

NRI SHAM MARRIAGES : A SOCIO - LEGAL PROBLEM IN INDIA : WITH SPECIAL REFERENCE TO PUNJAB

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Abstract

Marriage as a social institution is losing its original concept and the legislative law as well as the courts are aware of this social upheaval. Just as drug abuse and attacks on internal security are external criminal threats to Indian society, matrimonial discord and changing matrimonial ethos are internal destabilizing factors in Hindu civil society. Legislative law and court procedures have a significant role to play in strengthening and streamlining the most important social institution of marriage. Thus, marriage laws and other measures for the welfare of women have become the focus of attention of the Indian legislature as well as Courts at all levels.

Introduction

Modern transport and communication system has reduced the entire world into a global village. Distances are no longer daunting. They do not act as barriers to social interactions even among the distantly located societies. The communication system has vastly improved and people are just a phone call away from each other. This has opened the floodgates of large-scale migration from India to places of opportunities to earn livelihood and improve the economic conditions. However, the migrants do carry their strong family and social traditions along with them. Immediate social environments of the host/adopted societies also affect them, but gradually. In a situation like this, the migrants return to their roots and the land of their forefathers for meeting most of their social needs, particularly for marriages. Most males settled abroad prefer to marry girls from back home. Others succumb, under family pressure, to enter into arranged marriages with girls from India. Most of the time the boy and girl, as in arranged Indian marriages,

have never met before marriage. This leads to very unsavoury and disastrous consequences giving way to many a social problem.

The Problem

Many Indian women who enter into arranged marriages with non-resident Indians are led up to a garden path by the husband's family who project rosy and misleading pictures about their income and status. The girl's family neither has the resources nor is in a position to verify their exaggerated claims. The great hurry in which such marriages are formalised leaves hardly any time to verify the veracity of the claims. Sometimes, the boys may be already married which may or may not be in the knowledge of the boy's family. Greed of dowry may be another reason on the part of the boys to hasten the marriage. The motivation of the girl's family to find a non-resident groom is partly the perceived high and glamorous status of the groom,

though pretentious, and partly their urge for an opening into the promised land to serve as a gateway for the other members of their family. Lure to visit foreign lands may be yet another temptation for the girl's family and their poverty may be a compelling factor in such marriages which propels them to take such a risky course.

Once married the situation changes. The woman is mostly not taken abroad on some pretext or the other. She is asked to wait till the laws/regulations of the foreign land enable her to secure a visa for that land. If she is unlucky, she might become a mother meanwhile and end up as an unpaid maid in her in-laws family toiling from morning to night. She is unable to get any succour from her parental home mostly on account of poverty and sometimes on account of the prevalent belief that after marriage the girl belongs to the in-laws. If at all she is taken abroad, she is ill-treated, made a slave to the extended family of the husband and sometimes even deserted. She is ill equipped to fight such an adversity because of poor skills/education. She is unable to communicate her grievances to anybody because of her near zero familiarity with the local language. Second marriages by the husbands either abroad or sometimes even back home in India either before or after such a marriage are not uncommon. Some NRIs have even made this a flourishing business.

Need For The Study

The number of women deserted by NRI husbands is very large and is on the rise. No study has been done on the extent of this problem or its reasons. The situation, however, is very grim particularly in rural Punjab though at times even the urban and educated populace become victim to this malady. Even daughters of well-placed bureaucrats have been found to be the

victims of this tragedy. Normally, such occurrences were considered to be a social shame and no attempts were made to seek redressals except by way of mediation by family and friends. However, such things having become a common place occurrence, they are beginning to come out of the closet. The magnitude of the problem can be gauged by the fact that around 10,000 women were languishing in Punjab after being deserted by their NRI husbands (Kaur 2003). According to a newspaper report, 42 such cases have been lodged in Jagraon (Punjab) alone; the actual number of cases may be many more. There is, therefore, an urgent need to study the social compulsions/factors that lead parents to marry off their daughters to NRIs who ruin their lives completely. It is also to be examined whether any safeguards can be built at the time of marriage to protect the girls from being abused.

