

# BRIDES WITHOUT BORDERS: NEW TOPOGRAPHIES OF VIOLENCE AND THE FUTURE OF LAW IN AN ERA OF TRANSNATIONAL CITIZEN-SUBJECTS

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*As she peeked through her rich and intricately woven maroon and golden veil to catch a glimpse of her husband Manoj, 18-year-old Neeta started daydreaming about the luxurious life that lay ahead of her. The first in her family to go abroad, she thought to herself: "this wedding is a dream come true."*

*Reminisces Neeta's mother; "We thought this was a God sent match as he was well established abroad. We were happy that our daughter would lead a secure and comfortable life and enjoy all the luxuries we lacked. The family, who hails from a remote town in Bihar was so impressed with the suave and sophisticated Manoj, that they even sold their ancestral property in the village to meet the hefty \$20,000 dowry demand."*

*Manoj left India a week after the wedding, promising to send his new wife the documents she needed to get a visa. Neeta....waited....And waited. After nearly one year of anxious waiting, the divorce papers came along with the news: Manoj had used most of the dowry money to sponsor his longtime Indian girlfriend.<sup>1</sup>*

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<sup>1</sup> Leena Kundnani, *Marry An NRI At Your Own Risk*, NAAREE.COM, Nov. 16, 2007, <http://www.naaree.com/mamblog-section/marriage-wedding/marry-an-nri-at-your-own-risk-20071116133.html>.

## INTRODUCTION

Lavina Melwani has described non-resident Indian (NRI) abandonment cases as the “ugly underside of outsourced marriages.”<sup>2</sup> As the introductory narrative suggests, patterns of marriage and migration within the Indian diaspora have generated new forms of abuse that manifest themselves in a wide range of desertion scenarios involving new brides. Anti-violence activists are receiving a growing number of calls from women experiencing what some advocates have characterized as “transnational abandonment.”<sup>3</sup> It is estimated that at least 20,000 to 30,000 Indian women have been abandoned by their non-resident Indian<sup>4</sup> spouses, and true figures may be significantly higher due to underreporting.<sup>5</sup>

As the issue of abandonment receives increasing international spotlight,<sup>6</sup> So too has information concerning the many different circumstances in which it occurs. Depending on their objective, spouses in abandonment cases file divorce papers, initiate custody proceedings, or

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<sup>2</sup> Lavina Melwani, *Dishonor and Abandon*, LITTLE INDIA, Feb. 5, 2005, available at <http://www.littleindia.com/news/134/ARTICLE/1475/2005-02-05.html>.

<sup>3</sup> Interview with Shamita Das Dasgupta, Founder, Manavi, in New Brunswick, N.J. (May 25, 2005) and Interview with Lakshmi Rajagopal, former Program Director, Manavi, in New Brunswick, N.J. (May 25, 2005); SHAMITA DAS DASGUPTA & URJASI RUDRA, *TRANSNATIONAL ABANDONMENT OF SOUTH ASIAN WOMEN A NEW FACE OF VIOLENCE AGAINST WOMEN* (2009), available at <http://www.manavi.org/documents/Manavi-%20Final%20Article%20on%20Transnational%20Abandonment.pdf/> [hereinafter *TRANSNATIONAL ABANDONMENT*].

<sup>4</sup> NRI's or non-resident Indians include: people of Indian origin who are born outside India or people of Indian origin who reside outside India. See National Portal of India, *Indian Diaspora*, <http://india.gov.in/overseas/diaspora/nri.php> (last visited May 1, 2010).

<sup>5</sup> Indeed, Transnational Abandonment has become a widespread phenomenon. See, e.g., Himanshi Dhawan, *Marry-and-Dump NRIs May Face Indian Law*, TIMES OF INDIA, Jan. 9, 2007, <http://www1.timesofindia.indiatimes.com/events/articleshow/1100973.cms>; Madhur Singh, *Indian Brides, Marrying to Go Abroad, Often Find Themselves Abandoned at Home*, NRI DIVORCE, Oct. 25, 2007, <http://www.nridivorce.com/NRID54.htm>; Nandita Vij, *Abandoned Wives: Promises and Lies*, FR. 24 INT'L NEWS, Dec. 7, 2006, <http://www.france24.com/france24Public/en/archives/news/asia-pacific/20061207-Abandoned-Brides-India.php>; *TRANSNATIONAL ABANDONMENT supra* note 3.

<sup>6</sup> See, e.g., Kul Bhushan, *NRI Marriages: Dreams to Nightmares*, INDIAN STAR, July 25, 2008, available at [http://www.nr pulse.com/NRI News/NRI News\\_NRI\\_Marriages.htm](http://www.nr pulse.com/NRI News/NRI News_NRI_Marriages.htm); Geeta Pandey, *Scheme to Aid Duped Indian Brides*, BBC NEWS, Feb. 2, 2007; Madhur Singh, *The Honeymoon's Over*, TIME, Oct. 25, 2007, available at <http://www.time.com/time/magazine/article/0,9171,1675399,00.html>.

avoid paying child support in the jurisdiction they believe to be most supportive of their interests.<sup>7</sup> In many of these situations, women are powerless to contest their spouse's legal actions because of financial constraints and/or the inability to travel due to immigration restrictions.<sup>8</sup> In addition to being severely disadvantaged in these cases from a legal perspective, these women are often subjected to other forms of emotional and physical abuse at the hands of their spouses, and in some cases, their in-laws.<sup>9</sup>

The issue of transnational abandonment highlights Saskia Sassen's concept of the "global city," or that which signifies the "unbundling of the exclusive territoriality of the nation-state."<sup>10</sup> In this juncture between globalization and sovereignty, the absence of national and international legal strategies to address the emergent issue of abandonment leaves many women without access to vital legal protections.

This Article examines the phenomenon of transnational abandonment, or what has emerged in media and legal discourses as the figure of the "NRI abandoned bride." In particular, this Article investigates the potential of the NRI abandoned bride for advancing a more transnational approach to jurisprudence involving family law and child custody issues; and the extent to which the US. and Indian governments have responded to the problem of NRI abandonment, given the distinct challenge of advocating for women across national boundaries, and in the absence of a coordinated system of intergovernmental communication and meaningful cross-border advocacy networks. By tracing the figure of the NRI bride in and through these multiple national, transnational, legislative and jurisdictional entanglements, this Article aims to complicate legal

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<sup>7</sup> Interview with Vasudha Nagaraj, Fellow, Anveshi, in Hyderabad, India (Jan. 7, 2005); Interview with Asmita Basu, Project Co-ordinator & Legal Consultant, Lawyers Collective Women's Rights Initiative, Delhi, India (Jan. 25, 2005); Interview with Shamita Das Dasgupta, Founder, Manavi, in New Brunswick, N.J. (May 25, 2005); Interview with Lakshmi Rajagopal, former Program Director, Manavi, in New Brunswick, N.J. (May 25, 2005); Interview with Kavitha Sreeharsha, Former Domestic Violence Coordinator, Asian Pacific Islander Legal Outreach, San Francisco, CA (Oct. 14, 2004).

<sup>8</sup> Shamita Das Dasgupta, *Abandoned and divorced: The NRI pattern*, INFOCHANGE WOMEN, March 2010, available at <http://infochangeindia.org/201003318203/Women/Features/Abandoned-and-divorced-The-NRI-pattern.html>; TRANSNATIONAL ABANDONMENT, *supra* note 3.

<sup>9</sup> Melwani, *supra* note 2.

<sup>10</sup> SASKIA SASSEN, *GLOBALIZATION AND ITS DISCONTENTS: ESSAYS ON THE NEW MOBILITY OF PEOPLE AND MONEY* (1998).

theory, which has resisted meaningful engagement with the altered jurisdictions globalization has produced.

Part I of this Article situates the issue of NRI abandonment within a broader examination of the complexities of gendered violence in the Indian diaspora, as well as other global studies of transnational marriages and the myriad socio-legal questions they present. This Part also revisits key concepts, suggesting that terms “domestic” and “violence” ought to be expanded in order to meaningfully address the rapidly shifting and increasingly transnational landscape of anti-violence advocacy. Part II examines the varied incarnations of NRI abandonment by exploring advocates’ direct encounters with the issue while serving Indian women at NGO’s and community-based organizations in major urban centers of India and the United States. Part III conducts a purposeful sampling of Indian Supreme Court and High Court cases on NRI abandonment decided between 1975 and 2007, highlighting the ways in which Indian courts have intervened in claims involving NRI marriages, with a particular focus on the Indian judiciary’s response to judgments from foreign courts. Part IV of the Article considers recent law and policy initiatives undertaken by the U.S. and Indian governments to begin to address the complexities of cross-border marriages and abandonment. This final section includes an evaluation of the extent to which such interventions could positively impact the legal rights of abandoned NRI brides, and concludes with some recommendations for future advocacy efforts to address this complex issue.

## **I. SITUATING GENDERED VIOLENCE WITHIN TRANSNATIONAL PROCESSES**

This Article derives from a broader study of law and advocacy responses to violence against Indian women living in the United States and India.<sup>11</sup> In order to understand how Indian women’s lives are shaped by

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<sup>11</sup> The data relied upon in this Article derives in part from my doctoral research study entitled “Migrating Bodies and Shifting Violence Discourses: The Formation of Legal Subjects in a Transnational Age.” A two-pronged methodological approach was utilized in this study which included: (1) in-depth interviews with advocates working in a range of capacities at 35 legal and non-legal organizations in the United States and India, and (2) archival/textual research drawn from a targeted analysis of legislative histories, statutes and case law, which comprise the specific legal framework each country has adopted to address violence against women. Data from my ethnographic and archival research highlighted the constraints on anti-violence advocacy for Indian women and the challenge of using existing laws to address particular forms of gendered violence. My findings suggest that Indian women are subjected to a combination of factors that result in a failure of the legal system to protect them and/or provide them with meaningful remedies, such as limitations in existing legal frameworks encompassing violence against women, as well as new patterns of

varying degrees of access to and representation within diverse legal systems, my research has examined the particular constraints faced by advocates working on violence against women across geographic borders and endeavors to unpack the diverse sources of those constraints. This analysis of migrating spouses, traveling cultures and evolving bodies of law suggests that new types of legal subjects are being produced within transnational spaces that undermine the meaningfulness of legal remedies conceived within the narrow boundaries of the nation-state. My examination of laws and legal advocacy efforts directed at Indian women experiencing abuse reveals that the legal frameworks which encompass crimes of gendered violence against Indian women are increasingly inadequate because they define domestic violence too narrowly and are unable to address the shifting and complex legal entities that emerge within transnational spaces.<sup>12</sup> What immediately becomes evident is not only the growing interconnectedness between the United States and India—engendered by globalization and recent patterns of cross-border marriage and immigration—but also the new configurations of violence these shifts have enabled.<sup>13</sup> One such pattern is the issue of NRI abandonment and the difficulties these scenarios present for both advocates seeking to assist transnationally abandoned women, as well as for the legal systems being relied upon to adjudicate these claims. It is this contemporary dilemma in law and advocacy work that this Article examines.

#### **A. Gender, Law and Violence within Postcolonial and Transnational Spaces**

For legal systems rooted in traditions of Western liberalism and committed to “neutral” principles and standards, the idea of complex, intersectional identities presents a considerable challenge. While the presumed fairness of the law resides in its ability to treat all those subject to it to colorblind and gender-neutral justice, in actuality, one’s ability to enjoy the rights and privileges of citizenship is severely constrained by hierarchies

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violence, such as transnational abandonment, that are resistant to legal interventions. Sharmila Lodhia, *Migrating Bodies and Shifting Violence Discourses: The Formation of Legal Subjects in a Transnational Age* (Nov. 30, 2007) (unpublished Ph.D. dissertation, University of California, Los Angeles) (on file with author).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

of race, gender, sexuality and other power dimensions.<sup>14</sup> Accordingly, transnational feminisms provide the overarching methodological framework of this Article's analysis of NRI abandonment, which traces law and advocacy through various local and global sites. This feminist literature highlights the importance of contextualized and historicized analyses which take into account the impact of globalization, nationalism and colonialism in the lives of women.<sup>15</sup> Transnational practices demand a consideration of the various local and national identities that are produced by the expansion of social, political, cultural and territorial borders due to movements of people, goods and ideas.<sup>16</sup> This framework enables an exploration of legal activism for Indian women in an era of increasingly mobile legal subjects—including both victims and perpetrators of violence—within a socio-political moment wherein even the terms “domestic” and “violence” require reconfiguration.

