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## Transnational marriage abandonment

Anitha, S., Roy, A. and Yalamarty, H. (2021) Transnational marriage abandonment: A new form of domestic violence and abuse in transnational spaces. In J. Devaney, C. Bradbury-Jones, S. Holt, R. Macy and C. Øverlien (eds.). *The Routledge Handbook on Domestic Violence and Abuse*. Oxford: Routledge.

### **Abstract**

In the West, abandonment within the context of marriage is generally not considered a form of violence against women. In the case of transnational marriages, abandonment of wives across national borders is embedded within a pattern of domestic violence and coercive control exercised over the woman. Additionally, by strategically abandoning their wives in their home country and then filing for divorce in foreign courts, transnationally mobile migrant men can make it almost impossible for their wives to participate in legal proceedings to secure their financial rights relating to child support, maintenance and return of dowry. The impact of abandonment also creates contexts for further forms of violence against women due to the stigma associated with divorce, women's vulnerability within natal families and issues related to inheritance and residence arrangements within the natal home after divorce. Research conducted in India shows that beyond the various processes of control and individual acts of harm that lead to and outlast the act of abandonment in transnational marriages, abandonment itself constitutes a form of violence against women. It is rooted in and results in gendered devaluation of women and is enabled by gender-blind transnational formal-legal frameworks, which construct abandoned women as an inferior class of citizens and as a category of women who can be abused and exploited with impunity. This chapter explores the issue of transnational marriage abandonment, which has recently been recognised as a form of domestic abuse by family courts in England & Wales.

**Transnational marriage abandonment: A new form of domestic violence and abuse in transnational spaces**

**Sundari Anitha, Anupama Roy and Harshita Yalamarty**

**Introduction**

This chapter addresses the issue of domestic violence and abuse within transnational spaces by focusing on the abandonment of wives as a form of domestic violence against women who marry across national borders. Transnational marriage abandonment has been recently recognised as a form of domestic violence following activism by feminist organisations. This chapter draws from our 2013-16 study conducted in India and the existing research and policy developments on this emerging theme in South Asia, Canada, Australia, England and Wales, to outline the specificity of this form of violence and its implications for understanding violence against women through the lens of intersectionality.

**What is transnational marriage abandonment?**

The experience of transnational migration has been seen as a risk factor for domestic violence, which is exacerbated by factors including language barriers and social isolation (Williams & Yu, 2006). The difficulties of women facing domestic violence are heightened by the challenges of migration; and immigration sometimes shapes the nature and impact of the violence and abuse (Anitha, 2011; Erez et al, 2009). Structural barriers such as immigration regulations, lack of access to housing, welfare benefits and right to work impedes migrant women's capacity to leave an abusive relationship; and have been scrutinised in relation to diverse jurisdictions such as the US (Raj & Silverman, 2002; Clark, 2007), Canada

## Transnational marriage abandonment

(Henderson et al., 2019; Okeke-Ihejirika et al, 2018; Alaggia et al, 2009; Abraham & Tastsoglou, 2016; Shirwadkar, 2004), Australia (Ghafournia, 2011; Odhiambo-Abuya, 2003) and member states of the European Union (Hagemann-White, 2008). For those who migrate for the purpose of marriage without appropriate documentation, precarious immigration status exacerbates power differentials between the resident spouse and the marriage migrant, thereby increasing women's vulnerability to abuse and barriers to help-seeking, leaving women with limited options (Vishnuvajjala, 2012; Salcido & Adelman, 2004).

In many countries, marriage migrants whose immigration status is dependent on their spouse, which is often the case in the first few years of the marriage, are at risk of destitution and deportation if their marriage breaks down. In the UK, prior to 2002, marriage migrants abandoned following domestic violence were routinely deported to their country of origin, often to face further abuse from their families for not 'making the marriage work'. Following campaigns from women's organisations in the UK, the Labour government passed the Domestic Violence Rule in 2002 making it possible for a woman to apply for Indefinite Leave to Remain (ILR) in the UK *if she could prove that her marriage had broken down because of domestic violence*. However, women with insecure immigration status were prohibited from accessing public funds, resulting in many women being unable to be accommodated in refuges as the refuge provider was not entitled to claim the costs associated with providing accommodation. This rule also left women destitute while they were expected to apply for ILR (Anitha, 2011) as they were not eligible to claim welfare benefits. Southall Black Sisters (SBS) and allied organisations campaigned to change this, resulting in the Destitute Domestic Violence (DDV) Concession of 2010, which gives women access to limited support in the UK in the form of housing and welfare benefits while they apply for secure immigration status (SBS, 2010). In April 2017, after concerted campaigns, Canada announced the elimination of

## Transnational marriage abandonment

Conditional Permanent Residence (2012), which compelled sponsored spouses or partners of Canadian citizens and permanent residents to live with their sponsor for two years to keep their permanent resident status—a condition which forced them to stay in abusive situations.