Marriage as a social institution is losing its original concept and the legislative law as well as the courts are aware of this social upheaval. Just as drug abuse and attacks on internal security are external criminal threats to Indian society, matrimonial discord and changing matrimonial ethos are internal destabilizing factors in Hindu civil society. Legislative law and court procedures have a significant role to play in strengthening and streamlining the most important social institution of marriage. Thus, marriage laws and other measures for the welfare of women have become the focus of attention of the Indian legislature as well as Courts at all levels.¹

Objectives

The main objectives of the study are:

- I. identifying the motivating factors and social causes driving the NRI boys and Indian girls or their families into contracting such marriages;

- II. finding out the coping mechanisms of the deserted women and possible ways of rehabilitating them; and
- III. suggesting strategies ó social as well as legal ó for securing justice for such deserted women.

Methodology:

The study is diagnostic in nature and based on the case study approach. The cases were taken from the First Information Reports (FIRs) lodged with the police. Preliminary brain storming sessions were organised to gauge the depth and ramifications of the problem and how to go about the study. District officials, police personnel, researchers, social workers, NGO representatives and affected persons were invited to these sessions and the strategy for the study was finalised on the basis of these discussions.

The Secretary, Social Security, Department of Women & Child Development, Government of Punjab was contacted and his cooperation was sought. The Police Department, Government of Punjab was also contacted. They were requested to initially provide us with the number of FIRs registered in each of the districts of Punjab during the preceding ten years. Two districts having the highest number of FIRs were selected on the basis of this information. Having selected the districts, the Police Department was requested to provide us with the list of FIRs in the two districts. These provided us with the name and address of the deserted girls and also the name and address of the in-laws.

Sample

The study relates to the State of Punjab. A district wise list of cases for which FIRs had been filed was procured (Appendix I). Two

districts that had the largest numbers of FIRs were selected. These were Hoshiarpur and Jalandhar. A sample of 10 cases in each district was to be taken up on the basis of the FIRs registered. A total of 20 case studies were to be taken up, but six additional case studies were conducted. For each of these 26 case studies information was elicited from the deserted girl, her parents, her in-laws and the intermediary who negotiated the marriage, wherever they were available.

At this point it becomes quintessential to understand the expanse of the term media. In order to gather information related to the objectives of this research problem; Role of media in highlighting the plight of Punjabi girls deserted by their NR husbands, the researcher is required to scan the various media options that are used for communication to gather information about the kind of news reports that were being published to highlight this social crime against women. The researcher as classified the various typed of media into three broad categories and these categories have further been divided into sub-categories listed as follows.

Print Media

- National Dailies (in English)
- Vernacular Newspaper (in Punjabi)
- Community Newspapers (for Punjabi Diaspora)
- Information Booklets (official)

Electronic Media

- TV
- Radio
- Films (especially Punjabi language)

New Media

- News-based websites
- Blogs
- Institutional Websites (NCW, NRHM, Punjab Government)

Results and Findings:

The problem of Punjabi girls being abandoned by their NRIgrooms is rising at an alarming rate. In Punjab, the Doaba regionhas the most number of such fraud marriages. Accordingto the NCW nearly, 15,000 victims are believed to be presentin Jalandhar, Hoshiarpur and Kapurthala districts alone. Theexact number of such victims is expected to be much higher. Several girls prefer to grieve in isolation, since they feel it is asocial stigma to speak about their sorrows. They fear that theywould become a laughing stock for the society and their familieswould be disgraced. Hence, they suffer in silence. Initiallyonly a few girls come forward with their stories and sharedthem with the media. As a result of the positive role played bythe media, more girls came forward and shared their shockingstories of deceit at the hands of their NRI husbands whohad promised them a luxurious life abroad.Most of these marriageswere lavish and the girlsøfamilies were forced to provideexpensive gifts to the NRI grooms and their relatives. Themedias has provided the much needed platform to the victims.The society has been forced to take notice and these girls nowdo not have to suffer in silence.

Hindu marriages are socially pompous and elaborate affairs involving a whole lot of considerations and preparations in match-making, including caste, horoscope, family status, and dowry and personal considerations regarding economic well-being and profession of the marrying parties. Each of these steps has a bearing on the stability of married life.

