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Desertion Of Married Women By NRIs In India: New Form Of Domestic Violence

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Abstract:

Domestic violence is a global issue reaching across national boundaries as well as socio-economic, cultural, racial and class distinctions. It is one of crime against women which is linked to their disadvantageous position in the society. With varied forms of domestic violence such as mental, economic, sexual abuse and physical abuse desertion of married women by their Non-Resident Indian (NRI) husband is an emergent, unique form of violence against women. The problems of women being deserted by their NRI husbands which were earlier restricted to isolated cases has now become a major social problem. The issues of NRI deserted women are of recent origin and because of its sensitive nature and family influence, no concerted efforts have taken place. Moreover, these women do not speak about the violence or crimes they have been subjected to, because of social stigma attached to the divorced or deserted women. Besides, they want to protect their family life.

The study of this paper is confine to the problem and remedial measures to eradicate this new form of domestic violence with some suggestion to provide justice to the victims of desertion.

Keywords: *Violence, Desertion, Diaspora ,Maintenance*

1.Introduction

Domestic violence is a global issue reaching across national boundaries as well as socio-economic, cultural, racial and class distinctions. It is one of crime against women which is linked to their disadvantageous position in the society. With the modernization and urbanization the domestic violence against women has got increased. Domestic violence refers to violence against women especially in matrimonial homes. The varied forms of domestic violence are mental, economic, sexual abuse and physical abuse continues to be perpetrated against her. Prevention of domestic violence is a burning issue all over the world. It is not confine to any one socio-economic, ethnic, religious, racial or age group. Desertionⁱ of married women by their Non-Resident Indian (NRI) husband is an emergent, unique form of violence against women. The problems of women being deserted by their NRI husbands which were earlier restricted to isolated cases has now become a major social problem. The issues of NRI deserted women are of recent origin and because of its sensitive nature and family influence, no concerted efforts have taken place. Moreover, these women do not speak about the violence or crimes they have been subjected to, because of social stigma attached to the divorced or deserted women. Besides, they want to protect their family life.

The study of this paper is confine to the problem and remedial measures to eradicate this new form of domestic violence with some suggestion to provide justice to the victims of desertion.

The problems of women abandoned by NRI bridegroom are not really new. Earlier instances it was mostly bigamous marriage entered into by men under family duress to marry within community. The husband tended to hide their foreign spouse and later abandoned the Indian wife. However, with burgeoning Indian NRI population drawn from different economic and social strata spreading across the globe the problem has become multi-dimensional. Now the cases of women being subjected to cruelty of false marriage, cheating, lying and dowry extortion, mental harassment, beaten up have increased. There is growing evidence today that even as the number of NRI marriages is escalating by thousand every year, with the increasing Indian Diaspora, the number of matrimonial and related disputes in the NRI marriages have also risen proportionately, in fact at most places much more than proportionately, which resulted as nearly two in every ten NRI marriages are fake or end up in desertion or in divorce.ⁱⁱ

2. Meaning of NRI Marriages

Even though this is a gender neutral term, typically the 'NRI Marriages', as generally understood, are between an Indian woman from India and an Indian man residing in another country (thus NRI – Non Resident Indian),ⁱⁱⁱ either as Indian citizen (when he would legally be an 'NRI') or as citizen of that other country (when he would legally be a PIO – Person of Indian Origin).^{iv}

3. Factors responsible for the desertion of Married Women

- In the lure of sending daughter abroad, the parents committed to pay huge sum of money as dowry, both before and after marriage, when they failed to give the desired money. Their daughters are deserted or divorced by NRI's.
- Families sometime totally ignore even the common cautions that are observed in traditional matchmaking.
- The women who went to her husband's home in the other country only to be brutally battered, assaulted, abused both mentally and physically, malnourished, confined and ill-treated by him in several other ways. She is therefore either forced to flee or is forcibly sent back.
- When woman come to know on reaching the country of her NRI husband's residence that he was already married to another woman, whom he continued to live with.
- When women after her marriage come to know that her NRI husband had given false information of his job, immigration status, earning, property, marital status and other material particulars, to con her into the marriage.