Critical race theory provides a rich and multifaceted critique of the ways in which race, gender and class alter the experiences of minority groups within dominant legal systems.<sup>17</sup> Literature that examines intersectionality and thereby makes evident the failure of mainstream law and advocacy efforts to address interlocking forms of oppression helps to inform the analysis of the increasingly complex legal subjects that

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<sup>14</sup> See, e.g., Inderpal Grewal, *TRANSNATIONAL AMERICA: FEMINISMS, DIASPORAS, NEOLIBERALISMS* (2005) [hereinafter GREWAL, *TRANSNATIONAL AMERICA*]; IAN HANEY-LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996); CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberle Crenshaw et al. eds., 1995) [hereinafter CRITICAL RACE THEORY: THE KEY WRITINGS].

<sup>15</sup> See, e.g., Amrita Basu, *Globalization of the Local/Localization of the Global: Mapping Transnational Women's Movements*, 1 MERIDIANS: FEMINISM, RACE, TRANSNATIONALISM 1, 68 (Autumn 2000); SCATTERED HEGEMONIES: POSTMODERNITY AND TRANSNATIONAL FEMINIST PRACTICES (Inderpal Grewal & Caren Kaplen, eds., 1994); [hereinafter SCATTERED HEGEMONIES] BETWEEN WOMAN AND NATION: NATIONALISMS, TRANSNATIONAL FEMINISMS, AND THE STATE (Caren Kaplan et al. eds., 1999); DANGEROUS LIAISONS: GENDER, NATION, AND POSTCOLONIAL PERSPECTIVES (Anne McClintock et al. eds., 1997); Richa Nagar et al., *Locating Globalization: Feminist (Re)readings of the Subjects and Spaces of Globalization*, 78 ECON. GEOGRAPHY 257 (2002) (analyzing globalization literature from a feminist perspective).

<sup>16</sup> See generally, Basu, *supra* note 15; SCATTERED HEGEMONIES, *supra* note 15; AIHWA ONG, *FLEXIBLE CITIZENSHIP: THE CULTURAL LOGICS OF TRANSNATIONALITY* (1999).

<sup>17</sup> See, e.g., CRITICAL RACE THEORY: THE KEY WRITINGS, *supra* note 14; RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* (2001); CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 2nd ed. 2003).

globalization has produced.<sup>18</sup> Through the concepts of political and structural intersectionality, Kimberlé Crenshaw suggests that intersecting and mutually reinforcing systems of racial and gendered subordination work together to alter women of color's interactions with the law. Specifically, she argues that structural intersectionality—the unique location of women of color at the intersection of race and gender—distinguishes their experiences of rape, domestic violence or reproductive rights, from those of white women.<sup>19</sup> Similarly, the failure of mainstream domestic violence agencies to address the specific needs of South Asian women experiencing transnational abandonment, combined with the legal system's ineffectiveness in addressing the complex subordinations stemming from race, gender and immigrant status, provide new evidence of this structural intersectionality.

Situating Indian feminist scholarship within the larger literatures of postcolonial theory and feminist legal theory also provides critical insights into the evolution of Indian laws addressing violence against women and, in particular, the ways in which women's lives become situated in relation to particular colonialist and nationalist agendas.<sup>20</sup> This literature highlights some of the hazards of relying on protectionist discourses of the state that are often tainted by patriarchal ideologies. The distinct racial history of the United States, as well as ongoing questions of citizenship and belonging, remain deeply embedded in activism within the U.S. among members of the South Asian<sup>21</sup> community.<sup>22</sup> Annanya Bhattacharjee highlighted the

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<sup>18</sup> Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139; LISA A. CROOMS, 'To Establish My Legitimate Name Inside the Consciousness of Strangers': Critical Race Praxis, *Progressive Women-of-Color Theorizing and Human Rights*, 46 HOWARD L. J. 229 (2003); DARREN LENARD HUTCHINSON, *Identity Crisis: "Intersectionality," "Multidimensionality," and the Development of an Adequate Theory of Subordination*, 6 MICHIGAN J. GENDER & L. 285 (2001).

<sup>19</sup> See generally Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

<sup>20</sup> JANAKI NAIR, *WOMEN AND LAW IN COLONIAL INDIA* (2000) (analyzing the history and influence of colonialism on Indian law and legislative reforms affecting women); KUMKUM SANGARI & SUDESH VAID, *RECASTING WOMEN: ESSAYS IN INDIAN COLONIAL HISTORY* (1990) (essay collection on patriarchal influence on Indian society, focusing geographically on areas previously under direct British rule).

<sup>21</sup> I utilize the term "South Asian" here to reflect the communities most U.S. advocacy organizations identify themselves as serving. Individuals from "South Asia" include those whose origins can be traced to: India, Pakistan, Bangladesh, Sri Lanka, and Nepal, as well as those who have migrated to diasporic locations such as England, Canada and Africa. VIJAY PRASHAD, *THE KARMA OF BROWN FOLK* (2000). It is worth noting that

difficulty of applying traditional domestic violence analysis and advocacy approaches to South Asian women, for whom static theories of “public/private spaces” and “national-belonging,” prove severely inadequate.<sup>23</sup> She suggests that “the parameters of each immigrant woman’s experience of domestic violence spans the patriarchal home, the community, the host nation, and the nation of origin.”<sup>24</sup> This notion of “home” traverses the rigid boundaries between public and private spheres, and recognizes the role of the nation in shaping the domestic arena. Bhattacharjee argues that for South Asian immigrant women, traditional liberal concepts of public and private spheres are gravely inadequate because, with respect to immigrant homes, the state is “actively involved in determining the very existence of the family.”<sup>25</sup> Not only does the state shape the composition of the family, but it also plays a direct role in determining whether or not to intervene in cases where the immigrant family becomes the site of abuse. NRI abandonment cases provide further evidence of the failure of static conceptualizations of the “domestic” to encompass a range of harm that extends not only beyond the realm of a single home or family, but beyond that of a single-nation state’s borders.

Consequently, the phenomenon of transnational abandonment presents a unique opportunity to re-imagine the boundaries of the “domestic” and “violence” in a more mobile and expansive way. The movement of spouses across borders in a world where citizenship and domicile have become more fluid, and their pursuit of legal remedies in multiple jurisdictions create a legal landscape where the spaces of home and nation are no longer geographically fixed. Within these realms, violence

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statistical data from organizations served indicates that the majority of women served by South Asian organizations claim India as their country of origin.

<sup>22</sup> See, e.g., GREWAL, *TRANSNATIONAL AMERICA*, *supra* note 14; MONISHA DAS GUPTA, *UNRULY IMMIGRANTS: RIGHTS, ACTIVISM, AND TRANSNATIONAL SOUTH ASIAN POLITICS IN THE UNITED STATES* (2006) [hereinafter DAS GUPTA, *UNRULY IMMIGRANTS*]; BODY EVIDENCE: *INTIMATE VIOLENCE AGAINST SOUTH ASIAN WOMEN IN AMERICA* (Shamita Das Dasgupta ed., 2007) [hereinafter BODY EVIDENCE].

<sup>23</sup> ANANNYA BHATTACHARJEE, *The Public/Private Mirage: Mapping Homes and Undomesticating Violence Work in the South Asian Immigrant Community*, in *FEMINIST GENEALOGIES, COLONIAL LEGACIES, DEMOCRATIC FUTURES* (M. Jacqui Alexander & Chandra Talpade Mohanty eds., 1997).

<sup>24</sup> *Id.* at 322.

<sup>25</sup> *Id.*



assumes new and more sophisticated forms which demand individual recognition.

The cases and narratives examined below highlight the wide range of violence and abuse that new Indian brides experience within the family following marriage. In some situations, violence involves physical forms of abuse including beatings, sexual violence or forced servitude,<sup>26</sup> with the most tragic cases resulting in death.<sup>27</sup> In other circumstances, violence manifests in mental torture and harassment for dowry by the spouse and/or his extended family,<sup>28</sup> as well as other mechanisms of control, psychological harm, isolation and deprivation of resources.

While most jurisdictions in the U.S. fail to recognize this wide spectrum of violence and abuse, India's recently enacted *Protection of Women from Domestic Violence Act* of 2005 ("PWDVA") incorporates a vast range of physical and mental harms in a groundbreaking way.<sup>29</sup> The PWDVA is the first law in India to explicitly adopt the term domestic violence, which it defines as including physical, verbal, emotional, sexual and economic harms.<sup>30</sup> Chapter II of the Act states the parameters of each form of abuse. Physical abuse is defined as "[a]ny act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and

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<sup>26</sup> See *infra* Part IV.

<sup>27</sup> See, e.g., Shamita Das Dasgupta, *Broken Promises: Domestic Violence Murders and Attempted Murders in the U.S. and Canadian South Asian Communities*, in *BREAKING THE SILENCE: DOMESTIC VIOLENCE IN THE SOUTH ASIAN-AMERICAN COMMUNITY* 27-46 (Sandhya Nankani ed., 2000); George Joseph, *Home is Where the Hurt is*, *INDIA ABROAD*, June 12, 2009, at M3 (detailing instances of abusive marriages ending with the wife's murder or suicide); *NRI Arrested for wife's death in Bahrain*, *TIMES OF INDIA*, April 16, 2007, <http://www1.timesofindia.indiatimes.com/news/india/NRI-arrested-for-wifes-death-in-Bahrain/articleshow/1915331.cms>; Vidya Venkat, *Jenita's Tale*, *FRONTLINE*, Dec. 21, 2007, available at <http://www.thehindu.com/fline/fl2424/stories/20071221502102900.htm>.

<sup>28</sup> See, e.g., Marilyn Fernandez, *Domestic Violence by Extended Family Members in India: Interplay of Gender and Generation*, 12 J. INTERPERSONAL VIOLENCE 433 (1997) (detailing harassment, mental and physical abuse of young women by both their husbands and in-laws, in part for increased dowry); MARGARET ABRAHAM, *SPEAKING THE UNSPEAKABLE: MARITAL VIOLENCE AMONG SOUTH ASIAN IMMIGRANTS IN THE UNITED STATES* (2000).

<sup>29</sup> Protection of Women from Domestic Violence Act, No. 43 of 2005, India Code (2005) [hereinafter PWDVA].

<sup>30</sup> *Id.*

includes assault, criminal intimidation and criminal force.”<sup>31</sup> Sexual abuse includes “any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman.”<sup>32</sup> Verbal and emotional abuse refers to “insults, ridicule, humiliation, name calling and insults or ridicule, especially with regard to not having a child or a male child,” and “repeated threats to cause physical pain to any person in whom the aggrieved person interested.”<sup>33</sup> Some more specific examples of verbal and emotional abuse include: “accusation/aspersion on your character or conduct, insult for not bringing dowry; and demeaning humiliating or undermining remarks.”<sup>34</sup> The final category of violence enumerated in the statute is economic abuse. This category includes not only the deprivation of resources (*e.g.* not providing money for maintaining the wife or her children, not providing food, clothes, medicine for the wife or her children, non-payment of rent, and non-payment of bills),<sup>35</sup> but it also prevents an abuser from alienating or encumbering assets to which the woman may be entitled.<sup>36</sup>

In addition, this subsection recognizes “being forced out of the home or being prevented from accessing any part of the home,” as a form of economic abuse. As evidenced by these very particular elements of the statute, what the PWDVA is significant for its attempt to incorporate the particular social, familial and cultural context in which certain types of abuse against Indian women occurs. The statute’s incorporation of harms such as dowry harassment, deprivation of resources and forcible exclusion from the home, as actionable forms of abuse, are directly relevant to the patterns of violence that emerge in transnational abandonment cases but which are often not recognized overseas as constituting domestic violence.

## **B. Transnational Marriage and Migration**

Literature on NRI or transnational abandonment is somewhat limited, although advocates for Indian women have begun to identify the

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<sup>31</sup> *Id.* at ch. 2 (3) (i).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at ch. 2 (3) (iii).

<sup>34</sup> See Form I, Domestic Incident Report under Sections 9(b) and 37(2) (c) of the Protection of Women from Domestic Violence Act, available at [http://www.csindia.org/attachments/221\\_FormI.pdf](http://www.csindia.org/attachments/221_FormI.pdf) (implementing the PWDVA).

<sup>35</sup> *Id.* at ch. 2 (3) (iv).

