

N.R.I MARRIAGE: NUANCES AND INTRICACIES

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I. INTRODUCTION

Plight of women and their exploitation both inside and outside the house socially and economically is ancient. Mass of literature has been written to elevate their status. But a new social evil is surfacing in the cases of N.R.I. marriages, which raises an important issue as how to protect the right and interest of women who are deserted by non-resident Indians on decree of annulment obtained from foreign courts¹

‘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), 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).

Any matrimonial column of any newspaper or magazine would carry a column that a NRI seeks Indian bride without any demand. The attraction of getting a groom and that too serving or earning abroad without dowry, lures many specially from middle class. Even otherwise parental insistence for Indian bride in the hope that his son is not lost for ever is not uncommon. Result, at times, is matrimonial alliance by a reluctant husband to assuage the sentiments of his parent. Victim is the helpless, poor, educated girl, normally, of a middle class family with dreams of foreign land.

In the eagerness not to let go of such lucrative marriage offer, the families totally ignores even the common cautions that are observed in traditional matchmaking. They also ignore that in case of things going wrong in an NRI marriage, the woman’s recourse to justice is greatly constrained and complex. The aggravated risk in such marriage is the woman is being ‘isolated’ far away from home in an alien land, facing language constraints, communication problems, lack of proper information about the local criminal justice, police and legal system. The situation is

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¹ *Neeraja Saraph v. Jayant V. Saraph*, (1994) 6 SCC 461.

worsened by lack of support network of friends and family and monetary constraints which leaves the deserted wife completely helpless and stranded.²

II. COMMON ISSUES IN N.R.I. MARRIAGES

Following are some of the typical instances of the issues that could arise in NRI marriages

1. Woman married to an NRI who is abandoned even before being taken by her husband to the foreign country of his residence.
2. Woman brutally battered, assaulted, abused both mentally and physically, malnourished, confined and ill treated and forced to flee or was forcibly sent back.
3. A quick engagement, followed by a massive wedding, a huge dowry and a honeymoon, after which the NRI husband flies out of India while the wife waits for her visa. The menace of 'honeymoon brides' is a big problem to deal with as over 20,000 brides have not seen their husbands after their honeymoon.
4. In some cases, the children were abducted or forcibly taken away from the woman.
5. Woman who reached the foreign country of her husband's residence and waited at the international airport there only to find that her husband would not turn up at all.
6. Abandoned in the foreign country with absolutely no support or means of sustenance or escape and without even the legal permission to stay on in that country.
7. NRI husband was already married in the other country to another woman
8. Husband had given false information on any or all of the following: his job, immigration status, earning, property, marital status and other material particulars, to con her into the marriage.
9. Husband, taking advantage of more lenient divorce grounds in other legal systems, obtained ex-parte decree of divorce in the foreign country through fraudulent representations and/or behind her back, without her knowledge

² See, REPORT ON 'PROBLEMS RELATING TO NRI MARRIAGES', National Commission for Women and MARRIAGES TO OVERSEAS INDIAN, Ministry of Overseas Indian Affairs, Government of India, New Delhi.

10. Woman was denied maintenance in India on the pretext that the marriage had already been dissolved by the court in another country.
11. Woman who approached the court, either in India or in the other country, for maintenance or divorce but repeatedly encountered technical legal obstacles related to jurisdiction of courts, service of notices or orders, or enforcement of orders or learnt of the husband commencing simultaneous retaliatory legal proceeding in the other country.³

II. ARE INDIAN COURTS BOUND TO GIVE RECOGNITION TO DIVORCE DECREES GRANTED BY FOREIGN COURTS⁴

The answer to the question as regards the recognition to be accorded to the foreign decree of divorce must depend principally on the rules of our Private International Law. It is a well-recognized principle that "Private international law is not the same in all countries. There is no system of Private international law which can claim universal recognition and that explains why Cheshire, for example, says that his book is concerned solely with that system which obtains in England, that is to say, with the rules that guide an English court whenever it is seized of a case that contains some foreign element. The same emphasis can be seen in the works of other celebrated writers like Graveson, Dicey & Morris, and Martin Wolff. Speaking of the "English conflict of laws" Graveson says: "Almost every country in the modern world has not only its own system of municipal law differing materially from those of its neighbors, but also its own system of conflict of laws...." According to Dicey & Morris, "The conflict of laws exists because there are different systems of domestic law. But systems of the conflict of laws also differ". Martin Wolf advocates the same point of view thus: "Today undoubtedly Private International Law is National law. There exists an English private international law as distinct from a French, a German, an Italian private international law. The rules on the conflict of laws in the various countries differ nearly as much from each other as do those on internal (municipal) law". It is thus a truism to say that whether it is a problem of municipal law or of conflict of laws, every case which comes before an Indian court must be decided in accordance with Indian law. It is another matter that the Indian conflict of laws may