Research indicates that for women who have migrated as dependent spouses, these barriers persist despite the existence of formal provisions such as self-petitioning under the Violence Against Women Act (VAWA) in the case of the US, the DDV Concession in the UK and similar provisions in Australia and Canada, due to the restrictive nature of concessions or high evidential requirements. Statements made by politicians, media representations about migrants as well as state immigration policies create a hostile environment towards migrants which perpetrators utilise to control their foreign national wives—who may be unaware of their rights—with threats of deportation and separation from children (Anitha, 2011; Gray et al, 2014).

In the context of increasing provisions for marriage migrants experiencing domestic violence, activists and researchers have begun to document a growing form of violence and abuse that enables perpetrators to bypass these provisions by crossing national borders. Abandonment of wives is a form of violence and abuse that takes place in transnational marriages whereby the resident spouse—usually the husband—deliberately abandons his wife across national borders in order to deprive her of her financial and other rights.

In our research (Anitha et al, 2016, 2018a, 2018b), we found that there are three main contexts within which abandonment in transnational marriages takes place:

i) A woman migrates upon marriage to join her husband in another country and is subjected to a period of neglect, abuse and exploitation, following which she is thrown out

## Transnational marriage abandonment

of the marital home under risk of being deported to her country of origin; or less commonly, leaves to escape violence and abuse;

ii) Following marriage migration and abuse, the woman is taken back to her country of origin either coercively or deceptively (e.g., on the pretext of a holiday) and abandoned there while the husband returns and revokes her visa;

iii) After marrying a local woman, a visitor from another country returns to his country of residence with assurances to sponsor his wife's spouse visa without any intention to do so. The woman is left in her natal home or with her in-laws and is eventually thrown out or leaves because of domestic violence.

Manavi, a South Asian women's organisation in the US, first highlighted this problem by drawing upon their organisational experience, and argued that abandonment "constitutes an emerging face of violence against women, both by its intent and effect" (Rudra & Dasgupta, 2011, p. 7). Though subsequent research has largely focused on South Asia, different dimensions of this problem are beginning to be explored among other diasporic communities. For example, Liversage (2013) studied the power of sponsoring husbands within the Turkish community in Denmark, who married women from Turkey but dispossessed or divorced them before the period to acquire a residency permit elapsed, forcing the women to return to Turkey. Focusing on the transnational abandonment of Moroccan children, De Bree et al. (2011) document how men withhold passports and resident permits from their wives and children while in Morocco, and return to the Netherlands alone. Existing research indicates that such abandonment is a gendered problem; there is little evidence from research and case law of similar forms of abandonment of male marriage migrants.

## Transnational marriage abandonment

The problem of abandonment of wives by non-resident husbands has come to be recognised by government agencies in India, following media attention to this problem (Kahol, 2012; Kumar, 2018; Singh, 2006; Westhead, 2009). In 2008, the Indian government nominated the National Commission for Woman (NCW) to respond to issues pertaining to Non-Resident Indian (NRI)<sup>1</sup> marriages. The NCW estimates that this problem affects approximately 25,000 women, suggesting that two out of ten transnational marriages end in abandonment (NCW, undated). Media reports and anecdotal accounts from women's organisations in the West (Rudra & Dasgupta, 2011), exploratory studies based on surveys and interviews with affected women in India (Jabbi, 2005) and scholarship based on analysis of case law in India (Bhattacharjee, 2013; Kapur, 2019; Lodhia, 2010) suggests that this is a growing problem. This chapter draws upon the limited scholarship on this issue in recent years, and presents the findings of our first ever systematic study on this issue.

### **Our study**

Our study explored the nature and patterns of abuse and abandonment in transnational marriages, and documented women's experience of the legal and judicial apparatus in the UK and India in their quest for justice. Conducted between 2013 and 2016, it drew upon life-history interviews with 57 abandoned wives in Delhi, Punjab and Gujarat, states in India which have a long history of outward-migration to the UK and other countries in the West. Most participants were accessed through police, women's/community organisations and lawyers, while others were accessed through snowball sampling. Additionally, semi-structured interviews were also conducted with a purposive sample of 21 practitioners including lawyers, representatives of women's organizations and police officers engaged with this issue in India and the UK. Twenty-eight of the 57 women we interviewed had been

## Transnational marriage abandonment

married to UK residents, eight to men resident in Italy, and four each to men resident in Australia and USA, and the remainder to men from other countries. About two-fifths of the women we interviewed had migrated after marriage while the rest stayed in India with their in-laws while they awaited a spousal visa.

