
DOMICILE STATUS OF INDIAN WOMEN MARRIED TO NON-RESIDENT INDIANS

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ABSTRACT

The domicile status of an Indian woman married to a foreign national depends on several factors, including the country of her spouse's citizenship, her own citizenship, and the laws of the country where the couple is residing. In India, the concept of domicile is primarily used for determining the eligibility of a person for admission to educational institutions and for employment in government services. The domicile status of a woman married to a foreign national is not explicitly defined in Indian law, but she may be able to claim her Indian domicile if she satisfies certain criteria. The Indian Citizenship Act² provides for the acquisition and termination of Indian citizenship. According to this act, an Indian woman who marries a foreign national may lose her Indian citizenship if she acquires the citizenship of her spouse's country of origin. However, the Indian government has amended the act to provide certain exemptions for women who marry foreign nationals, depending on the country of the spouse's citizenship. For example, if an Indian woman marries a citizen of a country that does not allow its citizens to take up dual citizenship, she may lose her Indian citizenship. However, if her spouse is a citizen of a country that permits dual citizenship, she may be able to retain her Indian citizenship even after marriage.

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² Act no. 57 of 1955

INTRODUCTION

It is important to note that the laws regarding domicile status and citizenship can be complex and vary from country to country. Therefore, it is advisable for an Indian woman married to a foreign national to seek legal advice and guidance from a qualified lawyer or immigration expert to determine her legal status and rights in both India and the country of her spouse's citizenship. The domicile status of an Indian woman married to a non-resident Indian (NRI) would depend on various factors such as her citizenship, the laws of the country where she is residing, and the Indian laws governing citizenship and domicile status. Under Indian law, a person's domicile is determined by their residence and intention to make a particular place their permanent home. A person's domicile can change if they establish a new permanent home in another location. If an Indian woman marries an NRI and moves to her husband's country of residence, her domicile status in India would depend on various factors, including her intention to return to India and her citizenship status. If she retains her Indian citizenship and intends to return to India, she may continue to be considered an Indian domicile for legal purposes. However, if she acquires the citizenship of her husband's country of residence, her domicile status in India may change. According to the Indian Citizenship Act, 1955, an Indian woman who acquires the citizenship of another country automatically loses her Indian citizenship unless she renounces it. In such a case, she may need to apply for a visa or permission to enter India as a foreign national. It is important to note that the laws governing domicile and citizenship can be complex and vary by country. Therefore, it is advisable for an Indian woman married to an NRI to seek legal advice and guidance from a qualified lawyer or immigration expert to determine her legal status and rights in both India and the country of her husband's residence.

THE NRI WIVES PROBLEM: A PEEK INTO BRIDE TRAFFICKING AND HONEYMOON BRIDES.

The number of weddings between Indian women and Indian men living abroad is rising along with the trend of rising transnational migration.³ Because the potential husband lives and works abroad and offers the bride's family a perfect lifestyle, Indian families sometimes perceive a certain

³ Y. Narasimha Rao v. Y. Venkata Lakshmi, (1991) 3 SCC 451 : (1991) 2 SCR 821.

grandeur behind such NRI weddings. It gives the impression that the grooms are better off financially by having their salary in a foreign currency. Given their desire to marry their daughters into such homes, the warning signs seen in conventional matching are frequently ignored. After moving to the country where their spouse resides, the woman is left in an unfamiliar setting, divorced without their knowledge or agreement, and deserted without knowledge of the local legal system. The males are occasionally found to be either already married or cohabiting with another lady. Some women are never even at that point. Some of the Indian males who marry women make promises to send them overseas, but after receiving dowries, they abandon their wives behind. The Ministry of External Affairs notified Parliament that, between 2016 and 2019, 4,698 complaints of Indian wives being abandoned by their NRI husbands were received and resolved. In India, the personal laws applicable at the time of the marriage control NRI weddings and their legality. On the other hand, private international law regulations are followed in the majority of foreign nations. India doesn't have a robust private international law system. At the moment, four agreements from The Hague Conference on Private International Law have been approved. However, we have not yet ratified important conventions like the Convention on the Service Abroad of Judicial and ExtraJudicial Documents in Civil Law or Commercial Matters (which provides remedies against ex-parte divorces), the Convention on Celebration And Recognition Of Validity Of Marriage, 1978 (which denies recognition to bigamous marriages entered into by NRI husbands in their country of residence), and the Conventions on Maintenance Obligations and Child Support. The problems that result from a clash between private international law and national law were identified by the Law Commission of India. The fundamental issue for NRI women is still the issue of jurisdiction since, when spouses live in separate countries, any judgements made by foreign courts are essentially rendered unenforceable. Since no family law legislation specifically addresses the recognition of foreign marital judgements or other foreign decisions in connected cases, the only option is to refer to Section 13 of the Code of Civil Procedure, 1908 (CPC). Currently, the nation's legal system depends on this law to give abandoned women redress. The Supreme Court clarified that, in order to emphasise the significance of this section:

“...only that court will be a court of competent jurisdiction which the Act or the law under which the parties are married recognizes as a court of competent jurisdiction to entertain the matrimonial dispute. Any other court should be held to be a court without jurisdiction unless both parties

voluntarily and unconditionally subject themselves to the jurisdiction of that court...’’⁴

This effectively implies that for the decree to be legal, the parties would have to show that both parties give their assent to the decree's acquisition. It enables the Supreme Court to decline to slavishly enforce decisions made by other nations in family law cases. "Reciprocating Territories," as specified in Section 44A of the CPC, are an exception to this rule. Bangladesh, Fiji, Singapore, Malaysia, Trinidad & Tobago, United Arab Emirates, United Kingdom, New Zealand, Hong Kong, Papua & New Guinea, and Trinidad & Tobago are among the nations that India acknowledges as reciprocating territories. Therefore, if a woman marries an NRI whose primary residence is one of the aforementioned nations, the judgements rendered by the courts in those nations are enforceable in India and are equal to judgements rendered by Indian courts.

Bride trafficking is a form of modern-day slavery that involves the coercion, abduction, or sale of women and girls for the purpose of forced marriage. Unfortunately, this is a significant problem in India, particularly in rural areas where poverty and traditional gender norms create conditions that make women vulnerable to exploitation. Bride trafficking is a significant problem in India, particularly in states such as Haryana, Rajasthan, and Punjab. According to a report by the National Crime Records Bureau, there were 3,316 cases of trafficking for marriage in 2019. Poverty, lack of education, and traditional gender norms are some of the key factors that contribute to bride trafficking in India. In many cases, families may be willing to sell their daughters into marriage to escape poverty or to pay off debts. Women and girls who are trafficked for marriage often face significant abuse and exploitation. They may be forced to work in harsh conditions, subjected to physical and sexual violence, and denied access to education or healthcare. They may also be unable to leave the marriage or escape their traffickers. India has several laws in place to prevent and punish human trafficking, including the Immoral Trafficking Prevention Act⁵ and the Protection of Women from Domestic Violence Act⁶. However, enforcement of these laws can be weak, and there is a need for greater awareness and action to combat bride trafficking in India.

⁴ Supra 1

⁵ Once Trafficked as 'Brides', Now Excluded: In Bihar's Araria, a Second Chance Eludes Survivors, The Wire (10 May 2023), <https://thewire.in/rights/bride-trafficking-bihar-survivors>

⁶ Shivangi Kumar, UnWoman Review: A Powerful Portrayal Of Bride Trafficking That Deserves Widespread Attention, CineTales, (09 May 2023), <https://www.cine-ales.com/unwoman-review-movie-powerful-portrayal-bride-trafficking/>

Overall, bride trafficking is a serious problem in India that requires greater attention and action. Efforts to address this issue should focus on preventing trafficking through education and economic empowerment, as well as on providing support and protection for survivors of trafficking.

THE INDIAN CITIZENSHIP ACT OF 1955 AND ITS AMENDMENTS

The Indian Citizenship Act of 1955⁷ is a crucial piece of legislation that defines the qualifications and rights of Indian citizenship. Here are some key points to consider when analysing this act: The Indian Citizenship Act sets out various qualifications for Indian citizenship, such as being born in India, having Indian ancestry, or having lived in India for a specified period. This act also establishes rules for the acquisition and termination of citizenship. The Indian Citizenship Act does not allow for dual citizenship. If an individual acquires citizenship in another country, they are deemed to have given up their Indian citizenship. The Indian Citizenship Act has faced criticism for its potential to discriminate against certain groups of people. For example, the act requires that a person's parents or grandparents must have been born in undivided India in order for them to be eligible for citizenship by descent. This provision has been criticised for excluding individuals whose ancestors may have migrated to India from other countries or regions.

The Indian Citizenship Act has been amended several times over the years to address various issues related to citizenship. One notable amendment was the Citizenship (Amendment) Act of 1986, which made certain concessions for individuals who had migrated to India from neighbouring countries before a certain date.

Overall, the Indian Citizenship Act of 1955 is an important piece of legislation that outlines the qualifications and rights of Indian citizenship. While it has faced criticism for certain provisions, it has also been amended over the years to address some of these concerns.

The Indian Citizenship Act has been amended several times since its enactment in 1955 to address various issues related to citizenship. Some of the notable amendments are:

⁷ Supra 2

The Citizenship (Amendment) Act, 1986⁸

This amendment allowed certain individuals who had migrated to India from neighbouring countries before a specified date to become citizens of India. The amendment also introduced provisions for registration of overseas citizens of India and provided for the cessation of Indian citizenship in certain circumstances.

The Citizenship (Amendment) Act, 2003⁹

This amendment made changes to the eligibility criteria for obtaining Indian citizenship. It allowed individuals who had been married to an Indian citizen for a specified period to become eligible for citizenship, regardless of their previous nationality or country of origin.