³ *Ibid.*

⁴ *Satya v. Teja Singh*, AIR 1975 SC 105.

require that the law of a foreign country ought to be applied in a given situation for deciding a case which contains a foreign element. Such a recognition is accorded not as an act of courtesy but on considerations of justice. It is implicit in that process, that the foreign law must not offend against our public policy.

We cannot therefore adopt mechanically the rules of Private International Law evolved by other countries. These principles vary greatly and are molded by the distinctive social, political and economic conditions obtaining in these countries. Questions relating to the personal status of a party depend in England and North America upon the law of his domicile, but in France, Italy, Spain and most of the other European countries upon the law of his nationality. Principles governing matters within the divorce jurisdiction are so conflicting in different countries that not unoften a man and a woman are husband and wife in one jurisdiction but treated as divorced in another jurisdiction.

In determining whether a divorce decree will be recognized in another jurisdiction as a matter of comity, public policy and good morals may be considered. No country is bound by comity to give effect in its courts to divorce laws of another country which are repugnant to its own laws and public policy. A spouse who goes to a State or country other than that of the matrimonial domicile for the sole purpose of obtaining a divorce perpetrates a fraud, and the judgment is not binding on the courts of other States.

The English law on the subject has grown out of a maze of domiciliary wilderness but English courts have, by and large, come to adopt the same criteria as the American courts for denying validity to foreign decrees of divorce. Recent legislative changes have weakened the authority of some of the archaic rules of English law like the one by which the wife's domicile follows that of the husband; a rule described by Lord Denning M. R.⁵ as "the last barbarous relic of a wife's servitude". The High Court has leaned on that rule heavily but in the view which we are disposed to take, the rule will have not relevance. The wife's choice of a domicile may be fettered by the husband's domicile but that means by a real, not a feigned domicile.

⁵ *Formosa v. Formosa*, [1962] (3) ALL ER 419.

Such decisions caused great hardship to deserted wives for they had to seek the husband in his domicile to obtain against him a decree of divorce recognizable in England. During something like a game of chess between the judiciary and the legislature, the rigor of the rule regarding the dominance of domicile was reduced by frequent legislative interventions

These principles of the American and English conflict of laws are not to be adopted blindly by Indian courts. Our notions of a genuine divorce and of substantial justice and the distinctive principles of our public policy must determine the rules of our Private International Law. But an awareness of foreign law in a parallel jurisdiction would be a useful guideline in determining these rules. We are sovereign with our territory but “it is no derogation of sovereignty to take account of foreign law” and as said by Cardozo J. “We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home”; and we shall not brush aside foreign judicial processes unless doing so “would violate some fundamental principle of justice, some prevalent conception of good morals, some deep rooted tradition of the common weal.”⁶

Our legislature ought to find a solution to such schizoid situations as the British Parliament has, to a large extent, done by passing the Recognition of Divorces and Legal Separations Act, 1971. Perhaps, the International Hague Convention of 1970 which contains a comprehensive scheme for relieving the confusion caused by differing systems of conflict of laws may serve as a model. But any such law shall have to provide for the non-recognition of foreign decrees procured by fraud bearing on jurisdictional facts as also for the non-recognition of decrees, the recognition of which would be contrary to our public policy. Until then the courts shall have to exercise a residual discretion to avoid flagrant injustice for, no rule of private international law could compel a wife to submit to a decree procured by the husband by trickery. Such decrees offend against our notions of substantial justice.

IV. CONCLUSION

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

⁶ *Loucks v. Standard Oil Cg. of New York*, (1918) 224 NY 99.

like the Foreign Judgments (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 Judgments (India) Order, 1958. Apart from it there are other enactments such as Indian and Colonial Divorce Jurisdiction Act, 1940 which safeguard the interest so far United Kingdom is concerned. But the rule of domicile replacing the nationality rule in most of the countries for assumption of jurisdiction and granting relief in matrimonial matters has resulted in conflict of laws. What this domicile rule is not necessary to be gone into. But feasibility of a legislation safeguarding interest of women may be examined by incorporating such provisions as:

- (1) no marriage between a NRI and an Indian woman which has taken place in India may be annulled by a foreign court;
- (2) provision may be made for adequate alimony to the wife in the property of the husband both in India and abroad.
- (3) the decree granted by Indian courts may be made executable in foreign courts both on principle of comity and by entering into reciprocal agreements like Section 44A of the Civil Procedure Code which makes a foreign decree executable as it would have been a decree passed by that court.⁷

However, it is advisable for a concerned person to check the NRI groom's personal information particulars such as :

1. Marital status: if he is single, divorced, separated; Employment details : qualification and post, salary, address of office, employer and their credentials; Immigration status: type of visa, eligibility to take spouse to the other country
2. Financial status, Properties said to be owned by him in India, residence address, family background, Visa, passport, Voter or alien registration card, Social security number.
3. Have regular and meaningful communication with the man and his family over a period. Make sure that the two persons to be married meet personally and interact freely and frankly in comfortable atmosphere to make up their minds.
4. Insist on a registered marriage along with the religious marriage to be solemnized in India with adequate proof like photographs etc.

⁷ *Supra* n. 1.

5. Insist on keeping in touch with the bride even after the marriage on phone and e-mail and through local friends and relatives and get alert if at any point there is any reluctance or difficulty in this.
6. Equip the woman with knowledge of the laws of the foreign country and the rights she enjoys there, especially against any form of abuse or neglect, including domestic violence and if she can get residence permit and other protections as a victim of domestic violence or abuse.
7. Inform people you trust if you face domestic violence in any form - physical, emotional, financial, and sexual. Keep a log of all acts of violence you face.
8. Have a bank account in your exclusive name near your residence that you can use in case of any emergency.
9. Keep a list of contact details of neighbors, friends, relatives, husband's employer, police, ambulance, and the Indian embassy or high commission, if abroad.
10. Leave photocopies of all important documents including your passport, visa, bank and property documents, marriage certificate and other essential papers and phone numbers with parents or other trustworthy people in India or abroad. In case they are lost/forcibly taken away/mutilated/destroyed by or at the instance of spouse or in-laws, the copies will come in handy; if possible, keep a scanned soft copy with you and any person you trust so that the same can be retrieved if necessary.
11. Try to keep a photocopy of husband's personal details including passport, visa, property details, license number, social security number, voter or alien registration card, among others.⁸

Similarly, it is advisable for the concerned person to take following precautions by not doing the following mentioned things:-

1. Do not take any decision in haste and do not get pressurized to do so for any reason whatsoever.
2. Do not make matrimony a passage to greener pastures abroad by falling prey to lucrative schemes to migrate to another country or promises of getting green card through marriage.
3. Do not finalize marriage matters, without meeting the family or over long distance, on phone or through e-mails.

⁸ *Supra* n. 2.

4. Do not get pressurized in taking impulsive decisions of marriage proposal with an NRI just because it appears too perfect to be true.
5. Do not negotiate your daughter's marriage via a bureau, agent or middleman or trust them blindly.
6. In case matrimonial negotiations takes place via matrimonial sites, verify the details and authenticity of particulars submitted about the groom.
7. Do not finalize matters in secrecy – publishing the proposal among the near and dear ones, friends and close relatives could help you in getting vital information which you may not be able to collect otherwise.
8. Do not agree on the marriage taking place in the foreign country.
9. Do not be coerced into acceding to dowry or any other unreasonable demand made by or on behalf of your husband in order to end your desertion. Inform officials immediately if being forced to do so.
10. Do not remain quiet, if faced with desertion or any other cruelty by husband and/or in-laws whether in India or abroad, approach the authorities.
11. Do not forge/fabricate papers or legal documents for somehow going abroad and do not become a party to illegal acts under pressure, allurements or instigation from anyone.
12. Do not be forced into participating in legal action in country of husband's residence. You can file a case in India and cannot be forced to defend a case filed against you by husband abroad - especially divorce. India has more women-friendly laws than many other countries.
13. Do not panic if your husband obtains divorce in the other country with or without your knowledge since it is not valid in India. Its valid in India only if you participate in that case.
14. Do not defame husband and/or in-laws without evidence as they may slap a defamation case against you. Speak only the facts at the right fora - before police/lawyer/social worker/court etc.
15. Do not be vindictive and take law in your hands. Never resort to violence or any illegal act to settle scores with deserter husband and/or in-laws. Approach government authorities in case of any problem in the marriage. Do not file false/frivolous complaint.⁹

⁹ *Ibid.*