### **Histories of violence and abuse**

Transnational abandonment of women encompasses a range of violence including physical and sexual violence, economic abuse and denial of reproductive rights, which are commonly documented forms of domestic violence, as well as specific aspects of abuse such as purposive immobilization.

Most of the women we interviewed reported hastily arranged marriage, exchange of dowry and lavish celebrations, all paid for by the bride's family. In the case of transnational marriages, the gendered imbalances in the norms that govern marriage negotiations between the two families (Dube, 2001) are exacerbated by global hierarchies and time constraints. Men and their families took advantage of these circumstances to negotiate the most advantageous marriage, while women and their families had limited opportunities to minimise the risk, as they would normally do in a local marriage.

### ***Neglect, violence and abuse***

Soon after the marriage, about a quarter of the research participants realised that their husband had agreed to the marriage because of parental pressure. If the men had prior romantic relationships that their family considered unsuitable, the arranged marriage served to preserve the status of their family within their community. Often, the men had negotiated

## Transnational marriage abandonment

with their families to continue their prior heterosexual, or in three cases, same-sex relationships. The women's role was that of a domestic servant and care giver for elderly relatives.

*Soon after I came here, I realised that the marriage was a sham. He stayed away from home for days at a time. When I questioned him, he said, "You are nothing to me. I married you for my parents, your job is to look after them." When I complained to his parents, they said it was up to me to make him want to stay at home (Bina, 26).<sup>2</sup>*

In all cases—whether or not the men were pressurised into the marriage—the men and often their families acted purposively to control and dominate the women to secure benefits from these relationships. They used a combination of surveillance, degradation and isolation to exercise coercive control, with devastating effects on women's individual liberty, agency and autonomy (Stark, 2007, p. 131). They controlled the women's appearance, restricted their movement, prevented them from speaking to their family or monitored calls to their family, and restricted their access to money (Chaudhuri et al., 2014), thereby isolating women from any sources of support.

While all women were subjected to coercive control, about three quarters of the research participants—both women who had migrated following marriage and those who were left behind with their in-laws—also experienced physical violence. Fifteen women faced physical violence from their husbands only, 11 from their in-laws only, while 16 women were subjected to physical abuse from both their husband and his relatives. This corroborates research on domestic violence in South Asia and the South Asian diaspora which indicates that the perpetrators of domestic violence can also include members of the husband's family

## Transnational marriage abandonment

(Kandiyoti, 1988; Fernandez, 1997; Gangoli & Rew, 2011). In line with findings from previous studies, we found that perpetrators exploited migrant women's unfamiliarity with the sources of support available in other countries. State immigration policies exacerbate the power imbalance in these relationships and become part of the matrix of control that enables abuse to continue (Anitha, 2011; Menjivar and Salcido, 2002; Thiara, 2010).

One of the respondents, a 29 year old woman from Gujarat who had been brought to Kenya after her marriage, recounted her experiences:

*His harassment escalated over the months. Eventually, I told him, "Now our relationship is about to come to an end. You get me a ticket for India and give me back my passport which you have hidden somewhere." At this, he started beating me in the presence of our landlord. I was very frightened. I went to his friend for help but he told me, "You can't go anywhere. You are staying here illegally; they (police) will put you in jail straightaway". I learnt that he had not brought me there as his wife but as a visitor. The time limit for my stay was over, so I was in deep trouble... When he came home, he beat me badly that night. He threatened me, "If I cut you into pieces and bury you, no one will know about it." From his behaviour, I felt that he was capable of killing me. Over the next few months the beatings continued, even escalated. I knew that I was staying there illegally. So, I didn't know what to do (Shiva, 29).*

Where women lived with their in-laws in India, social norms against divorce and gender norms, which dictate that married women have no place in their parents' home, created a context where in-laws were able to subjugate the women and abuse them with impunity.

***Financial abuse: Exploitation of domestic labour and paid work***

A common form of abuse—one that is often underexplored in research on domestic violence— was the exploitation of women’s unpaid and paid labour (Anitha, 2019; Sharp-Jeffs, 2017). In keeping with the gendered expectations about domestic work within all societies, all the women interviewed accepted their responsibility for domestic labour after marriage, and had indeed been socialized into such a role. What they did not expect was that this would be their only or primary role following marriage, in a context where they were not treated with the affection, reciprocity or familiarity accorded to family members.