The phenomenon of run-away husbands, abandoned wife and limping marriages of NRI spouses has become of serious socio-legal malady, much like female foeticide, that these twin subjects are being discussed

in seminars as well as in court rooms these days.²

Matrimonial jurisprudence involving questions of conflict of laws, changing sociological perceptions about marriage and divorce and statutory innovations are widening their area of influence. Dents in marriage-bond, desertion, judicial separation, divorce, adultery, cruelty, domestic, physical and mental violence, maintenance, remarriage, joint property of husband and wife, Hindu succession, share of the girl child in the property of parents, necessity of common civil code have all become critical topics to be analyze by jurists.³

There is a close relation between law and life and who knows it better than a betrayed spouse? Matrimonial cases are a class apart as these not only involve law points but also the humane aspects of social laws bordering on sociology, psychology and social welfare of future siblings. But alas! It is easier said than done, so a definite framework of legal procedures must be evolved and clearly defined with flexibility for individual variations.

The attitude of the learned judges these days is to lean towards reconciliation in matrimonial matters than supporting the adversarial atmosphere. The enforcement service of court orders still needs to be strengthened. Institutions and organizations engage in social welfare should be involved and encouraged.

Various Acts under which Marriage can be Solemnized in India

These NRI marriages may be solemnized either under the Hindu Marriage Act, 1955, The Special Marriage Act, 1954 or The Foreign Marriage Act 1969 or any other personal law governing the spouses.⁴

The marriage under The Hindu Marriage Act, 1955 can be solemnized only between two Hindus as defined in Section 2, who are citizens of India. This marriage can be registered under the same Act under Section 8 or even under the Special Marriage Act 1954, Section 15 but such registration by itself does not confer on the spouses all the rights guaranteed under the Special Marriage Act.⁵

The Special Marriage Act, 1954 is a secular Act where religion or caste of the spouses is legally not relevant as Section 4 has used the words "any two persons". This even excludes the need of wedding persons to be Indian Citizens, so any two foreigners, namely two non-citizens domiciled in India may have their marriage solemnized under the Special Marriage Act. The Special Marriage Act, 1954 is in reality an Indian Marriage Act which applies to all Indians irrespective of caste, creed or religion. The concept of marriage under this Act is monogamous, that is union for life, dissolvable by judicial authority of law.

In some cases the marriage may even be under The Foreign Marriage Act, 1969, which is just an extension of The Special Marriage Act except that marriage under this Act is between parties one of whom at least is a citizen of India by fulfilling the conditions laid down in Section 4 of the Act. Such a marriage may have been solemnized in India or before a marriage officer in a foreign country.

This Act too, like other Acts, is a monogamous marriage Act where bigamy is void and punishable under Section 19. Under this Act, Foreign marriages solemnized under other laws can also be registered under Section 17.

Marriages to be celebrated in foreign country, where at least one of the parties is a citizen of India, effective and elaborate provisions have been made under the Foreign Marriage Act, 1969 and the question of domicile in India would no longer be relevant. Considerable uncertainty as to the law to such marriages has now been removed. This Act provides that marriages where one of the parties to the marriage is an Indian citizen and the other party is a Non-Indian, would be governed by the provisions of the Special Marriage Act, 1954. The court in this country and in some other countries may therefore, invoke the provisions of the Special Marriage Act of 1954 while dealing with dissolution of marriages which are covered by the Foreign Marriages Act, 1969.

Sham Marriages: What Actually Is It?

A sham or fake marriage is an "unwritten contract" in which huge amount of money exchange hands to send a boy or a girl abroad. The sham marriage is done to hoodwink immigration officials and abroad by gaining immigration rights for one of the spouses.

The trend of sham marriages picked up in the state (Punjab) following introduction of stricter immigration laws by the developed countries. Sham marriages have become a common method for allowing a foreigner to live and possibly gain citizenship, in the country desired by their spouse.

The couple marries with the knowledge that the marriage is solely for the purpose of obtaining the favourable immigration status. The marriage is arranged as a business transaction (i.e. a substantial amount of money is paid) and occurs more commonly when the Punjabi NRI are visiting their country.⁷

NRI Youths in Canada Take to Sham Marriages:

Even though the trend of sham marriages among Punjabis has ruined lives of several hundred girls in the state, still the lust for going abroad in search of greener pastures among the Punjabis does not seem to be dying down.

Drug addiction and economic slowdown is prompting boys and girls of Indian origin settled in Canada to take the route of sham marriage. These NRIs are taking full advantages of Punjabis' craze for greener pasture and ripping them off for Lakh of rupees.

