

NRI MARRIAGE ISSUES AND CHALLENGES WITH SPECIFIC REFERENCE TO CUSTODY AND MAINTENANCE

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Abstract

Non Resident Indian Marriage stands a marriage between non-residential Indian man and women. In NRI marriage the women were taped for sexual and fraudulent marriage. The cases of NRI fraudulent marriage are increase day by day. Due to fraudulent marriage the women are facing problem particularly with custody of children and Maintenance. The existing marriage law are not supposed to protect the rights of women in this regard. The NRI marriages trigger the other socio-legal problem like dowry, harassment, non-consummation of marriage and concealment of marriage by the husband. Due to such activities the marriage is not effectuated and women lost their rights of maintenance. The women experience lack of social and economic security sometime the women were force for illegal activities which leads towards mental and physical harassment by the husband which turn in trauma to wife.

As per personal laws marriage has its unique feature and solemnised for social and family development through sexual union and procreation of children. With the passage of time the nature of marriage is gradually changing and new forms and practice was introduced in all religion. Marriage with NRI partner is considered as prestige point in the society and for the reason the parents compel their children to marry with NRI partners. This kind of practices will trigger the various bad experiences to the partner particularly to women. Once the women fly aboard she compels to behave with the mercy on husband. Sometime the marriage was solemnised for pleasure or for keeping the women like as housemaid servant. The women has no choice to come back to their maternal house secondly they did not right to carry and have custody of children. If they come back to their maternal home they may lose the right of maintenance. Getting maintenance from husband who is NRI is very steady and hard task. Due to these problem women life turns in dark and they suffer various economic problem in their routine life. Due to economic problem they may indulge in illegal activities.

Taking in to consideration the various problem faced by the women in NRI marriage this article has aimed to discuss various problem and issues in NRI marriages. In the article the author tries to discuss various corrupt practices of NRI marriage and its effects on custody of children and maintenance of wife. It also reflects various situations where women compel for NRI marriages. Additionally, the researcher also focuses on various legal provisions relating to custody of children and maintenance. The objective of this analysis is to verify the practical and real problem faces by the women due to NRI marriage.

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Index Terms: NRI Marriage, Custody of child, Maintenance of wife, Legal provision, Violation of Rights etc.

Introduction

Marriage is a beautiful creation where two opposite sex come together and live rest of life with each other's. The notion of marriage has different meaning and status in different religion. as per Hindu law marriage is sacrament which is rest for seven births whereas under Muslim Law the marriage is imply contract and under Christian law the marriage is sacrament and dissolvable union. The practices of marriages and its rituals have its own meaning in the religion. The old concept of marriage is overcome by new forms of marriage. Because, World is global village where movement of every person is easy task. The increase of Indian people in other countries triggers the overseas marriage. The marriage in foreign countries is very common and considered as pride movement for parents and their marriage intended children. NRI marriage is like other marriage because the people are more attract towards these kind of marriage. NRI marriage has same up and downs like common marriage in the country. The practice of NRI marriage is very common in every religion and state. the NRI marriage trigger the various problem like language, lack of knowledge of foreign culture, lack of knowledge of legal system of that country, lack of support by family members etc. The aggravated risks in such marriages occur due to the woman being isolated far away from home in an alien land.² Due to such problem the women did not get any kind of physical and monetary help and suffer various problems in alien country.

NRI marriage typically solemnised between Indian Citizen who is migrated for education, job in foreign countries but their parents are of Indian origin. The NRI marriage promotes various offers promises better future to the family and bridegroom. The people were attracted due to indulgent the people were attracted towards marriage. The NRI marriages solemnised due to cultural and traditional similarities between husband and wife. But after marriage the marriage turns towards sorrow and various matrimonial disputes due to common reasons like, abandonment of spouses, domestic violence, extra-marital relationships, delay in getting visa and immigration, relationship with existing wife etc. In NRI marriage normally women were abandoned by the husband due to many reasons. The unwanted demand of dowry after marriage is root cause behind uninhibitedness of women

