A Study of Fraudulent Migratory Marriages in Canada and India

by

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A thesis submitted in conformity with the requirements for the degree of Master of Laws
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Abstract

This thesis focuses on Fraudulent migratory marriages by discussing two paradigms of such marriages, the Abandoned Brides Problem in India and the Fraudulent Immigration Marriages or Marriages of Convenience in Canada. It highlights some of the socio-economic and legal problems that may arise in these migratory marriages and explores the various legal solutions proposed as solutions to them. The solutions offered in these two instances require changes in two different areas of law, the first being Private International Law and the second Immigration Law.
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In this era of Globalization and Internationalism there has been an increase in migratory marriages in countries across the globe. Correspondingly, on the other, albeit slightly uglier side, there has been, in this context of migratory marriages, a steady rise in the number of fraudulent marriages that are taking place. In this thesis I discuss two instances of Fraudulent Migratory Marriages, the first being the problem of Abandoned Brides in India and the second being Fraudulent Immigration Marriages or Marriages of Convenience in Canada.

In the first Chapter, I discuss the ‘Abandoned Brides’ or ‘Holiday Brides’ problem in India. India is one of the largest migrant sending Countries in the world. With the characteristic desire of Indians to migrate abroad marriages to Non Resident Indians are seen as an opportunity by many to facilitate migration through nuptial bonds. Several Indian women are often hurriedly married off to Non Resident Indians, very often accompanied by exorbitant amounts of dowry but without proper inquiries into the antecedents of the boy. The Non Resident Spouses then go back to their country of residence, leaving the women behind but promising them that they would complete the required visa arrangements enabling them join their husbands abroad. These NRI spouses never file the visa papers, however they do file for divorce in their country of residence and obtain exparte decisions against their wives. Therefore in this thesis I take a more in-
depth look at the problem of NRI marriages and then look at the remedial measures and recommendations put forward by various national bodies including the National Commission for Women and the Ministry of Overseas Indian Affairs. One of the common recommendations by both these bodies include the signing of the Hague Conventions on Private International Law. I look at this recommendation in particular and peruse the relevant conventions to determine the feasibility of signing the conventions in order to solve the problem.

In the second Chapter of my Thesis I look at the problem of Fraudulent Immigration Marriages in Canada. Being one of the largest immigrant receiving countries in the world, Canada faces the problem of Immigration Fraud along with other countries like the U.S and U.K. One of the increasingly common methods of committing immigration fraud are through ‘Marriages of Convenience’ or ‘Fraudulent Immigration Marriages”. In the Canadian context, there have been several instances of persons entering into marriages merely for the sake of immigration and with the intention of defrauding the authorities. There are prominently two instances of marriage fraud that generally take place. The first is when spouses collude together to enter into a fraudulent marriage in order to defraud immigration officials and the second is when an immigrant spouse marries an citizen or permanent resident of a country for the sole purpose of gaining entry into the country. In this thesis I consider the second instance of unilateral fraud.
Every year over 30,000 new immigrants get married, become permanent residents and move to Canada. According to Citizenship and Immigration, Canada, anyone who wants to sponsor their spouse or partner to immigrate to Canada makes a serious legal commitment. As part of this commitment, sponsors must support their spouse or partner for three years, even if the relationship fails. If the couple breaks up and the sponsored person gets social assistance, the sponsor must pay back the amount of social assistance the former spouse received.\(^1\) Hence in a number of cases the sponsors put in papers for their spouses and once the immigrant spouses come to Canada, they leave them. However the sponsors are still financially responsible for them for a period of three years in spite of the marriage having failed. This has caused untold hardship, both emotional and financial, to thousands across the country.

I start by focusing on the problem in Canada and then take a comparative approach by looking at the measures implemented in other migrant receiving countries, like the United States and the U.K in order to consider the applicability of those measures in solving the problem in Canada. By looking at the two instances of fraudulent migratory marriages, I glimpse into the darker side of Migration, tainted surprisingly through the misuse of the supposedly sacrosanct institution of marriage.

CHAPTER I

ABANDONED BRIDES

1.1 Introduction

In the first chapter of my thesis I would like to deal with the problem of abandoned brides in India. With the characteristic Indians’ desire for migration to foreign countries, marriages to Non Resident Indians (NRI) are the most coveted ones in Indian society, promising greener pastures for not only the girl but her entire family. They are seen as the easiest way to migrate abroad. Further there are allurements by marriage agents and families feel that such unions would elevate their status in society. In the eagerness not to let go of such opportunities, families totally ignore even the common cautions that are observed in traditional matchmaking. Marriages are therefore rushed into, and as the statistics show that up to two out of ten times they turn out to be fraudulent. In several other instances there have been reports of mental and physical abuse. Nearly 30,000 women have been abandoned and 15,000 cases registered in the Northern State of Punjab alone. Further, the Ministry of Overseas Indian Affairs warns, that there are certain risks involved in these kinds of marriages. Families who hurriedly marry off their daughters overlook the fact that in the event that things go wrong, the woman’s recourse to justice is greatly constrained by the fact that such marriages are not governed only by the Indian legal system but also by far more complex private international laws involving

2 Though a gender neutral term, NRI marriages, generally and for the purpose of this thesis, is to be understood as a marriage between an Indian woman and an Overseas Indian man (which would include Non Resident Indians and foreign citizens of Indian Origin)

3 Marriages to Overseas Indians- A guidance booklet, Ministry of Overseas Indian Affairs, at 9[Ministry of Overseas Indian Affairs]

the legal system of the other country as well. The phenomenon of wives abandoned by their NRI husbands has been growing invisibly for more than a decade. Nearly every Indian state has women deserted by NRI men who live in various foreign countries including Canada, UK, various European and Middle Eastern countries, and the USA. It has been estimated that Canada itself may have as many as 10,000 of these runaway grooms. Despite this, community leaders in British Columbia insist that many NRI marriages do result in successful, lasting relationships.

Canada, with its historical links to Punjab, is a primary source of the bride-hunters (Seventy per cent of Canada’s 500,000 Indo-Canadians hail from Punjab; B.C. is home to half of them.)

1.2. The Problem of ‘abandoned brides’

According to the Ministry of Overseas Indian Affairs, in several cases women married to Non resident Indians are abandoned even before being taken abroad by their husbands to the foreign country of the husband’s residence. The husband goes back after a short honeymoon promising to sponsor her visa but he does not apply for it and she never hears from him again. Instead she may receive a copy of a divorce decree fraudulently obtained by her husband in the foreign jurisdiction. The women very often would be pregnant when her husband leaves and then she and the child would both be abandoned.

5 M.O.I.A, supra note 2
6 Das Dasgupta, Shamita. Abandoned and divorced: The NRI pattern, (Infochange News & Features, March 2010)[Dasgupta]
7 Roberts, Mike. Victims of betrayal :Deserted. She dreamed of a new life in Canada- now she weeps for shame,(Vancouver Province, 16 October 2005)
8 Ministry of Overseas Indian Affairs, supra note 2
Keeping in mind the socio cultural situation in India, once abandoned these ‘holiday’ brides lose everything including their social standing. They and their families are often ostracized and in severe debt due to the loans taken for the marriage and for giving exorbitant Dowries. Some women are taken abroad only to be brutally battered, assaulted, abused both mentally and physically, malnourished, confined and ill treated by their husbands and sometimes their in laws for dowry. In certain cases, wives reach the foreign country of their husband’s residence and are left waiting at the international airport, abandoned in a foreign country. They are deserted with no support or means of sustenance or the permission to stay on there. There are several cases where a woman later learns that her NRI husband has given false information about his job, immigration status, or earning to con her into marriage. Some of these men turn out to be married already or living with another woman abroad.  

The pattern of NRI wife abandonment falls into three categories: (a) a woman who is residing with her husband in a foreign country suddenly finds her husband has disappeared leaving her in the lurch; (b) a woman who has been residing abroad with her husband is either deceptively or coercively taken back to India and left there without her passport, visa, and money and thus without any way of rejoining her husband; and (c) a woman who is married before her husband migrates to a foreign country or while he is visiting India but is never sent sponsorship for a visa to join him. In this chapter I will mostly be focusing on the third situation of abandonment.

The Ministry further warns of the aggravated risks in marriages to Overseas Indians. These include the woman’s increased feelings of isolation, difficulties owing to

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9 Ibid
10 Dasgupta, supra note 5
constraints of language, difference in culture, lack of a support network of friends and family and readily available monetary support. Further she is confronted with the problem of the lack of knowledge of the foreign criminal justice system, police and legal system.\textsuperscript{11} Most often these women have no place to take shelter when they are thrown out of their matrimonial home by their husbands and not received by their parents. It is hardly surprising that even as the number of NRI marriages is escalating by thousands every year, with the increasing Indian Diaspora, the number of matrimonial and related disputes in the NRI marriages have also risen proportionately, in fact at some places much more than proportionately.\textsuperscript{12}

Though the problem of abandoned brides is common to many Indian states including Gujarat Haryana, Rajasthan, Tamil Nadu, Kerala and Andhra Pradesh, yet the problem is very serious in Punjab, in the Northern part of India, where the desire to migrate to western countries has traditionally been strong. For women in the Punjab getting married beyond the international boundary and engaging in migration, the motivation is essentially economic, triggered by “push” and “pull” factors in the state, community and family. The spiraling price of real estate, lack of suitable employment, decreasing rate of return from agriculture and allied activities, growing difficulty of getting into professional courses of education, demonstration effect of successful emigration in the neighborhood, higher value attached to western education and experience in the Indian job market, and a powerful lobby of emigration promoters are some of the “push” factors in the Punjab. Similarly, temptations of a good standard of living, better future for children in terms of health, education and employment, social security in old age, and the power of remittances are a few common “pull” factors. Emigration to developed countries is usually seen as a great leveler in terms of wealth and power, and, in the background of rising restrictions on international immigration, marriage provides the

\begin{footnotesize}
\textsuperscript{11} Ministry of Overseas Indian Affairs, supra note 2

\textsuperscript{12} Ibid
\end{footnotesize}
surest way of settling abroad and a legitimate escape route from some of the traditional burdens in one’s own land. Marriage abroad is presumed as a safe way of getting all near and dear one’s overseas. 