<sup>36</sup> *Id.* at ch. 2 (3) (iv) (b).

problem of abandonment across borders and the need for transnational advocacy networks in their work.<sup>37</sup> Katharine Charsley's research has examined the lives of Pakistani men and women who marry transnationally and who have migrated to communities in Britain.<sup>38</sup> She has noted that "[t]ransnational marriage dramatically increases the distance between a woman's natal and marital homes, heightening the dangers that stem from this distance."<sup>39</sup> Her research furnishes additional evidence of marital abandonment and abuse outside the country of origin and the impact of such acts on individuals and their families.<sup>40</sup> She highlights specific risks to migrant Pakistani brides, such as the concealment of premarital relationships or pre-existing families and various misrepresentations as to a potential spouse's character, behavior or physical health, as well as abandonment shortly after marriage.<sup>41</sup>

Similarly, the lives of married Sikh women living in Tanzania and Britain have been documented by Kanwal Mand, who notes that transnational women face distinct challenges with respect to divorce and widowhood because they live far from their natal families.<sup>42</sup> Ranjana Sheel has examined how patriarchal Indian customs are reinscribed and maintained by Indian families living in Canada.<sup>43</sup> Her work looks specifically at scenarios involving NRI marriages in Canada and the elevated expectations placed on brides' families in terms of lavish wedding

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<sup>37</sup> See BODY EVIDENCE *supra* note 22, at 1–8; DAS GUPTA, UNRULY IMMIGRANTS, *supra* note 22, at 119–121 (2006); Anu Gurnani, *July's Women: The Untold Story of Transnationally Abandoned Women*, MANAVI NEWS XLVI:1 (New Brunswick, N.J.), Summer 2005, at 1, available at <http://www.manavi.org/documents/manavinewsletter2005.pdf>; TRANSNATIONAL ABANDONMENT, *supra* note 3.

<sup>38</sup> Katherine Charsley, *Vulnerable Brides and Transnational Ghar Demands: Gender, Risk and 'Adjustment' Among Pakistani Marriage Migrants to Britain*, 12 INDIAN J. OF GENDER STUD. 381 (2005).

<sup>39</sup> *Id.* at 383.

<sup>40</sup> *Id.* at 388, 401–402 (detailing examples of abusive marriages involving transnational spouses).

<sup>41</sup> *Id.* at 386–389.

<sup>42</sup> Kanwal Mand, *Marriage and Migration Through the Life Course: Experiences of Widowhood, Separation and Divorce Amongst Transnational Sikh Women*, 12 INDIAN J. OF GENDER STUD. 407 (2005).

<sup>43</sup> Ranjana Sheel, *Marriage, Money and Gender*, in MARRIAGE, MIGRATION AND GENDER 220, 222–227 (Rajni Palriwala & Patricia Uberoi eds., 2008) [hereinafter MARRIAGE, MIGRATION].

ceremonies and dowry demands which are linked to marriage and migration abroad. Margaret Abraham has looked extensively at the problem of domestic violence within the Indian community in the United States.<sup>44</sup> Her research has documented the struggles of Indian women who are living away from their familial support systems, and who, when abused, have greater difficulty seeking help because of isolation, intimidation and fear of deportation.<sup>45</sup> While focused on particular communities, these works demonstrate difficulties shared by many of these “transnational” brides.<sup>46</sup>

### C. Immigration Flows and Violence in the Diaspora

The term “Indian” encompasses a diverse people, many of whom have migrated to diasporic communities throughout the world. The number of Indians estimated to be living overseas is 20 million.<sup>47</sup> The Report of the High Level Committee on the Indian Diaspora reveals that significant populations of overseas Indians can be found in countries such as Australia, Canada, Malaysia, Myanmar, Saudi Arabia, South Africa the United States and the UK.<sup>48</sup> According to the 2000 U.S. Census, there are 1,678,765 Asian Indians in the United States;<sup>49</sup> and a more recent press release

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<sup>44</sup> MARGARET ABRAHAM, *SPEAKING THE UNSPEAKABLE: MARITAL VIOLENCE AMONG SOUTH ASIAN IMMIGRANTS IN THE UNITED STATES* (2000).

<sup>45</sup> Margaret Abraham, *Domestic Violence and the Indian Diaspora in the United States*, in MARRIAGE, MIGRATION, *supra* note 43, at 303, 314-15.

<sup>46</sup> For other scholarly discussions of the phenomenon of the “transnational” marriage and its accompanying dangers, see, for example, NICOLE CONSTABLE, *CROSS BORDER MARRIAGES* (2005); BODY EVIDENCE, *supra* note 22; Mand, *supra* note 42; MARRIAGE MIGRATION AND GENDER (Rajni Palriwala & Patricia Uberoi eds., 2008); Kristen M. Lindee, *Love Honor or Control: Domestic Violence, Trafficking and the Question of How to Regulate the Mail-Order Bride Industry*, 16 COLUM. J. GENDER & L. 551 (2007).

<sup>47</sup> NRIOL.com, Indian Diaspora, <http://www.nriol.com/indiandiaspora/> (last visited May 1, 2010).

<sup>48</sup> HIGH LEVEL COMMITTEE ON INDIAN DIASPORA, REPORT OF THE HIGH LEVEL COMMITTEE ON THE INDIAN DIASPORA (Dec. 2001) available at <http://indiandiaspora.nic.in/diasporapdf/part1-est.pdf>.

<sup>49</sup> U.S. Census Bureau, 2000 Decennial United States Census, <http://www.census.gov/main/www/cen2000.html> (last visited May 1, 2010).

suggests that there were 2.77 million people of Asian Indian descent living in the U.S. in 2007.<sup>50</sup>

In the 1970s, following a long history of Indians immigrating to other countries, including the United States,<sup>51</sup> the Indian government created the “NRI” status and began encouraging Indians living abroad to invest in India. As Sandhya Shukla suggests, “the Indian State, by defining its national interests in a particular way, and with relation to a specific group of Indians abroad, was in essence creating the material basis for what we might understand as a new kind of migrant community in the 1970s.”<sup>52</sup> The Indian Government labels over 30 million people as members of the “Indian Diaspora,” which includes all people who have “migrated from the territories that are currently within the borders of the Republic of India,” whether they were born outside India or were born in India and now reside outside of India.<sup>53</sup> Another category known as “PIO’s” includes persons of Indian origin who have obtained the citizenship of another country.<sup>54</sup> NRI’s who go abroad to live or work in many cases return to their country of origin to marry.<sup>55</sup> These cross-border marriages in some cases result in

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<sup>50</sup> U.S. Census Bureau, Facts for Features: Asian/Pacific American Heritage Month: May 2010, [http://www.census.gov/newsroom/releases/archives/facts\\_for\\_features\\_special\\_editions/cb10-ff07.html](http://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb10-ff07.html) (May 1, 2010).

<sup>51</sup> For a discussion of this history, see KAREN ISAKSEN LEONARD, *THE SOUTH ASIAN AMERICANS* 39-40 (1997); PRASHAD, *supra* note 21; Shivali Shah, *Middle Class, Documented, and Helpless: The H-4 Visa Bind*, in *BODY EVIDENCE*, *supra* note 22, at 195.

<sup>52</sup> Sandhya Shukhla, *New Immigrants, New forms of Transnational Community: Post 1965 Migrations*, *AMERASIA J.*, 25(3), 1999/2000, at 23.

<sup>53</sup> Indian Government Website, Indian Diaspora, <http://india.gov.in/overseas/diaspora/nri.php> (last visited May 1, 2010).

<sup>54</sup> The Indian Embassy defines the Person of Indian origin as a foreign citizen not being a citizen of Pakistan, Bangladesh and other countries as may be specified by the Central Government from time to time if:

She/he “at any time held a Indian passport,” or

he/he or “either of his/her parents or grand parents or great grand parents was born in and permanently resident of India as defined in the Government of India Act, 1935”, or She/he is a spouse of a citizen of India or a person of Indian origin.

Consulate General of India, Overseas: Benefits: PIO Card, <http://www.indiaconsulate.org.br/html/english/benefits.php> (last visited May 1, 2010).

<sup>55</sup> Lavina Melwani, *Outsourced Spouses: Indian are Pioneers in Tran-Continental*

women being abandoned abroad or in India as the advocacy perspectives discussed below will demonstrate.

## II. ADVOCATES' PERSPECTIVES ON TRANSNATIONAL ABANDONMENT

The U.S. Department of State recently issued a warning to Indian men traveling abroad to marry, explaining that they may be at risk of abuse of anti-dowry laws by women and their families in India.<sup>56</sup> A similar warning was released in Canada.<sup>57</sup> These diasporic admonitions are especially troubling when one considers that the weight of evidence suggests that more often than not it is *women* who are at risk at the hands of unscrupulous grooms who manipulate the law.<sup>58</sup> The decidedly more common scenario involves a woman being abused and/or deserted by her NRI spouse after they marry and travel abroad.<sup>59</sup>

Ethnographic data<sup>60</sup> gathered in India and the United States highlights the emergence of NRI abandonment as an advocacy challenge for anti-violence advocates in India and the United States. While marriages between Indians living in the diaspora and Indians living in India are hardly a novel occurrence, contemporary global shifts have produced new types of

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*Marriages*, LITTLE INDIA, May 2, 2005, available at <http://www.littleindia.com/news/142/ARTICLE/1476/2005-02-05.html>; Nita Bhalla, *Indian Brides Seek Protection from Abusive Grooms*, REUTERS, Aug. 15, 2006, available at <http://www.nridivorce.com/NRID16.htm>; Baldev Sahota, *NRI Marriages—Sweeteners for Dowry*, DESI BLITZ, Dec. 22, 2008, available at <http://www.desiblitz.com/content/nri-marriages-sweeteners-for-dowry>.

<sup>56</sup> LISA TSERING, *NRI Marriages: The Dark Side*, INDIA-WEST, Dec. 31, 2004, available at [http://news.ncmonline.com/news/view\\_article.html?article\\_id=99efd9853a5a5168e4dad8b633bf1a7](http://news.ncmonline.com/news/view_article.html?article_id=99efd9853a5a5168e4dad8b633bf1a7).

<sup>57</sup> See Foreign Affairs And International Trade Canada, Travel Report For India, [http://www.voyage.gc.ca/countries\\_pays/report\\_rapport-eng.asp?id=128000](http://www.voyage.gc.ca/countries_pays/report_rapport-eng.asp?id=128000) (last visited May 1, 2010).

<sup>58</sup> See, e.g., Chetan Chauhan, *Indian Missions to Help Jilted NRI Brides*, HINDUSTAN TIMES, Jul. 8, 2008, available at <http://www.hindustantimes.com/News-Feed/india/Indian-missions-to-help-jilted-NRI-brides/327212/Article1-322703.aspx>; see also Gurnani, *supra* note 37; Singh, *supra* note 6.

<sup>59</sup> Melwani, *supra* note 2; Chauhan, *supra* note 58.

<sup>60</sup> In this section I draw on interview data from in-depth interviews with advocates from organizations in the U.S. and India working in a wide range of capacities to serve Indian and South Asian women who are victims of violence. The interviewees cited in this section spoke of the wide range of issues surrounding NRI abandonment.

consumerism in the form of escalating dowry demands, requests for consumer goods instead of money and the requirement of lavish designer weddings.<sup>61</sup> In addition, there is an increased desirability to parents to have their daughters seek marriages to spouses living and working abroad.<sup>62</sup>

### A. Indian Experiences with Cross-Border Marriages

Indian advocates describe shifts in demands being made by families living abroad in the context of marriage, not only in terms of dowry demands, but also in relation to the wedding ceremonies themselves.<sup>63</sup> The practice of giving and receiving dowry, while formally outlawed in 1961, remains a widespread practice in India.<sup>64</sup> Some Indian advocates discuss the fact that the dowry system itself has evolved as a result of the expansion of the global economy and the rise of consumerism. One such advocate made the following observation about the evolution of dowry:

In my great-great grandmother's time it was grains and vegetables and other produce of the earth that were given in exchange as dowry or bride-price. Over the years as society moved away from an agrarian society to an industrialized society even the form of dowry changed. From everyday things, like grain and rice and vegetables, it became a market economy where money was the medium of exchange and then factory produced goods. This is a direct offspring of globalization and consumerism.<sup>65</sup>

This is a striking example of traditions and culture being altered by rapid economic growth. A booming market economy in India, and the

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<sup>61</sup> Interview with Ranjana Kumari, Director, Centre for Social Research, in Delhi, India (Jan. 27, 2005); Interview with Donna Fernandes, Founding Member, Vimochana, in Bangalore, India (Feb. 16, 2005); Interview with Asmita Basu, Project Co-ordinator and Legal Consultant, Lawyers Collective Women's Rights Initiative, Delhi, India (Jan. 25, 2005).

