

# **NRI Sham Marriages - A Socio-Legal Problem in India with Special Reference to Punjab**

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## **I. Introduction**

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.<sup>3</sup>

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 a 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.<sup>4</sup>

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,

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<sup>3</sup> Refer, Dr. Monica Chawla “*Non-Resident Indians and Marriage under Private International Law*” Civil and Military Law Journal, p. 194.

<sup>4</sup> *Id.*

necessity of common civil code have all become critical topics to be analyzed by jurists.<sup>5</sup>

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 engaged in social welfare should be involved and encouraged.

## **II. Various Acts under which Marriage can be Solemnised in India**

These NRI marriages may be solemnised 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.<sup>6</sup>

The marriage under The Hindu Marriage Act, 1955 can be solemnised 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.<sup>7</sup>

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.<sup>8</sup>

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

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<sup>5</sup> *Ibid.*

<sup>6</sup> *Marian Eva v. State of H.P.*, AIR 1993 HP 7.

<sup>7</sup> *Supra Note*, 1 and p. 195.

<sup>8</sup> *Id.*

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 solemnised 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.

### **III. 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 marry 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 NRIs are visiting their country.<sup>9</sup>

### **IV. 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

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<sup>9</sup> The Tribune, 10<sup>th</sup> May, 2012, p.1

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.<sup>10</sup>

However no data is available about the number of disputes 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

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<sup>10</sup> Tribune News Service (TNS) The Tribune, 10<sup>th</sup> May, 2012, p.1.

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 newly wed 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.”

## V. 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.<sup>11</sup>

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.<sup>12</sup>

The problems faced 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 victim’s 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 too 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.

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<sup>11</sup> *Supra Note*, 7.

<sup>12</sup> See, Dr. Monica Chawla “*Non-Resident Indians and Marriage under Private International Law*” *Civil and Military Law Journal*, pp. 201-202.

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.<sup>13</sup>

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<sup>13</sup> *Id*