1.3 Role of Dowry

Further, Dowry has an important role to play in these fraudulent marriage cases. Women are often abandoned because they are unable to pay the exorbitant amounts of Dowry demanded by the NRI grooms and their families. Before the marriage grooms often openly threaten to call off the weddings on the pretext of being able to get better offers of dowry from other families. In these cases, the bride’s parents often pay the amount asked by the groom and his family in order to save their daughters from being left at the alter. However, even after the marriage, the demands from the groom and his parents do not stop and when the woman’s parents are unable to give the amount demanded, their daughters are abandoned in India and many of them never hear from their husbands again once they return to their country of residence.

According to the Dowry Prohibition Act: dowry means “any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage; or by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat)

13 Nanda, Aswini Kumar & Veron, Jacques. Women, Marriage and Mobility: Some Issues, Patterns and Perspectives in International Outmigration from Indian Punjab, (Seoul, 2007)

14 Bedi, Rahul. Broken Bangles:India’s Abandoned Brides,(7th August, 2009)
Originally, the concept of Dowry can be traced back to the traditional north Indian marriage system. Dowry referred to the gifts accompanying the gift of the bride (kanya dan), and was regarded as an act of enhancing the status and family honor of the giver. However this has now evolved into a social evil where women and their families are continually harassed and threatened by their husbands and in laws to gift excessive amounts especially if the groom is a Non Resident Indian. In the latter case, of NRI marriages, people are willing to give more dowry as this is seen as a way to ensure a better future for the bride. Once the woman is married to a Non resident Indian and migrates to a foreign country it is anticipated, that she could by subsequent sponsorship act as a conduit for her relatives to immigrate there as well. Despite anti-dowry legislation in independent India, a conspicuous increase in dowry has been witnessed.

However, the taking or giving of Dowry is an offence as laid down in the Dowry Prohibition Act of 1961 which states that “If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with the fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more.”

Women and their families are in a very precarious position when it comes to Dowry. On the one hand they feel compelled to pay the amount as a result of societal pressures and expectations while on the other hand, giving of Dowry is also considered as an offence. The Delhi High Court had recently said women or their parents who go ahead with marriage despite dowry demands from the bridegroom’s side would have to be seen as “accomplices to the crime” and “will face prosecution” under the

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15 Dowry Prohibition Act,1961,s. 2
17 Dowry Prohibition Act,1961,s.3
Dowry Prohibition Act.\textsuperscript{18} International dowry cases bring in its own set of problems, ranging from gathering evidence to getting the NRI spouse to face criminal action in India. In many cases, the police have had to take the aid of the High Commissions of UK, the US and Australia, to execute the orders passed by the local courts and in extreme cases, Interpol red corner notices have been issued to bring the abusive husband to book.\textsuperscript{19}

On the other hand, despite the fact that generally the victims are women, NRI husbands have also been harassed and used by their Indian wives to obtain green cards or dependent visas to go immigrate abroad. Once they reach the country of their husband’s residence they try to obtain divorces or leave their husbands. Some of them have also put false claims of cruelty and harassment for dowry upon their husbands misusing relevant provisions of the Indian Penal Code and the Dowry Prohibition Act.\textsuperscript{20} This problem will be dealt with in greater detail in the second part of my thesis.

1.4 Legal Issues that arise due to abandonment

In the above mentioned cases of abandonment, after deserting their wives, NRI husbands start divorce proceedings in their countries of residence and obtain ex parté divorces. The process of such divorce is filled with problems for women who are deserted outside the country where their husbands reside. This is because in many cases, the women may never receive the legal notice of filing, a copy of the complaint or summons to appear. It has also been suggested that in some cases men’s families or other parties may suppress such notices being served in India and forge the recipient’s signature to indicate legally binding acceptance. Even when a notice is served properly, it

\textsuperscript{18} Sumit Saxena, Case boomerangs on dowry givers, Hindustan Times, (New Delhi, December 2008)

\textsuperscript{19} Shibu Thomas, City courts go global with dowry cases, (TNN, 11\textsuperscript{th} November, 2009)

\textsuperscript{20} Lisa Tsering, Indian Husbands Fall Victim to Dowry-Immigration Fraud, India-West, (Jan 19, 2005)
may reach a woman late with only a couple of weeks in which to respond. This time may not be sufficient for the woman to obtain a visa, travel requirements and legal representation in the country of her husband’s residence. Therefore she is unable to defend her own and in some cases her child’s legal and financial interests in the case. Further, most women are unaware of foreign laws and often do not have easy access to appropriate legal advice in India.\textsuperscript{21}

Even when an abandoned woman has lodged legal complaints in India either before or in response to her husband’s legal case, foreign courts may not be aware of these proceedings as there maybe miscommunications or delays which allow the husband to obtain the ex parte decrees without contest. Further, the two countries involved may have different laws- for instance, fault-based divorce is no longer recognized in Canada (which now recognizes only irretrievable breakdown of the marriage as grounds for divorce) while India still has fault-based divorce and does not recognize irretrievable breakdown of marriage as legitimate grounds. There are also different personal laws for each religious community in India making the process even more complex. The courts may also ignore each other’s judgments, and thereby issue conflicting orders- for example, the Indian law of Restitution of Conjugal Rights\textsuperscript{22} has no equivalent in most U.S and Canadian jurisdictions and therefore courts in these jurisdictions may not consider this law. Such jurisdictional disagreements and legal contradictions often endanger the financial and social rights of women who are not in a position to protect them in the first place.\textsuperscript{23}

\textsuperscript{21} Dasgupta, supra note 5

\textsuperscript{22} The Hindu Marriage Act,1955,S 9

\textsuperscript{23} Ibid.
It has been suggested that in Canada, the NRI husbands can more easily find legal loopholes they can exploit. When a man leaves his wife in India, he files an affidavit in Canada, saying that she deserted him. The courts then send out the notices with a time limit for contesting it. These women find it extremely difficult to get visas in time to contest the divorce and at the end are unable to receive maintenance or in some cases child support.\(^{24}\) In most cases women have had to fight nasty legal battles for maintenance, for custody of children and for child support and sometimes while trying to bring their children back with them after they are divorced or forced to leave their conjugal home, sometimes they are even faced with charges of illegally abducting their own children.\(^{25}\)

Indian courts may in some cases issue anti-suit injunctions, preventing the NRI husband from pursuing the divorce in the country of his residence on grounds that the Indian court is the more appropriate forum before which to contest the divorce. They may also in some cases allot some maintenance for the wife or for a child from the marriage. In cases where the NRI husbands have absconded with the woman’s dowry, the court may order the sum be paid back. The courts have also declared NRI husbands as fugitives from justice when they fail to appear for any of the court hearings in India. Growing numbers of runaway grooms are charged with fraud and dowry extortion, and cannot return for fear of arrest.\(^{26}\)

\(^{24}\) O. Ward, ‘Runaway grooms’: Documentary points to young Indian expatriates who marry for cash and then desert their wives. Guelph Mercury (Ontario, Canada). (22 April, 2005)

\(^{25}\) National Commission for Women, Introduction to NRI Cell of Commissions, http://ncw.nic.in/frmNRIIntroduction.aspx,

\(^{26}\) Kazimi, Ali. Runaway Grooms, 2005
1.5 Relevant Cases

There have been a few cases in which the Indian Courts have ruled against NRI husbands while upholding the rights of these abandoned women. In the case of Narasimha Rao vs Venkata Lakshmi 27 both parties were married in India under the Hindu Marriage Act. After the marriage the husband went back to USA and obtained a decree of divorce from the State of Missouri. The husband alleged to the court that he was a resident of the State of Missouri for 90 days preceding the institution of the petition and obtained a divorce decree on the grounds that the marriage was “irretrievably broken down”. With special reference to section 13 of the CPC which deals with instances where foreign judgments are not conclusive, the Supreme Court of India held that both the issue of jurisdiction and the grounds on which the foreign decree was passed were not in accordance with the Hindu marriage act under which the marriage took place. The Supreme Court, therefore, held that the decree was not enforceable in India.28

In Dipak Bannerjee v Sudipta Bannerjee 29 the husband questioned the jurisdiction of the Indian court to entertain and try proceedings initiated by the wife under Section 125 for maintenance, contending that no Court in India had jurisdiction in to try such proceeding as he was a citizen of the U.S and his wife’s domicile also followed his domicile. The Court held that where there is conflict of laws every case must be decided in accordance with Indian Law and the rules of private international law applied in other countries may not be adopted mechanically by Indian courts. The Court felt that keeping in view the object and social purpose of Sections 125 and 126, the objection raised by husband was

29 Dipak Bannerjee v Sudipta Bannerjee (AIR 1987 Cal 491)
not tenable and the jurisdiction of Indian Court was upheld as it was the court within whose jurisdiction she ordinarily resided.  
Further Anubha v Vikas Aggarwal was a case in which the issue was whether the decree of ‘no fault divorce’ obtained by the husband from a Court of the United States of America (USA) could be enforced on the wife when their marriage was solemnized as per the Hindu rites and the wife had not submitted to the jurisdiction of the Court in USA and had not consented to grant of divorce. The question that arose in this case was whether the decree of divorce obtained from the Court at Connecticut in the USA during the pendency of the proceedings of the case in India in the given facts and circumstances was enforceable in India. The Court held that the ground on which the marriage of the defendant was dissolved was not available in the Hindu Marriage Act. The parties were Hindus and their marriage had been solemnized according to the Hindu rites. Therefore this matrimonial dispute would have to be governed by the provisions of the Hindu Marriage Act and since the plaintiff had not submitted to the jurisdiction of the US Court the decree passed by it was not recognizable in India.