<sup>62</sup> Ranjana Sheel, *Marriage, Money and Gender*, in MARRIAGE, MIGRATION, *supra* note 43, at 220–222.

<sup>63</sup> See, e.g., Kumari, *supra* note 61; Kundnani, *supra* note 1.

<sup>64</sup> Sonia Dalmia & Pareena G. Lawrence, *The Institution of Dowry in India: Why It Continues to Prevail*, J. DEVELOPING AREAS, 38(2), Spring 2005, at 71; WERNER MENSKI, SOUTH ASIANS AND THE DOWRY PROBLEM (1999).

<sup>65</sup> Fernandes, *supra* note 61.

increased exchange of images and ideas about wealth and status have brought about shifts in the demands being made within these arranged marriages.<sup>66</sup>

The desire for money and consumer goods by a husband's family is no longer exclusively limited to dowry transactions; it can also be found in the kinds of elaborate weddings being demanded by Indian families. NRI parents who want their sons to return to India to marry have found creative ways of expressing these mounting demands. Ranjana Kumari of the Centre for Social Research in Delhi gives one example in the use by families overseas of the term "decent marriage."<sup>67</sup> This terminology, she explains, is found in Indian personal ads and is a way for parents to communicate that they expect sizable dowries and elaborate weddings, often including the expectation that the bride's family will pay for the groom's extended family to travel overseas to attend the occasion.<sup>68</sup> Vast displays of wealth among the highest income families have a reverberating impact on the expectations of lower income families, regardless of their actual economic standing.<sup>69</sup>

Other interviewees cited the eagerness of Indian parents to marry their daughters off to young men living and working overseas.<sup>70</sup> Many Indians assume that families living abroad are more financially secure. Kumari explains that because of the exchange rate between dollars and rupees,<sup>71</sup> a potential groom's income may appear substantial no matter what the amount.<sup>72</sup> This transnational marriage arrangement becomes

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<sup>66</sup> *Id.*

<sup>67</sup> Kumari, *supra* note 61.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*; Fernandes, *supra* note 61. One extreme example of this phenomena was demonstrated in the 2004 marriage of Vanisha Mittal and Amit Bhatia, daughter of steel industrialist Lakshmi Mittal. The six-day wedding, which reportedly cost over 55 million pounds, was held in an exclusive French Chateau and attended by several Bollywood film stars who performed a reenactment of the couple's initial introduction. *A Fairy Tale Wedding in a French Chateau*, HINDU INT'L, Jun. 24, 2004, available at <http://www.hinduonnet.com/2004/06/24/stories/2004062404471300.htm>.

<sup>70</sup> Interview with Nilima Dutta, Trustee, Lawyers Collective Women's Rights Initiative, in Mumbai, India (Feb. 4, 2005); Interview with Vasudha Nagaraj, Fellow, Anveshi, in Hyderabad, India (Jan. 7, 2005).

<sup>71</sup> At the current exchange rate \$1 U.S. dollar is worth roughly 45 Indian rupees. Exchange-rates.org, *Indian Rupees (INR) to 1 US Dollar (USD)* (Oct. 6, 2009-Apr. 4, 2010), <http://www.exchange-rates.org/history/INR/USD/T>.

<sup>72</sup> Kumari, *supra* note 61.



problematic, however, in cases where a prospective spouse presents himself as enjoying a certain financial status and lifestyle quite different from the one he actually enjoys.<sup>73</sup> This common scenario involves a young Indian woman marrying an NRI and coming to her husband's country, only to discover that the facts that were presented to her were either exaggerated or entirely false.<sup>74</sup> Vasudha Nagaraj, a Bangalore based advocate describes the pattern as follows: "We've heard accounts where women have immigrated to the United States only to learn that their husbands want them to be maids in their parent's houses. If the woman rebels and says 'no' then there are many instances where the man just absconds and runs away."<sup>75</sup>

In other situations men will come to India, get married, demand a dowry and then refuse to take their wives back with them to the United States.<sup>76</sup> Several advocates describe cases of women being deserted either in India or abroad with no resources and often no family or friends to contact for help.<sup>77</sup> Asmita Basu of the Lawyers Collective Women's Rights Initiative in Delhi explains: "[I]t becomes very complicated and women who go to America are particularly vulnerable because even if they have some kind of support structure here in India they have nothing there and there are so many cases of desertion."<sup>78</sup>

In these situations women are left with little or no recourse overseas.<sup>79</sup> To make matters worse, because these women are married, often

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<sup>73</sup> Press Release, Ministry of Overseas Indian Affairs, National Consultation on Marriage to Overseas Indians: Safeguarding the Interests of Indian Women, Feb. 17, 2006, available at [http://pib.nic.in/release/rel\\_print\\_page1.asp?relid=15551](http://pib.nic.in/release/rel_print_page1.asp?relid=15551).

<sup>74</sup> Ministry of Overseas Indian Affairs, Government of India, Marriages to Overseas Indians: A Guidance Booklet 11-12 (Jan. 2007), available at [http://www.moia.gov.in/pdf/Marriages\\_to\\_Overseas\\_Indians\\_a\\_Guidance\\_Booklet.pdf](http://www.moia.gov.in/pdf/Marriages_to_Overseas_Indians_a_Guidance_Booklet.pdf).

<sup>75</sup> Nagaraj, *supra* note 70.

<sup>76</sup> Basu, *supra* note 61.

<sup>77</sup> *Id.* See also Nagaraj, *supra* note 70; Interview with Sheela Ramanathan, Director, Human Rights Law Network, in Bangalore, India (Feb. 15, 2005).

<sup>78</sup> Basu, *supra* note 61, at 64.

<sup>79</sup> Soumik Dey, *Common Marriage Registration Form to Secure NRI Brides' Future*, HINDUSTAN TIMES, Aug. 22, 2008, available at <http://www.hindustantimes.com/StoryPage/StoryPage.aspx?sectionName=&id=0dcc825b-5884-4a23-b4f9-7654ce9f03df&&Headline=Common+form+to+secure+NRI+brides+future&strParent=strParentID>.

even their own natal families do not want to take responsibility for them.<sup>80</sup> Some parents fear that their daughter's failed marriage will bring shame upon the family or negatively impact the chances of their other children being able to marry.<sup>81</sup> Issues of abandonment and desertion are particularly challenging for advocates who feel that they can offer little in terms of support to these women because of the geographical distances, issues of communication and the more basic problem of being unable to locate the offending spouse.<sup>82</sup> This pattern of abuse demonstrates how the "flexible citizenship" of certain cosmopolitan subjects negates the efficacy of law and legal advocacy efforts conceived within the limited boundaries of the nation-state.<sup>83</sup> Increasing deterritorialization enables exploitive abusers to take advantage of their transnational mobility in a manner that tests the jurisdictional capacity of the various sites through which this violence travels.

## B. "Transnational Abandonment" in the United States

Advocates at Manavi in New Jersey and Sakhi in New York use the term "transnational abandonment" to describe the marriage and desertion of NRI brides and their spouses' subsequent manipulation of the legal system.<sup>84</sup> This pattern suggests that legally savvy abusers are taking advantage of their global mobility to abandon their wives and/or deprive them of their rights to custody or spousal support.<sup>85</sup> Because issues of abandonment and desertion do not fall within traditional legal formulations

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<sup>80</sup> See NISHI MITRA, DOMESTIC VIOLENCE AS A PUBLIC ISSUE: A REVIEW OF RESPONSES 10 (2002); Parvathi Menon, *Focus on Domestic Violence*, FRONTLINE, Aug. 28-Sep. 10, 1999, available at <http://hinduonnet.com/fline/fl1618/16180420.htm>.

<sup>81</sup> Basu, *supra* note 61.

<sup>82</sup> See, e.g., Interview with Kavitha Sreeharsha, former Domestic Violence Coordinator, Asian Pacific Islander Legal Outreach, San Francisco, CA (Oct. 14, 2004); Das Dasgupta, *supra* note 3.

<sup>83</sup> ONG, *supra* note 16, at 6.

<sup>84</sup> Anu Gurnani, Saveen Kaushal, Shamita Das Dasgupta & Sharmila Lodhia, Presentation at the Manavi Conference Aarohan: Resources, Strategies and Barriers in Assisting Women Abandoned in South Asia, in New Brunswick, NJ (Sept. 9-11, 2005) [hereinafter Gurnani et al.]; TRANSNATIONAL ABANDONMENT, *supra* note 3.

<sup>85</sup> Sreeharsha, *supra* note 82; Interview with Sonia Pelia, President, Maitri, in Palo Alto, Cal. (Dec. 22, 2004).

of domestic violence, or mainstream domestic violence advocacy models, devising effective responses to these crimes can be extremely difficult.<sup>86</sup>

Women often seek assistance from South Asian advocacy organizations after being deserted by their spouses either within the United States or overseas.<sup>87</sup> The patterns of abandonment and desertion are wide ranging and complex, but advocates have identified a series of recurring patterns in these cases. According to advocates at Manavi, cases originating in the United States typically often involve one of two scenarios. In the first scenario, the husband simply vanishes, leaving behind his wife and children.<sup>88</sup> In the second, a woman's husband and/or in-laws act in various ways to permanently exclude her from the family home.<sup>89</sup> In these situations a recently married woman is either: 1) ordered to leave the residence 2) "dumped" at the home of a friend or a relative or 3) locked out of the house.<sup>90</sup> As Shamita Das Dasgupta explains, "[h]e changes the locks. I mean he just changes the locks."<sup>91</sup>

Different patterns arise in cases that originate in South Asian countries. The first pattern is described as "deceptive or forcible return."<sup>92</sup> These cases involve married women who, after living in the United States, are forced or tricked into returning to their home countries and left there.<sup>93</sup> In these situations a woman's immigration and travel documents are either stolen or tampered with to keep her from returning to the United States.<sup>94</sup> According to Gurnani, in these cases, a woman's spouse covertly returns to

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<sup>86</sup> Das Dasgupta, *supra* note 3; Pelia, *supra* note 85.

<sup>87</sup> Das Dasgupta, *supra* note 3; Rajagopal, *supra* note 3; Interview with Saveen Kaushal, former Legal Advocate, Sakhi, New York, N.Y. (May 26, 2005); Sreeharsha, *supra* note 82; TRANSNATIONAL ABANDONMENT, *supra* note 3.

<sup>88</sup> Gurnani, et al., *supra* note 84.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> Das Dasgupta, *supra* note 3.

<sup>92</sup> Gurnani, et al., *supra* note 84; Gurnani, *supra* note 37.

<sup>93</sup> Das Dasgupta, *supra* note 3; Kaushal, *supra* note 87.

<sup>94</sup> Interview with Sujata Warriar, Director, New York City Program, New York State Office on the Prevention of Violence Against Women, Pasadena, Cal. (Jul. 13, 2005); Gurnani, *supra* note 37.

the United States and vanishes.<sup>95</sup> During this time an abuser may file for a divorce or an annulment of the marriage in either in the United States or in the home country and in some cases even remarries.<sup>96</sup> The second scenario originating in South Asia is referred to as the “holiday bride” scenario.<sup>97</sup> In these cases a man living in the United States marries a woman in his country of origin, takes a dowry, goes on a honeymoon with her, and promises to sponsor her travel to the U.S.<sup>98</sup> In reality, he never files her immigration papers or sends for her to join him. Women in these scenarios are left deserted in their home countries, in some instances pregnant, with limited access to legal remedies.<sup>99</sup>

Once the abandonment is accomplished, the spouse will typically forum-shop and either file divorce papers, initiate custody proceedings or avoid paying spousal and/or child support in the jurisdiction they believe to be most supportive of their interests.<sup>100</sup> Take, for example, a statement by Asian-Pacific Islander Legal Outreach attorney Kavitha Sreeharsha about this pattern of violence:

Another thing that is fairly unique in the South Asian community is that they [the abusers] do a lot of sort of forum-shopping in order to create more difficulty for their spouse. There are a lot of cases, for example, where the abusive party sends a woman to India and he files divorce papers here or she comes here, and he files for divorce in India. The other thing is that the abuser will take the kids away and the woman cannot afford an attorney so she ends up losing her kids.<sup>101</sup>

A related issue is the problem of child abduction where a husband either takes the children back to his home country and leaves them with his parents or he sends his wife back home and keeps the children in the United States.<sup>102</sup>

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<sup>95</sup> Gurnani, *supra* note 37.

<sup>96</sup> Gurnani, et al., *supra* note 84; Gurnani, *supra* note 37.

<sup>97</sup> Gurnani, et al., *supra* note 84; Gurnani, *supra* note 37.