There is a huge list of unrestricted cases against the gang where the victim did not report the matter to the police fearing social embarrassment, such agents have spread all across the state and authorities of a few marriage places in sub-urban areas are also operating as agents have pocketed a whopping Rs. 10 crore by conducting nearly 25 such illegal (sham) marriages in the past three years.

Here are some Cases of Sham Marriages

Money Taken From Residents

Parminder Singh S/o Amarjeet Singh Gill Village, who got married on October 18, 2008, duped Rs. 35 Lakh. (The marriage was solemnized and the first installment was paid. Subsequently, the second installment was paid on October 23, 2008, when the marriage was registered).

Gurnam Singh of Gurre Village, who got married on August 28, 2008, spent Rs. 28 Lakh.

Jagroop Singh of Bodhe Badni Village in Moga, who got married on April 14, 2008, spent Rs. 42 Lakh.

Gurwinder Singh Tussa Village near Mullanpur, who got married on May 5, 2008, spent Rs. 31 Lakh.

Jasvir Kaur Khadoor Village near Jodhan, who got married on May 5, 2009, spent Rs. 26 Lakh.

Rajwinder Kaur of Sujapur Village, who got married on October 23, 2010, paid Rs. 20 Lakh.

Amandeep Kaur of Bardeke Village, who got married on May 7, 2007, paid Rs. 25 Lakh and 21 Tola Gold ornaments.

Maninder Kaur of Ceelo Anni spent Rs. 33 Lakh.⁸

However no data is available about the number of dispute taking place in the state. SAD leader Balwant Singh Ramowalia said his NGO Dignity of Daughters, keeps receiving such cases of and on. He said: "The Trend of fake marriage have picked up in the past five years. The economic down trend in Europe and western countries has also led to increase in sham marriages. Nearly 1000 contract marriages are taking place in the state every year. We receive nearly 110 cases, which ultimately end in dispute."

"According to the new law in Canada, the newlywed spouse would have to wait for nearly two years to get a permanent residency (PR). The spouse will have to wait for five years from the day they are granted PR status before they can, in turn, sponsor a new partner."

The role of the community newspapers that are based abroad is an avenue that has not been used effectively. These community news

papers are generally read by the Indian Diaspora as they provide them a sense of belonging in the foreignland. When these community newspapers report the wrong doings of the NRIs then the culprit and his family members are disgraced. They are forced to answer the upsetting questions of their social group not only in India but also abroad. This would ensure that the social crime committed in India does not go unnoticed in the country of their residence. This fear of the social stigma can act as a deterrent and discourage people from committing similar acts. Another important contribution of these community newspapers can be in the form of a platform for the Punjabi girl who has been cheated by her NRI husband who has snapped all ties with her and she fears that he might file for ex parte divorce. Such a victim should be encouraged to spill the beans. Some of the popular Punjabi community newspapers areas follow.

- Punjab Infoline
- Khulisoch
- Ajit Weekly
- Sanjh Savera
- Quami Ekta
- Sikh Times
- Sikh Shahadat
- Mehram Publication
- Sahitkar.com
- Handard Weekly
- Deshvidesh Times
- Sher-e-Punjab
- The Punjabi Star
- Punjab Mail
- Wichaar
- Media Punjab
- Europe Samachar
- Europe Vich Punjabi
- Daily Khushboo Sabhyachar Di
- Punjab Di Awaaz
- Indo-Canadian Times

The Role of Films:

Most of the people who select an NRI groom for their daughter have themselves never travelled to countries like Canada, America and Australia. All that they perceive about these developed countries is largely based on the inputs provided by the various media platforms. Hence, the media has contributed in forming a general perception that in the developed countries life is a bed of roses. The developed countries are the lands where the rags to riches stories are very common. And if you want to hit jackpot, get rid of your miseries and lead a luxurious life then you must migrate. As a result, when people find an opportunity (NRI match for their daughter) to migrate to the foreign lands, it turns into a temptation only a few can resist. Through our films the media has largely portrayed NRIs as rich, affluent and cultured people. The readers are also swept off their feet when they read about the grand and lavish weddings of the NRIs. It is the duty of the media to write about not only what the people want to know but also write about the people should know.

Important Websites to Look Out For:

The internet is a storehouse of a lot of information related to the problem. The victims and their families should explore this avenue in their fight for justice.