*About two weeks after our wedding, the domestic servant who used to clean and sweep the house was asked to give up that work. I had to sweep and mop the floor, remove the curtains daily and dust them. The ceiling fans, windows and doors had to be cleaned daily. After all this work, if my mother-in-law found any dust anywhere, she would shout at me and rebuke me. At times, she wouldn't give me anything to eat, or just give stale, leftover food or only chappati (bread). I ...was not allowed to enter the kitchen, a bottle of water was kept for me outside. I was like this full time maid who never had any days off, never had to be paid (Manju, 31).*

Many women also recounted systematic humiliation designed to erode their sense of self—including being barred from parts of the house, having separate and inferior plates and cups reserved for their use. In keeping with the subordinate status accorded to domestic servants, a majority of women who were left with their in-laws were prohibited from using certain furniture, denied adequate food and lodgings (e.g., bed, warm clothes), denied medical

## Transnational marriage abandonment

care (Wittenburg, 2008), and restricted within the family home, whether by being physically locked in their rooms or within the house; or by taking away their means to communicate with their family or friends outside the house. The small minority of marriage migrants and women who lived in cities in India and undertook paid work were deprived of any control over their earnings or the hours they worked. Women initially tolerated this abuse and exploitation, as they expected to eventually migrate and join their husbands or hoped that the abuse would diminish over time. Having little access to or understanding of the visa process, it was much later that many women who were left in India realised that their husbands had never intended to sponsor them.

### *Dowry abuse*

Dowry was an important factor that contributed to the abuse. Dowry is the transfer of money, jewellery or goods to the groom's family from the family of the bride at the point of the wedding and beyond. The giving and taking of dowry is prohibited under the Dowry Prohibition Act 1961 and Sections 304B and 498A of the Indian Penal Code but continues to be a common practice. Demand for dowry where the bride's family are unable to meet the requirement is a significant (but not the sole) factor in violence against wives in India (Rastogi & Therly, 2006; Rudd, 2001). Not all women experience dowry as a repressive practice and some may consider dowry their rightful share of their parents' wealth, in a context where daughters do not commonly inherit property. However, dowry is a practice that simultaneously reflects and reinforces the devaluation of women. Palriwala and Uberoi (2005, p. xviii) argue that dowry in transnational marriages serves to subsidise global capital, where it becomes an investment in the husband's education or business.

## Transnational marriage abandonment

The women in our study reported demands for dowry immediately before the wedding. For some it continued afterwards. All women reported the theft of dowry upon abandonment. Many research participants reported that their dowry was used to fund men's migration process, higher education or business ventures abroad. Women's parents often incurred debts to make payments to enhance men's financial security in their country of residence, expecting their daughters to join the men at a later date. Once they were entitled to secure immigration status, some men initiated ex-parte divorce proceedings. While deception was a common means of securing additional dowry payments in the first few months following the marriage, consistent with other research findings (Bloch & Rao, 2002), threats were also utilised purposefully and strategically to extract payments.

*He started threatening me, saying, "Give me Rs.20 lakhs (£20,000) to open a restaurant here, then I will bring you to Germany. Otherwise I will divorce you" (Sharanjit, 28).*

In a few cases, meticulous planning and careful strategising enabled men's families to secure a dowry. One woman from a poor family in a small town in Gujarat recounted the circumstances of her marriage:

*He contacted us in response to an [matrimonial] ad my father had put out in a newspaper. He was good looking, had a good job in a hotel in a Gulf state, so we decided to proceed. Their main condition was that the marriage would have to take place in their native town because his mother was too ill to travel—my dad was a bit hesitant but they said they would host the ceremony [a highly unusual offer in a context where the bride's family hosts and pays for the wedding]. So we agreed. When we*

## Transnational marriage abandonment

*reached groom's house with our extended family, we did not see any sign of celebrations there. They informed us that their uncle was on his death bed, he could die any day now. It would have to be a simple affair, out of respect for him. So, next day, we went to a temple and performed the ceremony, and I moved into my husband's place. Even the neighbours did not know about our marriage! I later found out from the neighbours that he had married twice earlier under similar circumstances. He soon left India and his sister-in-law took the gold that I got as dowry—since there were no wedding expenses, my parents had given me a dowry that was larger than would have otherwise been the case (Arti, 36).*

Over the coming months, continued harassment by her in-laws compelled Arti to return to her natal home. After a few months, she made her way to her husband's country of residence to salvage her marriage but faced domestic violence. She returned home and is now seeking the return of her dowry through the legal process.