<sup>98</sup> Gurnani, et al., *supra* note 84; Gurnani, *supra* note 37.

<sup>99</sup> Das Dasgupta, *supra* note 3.

<sup>100</sup> Sreeharsha, *supra* note 82.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

In many of these cases women are powerless to contest these proceedings because of financial constraints or the inability to travel because of immigration barriers.<sup>103</sup> These cases are especially problematic because many mainstream agencies and shelters do not view abandonment as a form of domestic violence and, as a result, many South Asian women are denied access to vital legal and social services.<sup>104</sup> As Shamita Das Dasgupta of Manavi argues, “[t]o mainstream anti-domestic violence movements in North America, desertion might not be considered actionable violence; yet, in the South Asian context its emotional, material, legal and social consequences are devastating enough on women to warrant such considerations.”<sup>105</sup> This is particularly tragic because transnational abandonment arguably should constitute a form of violence and control that falls within existing categories of mental and emotional cruelty. Take for example the following statement by Lakshmi Rajagopal of Manavi:

In terms of how this violence is unique it's not just, you know, actually taking the woman back or taking the children back but using the fact that women might not know the intricacies of the legal system as a tool of violence. So he might bring her here on a fiancée visa and then refuse to marry her. Or threaten her that 'I won't marry you' so then she'll become out of status. Or he'll apply for his own green card if he's on an H-1 visa and not apply for her. So a woman's legal status is just so completely tied into her husband's status and that becomes a method of control.<sup>106</sup>

Rajagopal, Dasgupta, and others have argued that one has to look at the particular contextual circumstances in which such abandonment occurs and the ways in which the attendant loss of economic support, citizenship status or vital support structures could constitute economic or mental cruelty that could be incorporated into existing law and advocacy for women.

The reasons why these cross-border marriages fail are far-ranging and complex.<sup>107</sup> Sometimes the problems derive from parents' insistence

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<sup>103</sup> Das Dasgupta, *supra* note 3; Kaushal, *supra* note 87; Sreeharsha, *supra* note 82; TRANSNATIONAL ABANDONMENT, *supra* note 3.

<sup>104</sup> Das Dasgupta, *supra* note 3; Rajagopal, *supra* note 3; Pelia, *supra* note 85.

<sup>105</sup> BODY EVIDENCE, *supra* note 22.

<sup>106</sup> *Id.*

<sup>107</sup> Das Dasgupta, *supra* note 3; Pelia, *supra* note 85.

that their sons marry women from India, even in cases where they may be involved with or legally married to non-Indian women in their country of residence.<sup>108</sup> In other situations marriages turn sour because of failed expectations and a kind of cross-cultural incompatibility because the spouse has lived abroad for some time and his wife no longer meets his expectations or she resists the overwhelming demands placed on her by her spouse or his family.<sup>109</sup> Another problem is linked to the misinformation or lack of information a prospective bride has about the immigration, employment or financial status or living situation of her spouse, which also leads to conflict once a marriage has taken place.<sup>110</sup> In many situations this is attributed to parents' failure to verify the groom's status because of the lure of an overseas marriage. The Ministry of Overseas Indian Affairs<sup>111</sup> has made the following observations about this phenomenon: "Alliances with Overseas Indians in the Indian society are seen as promising a better future for not just the woman but her entire family. In the eagerness not to let go of such promising offers the families sometimes ignore even the common cautions observed in traditional matchmaking."<sup>112</sup>

Several interviewees describe the difficulty of providing legal assistance to abandoned women because either their spouse has disappeared or there are jurisdictional issues in these cases.<sup>113</sup> While some advocates receive occasional assistance from individuals or agencies with which they have built relationships in India, the U.S. Department of State, or the Indian Consulate, this is the exception rather than the rule.<sup>114</sup> To address this growing problem, advocates are looking into strategies which call for

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<sup>108</sup> Das Dasgupta, *supra* note 3; Melwani, *supra* note 2.

<sup>109</sup> Nagaraj, *supra* note 70; Das Dasgupta, *supra* note 3; Nandita Vij, *Abandoned Wives: Promises and Lies*, FRANCE 24, Dec. 7, 2006 available at <http://mobile.france24.com/en/20090723-india-punjab-indians-abroad-abandoned-wives-brides-promises-lies>.

<sup>110</sup> *Id.*

<sup>111</sup> The Ministry of Overseas Indian Affairs or MOIA was created in 2004 with the objective of addressing the NRI population. See Singh, *supra* note 6.

<sup>112</sup> Ministry of Overseas Indian Affairs, *supra* note 73.

<sup>113</sup> Das Dasgupta, *supra* note 3; Rajagopal, *supra* note 3; Kaushal, *supra* note 87; Sreeharsha, *supra* note 82; Pelia, *supra* note 85; Dutta, *supra* note 70; Basu, *supra* note 61; TRANSNATIONAL ABANDONMENT, *supra* note 3.

<sup>114</sup> Sreeharsha, *supra* note 82; Das Dasgupta, *supra* note 3; Rajagopal, *supra* note 3.

greater transnational collaborations between groups working on violence against women across borders, and greater involvement at the government level to protect women's rights.<sup>115</sup> In the issue of transnational abandonment we have a clear manifestation of the juncture between globalization and sovereignty which, according to Saskia Sassen, produces "conceptual openings for other actors and subjects."<sup>116</sup> It is this very "opening" that abusers capitalize on in the absence of national or international laws that can effectively respond to this transnational form of violence against women.

#### IV. A REVIEW OF INDIAN JURISPRUDENCE IN NRI ABANDONMENT CASES

*It has become fashionable to speak of our world as a global village. There is bound to be a manifold increase in cross border disputes such as the present one, and the question of which is the appropriate forum/Court to decide this is certain to remain a vexed one.*<sup>117</sup>

##### A. Understanding Family Law in the Indian Context

An examination of Indian jurisprudence provides vital insights into the issues surrounding NRI abandonment and in particular the challenges cross-border migration presents for family law and custody disputes.<sup>118</sup> This is particularly vivid in the Indian context where a diverse system of religious laws governs the realm of the family. When British colonial rule was imposed on India, the indigenous systems of redress were replaced by a

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<sup>115</sup> Gurnani, et al., *supra* note 84; TRANSNATIONAL ABANDONMENT, *supra* note 3.

<sup>116</sup> SASSEN, *supra* note 10, at 93.

<sup>117</sup> Harmecta Singh v. Rajat Taneja, 2003 D.L.T. 102 (Del.) 822 (India).

<sup>118</sup> While there are some recent U.S. cases presenting jurisdictional questions in the area of family law jurisprudence—see for example *Chowhan v. Chowhan*, 67 Pa. D. & C.2d 610 (C.P. 1974); *Ramachandra Ramnath v. Seetha Ramnath*, 1984 Ohio App. Lexis 11268 (1984); *Rituparna Roy Sinha v. Indrajit Sinha*, 2003 Pa. Super. 375 (Super. Ct. 2003); *Ajay Garg v. Deepa Garg*, 393 Md. 225 (Ct. App. 2006); *Reema Sareen v. Vikas Sareen*, 153 Ca.App.4th 371 (Ct. App. 2007); *Hari K. Verma v. Anita Verma*, 179 Ohio App.3d 637 (Ct. App. 2008)—these have not been precedent-setting cases. In addition, because of the variance in each state's approach to family law issues, and the challenge of identifying claims involving South Asian families in particular, it is difficult to make generalizations about the U.S. legal system's response to cases involving NRI abandonment.

centralized legal system modeled on that of Britain.<sup>119</sup> The colonizers imposed uniform civil and criminal jurisprudence on the country, but left largely untouched the area of personal laws, which includes marriage, divorce, custody, guardianship and maintenance.<sup>120</sup> As the Supreme Court of India noted in *Y. Narasimha Rao and Others v. Y. Venkata Lakshmi and Another*, “[e]ven the British were circumspect and hesitant to apply their rules of law in such matters during their governance of this country and had left the family law to be governed by the customary rules of the different communities.”<sup>121</sup> Flavia Agnes has argued that through the process of rendering scriptural interpretations and formal opinions in the realm of personal laws, certain ambiguities which, in the pre-colonial period had enabled women to negotiate their rights, became eroded. She further suggests that the “most negative aspects of Hindu and Muslim laws were highlighted” in family law.<sup>122</sup> Indeed, arguably all religious communities discriminate against women and treat them unequally to men, and personal laws reflect this gender bias.<sup>123</sup>

In India, couples choose to marry under one of three available religious codes: the Hindu Marriage Act 1955,<sup>124</sup> the Parsi Marriage and Divorce Act 1936, and the Indian Christian Marriage Act 1872, or alternatively the non-denominational Special Marriages Act of 1954.<sup>125</sup> Each of these codes provides distinct requirements for valid marriages. Similarly, the dissolution of marriages is governed by personal laws that detail the circumstances under which a marriage can be dissolved. There are also religious laws that define a wife’s right to maintenance and govern

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<sup>119</sup> FLAVIA AGNES, LAW AND GENDER INEQUALITY: THE POLITICS OF WOMEN’S RIGHTS IN INDIA 41-54 (2004).

<sup>120</sup> Catherine A. Mackinnon, *Sex Equality Under the Constitution of India: Problems, Prospects, and “Personal Laws”*, 4 INT’L J. CONST. L. 181, 191-92, 199 (2006).

<sup>121</sup> *Y. Narasimha Rao and Others v. Y. Venkata Lakshmi and Another* (1991) 2 S.C.R. 821 (India).

<sup>122</sup> AGNES, *supra* note 119, at 64.

<sup>123</sup> Archana Parashar, *Just Family Law: Basic to All Indian Women*, in MEN’S LAWS WOMEN’S LIVES 286 (Indira Jaising ed., 2005); AGNES, *supra* note 119.

<sup>124</sup> The Hindu Marriage Act governs not only Hindu marriages but also those in the Sikh, Buddhist and Jain community. The Hindu Marriage Act, 1955, No. 25, Acts of Parliament (1955).

<sup>125</sup> Parashar, *supra* note 123.



issues regarding the adoption and guardianship of children.<sup>126</sup> This plural system of family laws is highly complex and includes a vast array of rights and obligations for the husband and wife. This system presents a distinct challenge when Indian courts are asked to adjudicate claims involving marriages that have been solemnized in India under the various religious codes, but which spouses have since sought to dissolve in overseas courts.

In the absence of clear legislative guidance on how Indian courts should approach foreign legal rulings when they are introduced in Indian courts, the current framework for responding to these claims is determined and exemplified by a series of legal decisions regarding jurisdictional challenges to overseas family law decisions. The following sections examine the evolution of NRI jurisprudence on matters related to marriage and dissolution of marriage through a targeted selection of Supreme Court and High Court decisions from between 1975 and 2007. The cases discussed here are by no means exhaustive, but make evident some of the fact patterns that emerge in cases involving abandoned brides, as well as the relevant legal developments in this area of law. What is clear from these legal discourses is that many Indian judges are responding to these scenarios in a manner that reflects an understanding that women are distinctly disadvantaged by these practices.

## **B. Early Cross-Border Family Law Jurisprudence**

*Satya v. Teja Singh*, a case from 1975, presents one of the earliest examples of the Supreme Court of India wrestling with the question of whether courts are bound to give recognition to foreign divorce decrees granted where the divorcing spouse was clearly forum-shopping for favorable divorce laws.<sup>127</sup> In this case the husband and wife, Teja and Satya, were married in India. After a few years, Teja left for the U.S. to pursue further studies with the promise that he would return.<sup>128</sup> Six years later, Satya filed a claim for maintenance from her husband in an Indian court and learned that Teja had received a decree of divorce from the State of Nevada,<sup>129</sup> and therefore claimed that he had no responsibility to provide her with maintenance.<sup>130</sup> The lower Court found that during the time the

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<sup>126</sup> *Id.*

<sup>127</sup> *Satya v. Teja Singh* (1975) 2 S.C.R. 197 (1974).

<sup>128</sup> *Id.* at 200.

<sup>129</sup> *Id.* at 208.