4. Matrimonial Laws In India

India, where diversity is the rule rather than an exception, has a multiplicity of matrimonial legislations. The applicability of these laws varies depending upon the religion and domicile of the parties to join the matrimony. Accordingly the laws of marriages can be broadly classified in two categories, first are the religion specific, available to person belonging to a specific religious community and the other are to secular enactments which enable every Indian to avail of their provisions irrespective of the religion. In the former category are:

- The Hindu Marriage Act, 1955;^v

- The J&K Hindu Marriage Act, 1980;^{vi}
- Goa, Daman and Diu Laws;^{vii}
- Quaranic Laws of Muslims;^{viii}
- Parsi Marriage and Divorce Act, 1936;^{ix}
- The Indian Christian Marriage Act, 1872;^x
- The Indian Divorce Act, 1869.^{xi}

And in the latter category are: (i) Foreign Marriage Act, 1969,^{xii} (ii) The Special Marriage Act, 1954.^{xiii} These laws lay down:

- the formalities to be complied with at the time of the solemnization of a marriage;
- conditions relating to the validity of a marriage;
- rights and obligations of the spouses during the subsistence of marriage;
- matrimonial remedies available to the parties in the event of a dispute between them and the specification of the grounds on which they can be availed of;
- rights and obligations of the parties after the settlement of the disputes;
- ancillary matters such as maintenance, custody of children and distribution of spousal property.^{xiv}

As mentioned above the personal laws of each religious community continue to be different in this country, thus making the matrimonial dispute especially in inter-religious marriages, even more difficult to deal with. In this already complex scenario where matrimonial disputes are placed, the legal complications get multiplies manifold when a marriage steps out of the borders of a country and therefore the boundaries of the country's legal system, in a phenomenon that has come to be known as the "NRI Marriages."^{xv}

5.Problems in existing Family Laws

The family law legislations enacted by the Indian Parliament in 1955 and 1956 have left Indians where they were. This has resulted into an influx of family law problems, which have arisen of NRI marriages with no practical solution in the legislative enactments as they exist today.^{xvi} NRI's being the Indian citizen diaspora are subject to Indian Marriage and divorce laws. But the legal system is not yet designed and amended for resolving their new age issues. With the increasing number of such incidents of NRI marriages the outdated legislation serves no purpose.^{xvii}

It is time to amend the existing laws accordingly with the need of time. Especially in the family law arena, limping NRI marriages, abandoned spouses, abducted children, overseas adoption, etc. need statutory solutions.^{xviii}

Following are some of the common instances of the issues that arise in NRI Marriages because of existing flaws of family laws.

- In India the absence of uniform civil laws and the abundance of personal laws of various religious communities make matrimonial disputes extremely difficult to deal with.
- NRI bridegrooms walked out of marriages without fearing the law in the absence of proper laws in India to protect the right of woman married abroad.
- Lack of effective and authentic family laws to deal with matrimonial disputes occurred between spouses when though citizens of India and married in India as per Indian laws, but are outside the jurisdiction of the courts of India.
- Legal recourse is difficult, time consuming, expensive and complicated. Despite the Family Court Act, 1984,^{xix} most state governments did not bother to frame the rules and setup family courts.
- The most conspicuous disturbing trend, however, appears to be the easy dissolution of NRI marriages by the foreign courts even though their solemnization took place in India as per Indian laws. The NRI husband usually manages to get divorce from the courts abroad without the knowledge and consent of his defenceless spouse by presenting false information and fake documents. In many cases such wives were even deprived of maintenance allowances from her husband.
- The marriages are not governed any more by only the Indian legal system but by the far more complex private international laws involving the legal system of the other country too, which makes the situation of these deserted women more miserable.
- There are issues like inter-parental child abduction, inter-country child adoption etc. But practically there is no law on the subject which further added the miseries of females whose kids are kept by the husbands in some cases.
- Some time women denied maintenance in India on the pretext that the marriage had already been dissolved by the court in another country (Provision of Section

19 of the Hindu Adoption and Maintenance Act, 1956 could also be looked into in order to make it applicable in case of deserted daughter-in-laws).^{xx}

Thus, there is a need to address the flaws in law to resolve the problems of deserted NRI married women.