Further women can seldom use criminal law in India to punish their husband and in laws for dowry demands or matrimonial cruelty because the husbands refuses to come to India and submit to trial or respond in any way to summons or even warrants of arrest. In Rajiv Tayal vs Union of India and others, the abused wife availed of a remedy under Section 10 of the Passport Act for impounding of the passport of her NRI husband when he failed to respond to the summons by the Indian courts. The courts in India have also awarded damages to abandoned wives in certain cases. In the case of Neeraja Saraph v

30 National Commission for Women, supra note 27
31 Anubha v Vikas Aggarwal (100 (2002) DLT 682)
32 National Commission of Women, supra note 27 at 26
33 Rajiv Tayal v. Union of India & Ors. (124 (2005) DLT 502
34 National Commission for Women, supra note 27 at 18
Jayant Saraph, the appellant wife who was still trying to get her visa to join her husband in the U.S received the petition for annulment of marriage filed by her husband in a U.S court. The Supreme court awarded damages for the emotional, mental and financial hardship of the wife who had also given up her job in anticipation of moving to the U.S. In another case of Harmeeta Singh v Rajat Taneja, the wife was deserted by her husband within 6 months of marriage. When she filed a suit for maintenance under the Hindu Adoptions and Maintenance Act in India, the Delhi High Court passed an order of restraint against the husband from continuing with the proceedings in the US court in the divorce petition filed by the husband and also required the husband to place a copy of the high court order before the US court. The court also mentioned that if the husband obtained the decree from the US court it would not be recognized in India until the jurisdiction of the U.S court was established under section 13 of the Civil Procedure Code and until the U.S decree was recognized in India the husband would face bigamy charges should he enter into another marriage during the subsistence of the one in dispute. Further the court emphasized that since the wife’s stay in the United states was temporary, the forum of convenience in the matter would be India. In Veena Kalia v Jatinder N Kalia, the Delhi court held that the ex parte divorce decree obtained by the NRI husband in Canada on a ground that was not available to him in India as it did not act as res judicata and did not bar applications for maintenance filed by the wife in her divorce petition.

Indian Courts have also passed several decision in cases involving children where it applied the principle of the best interest of the child. to award custody in transnational

35 Neeraja Saraph v Jayant Saraph (1994) 6 SCC 461
36 National Commission of Women, supra note 27 at 17
37 Harmeeta Singh v Rajat Taneja 102 (2003) DLT 822
38 Veena Kalia v Jatinder N Kalia AIR 1996 Del 54
39 National Commission of Women, supra note27 at 25
custody cases. In Kuldeep Sidhu v Chanan Singh, the High Court of Punjab and Haryana allowed the mother who was resident in Canada to take back the children to her country of residence as she had been awarded custody by a competent court in Canada. This was considered as being in the best interests of the child. Lastly, the courts have also in certain cases accepted the decision of foreign courts in certain matters especially relating to child custody. In Surinder Kaur Sandhu v. Harbax Singh Sandhu, the Supreme Court had to decide the custody of the mother in circumstances where while the wife was still in England, the husband had taken away the children to his parents house in India even though an English court had already passed an order on the children’s custody in England. In this case the court looked into the best interests of the child and gave the custody of the children back to their mother. The same decision was given by the Supreme Court in Elizabeth Dinshaw v. Arvand M. Dinshaw, where the child had been removed from the United States by the father and brought to India, against the custody orders of an U.S. Court. The court while passing the decision in favour of the mother attributed this decision not only to the principle of comity but also the principle of the best interest of the child given the facts and circumstances of the case. The third case of a similar kind is Kuldeep Sidhu v. Chanan Singh, the High Court of Punjab and Haryana passed a decision considering the best interests of the children and send them back to their mother residing in Canada.

40 Kuldeep Sidhu v Chanan Singh AIR 1989 P&H 103
41 National Commission of Women, supra note 27 at 21
42 Surinder Kaur Sandhu v. Harbax Singh Sandhu, AIR 1984 SC 1224
43 National Commission of Women, supra note27 at 20
45 Kuldeep Sidhu v. Chanan Singh (AIR 1989 P&H 103)
1.6 Recommendations and Remedial Measures

Several conferences and discussions have been held in India on this issue. It was declared a priority area by the National Commission for Women in the year 2005-2006. Workshops were conducted at Chandigarh and Trivandrum in June and September 2006 respectively. A National Consultation on this issue was organized on 18th February 2006 at Vigyan Bhavan, New Delhi by the Ministry of Overseas Indian Affairs (MOIA). A parallel session on Gender Issues was also organized during the Pravasi Bharatiya Divas 2006. Further a Guidance booklet on Marriages to Overseas Indians was released by the Prime Minister during Pravasi Bhartiya Divas 2007 on 7th January, 07. Pamphlets to create awareness on this issue have also been published in English, Hindi, Punjabi, Malayalam and Telugu and circulated for dissemination of information on this issue. Regional electronic media has also been used to create awareness on rights and responsibilities pertaining to the issue. Another session on ‘Women’ was held during PBD 2007 on 8th January 2007 and a meeting of Gender Advisory Group took place on 2nd April 2007 to discuss this issue.

As a result of intense deliberation, some recommendations have been put forward by the National Commission on women in order to curtail this problem which include the following :-

1. The registration of marriages is to be made compulsory. The supreme court in the case of Smt Seema vs Aswini Kumar has issued the directions to the central and state governments to take steps to ensure that the marriages of all persons who are citizens of India belonging to various religions should be compulsorily registered. The Compulsory Registration Of Marriages Bill, 2006 has been introduced in parliament but has not yet been passed. The Court agreed with the National Commission for Women that compulsory registration of marriages would help tackle various women’s rights infringements such as child marriage,
ensuring a minimum age in accordance with the law, marriage without the consent of both parties, bigamous unions, and a woman’s right to live in her marital home and receive maintenance. Presently in India there are only few states which have provisions for the compulsory registration of marriages, these include Andhra Pradesh, Goa, Mizoram, Karnataka, Himachal Pradesh and Maharashtra

2. Bilateral agreements should be signed between India and countries having large numbers of Indians.


4. If the NRI husband has not become a citizen of the country in which he resides, then application of Indian law irrespective of the place of the filling of the petition for dissolution of marriage.

5. There should be a government-monitored process of settlement of matrimonial disputes in these cases.

6. The NRI husband’s property in India should be attached

7. If overseas citizenship has been given to the husbands, then these must be withdrawn.

8. Legal action should be initiated for compensation against fraudulent spouses.

9. In the matters of Child Custody and Abduction, it was recommended that giving importance to best interest for child welfare must be a sine qua non to govern the issue relating to child custody.
10. Special cells should set up within Indian embassies, especially in target countries to provide crisis assistance and legal support and information to Indian women in need of help.

11. Suppression of information regarding marital status by NRI grooms is to be dealt with under criminal law and steps taken through extradition treaties wherever operational. 46

More importantly for the purpose of this Chapter, the National Commission for women also made the following recommendations with respect to International Legal Interventions that needed to be made in order to curb this problem.

1) The Hague Conventions, especially the following ones, which are related to the issue of NRI marriages, need to be examined closely

a) Convention On the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 1965 (“Service Convention”)

b) Convention On the Recognition of Divorce and Legal Separations, 1970


d) Convention on Celebration and Recognition of Validity of Marriage, 1978

e) Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters


g) Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, 1996

2. Bilateral agreements need to be concluded with countries where Indian Diaspora is in large numbers. The existing legislation for bilateral agreements is available on the basis of reciprocity i.e. section 44A of CPC, Section 3 of Maintenance Orders enforcement Act 1921 and section 13 of CPC. These laws enable recognition and enforcement of foreign divorce decrees, maintenance orders, child custody, etc.

3. Bilateral agreements especially needed to be concluded on critical issues covered by the Conventions mentioned above, especially validity and recognition of divorce decrees, maintenance, child abduction and custody and service of orders and Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters.

4. While signing reciprocal bilateral treaties, with target states, i.e. countries with large presence of Indians, bilateral agreements on critical issues need to take into account certain issues. These include, among others, grounds for non-recognition where certain judgments are regarded as being against public policy, for instance, those given in cases where no due notice was served to the respondent in the proceedings, or where a judgment given in a proceeding was irreconcilable and contrary to public policy or the law of the country, particularly relating to law of marriages and divorce, child custody, etc.

5. Jurisdiction has emerged as one of the significant aspects, particularly, in providing matrimonial relief for failed marriages involving non-resident Indians. The leading basis that have been considered are: domicile, nationality residence including habitual residence. The rule of habitual residence needs to be considered as a possible basis of matrimonial jurisdiction in any attempt of future legislation. The principal reason for this suggestion being, that the rule of habitual residence has struck a balance between domicile on the one hand and nationality on the other. Besides, this rule is also capable facilitating a minimum common ground of jurisdiction amongst an majority of the countries.
6. On the issue of recognition of foreign divorce or nullity decrees, three lines of approach to be adopted to improve the present situation.

a) The contextual interpretation of the existing legal provisions as suggested in Narasimha Rao’s case.\textsuperscript{47}

b) Widening the scope for more bilateral agreements under Sec.44-A of CPC which is based on reciprocity. Particularly, the government should include those countries where the Indian Diaspora is in substantial in numbers and also those countries which have been already included for conferring dual citizenship.