<sup>130</sup> *Id.*

divorce proceedings were initiated, Teja was domiciled in Nevada and further invoked the English common law rule that “during marriage the domicile of the wife, without exception, follows the domicile of the husband.”<sup>131</sup> As such, the Court concluded that the divorce decree was binding on both Teja and Satya.<sup>132</sup>

On review, the Supreme Court of India, concluded that this English rule of domicile “caused great hardship to deserted wives,” as evidenced in the case before them: Satya did not appear in the Nevada court, was unrepresented and did not at any point submit to its jurisdiction.<sup>133</sup> The Court further observes that Teja specifically relocated to Nevada, a jurisdiction that required only six weeks of residency for filing a divorce petition, and had no intention of remaining there.<sup>134</sup> Under these circumstances, the Supreme Court set aside the judgment of the High Court noting, “[t]hey will be treated as divorced in Nevada but their bond of matrimony will remain unsnapped in India, the country of their domicile.”<sup>135</sup>

Later, in the 1980s the Supreme Court of India rendered two other notable decisions in cases presenting challenging questions in the arena of cross-border family law jurisprudence. In the *Smt. Surindar Kaur Sandhu v. Harbax Singh Sandhu and Another*,<sup>136</sup> the Supreme Court upheld the jurisdiction of the English courts in a child custody claim involving the removal of a child by a husband to India. In this case, the husband and wife were married in Punjab in 1975 and left for England where they had a son. The marriage disintegrated and in 1983 the husband removed the child from England and took him to India without his wife’s knowledge despite the pre-existing visitation order from the English court. On appeal from a decision upholding the husband’s custody rights, the Supreme Court noted that the spouses had established their matrimonial home in England and that their son was a British citizen with a British passport.<sup>137</sup> The Court held

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<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Satya v. Teja Singh* (1975) 2 S.C.R. 197 (1974).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Smt. Surindar Kaur Sandhu v. Harbax Singh Sandhu and Another* (1984) 3 S.C.R. 422.

<sup>137</sup> *Id.*

therefore that the English Court had jurisdiction in the case with respect to the child custody issue, and expressed its concern about the potential for forum-shopping in these matters, noting:

Jurisdiction is not attracted by the operation or creation of fortuitous circumstances such as the circumstance as to where the child, whose custody is in issue, is brought or for the time being lodged. To allow the assumption of jurisdiction by another State in such a circumstance will only result in forum-shopping.”<sup>138</sup>

The Supreme Court went on to assert that “it is our duty to function to protect the wife against the burden of litigating in an inconvenient forum.”<sup>139</sup> Two years later, the Supreme Court reviewed a similar case involving an NRI husband’s removal of a child to India after his marriage to a U.S. citizen and settlement abroad. In *Mrs. Elizabeth Dinshaw v. Arvand M. Dinshaw and Another*,<sup>140</sup> the Court once again upheld the foreign court’s award of custody to the wife on the grounds that a father cannot rightfully claim an advantage in a custody dispute via “an illegal act of abduction.”<sup>141</sup>

Notwithstanding this precedent, in 1989, the Delhi High Court in *Mrs. Anoop Beniwal v. Dr. Jagbir Singh Beniwal*<sup>142</sup> upheld a divorce decree obtained by an NRI living in the UK. In the *Beniwal* case the husband and wife married in New Delhi in a Hindu ceremony.<sup>143</sup> In this case, after the husband and wife separated, the husband moved to England. The wife later went to the UK on a visitor’s visa and attempted to make contact with her husband.<sup>144</sup> At that point, her husband used the fact that she was present in England to file for a petition for divorce for irretrievable breakdown of marriage.<sup>145</sup> In response to her challenge to the divorce proceedings under

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<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Mrs. Elizabeth Dinshaw v. Arvand M. Dinshaw and Another*, (1987) 1 S.C.R. 175 (India).

<sup>141</sup> *Id.*

<sup>142</sup> *Mrs. Anoop Beniwal v. Dr. Jagbir Singh Beniwal*, 1990 A.I.R. (Del. H.C.) 305.

<sup>143</sup> *Id.* at ¶ 6.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

the *Hindu Marriage Act of 1955*,<sup>146</sup> the Delhi High Court found that despite the wife's claim that she had financial constraints that prevented her from adequately defending her interests, she did have an opportunity to respond to the English court as she was residing there at that time,<sup>147</sup> and that the decision did not violate the *Hindu Marriage Act* or the *Code of Civil Procedure*.<sup>148</sup>

Two years later, in the often cited case of *Y. Narasimha Rao and Others v. Y. Venkata Lakshmi and Another*, the Supreme Court constructed a rule regarding Indian courts' recognition of foreign judgments in issues of family law.<sup>149</sup> The Court, reviewing a criminal complaint for bigamy by the Indian wife following the husband's re-marriage after obtaining a U.S. divorce without the wife's knowledge or consent, ultimately chose not to recognize the foreign divorce.<sup>150</sup>

The Supreme Court ruled, *inter alia*, that under the *Hindu Marriage Act of 1955* and *Section 13 of the Code of Civil Procedure of 1908*, the Missouri court lacked jurisdiction in the case, and that the ground of irretrievable breakdown of marriage was not an available basis for dissolving a marriage under the *Hindu Marriage Act*. The Supreme Court then proceeded to acknowledge a shift in marriage patterns and the critical need for standardized responses to these types of cases:

We cannot lose sight of the fact that today more than ever in the past the need for definitive rules for recognition of foreign judgments in personal and family matters, and particularly in matrimonial disputes has surged to the surface. Many a man and woman of this land with different personal laws have migrated and are migrating to different countries either to make their permanent abode there or for temporary residence.<sup>151</sup>

This migration, the Court concluded "has been giving rise to various kinds of matrimonial disputes destroying in its turn the family and

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<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Mrs. Anoop Beniwal v. Dr. Jagbir Singh Beniwal*, 1990 A.I.R. (Del. H.C.) 305.

<sup>149</sup> *Y. Narasimha Rao and Others v. Y. Venkata Lakshmi and Another* (1991) 2 S.C.R. 821 (India).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

its peace.”<sup>152</sup> Noting the absence of legislation to address these questions, the *Rao* court proceeded to lay down a rule to govern such cases in the future, determining, with limited exceptions, that that grounds on which a divorce is granted must be in accordance with the matrimonial law under which the parties are married.<sup>153</sup>

More recently, in a decision by the Mumbai High Court, the Court ruled that despite the couple’s immigration to Sweden, the wife could still challenge the divorce in an Indian court, as:

The rule is ‘once competent, always competent’ and that will be so even if the party domiciled in India at the time of marriage has since changed his domicile, disassociated himself from the determination of his status by the Court in India....It is unjust that a party to the marriage can change his entire system of personal law by his or her unilateral decision. If that is allowed it would make the position of the wife very miserable or helpless.<sup>154</sup>

The holding thus preserves the applicability of the *Hindu Marriage Act* so long as the couple was married and domiciled in India at the time the marriage took place.

In shifting away from the doctrine that a wife’s domicile is inextricably linked to her husband’s, these decisions recognize the ways in which women are disadvantaged by ex parte family law proceedings that

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<sup>152</sup> *Id.*

<sup>153</sup> *Id.* The exceptions include:

(i) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married;

(ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married;

(iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.

*Id.* For another progressive decision in the area of NRI abandonment, see *Mrs. Veena Kalia v. Dr. Jatinder Nath Kalia and Another*, 1996 A.I.R. (Del.) 54 (1995).

<sup>154</sup> *Sondur Rajini v. Sondur Gopal* (2005)(4) MgLj 688 (Mumbai H.C.).

occur abroad in cases involving abandonment, particularly given the way that spouses engage in forum shopping, both to find the most favorable laws, and to enhance the financial and immigration barriers that make it extremely difficult for women to defend these claims when they have been deserted overseas.<sup>155</sup>

### C. Danger in the Diaspora—Evolving Patterns of Violence and Cruelty

Beginning in the 1990s, Indian judges began explicitly chastising Indian parents for their overzealousness in marrying their daughters to men from abroad. In *Neeraja Saraph v. Jayant Saraph*,<sup>156</sup> a 1994 case involving abandonment of a bride overseas, the Supreme Court described the phenomenon of abandonment as a “new social evil that is surfacing.”<sup>157</sup> Cases decided in this period offer a revealing insights into shifts in marriage patterns and perceptions of “unscrupulous” and “consumerist” parents who seek “greener pastures” for their daughters through transnational marriages.<sup>158</sup> The Court in *Neeraja Saraph v. Jayant Saraph* makes the following statement about this trend:

Any matrimonial column of any newspaper or magazine would carry a column that a NRI seeks Indian bride without any demand. [i.e. dowry demand]. The attraction of getting a groom and that too serving or earning abroad without dowry, lures many, especially from the middle class. . . The result, at times, is a matrimonial alliance by a reluctant husband to assuage the sentiments of his parents. The victim is the helpless, poor, educated girl, normally of a middle class family with dreams of a foreign land. To what extent such misfortune may befall any innocent girl is transparent by this unfortunate case.<sup>159</sup>

Similarly, in *Smt. Anubha v. Vikas Aggarwal*,<sup>160</sup> the Delhi High Court noted:

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<sup>155</sup> At the same time, the underlying concern that the “institution of marriage” be preserved at all cost raises some concern given the patriarchal tendencies of the Indian judiciary.

<sup>156</sup> *Neeraja Saraph Smt v. Jayant v. Saraph and Another* (1994) 6 S.C.C. 461.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> 2003 A.I.R. (Del. H.C.) 175 (India).

Here is a case of an unfortunate hapless young bride who strayed in a dark tunnel without any hope to see the light at its end as she got entrapped in the marital knot on the temptation of greener pastures, as the groom was an NRI and might have painted a rosy picture about life in the United States. It is common knowledge that those who are more conscious about material comforts than the mental happiness in life look for sojourns abroad particularly in countries like the United States, and grab the opportunity as it comes to them. However such illusion is so short lived that the moment that they land there it evaporates making their life miserable and the place a tiny hell. Such brides end up in an emotional wreck carrying the albatross of marriage around their neck during the golden period of their youth.<sup>161</sup>

While the courts' cognizance of the specific problems arising from NRI abandonment is notable in both these cases, here too we might express some trepidation as to the gendered implications of this construction of the "poor hapless bride" as a helpless victim. It could be argued that such a characterization denies women critical agency in responding to their conditions, and further reinforce the idea that an Indian woman's identity is defined by her role as a wife. Nonetheless, both divorced women and deserted women who are in legal limbo because they are unsure about the ongoing validity of their marriages are clearly disadvantaged by the situation.

Moreover, practices of marital abandonment are often coupled with other forms of violence, harassment and cruelty. One Court, faced with the case of a woman who had given up her career in India at her husband's instigation, only to be presented with a divorce decree from the United States shortly thereafter, stated a rule that "[n]o marriage between an NRI and an Indian woman which has taken place in India may be annulled by a foreign court."<sup>162</sup>

In one particularly appalling case involving a young bride lured to the United States by her NRI husband under false pretences, the Court described her living conditions as follows:

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<sup>161</sup> *Id.*

<sup>162</sup> *Neeraja Saraph Smt v. Jayant v. Saraph and Another* (1994) 6 S.C.C. 461. In a similar case, except that the marriage took place in the United States, the Court stated that "[i]t would be appropriate if the legislature steps in and enacts a specific provision relating to territorial jurisdiction in the matters of claiming maintenance under the Hindu Adoptions and Maintenance Act." *Indira Sonty v. Suryanarayan Murty Sonti*, 2001 D.L.T. 94 (Del. H.C.) 572 (India).

At Connecticut, the defendant treated the plaintiff like a slave. She was virtually confined to the house. She was not given any money at all. She was not even allowed to telephone her family except in the presence of the defendant. The plaintiff continued to be harassed, beaten and shouted at and physically and mentally tortured for dowry every day.<sup>163</sup>

Shortly thereafter, her husband sought and obtained a decree of divorce from the state of Connecticut. After the wife brought a case challenging the husband's actions, the Delhi High Court determined that the marriage had been dissolved on a ground not available under Indian law, and that the wife had not submitted to the Connecticut court's jurisdiction. The High Court then granted the wife's petition to live separately from her husband and awarded her maintenance.<sup>164</sup>

In contrast, the Delhi High Court recently shifted slightly away from its earlier precedent in favor of spouses challenging U.S. divorce decrees in the 2007 case *Kanchan Gulati v. State*.<sup>165</sup> In that instance, despite the U.S. court's grant of divorce, in the face of the wife's protests and the husband's failure to comply with a court order that he return the enormous dowry her family had paid him, the Court upheld the jurisdiction of the U.S. court, because the wife had appeared in the initial U.S. proceedings.<sup>166</sup> Although the wife argued that she no longer had the money to continue to pursue her rights in the U.S. courts, the Indian Court declined to intervene.<sup>167</sup> At the same time, the Court did acknowledge the fact that spouses can and do manipulate the family court system to their benefit.