This systematic and purposeful dowry abuse took place alongside other forms of violence (Anitha et al, 2018b) within the marriage in the case of most women we interviewed. However, a few women's narratives indicate that the sole purpose of the marriage was to extract dowry and few other aspects of marriage, such as the establishment of a conjugal home together, were ever intended to be realised. In these cases, the men and their families absconded with the dowry, leaving their 'wives' to live with the social stigma and the liminal status attached to an abandoned woman in the Indian context.

### ***Sexual violence and denial of reproductive rights***

## Transnational marriage abandonment

A third of the women reported a continuum of sexual coercion (Kelly, 1988) whereby their husband determined whether or not there were sexual relations in the marriage, and when, where and how sex took place.

*In the beginning, my husband hardly ever came home at night. He used to tell me that he had to work two to three shifts. Later, when he did come home, we used to be in the same room but he would be ... watching horror films. I used to get frightened by such films ...but he would pressurise me to watch and indulge in sexual acts as seen in the films. A few months later, when he went to parties, he would come back with his girlfriend. If I questioned him, he would just laugh it off. His parents never said anything to him about this. When I saw all this I was truly depressed (Asha, 38).*

Where men had been pressurised into the marriage and did not show any interest in pursuing a relationship with their wife, women were blamed by their in-laws and in some cases, were pressurised to become pregnant, in the belief that this would change men's attitude towards them.

*He never stayed at home—he was out most nights, and I thought, maybe he was with someone else. I refused to have any relations with him, but his parents wanted a grandchild. He complained to his mother, "It seems that this girl does not like me. She does not even allow me to touch her!" When my mother-in-law talked to me about it, I told her, "We haven't even spoken to each other properly yet. How can we have any relations with each other?" After that, one night when I came home from work, my mother-in-law gave me food and milk to drink and I fell asleep. I don't know what happened, what was in it, but when I got up in the morning, I found bite marks on my*

## Transnational marriage abandonment

*shoulders, breast, neck, thighs and stomach. I had pain all over my body and in my stomach. I called out but no one was home. When I called up my husband, he told me that he had (sexual) relations with me (Chandni, 35).*

The collusion of the mother-in-law in drugging her made this rape a particularly traumatic experience for Chandni. A third of the women were denied their reproductive rights: 11 women were coerced to undergo abortions and eight were pressurised to get pregnant. Consistent with previous research (Campbell et al., 2004; Jasinski, 2004), women reported that both verbal and physical violence escalated during pregnancy.

*As soon as I got pregnant, he started saying, “We have to have a son. If you have a daughter I will give you a divorce, that's that, and send you back” (Satinder, 34).*

Although research universally associates pregnancy with the escalation of existing abuse, in our study this seemed to be particularly prevalent where women were pregnant with a female child. The preference for sons derives in part from cultural practices like dowry that create economic disincentives for having daughters. Analysing female ‘deficit’ in the sex ratios, Sen (1990) argues that this is a consequence of sex-selective abortions and the gender-biased allocation of resources leading to lower survival rates of girls in India. Sociological evidence also points to a continued preference for sons among some diasporic South Asian communities (Purewal, 2003), including among Punjabi Canadians (Mucina, 2018; Srinivasan, 2018).

Women left with their in-laws were also vulnerable to sexual harassment/violence from men in the husband’s family, as they were perceived to have lost the protection that

## Transnational marriage abandonment

derives from the husband's claim to exclusive sexual access. Thirteen women recounted ongoing sexual harassment, primarily from their father-in-law. One woman, who was left with her in-laws in Gujarat for several years while her husband returned to the US, recounted:

*My father-in-law began coming to the room where I used to sleep with my son to watch me sleeping. When he began to touch me, I used to get up and get angry. Once, I even slapped him. When I told my husband about it he did not believe me. Instead, he threatened me. Then I told my mother-in-law, and she said, "Are you going to disgrace your god-like father-in-law?" [...] My parents were not able to accommodate me. I had my own room at my in-laws' place, so I found a way out—I started sleeping with my bedroom locked (Okhaben 42).*

This kind of abuse from other men in the family, and the lack of support from their husbands, compelled some women to leave the in-laws' home. Women often returned to their natal homes for a period of respite; but they also renewed their efforts to migrate abroad and establish their conjugal family lives with their husbands.

