



Marriage Law for Non Resident Indians (NRI)

Nowadays, men and women of this land to whom different personal laws are applicable are frequently relocating to different countries either for their permanent abode or temporary residence. However, this relocation, temporary or permanent, has its own side effects on the matrimonial relationships, creating various kinds of matrimonial disputes ruining the family and peace.

The problems faced by the NRI women in foreign jurisdictions include instances of abandonment of wife by the NRI husband on a foreign land, the woman being alone on the foreign land, is assaulted and abused both physically and mentally and is malnourished, confined and ill-treated by the husband and/or his relatives, the woman harassed for dowry. In most of the cases, the husband obtains an ex-parte divorce decree in the foreign country behind her back and may also not give her the custody of her children. The woman is denied maintenance on the ground that her marriage has been dissolved by a foreign court. She may also face various other legal impediments relating to the issues of private international law such as those relating to jurisdictional issues, service of notice, enforcement of orders and decrees etc.

Recently, prompted by increasing numbers of reports of Indian women being trapped in fraudulent marriages with NRIs, an initiative has been taken by the External Affairs Minister, Ms. Sushma Swaraj, to combat these problems, by introducing a Bill in Rajya Sabha titled as " The Registration of Marriage of Non-Resident Indian Bill, 2019".

[1] This Legislation seeks to provide for compulsory registration of marriage for better enforcement of rights of deserted spouses under various family laws. This bill proposes to provide for compulsory registration of marriage by Non- Resident a within a period of 30 days from the date of marriage. This Bill, by proposing to amend the provisions of the Passport Act 1967, empower the Authority to impound or cause to impound the passport or travel document of a non-resident Indian, if it is brought to this notice that the non-resident Indian has not registered his marriage within a period of 30 days from the date of marriage. This bill, further proposes to amend the provisions of the Code of Criminal procedure, 1973, empower the Court for issuance of summons, warrants through the specifically designed website of Ministry of External Affairs of Government of India. It further provides for attachment of properties, both movable or immovable, belonging to a proclaimed offender.

[2] However, it seems that the Bill has been introduced in haste and without addressing the various other matrimonial problems being faced by the NRIs due to the lack of effective legal provisions in India. The Bill fails to consider in totality the recommendations of the Law Commission in its Report No. 219 dated 30.03.2007, titled as "Need for family law legislations for non resident Indians". It fails to provide for any



provision for maintenance and alimony of spouses, child custody and child support.

[3] Till now, in India, there is not even a single legislation governing the matrimonial laws applicable to the NRIs. However, the open minded Indian judicial system has often come to resolve such problems. For instance, in the case of Smt. Neerja Saraph vs. Jayanth V. Saraph , 1994 SCC (6) 461, the Supreme Court observed, "Although it is a problem of Private International Law and is not easy to resolve, but with change in social structure and rise of marriages with NRIs the Union of India may consider enacting a law 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 interests so far as 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 is this domicile rule is not necessary to be gone into. But feasibility of a legislation safeguarding interests 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 44-A of the Civil Procedure Code which makes a foreign decree executable as it would have been a decree passed by that court.

The Supreme Court of India has held that even where a foreign court has taken a particular view on any aspect concerning the welfare of a minor, the Indian courts should objectively and independently review the matter. It was held that the judgment by a foreign court should only be taken as input for its final adjudication. In this case, the Apex Court allowed the trial court in India to hear the mother's application for custody of the child.



Therefore, in view of the aforesaid Law Commission Recommendations and the judicial pronouncements, there is a strong need to reconsider the Bill before enacting it into a law.

[1] The Registration of Marriage of Non-Resident Indian Bill, 2019

[2] Statement of Object and Reasons of the Registration of Marriage of Non-Resident Indian Bill, 2019".

[3] Need for family legislations for Non resident Indians, the Law Commission Report No. 219,99 dated 30.03.2007.

[4] Ruchi Majoo vs Sanjeev Majoo AIR 2011 SC 1952.

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