7. In matters of child custody and abduction, It is recommended here that giving importance to best interest for child welfare must be a sine qua non to govern the issue relating to child custody.

8. Examining the feasibility of invoking the provisions of Extradition Act, 1962. Section 20\textsuperscript{48} which provides for return of any person accused of or convicted for an extradition offence, from the foreign country to India.\textsuperscript{49}

\textsuperscript{47} Supra Note 28
\textsuperscript{48} Section 20: Conveyance of accused or convicted person surrendered or returned: Any person accused or convicted of an extradition offence who is surrendered or returned by a foreign State may, under the warrant of arrest for his surrender or return issued in such State or country, be brought into India and delivered to the proper Authority to be dealt with according to law.”
\textsuperscript{49} National Commission for Women, Report on Regional Seminar on “Problems Relating to NRI Marriages” in Trivendrum on 13th and 14th September 2006 (September 2006)
I would now like to focus on the recommendation of the National Commission for women, which deals with the signing of the Hague Conventions of Private International Law. The primary reason for this recommendation was to find a way to avoid the complexity of Private International Laws of both the foreign state and India. The raison d’être of Private International Law is the existence in the world of a number of separate municipal systems of law—a number of separate legal units that differ greatly from each other in the rules by which they regulate the various relations arising in daily life. Private International Law is primarily concerned with one or more of three questions: the jurisdiction of the Domestic Court, recognition and enforcement of foreign Judgments and the choice of Law.  

The problem of Abandoned brides as with any other case involving Private International Law rules need to be solved on a case by case basis and often result in great disparity in judgments produced as each country has its own private international law rules. Therefore and effort to harmonize these rules have been underway for sometime. With nearly 70 Members (68 States and the European Union) representing all continents, the Hague Conference on Private International Law is a global inter-governmental organization with the mission of working for the "progressive unification" of these rules. This involves finding internationally-agreed approaches to issues such as jurisdiction of the courts, applicable law, and the recognition and enforcement of judgments in a wide range of areas, from commercial law and banking law to international civil procedure and from child protection to matters of marriage and personal status. The conventions mentioned by the National Commission for women are the results of the efforts taken by this organization to fulfill its objectives.

I now study the suggestions put forward both by the National Commission for women and the Ministry of Overseas affairs in relation to the Hague Conventions and discuss the relevance of each of these conventions to the solution or even mitigation of the particular problem of “abandoned brides”. In each instance, I make a note of whether Canada or India are parties to the said conventions in order to help access the feasibility of signing these conventions. I intend to demonstrate that in spite of the recommendations and growing popularity of the Hague Conventions very few States have acceded to or ratified it. Therefore, in a case, assuming a dispute where a woman in India had been abandoned by a Non Resident Indian from Canada, very little can be done practically until both countries have ratified the said convention.

**Convention on the service abroad of judicial and extrajudicial documents in civil or criminal matters, 1965 (Service Convention)**

This convention was framed with the object of creating the appropriate means to ensure that judicial and extrajudicial documents to be served abroad are brought to the notice of the addressee in sufficient time and to improve the organization of mutual judicial assistance for that purpose by simplifying and expediting the procedure.\(^{52}\) Article 15 mentions that where a writ of summons or an equivalent document has to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that - the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or that the document was actually delivered to the defendant or to his residence by another method provided for by this Convention, and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend. Therefore this section is helpful in mitigating cases of ex parte divorces where the women

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\(^{52}\) Convention on the service abroad of judicial and extrajudicial documents in civil or criminal matters, 1965 (Service Convention)
have not received proper and timely notice of the initiation of divorce proceedings in a foreign state.\(^{53}\) This convention has been ratified by both India and Canada. Further Article 16 mentions that when a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and the defendant has disclosed a *prima facie* defence to the action on the merits.\(^{54}\) Therefore this further reinforces the remedy against ex parte divorces obtained without giving the abandoned woman notice of the proceedings and a fair chance to contest it.

**Convention on the recognition of divorce and legal separation 1970**

The objectives of this convention were to facilitate the recognition of divorces and legal separations obtained in their respective territories. Article 1 states that the present Convention shall apply to the recognition in one Contracting State of divorces and legal separations obtained in another Contracting State which follow judicial or other proceedings officially recognized in that State and which are legally effective there. However the Convention does not apply to findings of fault or to ancillary orders pronounced on the making of a decree of divorce or legal separation; in particular, it does not apply to orders relating to pecuniary obligations or to the custody of children.\(^{55}\) Article 2 of this Convention stipulates that a divorce decree or legal separation obtained in a contracting state will be recognized by another contracting state if at the time of the

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\(^{53}\) Ibid, Art 15  
\(^{54}\) Ibid, Art 16  
\(^{55}\) Convention on the recognition of divorce and legal separation 1970, Art 1
proceedings, it was the respondent or the petitioner’s habitual residence. It further states that if only the petitioner had his/her habitual residence in the state where the divorce was obtained, such residence must be for more than one year, or it must have been the last habitual residence where the spouses had cohabited.\textsuperscript{56} Further Article 8, mentions that if, in the light of all the circumstances, adequate steps were not taken to give notice of the proceedings for a divorce or legal separation to the respondent, or if he was not afforded a sufficient opportunity to present his case, the divorce or legal separation may be refused recognition.\textsuperscript{57} This provision is again particularly relevant in the case of ex parte divorces. Article 9 goes on to say that Contracting States may refuse to recognize a divorce or legal separation if it is incompatible with a previous decision determining the matrimonial status of the spouses and that decision either was rendered in the State in which recognition is sought, or is recognized, or fulfils the conditions required for recognition, in that State. \textsuperscript{58} Neither Canada nor India have ratified or acceded to this convention.

**Convention on the laws applicable to maintenance obligation, 1973**

This convention intended to establish common provisions to govern the reciprocal recognition and enforcement of decisions relating to maintenance obligations in respect of adults. Article 5 mentions that Recognition or enforcement of a decision may, however, be refused if the recognition or enforcement of the decision is manifestly incompatible with the public policy ("ordre public") of the State addressed; or if the decision was obtained by fraud in connection with a matter of procedure. Recognition or Enforcement may also be refused if proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those

\textsuperscript{56} "Transnational Abandonment ofouth Asian Women A new Face of Violence against Women, Shamit Das Dasgupta and Ujarsi Rudra, Manavi Inc, 2005

\textsuperscript{57} Convention on the recognition of divorce and legal separation 1970, Art 8

\textsuperscript{58} Convention on the recognition of divorce and legal separation 1970, Art 9
proceedings were the first to be instituted; or if the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed. This article therefore refuses recognition to a decision in favour of the NRI husband obtained in the country of his residence, by fraud in connection with a matter of procedure or if it is manifestly incompatible with public policy.  

59 Article 6 of this convention is also relevant for ex parte divorces as, it states that, a decision rendered by default shall be recognized or enforced only if notice of the institution of the proceedings, including notice of the substance of the claim, has been served on the defaulting party in accordance with the law of the State of origin and if, having regard to the circumstances, that party has had sufficient time to enable him to defend the proceedings. 60 Neither Canada nor India has ratified this Convention.

**Convention on celebration and recognition of validity of marriage, 1978**

This object of this convention was to facilitate the celebration of marriages and the recognition of the validity of marriages. Article 11(1) states that a Contracting State may refuse to recognize the validity of a marriage, when at the time of the marriage, under the law of that State one of the spouses was already married. Further, Article 14 states that a Contracting State may refuse to recognize the validity of a marriage where such recognition is manifestly incompatible with its public policy ("ordre public"). 61 These provisions refuse recognition to bigamous marriages entered into by the NRI husbands in

59 Convention on the laws applicable to maintenance obligations, 1973, Art 5

60 Convention on the laws applicable to maintenance obligations, 1973, Art 6

61 Convention on celebration and recognition of validity of marriage, 1978, Art 11(1)
their country of residence, while they remain married to the spouses they abandoned in India. Both Canada and India are not parties to this convention.

**Convention on celebration and recognition of validity of marriage, 1978**

The objects of the present Convention are to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States. Signing this convention would help in the speedy return of the children of women who have been abandoned by their husband and have had their children wrongly taken away from them. Provisions facilitating this can be seen under Chapter III of the Convention. Canada is a signatory to this convention, however India is not.

**Convention of Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of parental responsibility and measures for the protection of the children, 1996.**

Article 1 of the convention states that its objectives are to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child; to determine which law is to be applied by such authorities in exercising their jurisdiction; to determine the law applicable to parental responsibility; to provide for the recognition and enforcement of such measures of protection in all Contracting States; and to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this

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62 Convention on the civil aspects of international child abduction, 1980, Art 1
The provisions of this convention can be used for the protection of the rights of the child tangled in the abandoned brides situation by upholding the principle of the best interest of the children in all cases involving them. However neither Canada nor India are parties to this convention.