### ***The deception and violence of abandonment***

Despite the violence they suffered, most women sought to keep their marriages intact. They tried to placate their husband and in-laws through silence and avoidant behaviour and lived with what they deemed an 'acceptable level' of violence. Socio-cultural norms against divorce made it very difficult for women to leave abusive relationships.

For marriage migrants, the vulnerabilities arising from insecure immigration status limited their options. In the context of some countries, including the UK, Canada and the

## Transnational marriage abandonment

USA, which have introduced entitlements for immigrant women who experience domestic violence, men have taken recourse to restrictive immigration policies that operate across transnational spaces to treat their wives as disposable women. Hira, who belonged to a middle peasant family in rural Gujarat and migrated to the UK following marriage to a highly educated man, reported:

*He often used to hit me. He would tell me that he had much better girls to choose from. After three years like this, we came to India for a holiday. [...] After two to three days, he left me at my mother's place. We had return tickets—we were planning to go back together after two months. But he phoned me and said he was returning to the UK that very night and I should come back later. I was surprised, but I thought, he must have got some new project at work. We all went to the airport to see him off and he left. Later on, he suggested that I stay on to attend English classes so I could pass some exams that I was planning to take in the UK, so I extended my return ticket. It was only later that I realised that he was waiting for my visa to expire. As soon as the deadline passed, he called to say he was going to divorce me (Hira, 32).*

Of the 23 research participants who migrated upon marriage, sixteen were taken back to India and abandoned and their visa revoked, thus depriving them of their right to be represented in any divorce proceedings in the country where the man resided, to claim financial settlement, or secure the return of dowry. Abandonment across transnational borders meant that women were unable to initiate any criminal proceedings against the men for domestic violence, and unable to claim the rights to settlement to which they were entitled in some countries. Of the 34 women who were left with their in-laws, a majority were eventually thrown out, or less commonly, fled the marital home when the violence was

deemed unbearable. Once other options such as mediation were exhausted, some women also sought criminal sanctions against their husbands and/or in-laws, but to no avail. Men and their families were able to dominate, abuse and exploit women, secure in the knowledge that the women would not be protected by the legal frameworks in India and across transnational spaces.

### **Impact of abandonment and access to justice for transnationally abandoned women**

The impact of abandonment documented in several studies and in media reports include difficulty in securing employment, women's financial dependence on their natal families where they may be considered a burden, loss of relationships with extended family and friends, a detrimental impact on the social standing of their family, and the loss of good marriage prospects of younger sisters (Anitha et al, 2018a, Bajpai 2013, Lodhia, 2010; Stewart, 2013). Women abandoned in their country of origin are often left at risk of poverty and destitution, social stigma, shame, and a loss of status, and domestic abuse. In a context where marriage remains the primary marker of social status and identity for women, abandoned women have limited means of living independently or undertaking paid work, particularly in rural areas. In the absence of formal divorce proceedings, women are left in a legal limbo (Kapur, 2019) and lack the option of securing their future by marrying again in a context where the only socially acceptable position for a woman is under the 'protection' of a father, husband or son (Gandhi et al, 2016). Our study also documented how the loss of dowry upon abandonment and having to return to their parental home placed some women in a precarious position as a potential threat to the inheritance of their brothers (Anitha et al, 2018b).

## Transnational marriage abandonment

*Things are not easy here—all I can say is that I stay here. But my brother tells me all the time that I should give up my share in my father's property. My father possesses two houses and receives a considerable pension. But my brother says he will look after me and get my daughter married only if I renounce my inheritance. If I give up my right and my relations with my brother and his wife deteriorate, where will I go (Jasma, 38).*

Studies based on analysis of case law (Bhattacharjee, 2013, Lodhia, 2010; Kapur, 2019) reveal the difficulties women face in securing an equitable financial settlement, regular maintenance for children, or the return of their dowry. Due to inadequate transnational legal mechanisms, some women are also separated from their children who are retained by the father in his country of residence. While the European Convention on Human Rights (ECHR) enables women abandoned by spouses resident in Council of Europe member states to access some remedies (Jahangir et al., 2016), these rights elude abandoned women who often lack the financial means to access legal advice and representation. Kapur (2019) draws attention to the interplay of factors including the breakdown of traditional social institutions, globalization, and gendered policy frameworks which shape the unique nature of challenges experienced by transnationally abandoned women. Beyond the deprivation of meaningful access to family law and child custody laws, the realities and consequences of transnational abandonment require us to recognise not just that these patterns of desertion are often accompanied by other forms of abuse as noted by Lodhia (2010, p.735-6), but that abandonment in transnational marriages itself constitutes a form of domestic violence and abuse (Anitha et al, 2018).

