently leads to harassment, exploitation, and even violence against women.



The CrPC includes provisions for addressing offences involving dowry. Section 498A<sup>6</sup> addresses cruelty by a husband or his relatives. It states that anyone who subjects a woman to mental or physical cruelty in relation to the demand for dowry shall be punished with imprisonment and/or a fine. This provision is intended to protect women from dowry harassment and deter such conduct.

In addition, Section 406 of the Criminal Code addresses criminal breaches of confidence. If a person entrusted with dowry-related property or valuable security misappropriates or converts it for his own use or disposes of it dishonestly, he or she may face imprisonment and/or a fine. Moreover, the CrPC authorises the police to take action in cases involving dowry. They are permitted to investigate complaints and collect evidence. The Code also grants the courts the authority to issue search warrants and subpoena witnesses in the interest of a fair trial and justice.

It is important to note that dowry is illegal in many countries, including India, where it is considered a criminal offence. The provisions of the Criminal Procedure Code are essential for enforcing the law and holding individuals accountable for dowry-related offences. These provisions provide a legal framework for safeguarding women against the exploitation and abuse associated with dowry demands.

Nevertheless, despite legal measures, the eradication of dowry necessitates a comprehensive strategy that includes social awareness, education, and a shift in mentality. Focus should be placed on empowering women, promoting gender equality, and educating the public on the negative effects of dowry.

Domestic violence is a major problem in India, particularly for women trapped in non-resident Indian marriages. An NRI marriage occurs when an Indian woman marries a person of Indian origin living abroad. While such marriages can provide women with new opportunities and a fresh start, they can also result in physical, emotional, and financial abuse.

Due to their lack of support systems and legal rights in foreign countries, women in NRI marriages are susceptible to abuse and exploitation. Frequently, the husbands entice their wives into marriage with false promises of love and a better life, only to abandon them in a foreign country. These women are frequently cut off from their families, friends, and support networks, making it difficult for them to seek help and escape abuse.

In many instances, the abusers also possess the women's passports and other important documents, limiting their mobility and rendering them dependent on their abusers. In such

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<sup>6</sup> Code of Criminal Procedure, 1973, § 498A, No. 02, Acts of Parliament, 1974 (India)

circumstances, it is challenging for women to seek legal assistance and return to their home country.

The Indian government has taken action to combat domestic violence against women in NRI marriages. The Ministry of Foreign Affairs has established an Integrated Nodal Agency (INA) to assist women experiencing such violence. The INA aids in locating the woman, repatriating her to India, and prosecuting the perpetrator. In addition, the Ministry has launched the 'Bharat ki Beti' campaign to raise awareness of the issue and provide assistance to women.

The Protection of Women from Domestic Violence Act of 2005 offers protection and relief to domestic violence victims, including those in NRI marriages. The Act recognises that domestic violence includes emotional, verbal, and economic abuse in addition to physical abuse. Under the Act, women can seek protection orders, residence orders, and monetary relief. The Act also allows protection orders to be enforced in foreign countries.

Nevertheless, despite the legal measures, many women continue to face formidable obstacles when seeking assistance and escaping abuse. Both in India and abroad, there is a need for greater awareness and education on the subject. Even when they are abroad, the government should work to ensure that women have access to support systems and legal assistance. Efforts should also be made to prevent such abuse by intensifying oversight of NRI marriages and ensuring that women are not lured into such unions with false promises.

Therefore, domestic violence against women in NRI marriages is a serious issue requiring immediate attention. Frequently, women in abusive marriages are isolated from their support networks and reliant on their abusers. The Indian government must take strong measures to safeguard the rights of these women and prevent such abuse from occurring. To ensure that women in NRI marriages are not subjected to violence and exploitation, it is vital to increase awareness and education surrounding the issue.