In sum, what emerges in examining NRI jurisprudence over the past two decades, is an important acknowledgement of the realities and consequences of transnational abandonment. This is true both with respect to women being deprived of meaningful access to family law and child

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<sup>163</sup> Smt. Anubha v. Vikas Aggarwal and Others, 2003 A.I.R. (Del. H.C.) 175 (India).

<sup>164</sup> *Id.* For two other roughly contemporaneous cases granting favorable decisions for the victims of abuse and *ex parte* divorce proceedings, see Harmeeta Singh v. Rajat Taneja, 2003 D.L.T. 102 (Del.) 822 (India) and Balasubramaniam Guhan v. T. Hemapriya, 2005 MANU/TN/0165/2005 (Madras).

<sup>165</sup> *Kanchan Gulati and Another v. State and Others*, 2007 Indlaw Del 905 (Del.).

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*



custody laws and in terms of the Indian legal system's recognition that these patterns of desertion are often accompanied by other forms of abuse.

#### **IV. RECENT LAW AND POLICY INITIATIVES TO ADDRESS NRI ABANDONMENT**

This final Part examines some of the specific legal and governmental initiatives that have been undertaken by the governments of the United States and India to address the complexities of transnational abandonment. While in the Indian context, the government has held a number of forums that explicitly address this issue as it impacts Indians living in India and abroad, efforts taking place in the U.S. are focused more generally on assisting immigrant women who are victims of violence. Still, certain legislative changes have the potential to substantially impact Indian women living in the U.S.

##### **A. The Violence Against Women Act and Violence Against Immigrant Women**

The Violence Against Women Act (VAWA)<sup>168</sup> is a landmark federal statute aimed at reducing intimate partner violence<sup>169</sup> Enacted as part of the Violent Crime Control and Law Enforcement Act of 1994, VAWA establishes a pool of federal funding for states to create shelters and develop prevention, education, and legal advocacy programs for law enforcement, medical personnel, and judges on issues relating to domestic violence and sexual assault.<sup>170</sup> The federal government conditions state funding on systems that mandate arrest (or have pro-arrest policies),

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<sup>168</sup> Despite what its title would suggest, all VAWA (Violence Against Women Act) legislation is in fact gender-neutral and its provisions apply equally to male and female victims. Research has demonstrated that the majority of victims of intimate violence and sexual assault are women. Because I am analyzing the impact of VAWA legislation on South Asian women in this Article, in referencing VAWA's provisions I use female pronouns and descriptors. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1901, 1941-42, codified at 42 U.S.C. §§ 13925 et seq. (2010)

<sup>169</sup> Linda Kelly, *Stories from the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act*, 92 NW. U.L. REV. 665 (1998).

<sup>170</sup> *Id.*

criminalize violation of protective orders and give full faith and credit to protective orders from other states.<sup>171</sup>

A subsequent version of the Violence Against Women Act, “VAWA 2000” was enacted six years later as part of the Trafficking and Violence Prevention Act of 2000.<sup>172</sup> VAWA 2000 expanded protections secured under the initial VAWA legislation, and also created two new categories of non-immigrant visas: the T-visa and the U-visa.<sup>173</sup> The T-visa provides legal status for up to 5000 victims of sex trafficking and forced labor annually.<sup>174</sup> Up to 10,000 U-visas are available for victims of certain crimes including domestic violence and sexual assault.<sup>175</sup> According to one government study, violent victimizations by intimate partners declined by 49% after the passage of VAWA 1994 and VAWA 2000.<sup>176</sup>

The 2005 Reauthorization of the Violence Against Women Act, or “VAWA 2005,” provides funding for preexisting VAWA programs but also makes some notable advancements in addressing the limitations of prior VAWA legislation.<sup>177</sup> A broad group of law enforcement officers, victim service providers, community leaders and survivors of domestic violence, sexual violence and stalking, evaluated prior VAWA legislation and suggested specific changes to the law aimed at improving state and local

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<sup>171</sup> Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges and the Court System*, 11 YALE J.L. & FEMINISM 3, 12 (1999).

<sup>172</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, codified at 22 U.S.C. §§ 7101 et seq. (2010).

<sup>173</sup> Karyl Alice Davis, *Unlocking the Door by Giving Her the Key: A Comment on the Adequacy of the U-Visa as a Remedy*, 56 ALA. L. REV. 557, 566-567 (2004); Sarah M. Wood, *VAWA's Unfinished Business: The Immigrant Women Who Fall Through the Cracks*, 11 DUKE J. GENDER L. & POL'Y 141, 149-150 (2004).

<sup>174</sup> Victims of Trafficking and Violence Protection Act, 114 Stat. 1478.

<sup>175</sup> *Id.*

<sup>176</sup> CALLIE MARIE RENNISON, BUREAU OF JUSTICE STATISTICS, INTIMATE PARTNER VIOLENCE 1993-2001 (2003), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/ipv01.pdf>.

<sup>177</sup> See, e.g., Leila Abolfazli, *Criminal Law Chapter: Violence Against Women Act (VAWA)* 7 GEO. J. GENDER & L. 863 (2006); John Conyers, Jr., *The 2005 Reauthorization of the Violence Against Women Act: Why Congress Acted to Expand Protections to Immigrant Victims*, 13 VIOLENCE AGAINST WOMEN 457, 467 (2007).

responses to violence against women.<sup>178</sup> VAWA 2005 makes important strides by acknowledging developing areas of need in relation to domestic violence and sexual assault.<sup>179</sup>

## B. Transnational Mobilities and Violence Against Women

Specific provisions of VAWA 2005 reveal some of the ways in which abusers are manipulating their “transnational mobility” to engage in abuse against foreign spouses. The International Marriage Brokers Regulation Act, or IMBRA, was passed in conjunction with the 2005 Violence Against Women Act.<sup>180</sup> According to one senator, IMBRA’s provisions “are designed to minimize the incidents of domestic violence in international marriages, and to ensure that victims receive what can be lifesaving information.”<sup>181</sup> Legal Momentum, a legal advocacy group that has been actively involved in the development of all prior VAWA legislation, suggests that IMBRA is groundbreaking because it represents the first time Congress has passed a law “designed to prevent domestic abuse before the foreign spouse arrives in the U.S.”<sup>182</sup> IMBRA responds to needs articulated by anti-violence advocates in relation to violence occurring in marriages arranged by international marriage brokers.<sup>183</sup> While the title of the Act refers specifically to marriages coordinated by international marriage brokers, IMBRA’s provisions are applicable to all

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<sup>178</sup> *Comparison of VAWA 1994, VAWA 2000 and VAWA 2005 Reauthorization Bill*, NAT’L COALITION TO END DOMESTIC VIOLENCE (Jan. 16, 2006), available at [http://www.ncadv.org/files/VAWA\\_94\\_00\\_05.pdf](http://www.ncadv.org/files/VAWA_94_00_05.pdf).

<sup>179</sup> *Id.*

<sup>180</sup> Lindee, *supra* note 46, at 551-601; Leslye E. Orloff & Hema Sarangapani, *Governmental and Industry Roles and Responsibilities With Regard to International Marriage Brokers: Equalizing the Balance of Power Between Foreign Fiancés and Spouses*, 13 VIOLENCE AGAINST WOMEN 469 (2007).

<sup>181</sup> Conyers, *supra* note 177, at 467.

<sup>182</sup> Press Release, Legal Momentum, *The Women’s Legal Defense and Education Fund*, Capitol Hill Celebration Marks Historic Step to Stop Violence Against Foreign Fiancees (Nov. 19, 2008), available at <http://action.legalmomentum.org/site/Search?query=IMBRA&inc=10>.

<sup>183</sup> “International marriage broker” is defined as any corporation, individual, or legal entity, whether or not existing under the laws of the U.S., who charges fees for providing dating, matrimonial, matchmaking or social referrals or is “otherwise facilitating communication between individuals.” See International Marriage Broker Regulation Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960, 3066, codified at 8 U.S.C. 1375a (2010).

foreign born fiancés and spouses immigrating to the United States.<sup>184</sup> For this reason, certain aspects of IMBRA may potentially assist South Asian women in cases involving cross-border marriages.

Thousands of foreign fiancés enter the United States annually, usually on what is known as a “K-visa,” which requires them to marry within 90 days of their arrival or the United States considers them undocumented.<sup>185</sup> Because these visas are relatively easy to obtain but are of short duration, should the American citizen choose not to go through with the marriage, the potential for abuse by the American fiancé is vast.<sup>186</sup> IMBRA responds to the manipulation by citizen-spouses of U.S. immigration law in a manner that negatively impacts foreign fiancés and spouses.<sup>187</sup> Before the passage of VAWA 2005, the international marriage broker industry was largely unregulated.<sup>188</sup> Today IMBRA requires U.S. citizens filing K-visa petitions to disclose certain criminal background information to the Department of Homeland Security’s Customs and Immigration Services.<sup>189</sup> The Department of Homeland Security is then responsible for transferring this information and the results from other federal database searches to the foreign spouse or fiancée.<sup>190</sup> Officers in the U.S. consulate are also required to orally inform the foreign fiancé or spouse of the criminal history of the individual.

VAWA 2005 further requires that a pamphlet on domestic abuse laws be developed by the Departments of State, Justice and Homeland Security and sent to all foreign spouses or fiancés being sponsored on K-visas.<sup>191</sup> The statute requires that the pamphlet be translated into at least fourteen enumerated languages.<sup>192</sup> One of these languages is Hindi, a

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<sup>184</sup> *Id.*

<sup>185</sup> Orloff & Sarangapani, *supra* note 180, at 472.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*; Lindee, *supra* note 46, at 551–601.

<sup>188</sup> Orloff & Sarangapani, *supra* note 180, at 478–81.

<sup>189</sup> International Marriage Broker Regulation Act, §832(a), (codified at 8 U.S.C. § 1184(d)).

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* at § 833.

<sup>192</sup> *Id.*

language spoken by a large number of South Asian immigrants.<sup>193</sup> Another important IMBRA provision is that it prevents abusive U.S. citizens from attempting to sponsor multiple individuals for K-visas.<sup>194</sup> There will now be a government database tracking “serial” K-visa petitions and notifying a foreign spouse or fiancée, if multiple K petitions are filed by the same individual within a ten year period.<sup>195</sup> Lastly, IMBRA enables individuals who come to the United States on a K-visa to change their status to a U-visa or a T-visa if they are abused by a spouse.<sup>196</sup>

These changes in VAWA 2005 may play a role in addressing patterns of violence against South Asian women such as transnational abandonment and desertion. IMBRA opens up the possibility that a South Asian woman who immigrates to the United States on a K-visa and gets battered by her spouse could be eligible for T or U-visa relief. At the same time, it remains unclear whether abandonment alone, i.e., without other evidence of physical or mental abuse, would qualify as “extreme cruelty” under the new law. Certain provisions of VAWA 2005 allow foreign spouses to get vital information about their spouse’s criminal history and would put them on notice in cases involving a “serial” petitioner spouse. This information could potentially avert some transnational abandonment scenarios. Lack of access to information for immigrant spouses is a key barrier cited by advocates for South Asian women, and while IMBRA notifications and government pamphlets concerning laws about domestic abuse may not be enough to address this obstacle, it is at the very least an acknowledgment of a problem.<sup>197</sup>

Unfortunately however, while IMBRA requires that information be made available to spouses immigrating on K-visas, the legislation does not create similar protections for women who immigrate to the United States on other family-based, professional or student visa categories. Thus, while IMBRA and the reframing of domestic abuse under the 2005

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<sup>193</sup> *Id.*

<sup>194</sup> *Id.* at § 832(a).

<sup>195</sup> International Marriage Broker Regulation Act, §832, (codified at 8 U.S.C. § 1184(d) (codified as amended at 8 U.S.C. § 1184(r)).

<sup>196</sup> *Id.* at § 821(c). This eligibility for change of status also applies to non immigrants who entered on the following other types of visas: C (transit), D (crewman), S (criminal informant) or J (exchange visitor).

<sup>197</sup> Das Dasgupta, *supra* note 3; Rajagopal, *supra* note 3; Sreeharsha, *supra* note 82; Pelia, *supra* note 85.

Reauthorization of the Violence Against Women Act offer important forms of acknowledgment, lawmakers must continue to analyze the impact that transnational processes have on the violence in women's lives.