- wcd.nic.in/dowryprohibitionact.htm
- ncw.nic.in/PDFFiles/NRIDoDont.pdf
- India.gov.in/allannouncements/16029.pdf
- passport.gov.in/passport_act.pdf

Conclusion and Suggestions:

• Despite the fact that a large number of girls are being dumped by the NRI grooms every year in Punjab, still a few families are searching for them. •

It was not possible for the police to eradicate the menace from society. The parents of the girls shall also think twice and verify credentials of the NRIs before getting their daughters to them.⁹

NRI marriages are essentially inter-country marriages with ramifications of legal validity, jurisdiction, and recognition of foreign decree and enforcement of law. There is no legislative law in India compared to Private International Law or Conflict of Law as in some western countries.¹⁰

The problems faces by law enforcing agencies in dealing with the complaints of NRI marriages include lack of clarity in defining jurisdictional boundaries, variations in legal systems of different countries and the physical distance between the victims' home country and her/his matrimonial home.

In family and marriage cases, Indian courts rely upon Ss. 13 and 14 of the Civil Procedure Code, 1980 and Section 44-A of the Civil Procedure Code, 1908. The former deals with the competence to adjudicate and jurisdiction of a foreign court as to their conclusiveness and the later deals with the presumption of a decree by a foreign court for its execution and the different decisions rendered by the High Courts and Supreme Court of India have been mostly on the issue of desertion of wife by an NRI husband. Most of the cases are related to the enforcement of foreign decrees and that took a foreign decree obtained by the NRI husband, divorcing his Indian domiciled wife. The apex court has not been confronted with any choice of law situation so far.

The need of the hour is proper implementation of existing laws in the wake of Supreme Court guidelines, framing of

proper regulations, creation of Family Courts and Fast Track Courts and amendment of existing statutory legislation on marriage and other family laws; enact laws to address the various issues that arise in NRI marriages, specifically covering issue like validity of the marriages in the NRI context choice of personal law of marriage and divorce, jurisdiction of court, enforceability of foreign courts orders, offences relating to marriages and the right of the abandoned spouse to property. Registration of marriage should be made compulsory and an entry should be made in the passport of the married persons including name and other details of the spouse. Suppression of information regarding marital status by NRI grooms should be dealt with under criminal law.¹¹

In the light of the various findings of the study we may summarise that media can play a significant role in highlighting the plight of the Punjabi girls abandoned by their NRI husbands. The media can create awareness regarding the issue. The news reports should go beyond just stating the facts, it should be descriptive and analytical in nature. To ensure that the initial news report does not lose its sting and a public opinion is formed, the news should be supported with follow-up stories. This would sensitise the public and the victims would not be ridiculed by the society. The showcasing of specific intervention by the government and delivering of justice to the victims can kindle hope in the girls who are suffering for no fault of their own. The regional media has an edge over the English media as the regional media communicates in the language that a majority of the people understand. The previous efforts to use the media have generated positive results. This has created an environment for the prevention of this crime and provided a ray of hope for the victims and their families. Now that the society has started to take notice and speak up about this sensitive issue the future does not appear gloomy.¹²

Notes & References:

1. Refer, Dr. Monica Chawla "Non-Resident Indians and Marriage under Private International Law" Civil and Military Law Journal, p. 194.
 2. *Id.*
 3. *Ibid.*
 4. Marian Eva v. State of H.P., AIR 1993 HP 7.
 5. *Supra Note*, 1 and p. 195.
 6. *Id.*
 7. The Tribune, 10th May, 2012, p.1.
 8. Tribune News Service (TNS) The Tribune, 10th May, 2012, p.1.
 9. *Supra Note*, 7.
 10. See, Dr. Monica Chawla "Non-Resident Indians and Marriage under Private International Law" Civil and Military Law Journal, pp. 201-202.
 11. *Id.*
 12. See, Amanpreet Randhawa, "Role of Media in Highlighting the Plight of Punjabi Girls Deserted By Their NRI Husbands" Paripex-Indian Journal of Research, pp. 45-46, Vol. 3 Issue 12, December, 2014.
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Web Resources

1. http://en.wikipedia.org/wiki/Bani_Ishaq_Da_Kalma
2. <http://www.welcome-nri.com/info/projects>
3. http://ncw.nic.in/PDFFiles/NRI_DoDont.pdf
4. http://passport.gov.in/passport_act.pdf
5. <http://moia.gov.in/>
6. <http://www.punjabgovt.gov.in>
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