## **Conceptualising transnational marriage abandonment as domestic violence and abuse**

The issue of transnational marriage abandonment sheds light on violence against women in transnational spaces and thereby broadens the lens through which domestic violence and abuse is understood by drawing attention to the power asymmetries at local and transnational contexts. The gendered inequalities within the institution of marriage are exacerbated by the geopolitical inequalities, whereby the groom's family is able to command resources and mobility through access to state and legal institutions. Gender intersects with disadvantages arising from the relative poverty of women's families, state immigration policies and bordering regimes to create conducive contexts for violence (Kelly, 2016). Transnational mobility associated with the husband's 'flexible citizenship' leads to a corresponding disempowerment of the abandoned wife.

In the West, abandonment within the context of marriage is generally not considered a form of violence against women. However, in the case of transnational marriages, abandonment is embedded within a pattern of domestic violence and coercive control exercised over the woman and is intended to deprive her rights. Research shows that beyond the various processes of control and individual acts of harm that lead to and outlast the act of abandonment in transnational marriages, abandonment itself constitutes a form of violence against women. It is rooted in and results in gendered devaluation of women and is enabled by gender-blind transnational formal-legal frameworks, which construct abandoned women as an inferior class of citizens and as a category of women who can be abused and exploited with impunity.

## **Recent steps towards recognition of and redress for transnational marriage abandonment**

Recently, the first steps have been taken in recognising transnational marriage abandonment as a form of domestic violence and abuse. Following our study and campaigning by Southall Black Sisters and lawyers working in the area of international family law, the family justice system in England & Wales have recognised this issue through its amended Practice Direction 12J, which came into effect from 2 October 2017. PD12J sets out what the Family Court should do in cases where it is alleged/admitted, or there is other reason to believe, that the child or a party has experienced or is at risk of domestic violence or abuse. The definition of domestic abuse is thereby expanded to incorporate “dowry-related abuse and transnational marriage abandonment;” and that “‘abandonment’ refers to the practice whereby a husband, in England and Wales, deliberately abandons or “strands” his foreign national wife abroad, usually without financial resources, in order to prevent her from asserting matrimonial and/or residence rights in England and Wales. It may involve children who are either abandoned with, or separated from, their mother” (Practice Direction 12j, para 3). This extension of the definition of domestic abuse has important implications for abandoned women’s access to Legal Aid. In February 2019, the Court of Appeal (*A (Children) Re* [2019] EWCA Civ 74) utilised PD12J to successfully overturn a fact-finding judgment in private law proceedings to set out the law in respect of transnational marriage abandonment and recognised the many ways in which a spouse is prevented from returning to the UK. This is a significant development, but further changes are needed within the family justice system, to child protection mechanisms where women are abandoned with or

## Transnational marriage abandonment

following separation from their children, to the immigration system and in frontline practice to ensure that women's rights in national and international law are realised.

These recent measures represent the beginning of policy recognition of this issue in one jurisdiction, though this problem arguably affects women in transnational marriages across the world. In a context where justice evades the vast majority of victims of transnational marriage abandonment, addressing these issues will require a range of mechanisms in local, national and transnational arenas including domestic violence services which cater to the particular vulnerabilities and needs of migrant women. However, it is only by addressing the very structures including gender-blind bordering regimes that enhance women's vulnerabilities that a lasting solution can be found. We urgently need better protection of women's human rights within and across national boundaries. Not only will this enable perpetrators to be held to account, it will also help dismantle the structures and processes because of which some men perceive transnational wives as disposable women whose abuse is not a matter of concern.

### **Conclusion**

The gendered phenomenon of transnational marriage abandonment highlights the erosion of nation-state boundaries and the emergence of violence against women in transnational spaces. Recent scholarship in this emerging area of research documents South Asian women's experiences of abandonment in transnational marriages, whereby men resident in countries in the global north exercise violence, deception, and coercive and controlling behaviour to abandon their wives across national borders in order to deprive them of their rights. Gender-blind transnational formal-legal mechanisms combine with hostile

## Transnational marriage abandonment

bordering regimes operated by countries in the global north to exacerbate gendered power differentials between a resident and a migrant spouse to create conducive contexts for such violence and impede any remedies for the abandoned women. We are at the very early stages of recognising transnational marriage abandonment as a form of domestic violence and abuse and there is an urgent need for further research in order to gather evidence that will drive subsequent activist efforts and make the case for policy change.