NRI marriages disturb the system of marriage and principle of equality³ under the constitution of India which leads towards the violation of right to life and personal liberty⁴ of women. This kind of marriage practice profoundly changes of performance of marriage its divine purpose. Now there is radical change of performing marriage and its purpose, the man and women are marrying for money, for going abroad on the spouse ground, the contract marriages also came in to existence, which even extended to

² Marriages to Overseas Indians a guidance booklet April 2019 Published by Ministry of External Government of India

³ Article 14 of Constitution of India "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India"

⁴ Article 21 of Constitution of India "No person shall be deprived of his life or personal liberty except according to procedure established by law."

living in relationship.⁵ The cases of violation of marriage law are increase due to NRI marriage. The thousands of cases are filed in Indian courts where women are cheated by the husband through NRI marriages. Over 4,700 complaints of women abandoned by NRI husbands received in last 10 years⁶. The increasing ratio of violation of rights of women in NRI marriage triggers the violation of laws relating to marriage.

NRI Marriage and Legal Provisions

For the NRI marriage all laws are applicable which are made under the Indian legal system. The Hindu Marriage Act, 1955, The Special Marriage Act, 1954, The Foreign Marriage Act, 1969, The J&K Hindu Marriage Act, 1980, Goa, Daman and Diu Laws, Quaranic Laws of Muslims, Parsi Marriage and Divorce Act, 1936, The Indian Christian Marriage Act, 1872, The Indian Divorce Act, 1869, Hindu Adoption and Maintenance Act, 1956, The dissolution of Muslim Marriages Act 1939, The divorce Act 1869, The Marriage Laws (Amendment) Act, 2003 (Act No. 50 of 2003). In 2019 then External Affairs Minister introduced path breaking bill on registration of Marriage of NRI with intent to provide better protection and to create more accountability towards Indian women for NRI marriage.

The bill of NRI marriage provides protection to women by compulsory registration of marriage which will serve the purpose the women is legally wedded wife of NRI person. It is mandatory on the person to get marriage registration within 30 days from the date of marriage⁷. Additionally, the marriage will be registered by diplomatic officer who will be by country in foreign countries. If the parties fail to register the marriage within stipulated period his passport will be impound till registration of marriage⁸. A wife can under section 10 of the Passport Act apply for Impounding and/or revocation of the passport of her NRI husband if he failed to respond to the summons by the Indian courts⁹. Moreover if the person fail to comply any provision essential for marriage and protection to women the court has right to issue summons and warrant which will turn proclamation of offender and court has power to declare the person absconded and property of that person may be attached to court¹⁰. The provision of law safeguards the right to women by NRI marriage.

Apart from the above legal provision the Supreme Court of India also clear that, any marriage which has taken place in India may be annulled by the foreign court¹¹. It means the women has right to file a petition for divorce whenever she desired. The wife has right to claim alimony and maintenance in India and foreign countries. The decree passed by Indian court shall be executed in foreign country where her husband is resided¹². As per CPC the decree passed by Indian court shall be executable as would have been a decree passed by that court¹³. The legal provision in India provides protection to wife against harassment of women by NRI marriage. Additionally, at the international level some protection was provided to

⁵ M.Suneel Kumar, NRI marriages – Issues and challenges with special reference to custody of children, available at <https://districts.ecourts.gov.in/sites/default/files/SCJSOMPETA.pdf> access on 26th Feb 2021

⁶ Data is given in Hindustan Times newspaper on SEP 26, 2019

⁷ Section 3. (1) of The Registration Of Marriage Of Non-Resident Indian Bill, 2019

⁸ See Section 4 of The Registration Of Marriage Of Non-Resident Indian Bill, 2019

⁹ Rajiv Tayal vs. Union of India, AIR 2006 Delhi 81

¹⁰ See section 85,86 and 86 A of Cr.P.C. 1973

¹¹ Neerja Saraph vs Jayant V.Saraph, 1994 1994 SCC (6) 461

¹² Neerja Saraph vs Jayant V.Saraph, 1994 1994 SCC (6) 461

¹³ Section 44-A of code of civil procedure, 1908

women in case of any dispute due to NRI marriage. The Hague convention provides protection to women in NRI marriages. The convention provides protection in marriage, custody, right of maintenance of women.