#### **IV. THE EFFECTIVENESS OF NRI MARRIAGE ACT, 2019: A DEBATE**

The NRI Marriage Act, 2019, also known as the "Registration of Marriage of Non-Resident Indian Bill Act, 2019" aims to regulate NRI marriages in India. The purpose of the act is to protect the rights and interests of Indian women who marry non-resident Indians and to provide them with a legal framework for addressing issues that may arise in such marriages.

The proposed act includes a number of provisions designed to address issues pertaining to NRI marriages. It requires the registration of NRI marriages within 30 days, ensuring that these unions are legally recognised and documented. The act also proposes the establishment of

special courts to handle disputes arising from these marriages, providing a dedicated mechanism for resolving issues pertaining to dowry, abandonment, domestic violence, and property rights.

The 2019 NRI Marriage Act has sparked debate among various parties. It is noticed that NRI marriages, Indian women are frequently subjected to abandonment, domestic violence, and economic exploitation, according to proponents of the act. They believe the act will serve as a deterrent to potential abusers and provide victims with legal recourse.

Critics of the act, however, have raised concerns about its implementation and efficacy. Some argue that enforcing mandatory registration may be difficult given the logistical complications involved in marriages that take place abroad. Others argue that by imposing additional bureaucratic requirements and potentially stigmatising all NRI grooms, the act may discourage genuine NRI marriages.

There are also concerns that the act may not adequately address the underlying problems associated with multicultural marriages, such as dowry demands, cultural differences, and women's lack of awareness of their rights. Critics argue that more comprehensive measures, such as awareness campaigns, pre-marriage counselling, and stricter enforcement of existing laws, are required to address the issues women face in these marriages.

The controversy surrounding the Act highlights the complexities of addressing the difficulties women face in NRI marriages. While the act seeks to provide legal protection and recourse, a multifaceted approach involving social awareness, education, and intergovernmental cooperation is required to effectively address the root causes and protect the rights of women involved in NRI marriages.

## **V. CONCLUSIONS AND SUGGESTIONS**

Several measures can be implemented to combat fraudulent NRI marriages and their associated problems:

- 1. Strengthening the Legal Framework:** Enhance existing laws to impose harsher punishments on those who engage in fraudulent NRI marriages, abandonment, domestic violence, and dowry demands. Implement marriage registration requirements for non-resident aliens and establish special courts to expedite the resolution of disputes.

- 2. Conduct extensive awareness campaigns** to inform prospective brides and their families about the dangers associated with NRI marriages. Concentrate on educating them about their legal rights, the significance of premarital counselling, and the need for comprehensive background checks on prospective grooms.

**3. Counselling Prior to Marriage:** Couples entering NRI marriages should be required to undergo premarital counselling. This can aid in increasing awareness of cultural differences, financial expectations, and legal rights, thereby promoting informed decision-making and decreasing the likelihood of fraud.

**4. Establish a robust system for verifying the credentials and background of NRI grooms,** including their marital status, financial stability, and criminal history. Facilitate the sharing of information and prevent fraudulent marriages through collaboration with embassies, consulates, and international agencies.

**5. Support Networks:** Establish support networks and helplines to provide assistance and direction to women in NRI marriages who are experiencing difficulties. This may include legal assistance, counselling services, and financial assistance to facilitate their return to India in the event of abuse or abandonment.

**6. Bilateral Cooperation:** Strengthen cooperation between Indian and foreign authorities in addressing NRI marriage-related issues. Share information, coordinate investigations, and facilitate the repatriation of victims through collaboration.

In conclusion, combating fraudulent NRI marriages and the associated problems calls for a comprehensive strategy involving legal measures, awareness campaigns, pre-marriage counselling, verification processes, and support networks. It is possible to protect the rights and interests of women entering NRI marriages, deter potential abusers, and provide effective remedies for victims by implementing these recommendations. To protect individuals from the risks and exploitation frequently associated with fraudulent NRI marriages, it is crucial to collaborate with international counterparts and ensure the smooth implementation and enforcement of these safeguards.

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