### **Endnotes**

1. A Non-Resident Indian (NRI) is a citizen of India who holds an Indian passport and has temporarily emigrated to another country. However, in popular parlance, NRI denotes any person of Indian origin who lives in another country, which is how this term is used here.

2. All names have been changed to protect women's identities and a pseudonym has been allocated to each woman in accordance with regional and religion-specific naming conventions.

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## **Appendix 1: Summary of critical findings**

Abandonment within the context of marriage is not commonly considered a form of violence against women. In the case of transnational marriages, an emerging body of research, including our study, documents how abandonment is embedded within a pattern of domestic violence and coercive control over women which gets exacerbated by the power asymmetries that operate in transnational contexts. This study focuses on the manner in which these asymmetries unfold in contexts where women are abandoned by their husbands in their countries of origin.

Disadvantages arising from gender inequalities, global hierarchies between nations, relative poverty of women's families compared to their transnationally resident husband, immigration policies and bordering regimes intersect to create conducive contexts for new forms of domestic violence and abuse. The transnational mobility enjoyed by husbands undermines the protection afforded to the abandoned wife by national laws and her access to international protection.

As documented in existing research, men resident in countries in the global north are able to exercise violence, deception, and coercive and controlling behaviour to abandon their wives across national borders with impunity. By strategically abandoning their wife in her home country and then filing for divorce in the men's country of residence, transnationally mobile men can make it almost impossible for their wives to participate in legal proceedings to secure rights including financial settlement, maintenance and in some cases contact with children. The impact of abandonment also creates contexts for further forms of violence against women due to the stigma associated with divorce, women's vulnerability within natal

## Transnational marriage abandonment

families and issues related to inheritance and residence arrangements within the natal home after divorce.

Research indicates that beyond the various processes of control and individual acts of harm that lead to and outlast the act of abandonment in transnational marriages, abandonment itself constitutes a form of violence against women. It is rooted in and results in gendered devaluation of women and is enabled by gender-blind transnational formal-legal frameworks, which construct abandoned women as subordinate citizens.

### **Appendix 2: Summary of implications for policy, practice and research**

Transnational marriage abandonment represents what was hitherto a hidden facet of domestic violence and abuse affecting transnationally married women. Specific forms of domestic violence and abuse enacted across national borders has been hitherto invisible from the practice and policy communities which are based in particular countries and have not been equipped to recognise forms of violence against women in transnational spaces. This issue has considerable implications for practitioners working to support marriage migrants experiencing domestic violence. The policies that grant residence rights to immigrant women on the basis of the domestic violence they have experienced in various jurisdictions are effectively evaded by abusive men and their families through transnational marriage abandonment.

Awareness of this problem and the nature and forms of abandonment can enable effective pro-active support from services. For example, the period when a woman is in her husband's

## Transnational marriage abandonment

country of residence and in contact with services because of the domestic violence she is facing represents a crucial window of opportunity for making her aware of the very real risk of abandonment. This is also the opportunity to alert her to the risk of appropriation of her dowry. Any documentary evidence of her dowry might be crucial to any legal proceedings at a later date. However, recovery of women's dowries remains difficult in many jurisdictions including England & Wales in the context of the lack of recognition of dowry as a special form of pre-marital asset (Patel et al., 2016). In case of abandonment from the UK, returning before her visa has been revoked often represents her best chance of availing of the Destitute Domestic Violence Concession. Both the passage of time, and abandonment with her child(ren)—in contrast to abandonment which entails separation from her child(ren)—creates particularly difficult contexts for obtaining justice and security. Where a woman has been separated from her children in the process of abandonment, Article 8 of the Human Rights Act 1998 (Right to respect for your family and private life) has previously been invoked to secure her rights (Jahangir et al, 2016) in the UK. However, this is a complicated area of law, and few remedies exist in some other jurisdictions (Bhattacharjee, 2013, Lodhia, 2010; Kapur, 2019).

The recognition of transnational marriage abandonment as a form of domestic abuse through the recent amendment to Practice Direction 12J in England & Wales opens up the possibility of Legal Aid, as well as other avenues for abandoned women. However, these are the first steps in what needs to be a package of policy measures at the national level and within transnational mechanisms to protect women's human rights.

There is also an urgent need for more research on the problem of transnational marriage abandonment in other jurisdictions, and among marriage migrants from different countries. It

## Transnational marriage abandonment

is important to document the commonalities in the forms of abuse that result from the exacerbation of gender inequalities by bordering regimes as well as any specificities in the nature and manifestations of domestic violence and abuse that arise in different contexts.