Custody of Children in NRI marriage

Custody of children is closely connected with the concept of Guardianship. Normally the mother is first guardian for child below the age of 7 years. Custody of children below the age of 7 years is always with mother. The father has no right to take custody before 7 years except in special circumstances. The law of guardianship provides bundle of rights to minor and mother. The term custody is not defined precisely under the personal law. In every personal law the first guardian is father but the custody of children is always with the mother irrespective of her status. While giving custody of children the court will always consider the paramount welfare of child¹⁴. The court will not consider the welfare of father and mother welfare of the minor and of the minor alone which is the paramount consideration¹⁵. In order to confirm the custody of children under all personal laws court will consider and decide the case in the interest of better protection and of children. The court would not consider the convenience of guardian or parent's requirement of adjudication while deciding their claim of custody. Apart from the above the court will consider various other factors which are necessary for the overall development of child only¹⁶.

In fact the children are not a mere things or toy for their parents. Merely the chance of living with their child in the civilised society changed its social conditions. The absolute development and welfare of children as human being will be considered during giving custody with parents. If there is dispute between mother and father it will be strike a just and proper balance between requirement of child and their rights¹⁷. There are various kind of custody recognised as per Indian personal laws which includes legal custody, physical custody, bird's nest custody, split custody, alternative custody, third part custody etc. While giving any kind of custody by the court the court always rely on the benefit and welfare of children.

The custody of children in NRI marriage is always challenging task before the court. Much time the parents demand the custody as per foreign laws instead of marriage was solemnized as per Indian laws. The court in various landmark decisions made it clear that, while awarding custody of minor the welfare of child will be consider paramount consideration. The custody will go always with the person with whom the welfare of child. The question of custody may be reviewed *suo motu* by this Court or at the instance of the father or mother and the present order maintained, modified, altered or cancelled¹⁸. Additionally the court always considers the interest of children. Naturally mother is first custodian of child. While giving custody of child, court always relies on the interest of the child and ultimately on the basis of consideration the custody of children will be given to mother¹⁹. In other important case the High Court of Punjab held that, it was in the best interests of the children that the mother who was in Canada be allowed to take back the children from India to Canada where the mother continued to live as they were with their paternal

¹⁴ Sheoli Hati vs. Somnath Das, (2019) 7 SCC 490

¹⁵ Shripad Vad vs. Shripad Vasanji Vad, 1940 SCC On Line Bom. 77

¹⁶ Gaytri Bajaj vs. Jiten Bhalla, (2012) 12 SCC 471

¹⁷ Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42

¹⁸ Marggarate Pulparampil vs Dr. Chacko Pulparampil (AIR 1970 Ker 1)

¹⁹ Surinder Kaur Sandhu vs. Harbax Singh Sandhu, AIR 1984 SC 1224

grandparents in India, the father still being in Canada and as, in any case, the mother had been awarded their custody by a competent court in Canada²⁰. Ordinarily the female child should be allowed to remain with mother so that she can be properly looked after and that it is not desirable to separate two children from each and that therefore custody of mother in India was not illegal custody.²¹

Considering the laws and important observation of Supreme Court of India and various High Courts in India it is clear that, the custody of child is depend on the paramount consideration of welfare of child which always with mother.