6.Role of Judiciary

The dynamic, progressive and open minded judicial system in the Indian jurisprudence often comes to the rescue of such problems by interpreting the existing laws with a practical application to the new generation problems of immigrant Indians. The Supreme Court of India has decided some cases and laid down the following laws in relation to NRI matrimonial disputes.

7.Y. Narsimharao And Others Vs. Y. Venkatalakshmi^{xxi}

Both husband and wife were married in India under the Hindu Marriage Act. After the marriage the husband went back to USA and obtained a decree of divorce from the State of Missouri. The husband alleged to the court that he was resident of State of Missouri for 90 days preceding the institution of the petition and obtained a divorce decree on the ground that the marriage has been “irretrievable broken down”. The Supreme Court of India held that both on the issues of jurisdiction and on the ground on which the foreign decree was passed were not in accordance with Hindu Marriage Act under which the marriage took place. The Supreme Court, therefore, held that the decree was not enforceable in India.

In this case the court lay down a golden rule that has been repeatedly followed and relied upon in subsequent cases:

“... The jurisdiction assumed by the foreign court as well as the ground on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The only three exceptions to this rule were also laid down by the court itself as follows:

- where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which parties are married;

- where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on the ground available under the matrimonial law under which the parties are married;
- where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.”

In *Smt. Neerja Saraph Vs. Shri Jayanti Vs. Saraph*,^{xxii} the Supreme Court held that although it is a problem of private international law and is not easy to be resolved, but with change in social structure and rise of marriages with NRI, the Union of India may consider enacting a law like the Foreign Judgements (Reciprocal Enforcement) Act, 1933 enacted by the British Parliament under Section 1 in pursuance of which the Government of United Kingdom issued Reciprocal Enforcement of Judgements (India) Order, 1958.

The court recommended that feasibility of a legislation safeguarding interest of women may be examined by incorporating such provisions as:

- no marriage between a NRI and an Indian woman which has taken place in India may be annulled by a foreign court.
- provision may be made for adequate alimony to the wife in the property of the husband both in India and abroad.
- the decree granted by Indian courts may be made executable in foreign courts both in principle of committee and by entering into reciprocal agreement like section 44A of the C.P.C. which makes a foreign decree executable as it would have been a decree passed by that court.
- Right to approach court for injunction or interim order against the husband travelling abroad or taking the children abroad (including impounding of passport).

In *Smt. Seema Vs. Aswini Kumar*,^{xxiii} Supreme Court vide its judgement dated 14.02.2006 has issued the directions that the Central and State Governments shall take the following steps:

- Marriages of all persons who are citizens of Indian belonging to various religions should be compulsory be registered in their respective states.
- The procedure for registration should be notified by the respective states within 3 months.

- Thus, it is now incumbent upon the states to provide for registration of marriages which needs to be implemented in case of NRI marriages taking place in India. Also marriage certificates for NRI marriage should be issued in duplicate copies and must carry social security number of the NRI spouse.

Rajiv Tayal vs. Union of India and Others,^{xxiv} is another judgement which shows that the wife also has an available remedy under section 10 of the Passport Act for Impounding and/or revocation of the passport of her NRI husband if he failed to respond to the summons by the Indian courts.