Some other conventions also have provisions which could be relevant for the abandoned bride situation. They include-

**Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance**

The objectives of this convention include improving cooperation among States for the international recovery of child support and other forms of family maintenance. The states party to the convention were also aware of the need for procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair. It was written to further build upon the existing Hague Conventions and other international instruments, in particular the United Nations *Convention on the Recovery Abroad of Maintenance* of 20 June 1956. Article 1 of the convention specifies the objectives of this convention as being to ensure the effective international recovery of child support and other forms of family maintenance, in particular by establishing a comprehensive system of co-operation between the authorities of the Contracting States, making available applications for the establishment of maintenance decisions, providing for the recognition and enforcement of maintenance decisions; and requiring effective measures for the prompt enforcement of maintenance decisions. This convention therefore would facilitate the maintenance

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63 Convention of Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of parental responsibility and measures for the protection of the children, 1996, Art 1

64 Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, Art 1
claims and the enforcement of maintenance decisions obtained in India by abandoned brides. Article 22 of the Convention further lays down grounds for refusing recognition and enforcement including cases where the recognition and enforcement of the decision is incompatible with public policy or where the decision was obtained by fraud in connection with a matter of procedure. It also refuses recognition of decision obtained in cases where the respondent has neither appeared nor was represented in proceedings in the State of origin or when the law of the State of origin provides for notice of proceedings and the respondent did not have proper notice of the proceedings and an opportunity to be heard.\textsuperscript{65} This provision is particularly relevant for the abandoned brides situation especially when decision on maintenance or child support have been passed against them ex parte. The United States is party to this convention while Canada or India are not.

\textbf{The Protocol on the law applicable to Maintenance obligations, 2007}

This convention was made in order to establish common provisions concerning the law applicable to maintenance obligations, to modernize the \textit{Hague Convention of on the law applicable to maintenance obligations towards children}, 1956 and the \textit{Hague Convention on the Law Applicable to Maintenance Obligations}, 1973, and to supplement the \textit{Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance}, 2007 which has been considered before. This convention lays down under, Article 3 that all maintenance obligations shall be governed by the law of the State of the habitual residence of the creditor, save where this Protocol provides otherwise.\textsuperscript{66} This would again favor the abandoned brides in any claims of maintenance made by them in courts in their country of habitual residence i.e India. However the only signatory to this convention is the European Union.

\textsuperscript{65} Ibid, Art 22e(i)& (ii)

\textsuperscript{66} The Protocol on the law applicable to Maintenance obligations, 2007, Art 3
Constitution on International Access to Justice, 1980

The states parties to this convention were desirous of facilitating international access to justice. Article 1 of the convention states that through this convention nationals of any Contracting State and persons habitually resident in any Contracting State shall be entitled to legal aid for court proceedings in civil and commercial matters in each Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State. This is extremely beneficial for the women abandoned by their husbands in foreign jurisdictions who are unable to contest cases there because of financial constraints and a lack of knowledge of the laws of a foreign country.

1.8 Measures taken by the Ministry of Overseas Affairs and Non Governmental Organizations

The Ministry of Overseas Affairs has taken up various measures to curtail this problem. Working in tandem with the National Commission for Women it has held various conferences and awareness programmes. It has also released a guidance booklet on Marriages to Overseas Indians and in it laid down several precautions that should be taken by persons entering into these marriages. They recommend that the spouses should acquire knowledge about Indian personal laws as they are applied even in the case of marital discord outside India. Other statutes include Domestic Violence Act, Dowry Prohibition Act and the relevant sections of the IPC such as section 498A relating to cruelty and 304B relating to dowry deaths. According to the ministry, a few documents belonging to the spouse should also be checked before entering into the marriage. These

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67 Constitution on International Access to Justice, 1980, Art 1
include visa, passport, voter registration card, social security number, tax returns for the preceding 3 years, bank accounts and property papers. It also suggests further precautions including an affidavit from the spouse stating his present marital status and an insurance cover including health insurance to be taken, before arriving in the new overseas residence.

The ministry has also proposed a scheme to provide some financial assistance to women in distress who have been deserted by their overseas Indian spouses for obtaining counseling and legal services. This would be provided through credible Indian Women’s Organizations/ Indian Community Associations and NGOs identified for providing such services and empanelled with the Indian Missions in the USA, the UK, Canada, Australia, and the Gulf, which have been identified as countries having a large Indian Diaspora. The scheme is a welfare measure to support women of Indian origin in distress, with the support of the Indian community in India and abroad and with some financial assistance from the Government. This financial assistance would be provided in the form of grants to embassies and high commissions to tackle this problem. The scheme would cover a woman whose marriage is solemnized and registered in India but who is deserted in India or overseas within two years of the marriage or in cases where the divorce proceedings are initiated by the spouse within two years of the marriage Further it would also be granted in cases where an ex-parte decree of divorce or annulment of the marriage is obtained by the spouse and a case for maintenance/alimony is required to be filed.

The assistance under the scheme would be limited to $1000 per case to enable the organization/NGO to undertake initial work/documentation required for the legal proceedings on the women’s behalf. The scheme will be circulated amongst Indian community Associations by the Missions concerned for information and publicity and sent to the credible Indian women’s organizations/ Indian Community Associations/ NGOs working in the field of women’s welfare inviting them to apply for empanelment
under the scheme. The applications received by Ministry of Overseas Indian Affairs seeking assistance will be examined by a committee in MOIA consisting of a legal advisor and Director (SS). The cases will then be recommended to Indian Missions for sanctioning assistance to the woman in distress through the organizations/NGOs concerned.

The National Commission for Women and the Ministry have both said that an important role to alleviate this problem has to be played by the state government because that is the institution which can tackle such social problems effectively. State governments may have to launch a wide publicity campaign through various channels to educate the masses. Legal aid societies could also assist these families to get their disputes resolved amicably so that they are not further financially and adversely affected.

In January 2010, the Government of India (GOI) Ministry of Women and Child Development announced an unusual decision: it will issue two simultaneously valid passports to married women who leave the country to live with their husbands in foreign lands. The second passport would include information about a woman’s NRI (non-resident Indian) spouse, serve as her proof of marriage, and be deposited with the Indian Embassy/Consulate in the country where she is being taken to reside. This unprecedented move is to protect women who are deserted abroad by their émigré husbands; men who disappear without a trace after destroying their wives’ travel documents, making it difficult for the women to return to India.  

Several NGOs in India and abroad have also taken up and pursued this issue. They have played a very active role in educating the people regarding the risk they are taking if they enter into such marriages without proper verification. One such legal NGO, Seva, in

68 Shamita Das Dasgupta, “Abandoned and divorced: The NRI pattern”
California, which provides legal assistance for such women has claimed that the Indian Government has not played a very proactive role in alleviating this problem. Anu Peshawaria who heads the organization, recognizing the flipside, has said that there have been many cases, of girls marrying Indian Americans just to get a green card and later divorcing them. Such NRI marriages last only for two years, the time needed to get a green card. Many times, people even have children to make it seem like a real marriage. Thus creating a population of 'abandoned' children when these marriages come to an end. Further NRIs being Indian citizens are subject to Indian marriage and divorce laws. Thus there is a need to address the flaws in the law and make punishment more stringent, Peshawaria emphasizes. "The importance of antecedent verification, awareness of women's matrimonial rights, maintenance rights, dowry laws and information about passport and visa procedures should be made available and regular awareness campaigns conducted to make people aware of these frauds," she says. She also suggests free legal aid to parents wishing to marry their daughters to NRIs or PIOs.

1.9 CONCLUSION

To conclude, it has been seen that despite efforts by various government institutions and local bodies fraudulent NRI marriages still take place. A practical solution is for the prospective Indian brides or grooms to make inquiries about the antecedents of the spouse, his marital status and bona fides, with overseas Indian associations cultural bodies, relatives and friends. However in the broader context, the Government must become a party to the Hague Conventions. The Hague conventions were set up to bring about the unification of Private International Law rules between all countries of the world. Particularly, in the context of the abandoned brides problem, it can be seen that the provisions of the Hague Conference will help in bringing about efficiency and better coordination in the working of courts of countries that are parties to it. It will also help in the in recognition of foreign judgments relating to divorce, maintenance and child support and would facilitate the procedural working of courts in different countries by
providing methods for the timely delivery of court documents, such as notices and summons to appear and copies of the complaint through better transnational coordination. In the abandoned brides context it would greatly reduce the hardship caused to these women due to untimely delivery of court documents and would facilitate the passing of decisions on the basis of merits and in the spirit of Natural justice. However these conventions will only have significant effect if entered into by more states. As it now stands even if India does become party to the Hague Conventions, it will not prove to be an effective remedy to the abandoned brides problems due to a lack of other states, especially Western immigrant receiving states such as Canada and the U.S, that have signed it.
Chapter II

Fraudulent Immigration Marriages

2.1. Introduction

Fraudulent Immigration Marriages, are becoming increasingly prevalent in Canada and most other migrant receiving countries including the United States and the United Kingdom. I first look at the situation in Canada, by considering cases and the relevant law in force at present. Before I move on to the recommendations made in order to curtail this problem in Canada, I peruse the remedial measures, implementations and current developments in the United States and in the U.K, in order to comprehend the appropriateness of applying similar measures to Canadian System. Finally, I consider the various measures taken and recommendations advanced with a view to curb the problem of marriage fraud in Canada, focusing on the Regulations Amending the Immigration and Refugee Protection Regulations(Bad Faith), 2010.