### C. Indian Strategies to address NRI Abandonment

In India, several forums have been held by the Ministry of Indian Affairs on the issue of NRI abandonment since 2003.<sup>198</sup> These gatherings have produced a number of intriguing law and policy recommendations for addressing the problem.<sup>199</sup> The Supreme Court of India has even weighed in on this issue. In its 2006 decision *Seema v. Ashwini Kumar*, the Supreme Court issued a directive ordering all states and union territories to come up with legislation making marriage registration compulsory.<sup>200</sup> As reported by the Times of India, "the court felt that this ruling was necessitated by the time as certain unscrupulous husbands altogether deny marriage, leaving their spouses in the lurch."<sup>201</sup> As has been noted, "the majority of marriages in India are not registered because the ceremonies are performed according to religious rites."<sup>202</sup> Interference by the government in the area of family law in India is somewhat perilous terrain given the religious composition of the nation and the presence of communal politics and tensions.<sup>203</sup> Some

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<sup>198</sup> See Ministry of Overseas Indian Affairs, *supra* note 73; LAWASIA, Report on Seminar on 'NRIs Abandoned Brides-A Challenge to Meet' Organized in Association with Faculty of Laws, Punjab University, Chandigarh (Feb. 13, 2007), available at <http://lawasia.asn.au/objectlibrary/6?filename=NRIs%20Abandoned%20Brides.pdf>; GOVERNMENT OF INDIA, LAW COMM'N OF INDIA, NEED FOR FAMILY LAW LEGISLATIONS FOR NON-RESIDENT INDIANS, REP. NO. 219 (March 2009), available at <http://lawcommissionofindia.nic.in/reports/report219.pdf>

<sup>199</sup> Ministry of Overseas Indian Affairs, , *National Consultation: The Outcomes*, OVERSEAS INDIAN: CONNECTING INDIA WITH ITS DIASPORA, Apr. 2006, <http://www.overseasindian.in/2006/apr/news/11dng2.shtml>; LAWASIA, *supra* note 198; Government of India, Law Commission of India, *supra* note 198; Anil Malhotra, *Law Needed to Deal with NRI Marriages*, THE HINDU, Mar. 11, 2007, available at <http://www.hindu.com/op/2007/03/11/stories/2007031100291500.htm>.

<sup>200</sup> *Seema v. Ashwani Kumar* (2006) 2 S.C.C. 578 (India).

<sup>201</sup> Dhananjay Mahapatra, *Supreme Court Makes Marriage Registration Compulsory*, TIMES OF INDIA, Feb. 14, 2006, <http://timesofindia.indiatimes.com/India/Supreme-Court-makes-marriage-registration-compulsory/articleshow/1414370.cms>.

<sup>202</sup> Tinku Ray, *India Wedding Registration Ruling*, BBC NEWS, Oct. 25, 2007, available at [http://news.bbc.co.uk/2/hi/south\\_asia/7062098.stm](http://news.bbc.co.uk/2/hi/south_asia/7062098.stm).

<sup>203</sup> Rajeswari Sunder Rajan, *Women between Community and State: Some Implications of the Uniform Civil Code Debates in India*, 18 SOC. TEXT 55, 58(2000)

members of Muslim community in India fear that compulsory registration of marriages is a step towards imposing a Uniform Civil Code in India that would override the existing safeguards to religious personal laws.<sup>204</sup> Despite these concerns, and partially in response to the failure of the states to draft legislation, in August 2008 the Law Commission of India proposed enacting uniform national legislation requiring compulsory registration of marriages of all citizens regardless of religious and personal laws.<sup>205</sup> In a related effort, the ministries of women and child development have been pushing for a stamp regarding the marital status of an NRI to be added to a person's passport.<sup>206</sup> The proposed stamp would indicate the date and place of marriage.<sup>207</sup>

Other ideas being discussed are a new "NRI law of marriage" governing divorce, maintenance, child custody and settlement of matrimonial property, as well as the possibility of invoking international conventions and using bilateral treaties to ensure that marriages solemnized in India are dissolved according to Indian laws.<sup>208</sup> A government scheme has been initiated to provide \$1000 in financial assistance to Indian women who are victims of fraudulent marriages and deserted by their NRI husbands, or whose cases are being litigated in foreign courts.<sup>209</sup> This assistance is provided through women's organizations and NGO's in countries such as the U.S, UK and Australia who have been empanelled by the Indian government to provide these services.<sup>210</sup> Advocates have

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(discussing the difficulties, including *inter alia*, from the various religious groups, of implementing the Uniform Civil Code in India).

<sup>204</sup> Ray, *supra* note 202; Mahapatra, *supra* note 201.

<sup>205</sup> Dey, *supra* note 79.

<sup>206</sup> Himanshi Dhawan, *Married-to-NRI Stamp on Passport*, TIMES (India), Feb. 2, 2007, available at <http://timesofindia.indiatimes.com/India/Married-to-NRI-stamp-on-passport/articleshow/1552877.cms>; Malhotra, *supra* note 199.

<sup>207</sup> Dhawan, *supra* note 206.

<sup>208</sup> LAWASIA, *supra* note 198; LAW COMM'N OF INDIA, *supra* note 198.

<sup>209</sup> Press Release, Consulate General of India, Government will Provide Financial Assistance for Legal Services to Women Deserted by Overseas Indian Spouses (Oct. 2008), available at <http://www.indiacgny.org/php/showPressDetails.php?linkid=113&newsid=267>; Pandey, *supra* note 6; Dey, *supra* note 79.

<sup>210</sup> Ministry of Indian Affairs, List of Indian Women's Organizations, Indian Community Associations & NGOs Empanelled with the Indian Missions and Posts Abroad to Provide Legal/Financial Assistance to Indian Women Deserted by their Overseas Indian

expressed skepticism about the meaningfulness of this effort given the tremendous difficulty in securing these funds and the high level of red tape an organization must go through.<sup>211</sup> The data available on the Ministry of Indian Affairs website indicates that in a meager eleven cases has such funding been awarded.<sup>212</sup> Lastly, a manual entitled, *Marriages to Overseas Indians* has been developed for distribution to spouses marrying Indians living abroad which describes specific ways to safeguard a woman's interests.<sup>213</sup> The booklet provides guidance for new brides traveling abroad both with respect to the need to publicize and register marriages to NRI's, and the importance of verifying a groom's immigration, financial, marital and employment status. It also includes a valuable overview of applicable laws and a lengthy list of resources for women who have experienced abandonment or other forms of abuse.<sup>214</sup>

## V. CONCLUSION: "UNDOMESTICATING" VIOLENCE WITHIN TRANSNATIONAL SPACES

This Article reveals how the landscape of anti-violence advocacy for Indian women has been altered by local and global shifts. The phenomenon of NRI abandonment emerges as a form of gendered violence which highlights the erosion of nation-state boundaries. What is immediately evident is the manner in which the domestic sphere in these cases often transcends residential, familial and geographic borders. To borrow Ananya Bhattacharjee's term, this violence must increasingly be viewed as "undomesticated."<sup>215</sup> Patterns of desertion, abandonment and violence have significant implications with respect to reframing anti-

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Spouses,  
<http://www.moia.gov.in/writereaddata/pdf/LIST%20OF%20INDIAN%20WOMEN.pdf> (last visited May 1, 2010).

<sup>211</sup> See, e.g., Phone Interview with Shamita Das Dasgupta, Director, Manavi (Aug. 21, 2009).

<sup>212</sup> Data on Legal Assistance Rendered by Indian Missions <http://moia.gov.in/showinfo1.asp?linkid=538>.

<sup>213</sup> Ministry of Overseas Indian Affairs, *supra* note 74.

<sup>214</sup> *Id.*

<sup>215</sup> Anannya Bhattacharjee, *The Public/Private Mirage: Mapping Homes and Undomesticating Violence Work in the South Asian Immigrant Community*, in FEMINIST GENEALOGIES, COLONIAL LEGACIES, DEMOCRATIC FUTURES 308 (M. Jacqui Alexander & Chandra Talpade Mohanty eds., 1997).



violence advocacy and re-configuring anti-violence law in a global age. The international marriage broker provisions in the 2005 Reauthorization of the Violence Against Women Act in the United States, and the recent initiatives the Indian government has undertaken to address the issue of abandonment in cross-border marriages are two examples of national governments' cognizance of the need for increased reciprocity between the various jurisdictions through which these victims and perpetrators travel.

While important progress has been made in terms of increasing awareness about domestic violence at societal and institutional levels, other critical gaps in advocacy remain. This research highlights the need to expand traditional categories of domestic violence to include abandonment as a legally cognizable form of abuse. Even in cases where abandonment is not coupled with other forms of coercion, threats or physical abuse, this pattern of harm should be encompassed within existing prohibitions against mental or emotional abuse. Advocates and policymakers might in fact look to laws such as India's recently enacted Protection of Women from Domestic Violence Act, which specifically enumerates abandonment, desertion, and forced exclusion from the home as actionable forms of abuse.

Both Indian and U.S. advocates express the crucial need to build alliances across local and national borders to address the increasingly transnational dimensions of these crimes. The expansion of electronic communication networks presents both problems and possibilities for future anti-violence activism. The ubiquity of the internet has enabled abandoned women to contact advocates from around the globe for assistance. This increased accessibility, coupled with the often transnational legal dimensions of these cases, requires a greater level of collaboration between organizations serving Indian women. Already efforts have been initiated among South Asian women's advocacy organizations to discuss strategies for serving abandoned women.<sup>216</sup>

In concluding, this Article posits some specific suggestions for building on these advocacy efforts. One such tactic might be convening a global summit on the issue of NRI abandonment or a series of dedicated international forums involving advocates and government officials from regions with significant populations of abandoned brides. These gatherings would provide an opportunity for advocates to exchange knowledge about their experiences with transnationally abandoned women and potentially generate crucial advocacy networks across borders. Events involving government officials could also promote better channels of communication between advocates and state departments, embassies and consulates,

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<sup>216</sup> Melwani, *supra* note 2.

thereby enhancing women's ability to seek visas or other vital immigration documents to protect their legal interests overseas.

India's efforts to require compulsory registration of marriages is an important initial step in addressing some of the legal uncertainties surrounding abandonment. At the same time, advocates have expressed concern that unless these registrations are computerized in a national database where women can verify their marital status or the marital history of a prospective groom, then they remain an unfulfilled guarantee of protection. Other programs might be initiated via immigration offices in countries with significant NRI populations to collect information about a prospective groom's marital, financial and immigration status and make this information available to women being sponsored on fiancé or other derivative spouse visas. This would seem a logical extension of the existing provisions of IMBRA which require the tracking of K-visas. Though by no means accessible to all those who need it, the development of a transnational cyber-forum for advocates working on these issues could also provide a valuable space for advocates and abandoned women to exchange resources and information across geographic divides.

The goal of increasing awareness of the issue of NRI abandonment has been identified by the Indian government and activists working on this issue. As discussed above, the U.S. and Canadian governments have already issued warnings to men traveling abroad about the dangers of going abroad to marry and the potential misuse of anti-dowry laws. State governments in India where the issue of transnational abandonment has been most acute could issue similar warnings to its citizens choosing to marry and migrate overseas. Indeed, the State of Gujarat has embarked on a regional effort to educate women and their families about the potential pitfalls of cross-border marriages and other states in India with significant populations of abandoned women might engage in similar educational initiatives. Awareness campaigns about the risks of transnational abandonment should also be promoted by the governments of countries with significant NRI populations.

One particular challenge for South Asian women's advocates has been the failure of mainstream domestic violence organizations and the judicial system to understand the complexities of this issue. Educating the traditional constituents of the domestic violence community about issues related to transnational abandonment, and collaborating with organizations engaged in legislative advocacy for immigrant women would also provide an opportunity for increased awareness of the intricacies of these cases and potentially lead to legal and policy reforms. Lastly, raising awareness about NRI abandonment among the family court judges tasked with adjudicating

these cases abroad might help to limit the number of ex parte judgments that are issued, ending the trend where women are effectively deprived of the opportunity to be heard in court.

Finally as this Article has shown, tracing advocacy constraints across jurisdictional boundaries meaningfully reveals the multifaceted way in which the fundamental right to live free from violence is being undermined by transnational shifts. Marriage patterns will most certainly continue to evolve and change. While the attraction of marriages abroad will not likely cease in the near future, already it seems as if the economic downturn has reduced the desirability of overseas grooms for some Indian women.<sup>217</sup> However, so long as non-resident Indian marriages continue, increasing awareness about their potential risks, coupled with expanding advocacy to address the myriad problems which these marriages raise will hopefully be an effective first step toward addressing this critical problem.

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<sup>217</sup> Mallika Kapur, *Looking for Mr. Right—In India*, CNN, Jul. 2, 2009, <http://www.cnn.com/2009/WORLD/asiapcf/07/02/india.matchmaking.wedding/index.html>