8. Governmental Interventions

Government has created NRI commission, constituted NRI cells, at the state (where the problem is serious) as well as the central level, to facilitate flow, legal assistance and other necessary action. The Ministry of Overseas Indian Affairs (MOIA), through its guidance booklets, has tried to focus attention on the issue which deserves serious attention. It sets out the legal rights and obligations that govern such marriages.^{xxv} Apart from this, National Commission for Women (NCW), the coordinating agency at the National level for dealing with the issues pertaining to NRI marriages has brought out some print material which describe the problem related to NRI marriages and suggests precautionary do and don'ts for Indian women considering marriage to a NRI.^{xxvi}

Besides this, Government of India has also launched awareness programmes regarding this problem. State governments have also launched a wide publicity through various channels to educate the rural peasantry. NGO's are also playing very active role in educating the people regarding the risk they are taking if they enter into such alliances without proper verification.^{xxvii}

The Government of India has made it mandatory for NRI Indians to fill up a marriage registration form and provide like social security number, passport detail and labour ID cards details. False declaration in these forms will attract punishment under IPC.^{xxviii}

9. Suggestions And Recommendations

Some suggested solutions which emerge from the study are following:

- The Registration of girl's marriage with the NRI under the Hindu Marriage Act with other respective Marriage Act in other religions should be made

compulsory. The Government should setup an agency to undertaken the compulsory registration of all inter country/NRI/foreign marriages.

- Ex-parte divorces taken by NRIs from courts abroad should not be recognized or legally binding in India. The Central Government should bring legislation on the lines of recommendations of the Apex Court.
- The Indian government should enter into bilateral agreement with countries having a large Indian diaspora to take criminal action against offenders on the basis of reciprocity, especially Section 44A of CPC and Section 3 of Maintenance Orders Enforcement Act of 1921 and Section 13 of CPC. Such agreement would enable recognition and enforcement of foreign divorce decrees, maintenance orders, child custody and other foreign orders.
- Only enacting appropriate NRI laws, making corresponding procedural rules to implement them and vesting authority in competent court to adjudicate NRI disputes will provide an effective remedy.
- NRIs will be protected to extradite because India is not member of the Hague Conference on Private International Law.
- There is need to examine the feasibility of invoking the provisions of Extradition Act, 1962. Section 20 provides for return of any person accused of or convicted for an extradition offence, from foreign country to India.
- Police and judiciary needs to be sensitized towards this serious social issue of desertion of married women by NRIs. This would go a long way in providing support and humanitarian treatment to victims and ensure speedy judgements of such cases of violence against women.
- Media can also play an important role by highlighting adverse effect of marrying NRI in a hurry without adequate verification as this could lead to perpetual social and economic poverty.
- There is need to examine the feasibility to recognize “Irretrievable breakdown of Marriage” as a ground for divorce subject to safeguards.
- Creating a NRI commission, constituting NRI cells, deputing designated authorities for NRI problems and forming special NRI committees are not the solution without having statutory sanctions.
- The importance of antecedent verification, awareness of women’s matrimonial rights, maintenance rights, dowry law and information about passport and visa

procedures should be made available and regular awareness campaigns should be conducted to make people aware of these frauds.

- The strict legal measures need to be taken to provide relief to the married women deserted by their NRI husband(s).
- The parliament is in dire need to enact new laws or amend existing laws to define the NRI problems and prescribe solutions. One single comprehensive legislation on matrimonial issues is demand of hour, which if ignored will affect numerous lives in country.

10.Sum Up

Walk-in marriages and walk-out divorces are very common and acceptable in western world. But for Indian girls, facing such a situation is very difficult. From the above study it has been observed that desertion of NRI married women in India and the victims of domestic violence by the husband in other countries need immediate attention from policy makers, government and legislations to protect their rights. By enhancing the status of a married women through her entitlement to right of maintenance, right of inheritance and right of equal share in the property of her-in-law/husband by way of statutory provisions will bring about not only evolutionary but also revolutionary changes, which alter her status from a socio-economic liability to a socio-economic asset.^{xxix}