As described in the introduction, with an increase in migrant marriages there has also been a rise in the number of sham marriages undertaken solely for the purpose of immigration. In the Canadian context there have been several instances of persons, including citizens of India, entering into marriages merely for the sake of immigration and with the intention of defrauding the authorities. In this context there are prominently two instances of marriage fraud. The first is when spouses collude together to enter into a fraudulent marriage in order to defraud immigration officials and the second instance is when an immigrant spouse enters into a fraudulent marriage for the purpose of immigration thereby defrauding both the immigration authorities and the sponsoring spouse.
To adopt a more formal categorization, fraudulent marriages are either contractual or unilateral in form. Contractual fraud is the more common form of sham marriage. It involves a couple agreeing from the outset that the marriage's only purpose is to acquire preferential immigration standing for the alien spouse, and that the marriage will end once the alien obtains permanent resident status. More harmful for the resident spouse, but fortunately rare, is unilateral marriage fraud. Unilateral marriage fraud occurs when an alien deceives a citizen or permanent resident into marriage with the intent of leaving his or her spouse once the authorities have adjusted the alien's immigration status. This intent often becomes apparent when the alien receives his or her green card or permanent residency and subsequently abandons his or her spouse. For the purposes of this thesis I will be dealing with the second instance only.

The Council of the European Union which passed a Council Resolution dated 4th December 1997, adopted a definition of a “marriage of convenience”. According to this resolution, marriage of convenience means a marriage concluded between a national of a Member State or a third country national legally resident in a Member State and a third country national, with the sole aim of circumventing the rules on entry and residence of third country nationals and obtaining for the third country national a residence permit or authority to reside in a Member State”.

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69 De Armas Marcel. For richer or poorer or any other reason: Adjudicating immigration marriage fraud cases within the scope of the Constitution, 15 AMUIGSPL 743, [Marcel De Armas]

70 Measures to be adopted on the combating of marriages of convenience, Council Resolution, 4 December 1997, Official Journal C 382, 16/12/1997 P. 0001 - 0002
2.2. The problem in Canada

“Marriages of convenience are not allowed under Canada’s immigration law. It is illegal to be married simply to immigrate to Canada. Spousal sponsorship is a serious legal commitment.

Under Canada’s immigration law, marriages of convenience are not allowed. Citizenship and Immigration Canada’s officers are specially trained to recognize genuine immigration applications, and they know how to detect marriages of convenience. They use a variety of techniques to uncover marriage fraud, including document checks, site visits and interviews with sponsors and applicants.

Citizenship and Immigration Canada recognizes that even genuine marriages can fail. However, if a person enters into a marriage of convenience and comes to Canada as an immigrant, enforcement action can be taken. This enforcement action could result in deportation, and is the responsibility of the Canada Border Services Agency.”

An explicit warning cautions all readers visiting the website of Citizenship and Immigration Canada. However this has not deterred these so called sham marriages or marriages of convenience from taking place. Canada has many compelling reasons for promoting family reunification. These include international legal obligations, Canada’s tradition of giving priority to family reunification in immigration policies and the importance of family reunification as a factor in promoting newcomer integration. Canada’s Immigration and Refugee Protection Act (IRPA) makes a commitment to family reunification by giving a Canadian citizen or permanent resident the right to sponsor a family member.

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71 http://www.cic.gc.ca/english/department/media/facts/marriage.as

72 Family Reunification – OCASI submission to Standing Committee on Citizenship and Immigration (April 2005)
Every year over 30,000 new immigrants get married, become permanent residents and move to Canada. While most of those marriages are legitimate and long lasting, some people will go to any length to make Canada their home. Citizenship and Immigration Canada insists that it does what it can to make sure the marriages are legitimate, but admit that there are thousands of Canadian men and women who find out, once their spouse arrives here, that they have been duped, and have become victims of marriage fraud.  

There are two ways in which these favorable policies and laws are being misused. First is when the aliens marry landed immigrant or citizens with the intention of acquiring immigration. This is done with a view to defraud both the authorities and the resident spouse. According to regulations, a person sponsoring their spouse, common law partner or conjugal partner has to sign an undertaking accepting certain sponsorship obligations. The sponsor undertakes to provide for the basic requirements of the sponsored person. This includes providing for food, clothing, shelter, fuel, utilities, household supplies, personal requirements and other goods and services, including dental care, eye care and other health needs provided by public health care. The sponsor is financially responsible for his spouse, common law partner or conjugal partner for up to a period of three years. Further, pursuant to section 135 of the Regulations to the Immigration and Refugee Protection Act(IRPA), if the sponsor breaches any of his sponsorship obligations he will be in default. All social assistance paid to the sponsored person or his or her family members becomes a debt owed by the sponsor to the government and therefore enforcement action can be taken against the sponsor, the sponsored or against them both. Moreover, the sponsored spouse gets permanent resident as soon as he or she enters Canada.  

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In most cases, the intentions of an immigrant spouse do not become obvious to the sponsor until the immigrant spouse gets Permanent Residency and he or she then leaves the marriage. Therefore these fraudulent acts cause terrible hardship to the sponsor, as in addition to being defrauded and coping up with the failure of the marriage, he or she is still responsible for their spouse, for a period of three years. 75

Second, is when both parties agree to misuse the law and defraud the immigration authorities. In this case the sponsor is offered a considerable sum of money in order to enter into a sham marriage and put in a permanent residency application for the immigrant spouse. 76 This kind of fraud is very hard to detect as the spouses often submit a wide range of evidence, from elaborate marriage ceremonies to small demonstrations of affection between them like cards, letters, gifts, etc. in order to prove that their marriage is genuine. Mention must also be made here of the difficulty experienced by immigration officials in judging whether a marriage is genuine because of the diversity of socio-cultural and religious backgrounds of the applicants. Further, in most cases their perception of genuineness of a marriage is often tainted by their preconceived notions and biases and by their conceptions of what an ideal of marriage should be. Although immigration officials are often put through training in order to better understand the socio-cultural aspects of this institution in different societies, obviously, they still may not be able to fully comprehend the situation in comparison to a person present within the system.

75 http://www.fraudmarriage.com/RelatedNews.htm
2.2.1 Relevant Legislation

In order to delve, a little deeper into this problem, I would first like to consider the law at present in Canada. Growing numbers of Canadian citizens are caught up in marriage-related crime or fraud. These cases include extortion by foreign in-laws, scams involving cyber-romance, and being duped into sponsoring a spouse who bolts upon arrival in Canada. Further it has been alleged that it is the lax Canadian immigration laws allow these fraud marriages or marriages of convenience to take place. However, there are already certain deterrents in the IRPA designed to address the problem.

In the Canadian context, the Immigration and Refugee Protection Act governs issues relating to immigration. In the specific context of Immigration Marriage Fraud, the following sections are relevant. Section 4 of the IRPA specifically deals with instances of bad faith and states that: “For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act.”

Further, Section 40 of the IRPA deals with misrepresentation, laying down that “A permanent resident or a foreign national is inadmissible for misrepresentation (a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act; (b) for being or having been sponsored by a person who is determined to be inadmissible (c) on a final determination to vacate a decision to allow the claim for refugee protection by the permanent resident or the foreign national; or (d) on ceasing to be a citizen under paragraph 10(1)(a) of the Citizenship Act, in the
circumstances set out in subsection 10(2) of that Act.". And finally, Section 41, states that a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act is inadmissible for failing to comply with the Act.

Therefore, there already exists laws which can tackle this problem, however they need to properly implemented. Further, in addition to proper implementation, there also needs to be certain changes in the rules and procedures of immigration to specifically address the above discussed problem of fraudulent immigration marriages.

2.2.2 Relevant Cases

The courts have also played a pro active role in bringing the offenders to justice. There have been several instances where the courts have handed down judgments, granting annulments, jailing the defrauding spouse or passing deportation orders. Examples are the much publicized Jaswal case and Lainie Towell Case. In the former instance in October, 2004, the Federal court handed down a four Month Jail term for Marriage Fraud to a Indian bride, Karmjeet Jaswal and ordered that she be deported. In the latter instance, an Ottawa dancer was the victim of deceit when less than a month after she brought her husband to Canada from Guinea, his residency guaranteed by their marriage, he left without so much as a note. In order to bring attention to these cases of marriage fraud, Ms Towell wore her wedding gown, strapped a full-size red door to her back and marched on Parliament Hill. She said the door was supposed to represent the burden she bears for

77 Immigration and Refugee Protection Act, 2001
giving her husband, entry into Canada on New Year's Eve, 2007. Her husband has since been issued a removal order from Canada by the Immigration and Refugee board, not on the grounds of marriage fraud but because he had failed to disclose to the authorities that he had a child in Guinea. However, as a permanent resident, he has exercised the right to appeal his removal order and because Towell is still listed as his sponsor, she remains financially responsible for him while he makes his appeal.

Another landmark judgment was laid down in the case of Baeza v. Strange-Zelaya, decided by the Manitoba Court of Appeal, the husband and wife were married for approximately 13 months. The wife entered the marriage with almost no debts and supported parties for duration of marriage. At the time of separation, she was living with her parents and had the legal obligation to continue as husband's immigration sponsor. The Trial judge characterized the marriage as marriage of convenience, as her husband left after obtaining landed immigrant status and it was found that wife suffered an economic disadvantage as a result of the marriage. The Trial judge ordered that wife receive spousal support of $300 per month for 24 months. This decision was upheld by the court of appeal and the appeal was dismissed.

In another case, the BC Supreme Court awarded damages to a sponsor for tortuous deceit in respect of inducement to marry and sponsor her immigrant husband to Canada. The facts of this case are as follows. The plaintiff, Madhavi Raju, married the respondent, Rajendra Kumar in Fiji in 1999. Following the marriage Raju returned to Canada to begin the process to sponsor the respondent to Canada. Kumar was initially refused a visa.