Maintenance of wife in NRI marriage

As per the personal law the husband is bound to maintain his legally wedded wife till her death. The all personal laws make it mandatory on the husband. The maintenance is matter of right of very married women subject to her income source. It also did not bar applications for maintenance filed by the wife in her divorce petition²². The wife of NRI marriage has right to file an application under section 125 of Cr.P.C. and other personal laws. Actually the concept of maintenance has different facets under different personal laws. Every personal law has their own provision of maintenance of wife based on religious practices. But in fact every women has right to file a case for maintenance against the husband irrespective of their religious background. Additionally the proposed bill of NRI marriage also provides protection to women to claim maintenance from NRI husband. The law of matrimonial maintenance in India both in family law legislations and the Criminal Procedure Code must be amended for making special provision for providing matrimonial maintenance and settlement of matrimonial property for the abandoned Indian spouse²³. The wife has right get monthly maintenance stationed in India but husband being abroad and earning in foreign currency.²⁴ In other import case the Apex Court held that when compensation has to be paid in India to the claimants of a deceased working abroad, standard of living in India, cost of living in India and other related factors have to be considered and in light of the said facts considering income of the husband in a foreign country further taking note of the fact as to what is the cost of living in the said foreign country, loss of dependence has to be worked out²⁵. In short one can say that, the women of NRI marriage have absolute right to claim maintenance under the personal laws. It is legal right of every woman to claim the same not only from Indian courts but also from foreign courts.

Issues and Challenges of NRI Marriage

The cases of NRI marriage are increase day by day. The Indian people were more attracted towards the NRI marriage not only for settled in foreign countries but also it give pride for them. The parents force the women to marry with NRI person with intent to mark their respect in the society. The practice of NRI marriage in 21st century triggers various problems as issues in the life of women. The problem of application of Indian law, problem of custody, issue of maintenance, divorce etc. were trigger. Due to lack of application of Indian law in foreign countries most of the cases are not reported in the courts and women

²⁰ Kuldeep Sidhu vs. Chanan Singh (AIR 1989 P&H 103)

²¹ Sarita Sharma vs Sushil Sharma ([2000] 1 SCR 915)

²² Veena Kalia vs Jatinder N. Kalia AIR 1996 Del 54

²³ Sri V.V. Srinivasa Murthy, N.R.I., Marriages - Issues And Challenges With Special Reference To Custody Of Children p.g. 6 available at <https://districts.ecourts.gov.in/sites/default/files/4-NRI%20Marriages%20-by%20Sri%20VVS%20Murthy.pdf>

²⁴ United India Insurance vs. Patricia Jean Mahajan, Appeal (civil) 3655-58 of 2002 decided on 8th July, 2002

²⁵ Mr. Rajat Taneja vs Ms. Harmeeta Singh, 142 (2007) DLT 377

face so many problem which leads trauma and physical harassment of women. Basing on the study the author find some issues and challenges in the NRI marriage these are listed below.

- The wife witnessing various kind of mental and physical harassment
- Experience of denial of custody of child
- Denial of maintenance in foreign country
- Divorce
- Force for illegal relationship with other person
- Marriage of husband with other women
- False information about job/profession/ economic condition of husband etc.

This is not exhaustive list of problem and issues in NRI marriage apart from this the women face so many problem in NRI marriages.

Conclusion

Marriage is essential part of person life. The relationship through marriage is basis of creation and formation of new society. The husband and wife relationship boost the interdependency to men and women. As per every religion marriage place important ritual which is made essential for formation of religion. But actually in practice the women treated on inferior position and weak compare to men and she will treat badly after marriage. The harassment of women after marriage is common practice in family. The position of women worst when she marries with NRI person and fly to other countries. In foreign countries she will not able to access and take help from her parents and relative who leads towards to face various form of cruelty and bad treatment by husband. The attraction towards foreign countries leads the harassment and ill treatment to women particularly in NRI marriages. Additionally the women faces so many challenges and issues which sometime leads towards the death of married women.

Time has alarming to make aware every woman about her rights and privileges guaranteed by the personal laws and constitution of India. Every woman has fundamental rights and other civil rights to enjoy her life with fullest satisfaction. The time has come to provide equality to women and protect her right by leaving patriarchal mind-set of man. No doubt the government of India continuously striving for solving the complication in NRI marriage and framed various legislation and signed various international instrument for the protection of women but still it is need to provide more proactive approach against the failure cases of NRI marriages.