- i Desertion means to abandon, leave or run away. Deserted woman – means a woman who has been abandoned or left out by her husband after marriage without any time limitation.
- ii www.rediff.com/cms/Print=/news/2008/oct/08. Visited on 27.02.2012.
- iii A non-resident Indian (NRI) is an Indian citizen who has migrated to another country. According to Section 2(P) of Foreign Exchange Regulation Act (FERA): An Indian citizen who stay abroad for employment, business or vocation for any other purpose in circumstances indicating an indefinite period of stay outside India. Notwithstanding, Indian citizens working abroad on assignments with foreign governments/government agencies or International/regional agencies like United Nations Organisations (UNO) (including its affiliates), the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the World Health Organisation (WHO) etc. officials of the Central and State Governments and Public Sector Undertaking deputed abroad on temporary posting are also regarded as NRI's.
- iv "Report on Problems relating to NRI Marriages: Legal and other Interventions on NRI Marriages" by National Commission for Women, New Delhi, 2006, p.2.
- v This act extends to the whole of India except the state of J&K, and applied also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.
- vi Jammu and Kashmir Hindu Marriage Act, 1955, was repealed and in its place a new act called the Jammu and Kashmir Hindu Marriage Act, 1980 (hereinafter called "1980 Act") was enacted by the State Legislature.
- vii Marriages in Goa are compulsorily registered. Only a civil registration of Marriages in Goa is accepted as evidence of marriage. The performance of marriages before the office of Civil Registration was made compulsory and only those registered in this way considered valid under the law.
- viii The Muslim Personal Law (Shariat) Application Act, 1937, The Dissolution of Muslim Marriage Act, 1939, The Muslim Women (Protection of Rights on Divorce) Act, 1986 and the Muslim Women (Protection of Right on Divorce) Rules 1986, applies to Muslims living in India.
- ix The Parsi Marriage and Divorce Act, 1936 as amended in 1988, is an act to amend the law relating to marriages and divorce among the Parsis in India.
- x The Indian Christians Marriage Act, 1872 was enacted to consolidate and amend the law relating to the solemnization of the marriages of Christian in India.
- xi The Divroce Act, 1869, as amended in 2001, is an act to amend the law relating to divorce and matrimonial causes of the persons professing the Christian religion.

- ^{xii} Under this Act, a person has only to be a citizen of India to have a marriage solemnized under this Act outside the territorial limits of India.
- ^{xiii} Act provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce under this Act.
- ^{xiv} Saxena, Poonam Pradhan, (2003) "Matrimonial Laws and Gender Justice," *Journal of the Indian Law Institute*, Vol. 45, July-Dec., p. 337.
- ^{xv} Supra note. 4.
- ^{xvi} Malhotra, Anil, (2007). "Law need to deal with NRI Marriage," *The Hindu*, March 11,
- ^{xvii} Panday, Bimal N. (2008) *Indian and International Law*, Vol. II, pp. 496-497.
- ^{xviii} *Ibid.*
- ^{xix} Parliament has passed the Family Courts Act, 1984. It will be brought into force only when the Central Government issues a notification in the official gazette, and different dates maybe appointed for different states.
- ^{xx} For detail see, The Hindu Adoption and Maintenance Act, 1956.
- ^{xxi} 1991 3 SCC 451, (1991) 2 SCR 821.
- ^{xxii} JT (1994) (4) SC 488, (1994) 6 SCC 461.
- ^{xxiii} 2006 (2) SCC 578, AIR 2006 SC 1158.
- ^{xxiv} 2005 (85) DRJ 146, 124 (2005) DLT 502.
- ^{xxv} "Marriages to Overseas Indian: A Guidance booklet," January 2007, p. 10.
- ^{xxvi} "Initiatives on Safeguards of Deserted NRI Women," Social and Development New In India, Press Information Bureau, Govt. of India, <http://pib.nic.in/newsite/erelease>. Visited on 27.02.2012.
- ^{xxvii} A Study on Desertion of Married Women by Non-Resident Indians in Punjab and Andhra Pradesh by National Institute of Public Cooperation and Child Development, 2007, p. 85.
- ^{xxviii} The Tribune, 02.12.2011.