79 Zosia Bielski, I do…and I’m gone, Globe and Mail, April 30 2009
81 Baeza v. Strange-Zelaya, 156 Man. R. (2d) 166
however he obtained it after Ms Raju, successfully appealed the refusal to the Immigration and Refugee Board. Kumar came to Canada in December 2001 and, in less than three weeks he left the family home for good. When Ms Raju finally tracked him down in Edmonton, he rejected her absolutely and at the earliest opportunity in early 2003, filed for divorce. Unknown to Ms Raju, Kumar had continued an extra marital relationship with another woman in Fiji. Rajendra Kumar, described by the judge as a “cad” who lied to and cheated on his distraught estranged spouse, was ordered in March to pay Madhavi Raju, special damages of $11,376, plus general damages of $10,000 for her “hurt feelings, humiliation, inconvenience and postponement of the opportunity to marry another man while she was still capable of bearing children.”

The court in the calculation of special damages included the costs of marrying Kumar in Fiji, the cost of communicating with him while he was in Fiji and the costs of sponsoring him to Canada, including the cost of her appeal to the Immigration and Refugee Board. The decision has established a precedent. Prior to this decision the generally accepted view of the law was that a spouse had no right to sue her husband under common law for any tort, including deceit. However it must be noted that a determination of the immigrant spouse’s intent in a civil proceeding does not prove the misrepresentation under a removal proceeding under the Immigration and Refugee Protection Act. Evidence that arises in the civil proceeding thereafter can be used in a removal proceeding, that may eventually lead to the immigrant’s deportation from Canada. For years the immigration authorities have been reluctant to start a removal proceeding against a fraudulent spouse unless there was certain proof of the immigrant’s intentions. The Raju case shows that the intent may be proved without an explicit confession from the immigrant.

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82 Schmitz, Cristin. Spouses can sue each other for tortuous deceit, The Lawyer’s Weekly, April 7, 2006
83 Macintosh, William. Jilted sponsor obtains damages against spouse for deceit in fraudulent immigration marriage, Voice Online, (Saturday April 1, 2006)
After considering the rules, regulations and case law in Canada, I now turn to the rules regulations and recent amendments in other migrant receiving countries such as the United States, United Kingdom, Australia and France. With a marked trend of global migration towards these countries and an increase of fraudulent marriages undertaken to circumvent immigration rules, different measures have been adopted to try and curb the problem. The most promising one being, giving the immigrant spouse a two year probationary visa and the permanent resident visas only on the completion of the two years of marriage. This can act as a deterrent to those looking to get into marriages of convenience as a quick way of immigrating into a country. In this paper I briefly look at the regulations and recent developments in the United Kingdom and the United States in relation to fraudulent immigration marriages.

2.3. United States: Measures Taken

The United States has a long standing policy of reuniting families using immigration laws. However with the increase in the number of sham marriages Congress enacted the Immigration Marriage and Fraud Amendments (IMFA) in 1986, to balance the competing policies of promoting family reunification and preventing marriage fraud. The outcry for reform was tremendous. The Immigration and Naturalization Service (INS) surveys estimated that as many as thirty percent of all spousal petitions in the U.S involved marital fraud. According to the INS commissioner, marriage fraud posed a significant threat to the integrity of the immigration system because marriage was the easiest and most frequently used means of obtaining permanent resident status. The IMFA, which added Section 216 of the Immigration and Nationality Act, created a Conditional

84 Marcel De Armas, supra note 1
Residence requirement for Aliens who sought to acquire Permanent Residence based on recent Marriages.

Under the IMFA, an immigrant spouse is initially admitted as a “conditional” resident alien if the initial request of residency is allowed. The conditional status is contingent upon the spouses’ ability to maintain a valid, two-year marriage. The U.S. Citizenship and Immigration Services (USCIS) can terminate the conditional status before the completion of the two-year period, if the marriage is found to be a fraudulent, and entered into solely for the purpose of immigrating to the United States. If at the end of two years, the conditional status is not terminated by the USCIS, a petition for the removal of the conditional status must be done by both the spouses within ninety days of the completion of two years of the alien spouse obtaining the conditional status. This provides USCIS with a second opportunity to assess the validity of the marriage. The alien spouse can be deported if the resident spouse does not file the petition on time or attend the personal interview, with the alien spouse, conducted by the USCIS for the determination of the genuineness of the marriage. An exception may be made if the couple demonstrates “good cause” for any late filing of the petition.

If after the interview, the petition is granted, the conditional status is removed and the alien spouse becomes a Lawful permanent resident. However, on the other hand, if the USCIS finds that the marriage was “entered into for the purpose of procuring an alien’s entry as an immigrant,” “has been judicially annulled or terminated,” or was the result of a consideration paid to the resident to file the petition to gain a beneficial immigration status for the alien, the USCIS will terminate the resident status of the immigrant spouse. Such a termination renders the spouse subject to deportation proceedings.86

86 Section 216 b (1)(A), Immigration and Nationality Act, (1956), U.S.C. 1186a
However as an exception to the above mentioned process, the Attorney General has the discretionary power to grant a waiver on the grounds of extreme hardship, that removes the conditional basis of permanent residency status if certain conditions are met. These conditions include extreme hardship that would result from deportation, or that the marriage was entered into in good faith and had been terminated by the spouse for a good cause or that the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or child was battered by or was the subject of extreme cruelty. Further the spouse needs to show that there was no fault on her behalf, resulting in the failure to meet the requirements of the petition for the removal of the conditional status.  

However the discretion in granting this petition ultimately lies with the Attorney General. It must also be noted, that marriages for the purpose of evading immigration law in the U.S are criminal and conviction of marriage fraud may result for both spouses in fines up to $250,000 or imprisonment up to five years , in addition to the deportation of the alien spouse.

Although the IMFA has been used as an example to indicate changes that could be brought to Canadian Immigration rules, certain grievances have been addressed against them. It has been alleged that the IMFA's conditional status burdens marital relationships, renders irrelevant assimilative factors that otherwise provide grounds for admission, and, in certain circumstances, allows the deportation of citizens' and permanent residents' spouses without a hearing. The effort to thwart sham marriages has also had the unintended consequence of placing power over the alien spouse's future in the hands of the United States citizen or LPR spouse. Separation, divorce, and marital discord threaten the alien spouse's stability and ability to protect her immigrant status if the U.S. citizen.

87 James A Jones, supra note 17
88 Marriage and Immigration in the U.S, World law Direct, (20th April 2010)  
spouse refused to participate in the joint petition for the removal of the condition. In order to remedy some of the above mentioned flaws, in 1990, Congress amended the IMFA by enacting the Immigration Act of 1990 (IMMACT). It also passed the Violent Crime Control and Law Enforcement Act of 1994 (Crime Act), Title IV of which contained specific provisions regarding immigrant women and children. Most recently, Congress passed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) to expand immigration benefits to alien battered spouses. However in spite of these amendments, critics argue that the IMFA has become a weapon for oppressing alien spouses and children. While Congress has steadily attempted to remedy the adverse effects of the IMFA, these attempts have fallen short. In light of the faulty statistical data and the disastrous effects the IMFA has had on alien spouses, critics argue that the only logical and ethical solution is for legislators to repeal the IMFA in its entirety.90

2.4. United Kingdom: Measures Taken

The United Kingdom has also been struggling with the problem of sham marriages. In 2005, the government, imposed more stringent rules, requiring non-nationals to obtain the home secretary's permission to get married in the UK. If a non national did not have a legal right to be in the country, they were denied a certificate of approval. Registrars had lobbied for this change saying they had been powerless to stop a massive rise in bogus marriages, with more than 3,500 suspected cases in one year alone. Within months of the introduction of the home secretary's veto, the number of cases dropped dramatically. However, the House of Lords, in Baiai v Secretary of State, held that the approval scheme breached human rights because it unfairly affected almost every foreign national,

90 James A Jones, supra note 17
without trying to work out whether a couple were in fact trying to defraud the authorities.  

In R (on the application of Baiai) v Secretary of State for the Home Department , the House of Lords held that this scheme established under s.19 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 involved a disproportionate interference with the right to marry protected by art.12 of the ECHR. The court held that section 19 was enacted to address the issue of marriages of convenience, that is, marriages entered into for the purpose of circumventing the effect of UK immigration law. Section 19 (3) states that the superintendent registrar shall not enter the notice of a marriage in the marriage book, unless satisfied, by the provision of specified evidence, that the party subject to immigration control, has an entry clearance granted expressly for the purpose of enabling him or her to marry in the United Kingdom or has the written permission of the Secretary of State to marry in the United Kingdom, or falls within a class specified for the purpose of this paragraph by regulations made by the Secretary of State. This section applied to persons subject to immigration control and to all United Kingdom marriages save for Anglican marriages. The Secretary of State accepted that the distinction between Anglican and civil marriage contained within section 19 was discriminatory and undertook to remove it. Further, as stated under the terms of section 19, the applicants were required to obtain the written permission of the Secretary of State before they could marry. Application for such permission required payment of a fee and permission would only be granted (in the absence of especially compassionate features) if the applicant had been granted the right to remain in the United Kingdom for at least six

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92 Art 12 of the ECHR, states- “Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”

93 Section 19, Asylum and Immigration(Treatment of Claimants etc) Act 2004
months and there were at least three months of that period remaining at the time of application.  