The Citizenship (Amendment) Act, 2015¹⁰

This amendment introduced provisions for the issuance of long-term visas to individuals who were of Indian origin but had not acquired Indian citizenship. It also made changes to the eligibility criteria for registering as an overseas citizen of India.

The Citizenship (Amendment) Act, 2019¹¹

This amendment was one of the most controversial amendments to the Indian Citizenship Act. It provided a path to citizenship for certain religious minorities from neighbouring countries, but excluded Muslims. The amendment was criticised for being discriminatory and unconstitutional, and led to widespread protests across India.

Overall, the amendments to the Indian Citizenship Act have been aimed at addressing various issues related to citizenship, such as eligibility criteria, the cessation of citizenship, and the treatment of individuals of Indian origin who have not acquired Indian citizenship. However, some

⁸ Act No. 51 of 1986

⁹ Act No. 6 of 2004

¹⁰ Act No. 1 of 2015

¹¹ Act No. 47 OF 2019

amendments, such as the Citizenship (Amendment) Act, 2019, have been controversial and have faced significant criticism.

HOW IN (TOO) DEEP ARE WE?: PLIGHT OF THE UNFORTUNATE

A 15-year-old girl from Gaya in Bihar was abducted and brought more than a thousand km to Patna, where she was sold for Rs. 250,000 to a guy who later wed her in Baran, Rajasthan. To be sold again for a greater price, the girl was forcibly snatched back from him. Her rescue and the subsequent arrest of several of her traffickers put light on the ongoing exploitation and abuse of women and young girls from the poor eastern states who are trafficked to fill the void in areas with an unbalanced sex distribution.¹²

The revelations on the rising bride trafficking in India have shown the negative effects that a lopsided gender ratio has on society. Due to a lack of women in states like Haryana and Punjab, which sociologists refer to as the "male marriage squeeze," males have been forced to import wives from other regions of the nation. This trade is harsh, predatory, and well-organised. Young girls are frequently sold to older males for marriage. Sometimes a lady is bought by numerous brothers. The majority of the time, a marriage does not occur or is not recorded, in which case the wife has no rights. The 'spouse' is a constant horror in the woman's life. She experiences domestic violence and is treated like a sex slave. She is kept inside the house and is not permitted to speak to her neighbours. In addition, brides are frequently bought and sold. Even the 'husband's' death doesn't liberate them from exploitation since they are only bought and sold once more.¹³

CONCLUDING REMARKS

A potential precaution that any marriages of this kind between NRIs and Indian women shouldn't be declared null and void by foreign courts if they were legally consummated in India. Regrettably, a unilateral judgement cannot address a jurisdictional dispute issue. Because of this, the Standing Committee on the Empowerment of Women indicated that India's use of private international law

¹² Kavitha Iyer, Indian Women Are Sold & Resold For Marriage, Sexual Slavery, Child-Bearing, Cheap Labour, article 14, (10 May 2023), <https://article-14.com/post/indian-women-are-sold-resold-for-marriage-sexual-slavery-child-bearing-cheap-labour-63648172c5ccf>

¹³ DHNS, Bride Trafficking Must Stop Now, Deccan Herald, (10 May 2023), <https://www.deccanherald.com/opinion/second-edit/bride-trafficking-must-stop-720547.html>

may be a desired option in its report to the Lok Sabha. The Supreme Court of India, on the other hand, believed that making marriage registration mandatory was the best way to reduce the number of abandoned brides in the nation. The Law Commission of India recommended that analogous amendments be made to other personal laws as well, with regard to spousal maintenance and alimony, child custody and support, as well as the division of marital property where one party is an NRI in the marriage. It is crucial to amend the matrimonial rules governing unions with Indians who do not dwell in their country, as well as to raise awareness within the family. The family should be watchful and make sure to verify all the details about the possible groom from the very beginning. Through a number of programmes, the government has attempted to assist women of Indian descent who have been deceitfully abandoned by their abroad Indian spouses, but these efforts have fallen short. When the Bill was first proposed, there was some optimism that the gaps in the existing legal system would be closed, however the Bill itself has a number of shortcomings. We can't rely just on one Civil Procedure Code, 1908¹⁴ division to make things better for these women. The exploitation of these NRI women will go on, and the men will continue to get away with their wrongdoing unless these complaints are addressed and a proactive remedy is developed.

In *Sondur Gopal v. Sondur Rajni*¹⁵ important guidelines are established for how a change of residence may be affected as well as the extraterritorial applicability of Hindu Marriage Act.¹⁶ It eliminates all the problems that beset the earlier interpretations and establishes a precise and logical process that adheres to the acknowledged worldwide norm. In establishing the law, the court took a patriarchal and conservative approach; yet, had it investigated some of the neglected issues, the judgement would have been richer and more applicable to instances that would follow. Nevertheless, this case will go down in Indian legal history.

¹⁴ Act No. 5 of 1908

¹⁵ 2005 (4) MhLj 688

¹⁶ Act No. 25 of 1955