The House of Lords held that although not an absolute right, the right to marry is a "strong right". While the right is to be granted "according to the national laws governing the exercise of the right", any such conditions must not impair "the essence of the right", namely the right to enter a genuine marriage. The court held that no investigation into the genuineness of the affected marriage was envisaged by the scheme under this section. Rather, a blanket ban was imposed on the right to marry of those subject to immigration control. Such a blanket ban constituted a disproportionate interference with the right to marry. This decision has negatively impacted efforts to reduce sham marriages in the UK. The number of suspected sham marriages by illegal immigrants has leapt by more than half in the past year. Figures from the Home Office show a 54 percent jump in suspected cases reported by registrars in England and Wales.

2.5. Other Countries: Measures Taken

To make a brief mention of other countries- In France, the duration-of-residence and legal residence conditions have been significantly tightened in recent years. The 2003 reform of immigration and nationality law under Sarkozy, as interior minister, raised the duration-of-marriage requirement from one to two years (even three years when the foreign partner has not been resident in France for one year), while a one-year residence

96 Rise in Sham Marriages , supra note 23
in France and proved French language skills were introduced as new conditions. Sarkozy's second reform in 2006 raised the the duration of marriage requirement from two to four years (five years in case a three-year residence requirement in France has not been fulfilled). Under the banner of fighting "marriages of convenience" similar restrictions of spouses' privileged access to citizenship have been recently introduced in Austria, Denmark, Greece, and Ireland. In Australia, immigrants must live with their spouses for two years before receiving permanent partner visas and in New Zealand, a partner will be granted residence only if both people in the partnership have been living together for at least 12 months.

2.6. Canada: Recommendations and Measures taken

In the Canadian context, a number of organizations with names like Stopmarriagefraud.ca, the Canadian Marriage Fraud Victim Society, and Canadians Against Immigration Fraud have been formed to combat fraudulent marriages. They argue that the Canadian immigration system makes it easy for people abroad to marry Canadians just to immigrate to the country. Anti-Marriage Fraud groups recommend that Canada adopt a similar framework as that in the United States and Australia, where foreign spouses have to wait two years before they become permanent residents. Further, if the marriage is dissolved before the end of that period on the grounds of marriage fraud, barring hard cases such as domestic violence, the immigrant spouse should be deported to his or her homeland, and the resident spouse should be absolved from any

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98 Currey, Bill. Fraud squads chase down marriages of convenience, Globe and Mail, May 21, 2008, [Bill Currey]
further financial responsibility undertaken on immigrant spouse’s behalf.\footnote{99}{Stop Marriage Fraud.ca, There are Solutions, http://www.stopmarriagefraud.ca/solutions.html,[Stop Marriage Fraud]} Moreover, in addition to a conditional period being imposed, if the marriage ends before that stipulated period in the event of fraud but the foreign partner is not deported, he or she should not be entitled to spousal support or to welfare from the public purse. This, the groups suggest, might compel fraudulent spouses to go back to their home country as they will not be able to receive any financial assistance in Canada.\footnote{100}{Murphy, Emilia Liz. Married for the papers, www.Stopmarriagefraud.ca/marriage_fraud.pdf}

An alternative solution proposed is the issuance of a marriage visa. Such a document may carry all the rights of full residency, however, being that the immigration is based solely upon a marriage; in the event of a dissolution of that marriage the sponsored spouse would have agreed, in advance, to return home. Such a document may be converted to permanent residence status based on earned criteria such as demonstrating your ability to participate and contribute to the Canadian community rather than being an added burden.\footnote{101}{Stop Marriage Fraud.ca, supra note 31}

In addition to the solutions that have been proposed there is a need for stricter immigration procedures and enforcement of rules. It has been recommended that countries take a more restrictive approach. As seen above, the United States Congress passed the Immigration Marriage Fraud Act in 1986 in response to controversy over the so-called sham marriages that established a two year conditional residency status. In Australia, as well, immigrants must live with their spouses for two years before receiving permanent partner visas.\footnote{102}{Bill Currey, supra note 30} Further, in the U.K spouses are given permission to live and work within the country for a period of 27 months. This is called the probationary period.

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\footnote{99}{Stop Marriage Fraud.ca, There are Solutions, http://www.stopmarriagefraud.ca/solutions.html,[Stop Marriage Fraud]}
\footnote{100}{Murphy, Emilia Liz. Married for the papers, www.Stopmarriagefraud.ca/marriage_fraud.pdf}
\footnote{101}{Stop Marriage Fraud.ca, supra note 31}
\footnote{102}{Bill Currey, supra note 30}
At the end of two years, the spouse may then apply for permission to settle permanently in the U.K.\textsuperscript{103}

In light of these measures taken by other migrant receiving countries there has been recent agitation to implement some changes to the immigration rules in Canada. The Harper government has in response, deployed teams to fan out across foreign countries and gather information about elaborately staged phony weddings aimed at duping Canadian Immigration officials. The team consisting of up to five people is a part of a wider bid by the Department of Citizenship and immigration to curb the problem of fraudulent marriage. The Department continues to warn and remind Canadians that they will be held responsible if their new husbands or wives immediately leave them or apply for social assistance and hence implying that they should be cautious while entering into marriages with foreigners.\textsuperscript{104}

2.6.1.Regulations Amending the Immigration and Refugee Protection Regulations(Bad Faith),2010.

Mention must also be made of certain recent changes in regulatory measures made by the Canadian immigration authorities. A change in regulation introduced in April 2010 has now introduced the concept of bad faith. Relationships entered into primarily for the purpose of immigration have not been considered bona fide relationships under Canadian immigration law since the mid-1980s. These relationships are currently prohibited by section 4 (R4) of the Immigration and Refugee Protection Regulations (IRPR). The intent of R4 is to protect the integrity of the immigration program by preventing individuals from using relationships of convenience or bad faith relationships to circumvent

\textsuperscript{104} Bill Currey, supra note 30
immigration law. The provision currently states that a foreign nationals will not be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the relationship is not genuine and was entered into primarily for immigration purposes. Under the current provision, it has been difficult to properly identify these relationships. This is because R4, as it currently reads, specifies two mandatory elements for determining “bad faith” relationships: (a) that a relationship is not genuine and (b) that it was entered into primarily for the purpose of acquiring any status or privilege under the Act. This means that Citizenship and Immigration Canada (CIC) has to be satisfied that both elements have not been met when refusing a case under this regulation. However, a “bad faith” relationship is present when either of these related factors is apparent. Therefore the CIC has now amended the Regulations in order to create a disjunctive relationship between the “genuineness” element and the “purpose” element of the bad faith assessment. This will clarify that a finding of bad faith can be made if either of these elements is present. Clarification of the bad faith rule will enable more consistent assessment and identification of relationships entered into for immigration purposes. Even though the provinces, territories and the Canadian Bar Association are all supportive of this amendment, the Canadian Bar association has expressed some concerns about the amendments to this provision. One concern is the possibility that moving from a conjunctive to a disjunctive test will operate unfairly against people in arranged marriages, as mobility may be a consideration in choosing a marriage partner.105

2.7. Conclusion

Therefore as seen above, the problem of marriage fraud is faced by a number of countries and is a growing concern for immigration authorities. In Canada, some attribute the existence of this problem to the callousness of the resident spouses, and others to the laxity in Canadian immigration laws and their inefficient enforcement. However moving past the blame game, the seriousness of this problem has now been acknowledged, which

105 Canada Gazette Part I, Ottawa, Saturday, April 3, 2010, Volume 144 No. 14
has in turn facilitated the preventive or remedial processes. At present, it is obvious that there is need for new laws and regulatory measures to curb this problem. There is also a need for better implementation of existing rules. As it stands now, no country’s immigration system has, devised an infallible scheme to deal with this problem, therefore countries are still in a process of testing out remedies and deterrents through trial and error processes.
Conclusion

This thesis therefore was aimed at studying Fraudulent migratory marriages in India and Canada. In the first instance I focused on the Abandoned brides problem in India. The problem is essentially a socio cultural one and is unique to the subcontinent. Perhaps, the best solution in this problem is precaution. To be brides and their parents need to carefully verify the antecedents of the prospective groom before entering into an NRI marriage. Further there needs to be stricter application of anti Dowry legislation and although enforcement is critically required, the problem of abandoned brides and the related dowry harassment cases can be curbed only through social change. Awareness programs at the grassroot levels through panchayats seem to be the most promising recommendation so far. It is hoped that with the strengthening of the Indian economy and positive changes in poverty and literacy rates, people will ultimately lose their fascination of migrating abroad and be more skeptical of the NRI marriage and the use of it as a path to greener pastures. However, social change takes place slowly and for the present there needs to be certain measures that need to be taken. Among the various recommendation proposed by the various bodies considered in the thesis, is the that of signing the Hague Conventions on Private International Law. Although drafted excellently and promising unification of the extremely complex private International Law rules of various jurisdictions, these conventions are still not ratified by a vast majority of states. It is for this reason that this recommendation cannot bring about any significant change in the abandoned brides situation. The recommendation of signing of bilateral treaties, tailor made to suit two particular jurisdictions and with provisions specifically aimed at correcting this particular problem seems to offer more promise.

The second problem of Fraudulent Immigration marriages though discussed in the Canadian context is not a problem specific to Canada. It is a problem faced by mostly all immigrant receiving countries in the Western world, varying in degrees. With
globalization, growing internationalization, and still prevalent economic disparity between different countries, neither can migration be avoided nor problem of fraudulent migration. It is interesting to notice that people misuse even the once sacred institution of marriage in order to defraud authorities and immigrate to other countries. In the thesis I consider the various measures undertaken by different countries to combat immigration marriage fraud such as implementation of a conditional residency statuses and strengthening of existing immigration legislation. Although the methods implemented by other countries such as the United States have not been infallible, Canadian Immigration laws however need to be change and effectively implemented to curb the problem at hand.
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