



## **National Seminar**

**On**

# **“ISSUES RELATING TO NRI MARRIAGES”**

15th February, 2011, Vigyan Bhawan, New Delhi

Organized by  
**National Commission for Women**  
In Collaboration With  
**Ministry of Overseas Indian Affairs**

**- Background Note -**

## Index

1. Introduction	1 – 2
2. Common issues in NRI marriages	3 – 5
3. Initiatives of NCW	6
4. NRI cell of NCW - An Overview	7 – 8
5. Country wise data of complaints received in NRI Cell	9
6. State wise data of complaints received in NRI Cell	10
7. Success Stories of NRI Cell	11 – 12
8. Scheme for giving legal /financial assistance to Indian women deserted by their overseas Indian spouses	13 – 18
9. Issues for consideration at national seminar	19 – 21

### Appendix

a. Note on experience of the state government of Kerala in the issue of Non-Resident Indian marriages and the distressed wives	22 – 23
b. Note from Punjab State Government on suggestions relating to NRI marriages	24 – 27
c. Survey of Marriages in Punjab – Ashwini Luthra, Asian Education Society	28 – 32
d. Note on the legal difficulties being faced by NRI women – Indira Jaisingh	33 – 35
e. NRI marriages – the Punjab perspective by Anil Malhotra and Ranjit Malhotra, advocates	36 – 44

## INTRODUCTION

Over the years the problems of Indian women trapped in fraudulent marriages with overseas Indians are increasingly reported. This has underscored the urgent need to build safeguards to protect these women and make them aware of their rights and responsibilities on the one hand and about the safety nets and social defense mechanisms that are available and which could assist them.

The problem is manifold and includes dowry and other kinds of harassment of married women in foreign countries like non-consummation of marriages, marriages of convenience, concealment of earlier existing marriage by the husband before marrying an Indian woman and lack of social security faced by an Indian woman on the foreign soil once the marriage is broken and *ex parte* divorces are obtained. A most conspicuous disturbing trend, however, appears to be the easy dissolution of such marriages by the foreign courts even though their solemnization took place in India as per the Indian laws. Since there is no comprehensive and special law to govern such aspects and also in view of the jurisdictional issues involved in decide the matrimonial cases, women are being deprived of justice with impunity.

Though matrimonial disputes are one of the most challenging and complex areas for legal intervention within any system, what makes the situation complex particularly in the Indian context is the fact that in the absence of uniform civil laws, the personal laws of various religious communities continue to be different, thus making the matrimonial disputes, especially in inter-religious marriages, even more difficult to deal with. In this already complex scenario, the legal complications get multiplied manifold when a marriage steps beyond the borders of a country and its legal system, in a phenomenon that has come to be known as “NRI marriages”. These marriages have to then enter the domain – often called the ‘maze’ - of private international law that deals with the interplay and conflict of laws of different countries, which makes the issues therein that much more complex.

Even though this is a gender-neutral term, typically the ‘NRI marriages’, as generally understood, are between an Indian woman from India and an Indian man residing in

another country (thus NRI – non-resident Indian), either as Indian citizen (when he would legally be an ‘NRI’) or as citizen of that other country (when he would legally be a PIO – person of Indian origin). With the characteristic Indians’ penchant for migration to foreign countries, such alliances are seen as the most coveted ones in Indian society, promising greener pastures for not just the woman but her entire family.

In the eagerness not to let go of such a match, the families totally ignore even the common cautions that are observed in traditional matchmaking. They also ignore that in case of things going awry in an NRI marriage, the woman’s recourse to justice is greatly constrained by the reason that such marriage are not governed any more by only the Indian legal system but by the far more complex private international laws involving the legal system of the other country too. They even ignore the plain and simple fact that just logistically for a woman to negotiate her way to justice across thousands of miles would be a thoroughly exasperating experience. The aggravated risks in such marriages, the woman being isolated far away from home in an alien land, inevitably facing constraints of language, communication, lack of knowledge of local criminal justice, police and legal system, lack of support network of friends and family to turn to, lack of immediate and readily available monetary support and a place to take shelter in, are issues that no one likes to talk or hear about at the time of marriage. It is therefore hardly surprising that there is growing evidence today that even as the number of NRI marriages is escalating by thousands every year, with the increasing Indian Diaspora, the number of matrimonial and related disputes in the NRI marriages have also raised proportionately, in fact at most places much more than proportionately.

## COMMON ISSUES IN NRI MARRIAGES

Some of the typical instances of the issues that arise in NRI marriages that have been repeatedly reflected in the actual case studies from different states of the country are as follows:

- 1) Woman married to NRI was abandoned even before being taken by her husband to the foreign country of his residence. After a short honeymoon he had went back, promising to soon send her ticket that never came. In many instances the woman would already have been pregnant when he left and so both she and the child (who was born later) were abandoned. The husband never called or wrote and never came back again. The in-laws who could still be in India would either plead helplessness or flatly refuse to help.
- 2) Woman went to her husband's home in the other country only to be brutally battered, assaulted, abused both mentally and physically, malnourished, confined and ill-treated by him in several other ways. She was therefore either forced to flee or was forcibly sent back. It could also be that she was not allowed to bring back her children. In many cases, the children were abducted or forcibly taken away from the woman.
- 3) Woman who was herself or whose parents were held to ransom for payment of huge sums of money as dowry, both before and after the marriage, making her continued stay and safety in her husband's country of residence dependent on that.
- 4) Woman who reached the foreign country of her husband's residence and waited helpless at the international airport there only to find that her husband would not turn up at all.

- 5) Woman who was abandoned in the foreign country with absolutely no support or means of sustenance or escape and without even the legal permission to stay on in that country.
- 6) Woman who learnt on reaching the country of her NRI husband's residence that he was already married in the other country to another woman, whom he continued to live with. He may have married her due to pressure from his parents and to please them or sometimes even to use her like a domestic help or pick up dowry.
- 7) Woman who later learnt that her NRI husband had given false information on any or all of the following: his job, immigration status, earning, property, marital status and other material particulars, to con her into the marriage.
- 8) Woman whose husband, taking advantage of more lenient divorce grounds in other legal systems, obtained ex-parte decree of divorce in the foreign country through fraudulent representations and/ or behind her back, without her knowledge, after she was sent back or forced to go back to India or even while she was still there.
- 9) Woman who was denied maintenance in India on the pretext that the marriage had already been dissolved by the court in another country.
- 10) Woman who approached the court, either in India or in the other country, for maintenance or divorce but repeatedly encountered technical legal obstacles related to jurisdiction of courts, service of notices or orders, or enforcement of orders or learnt of the husband commencing simultaneous retaliatory legal proceeding in the other country to make her legal action
- 11) Woman who sought to use criminal law to punish her husband and in-laws for dowry demands and/ or, or matrimonial cruelty and found that the trial could not proceed as the husband would not come to India and submit to the trial or respond in any way to summons, or even warrant of arrest.

- 12) Woman who was coaxed to travel to the foreign country of the man's residence and get married in that country, who later discovered that Indian courts have even more limited jurisdiction in such cases.
  
- 13) Woman who had to fight nasty legal battles for custody of her children and for child support, and to bring them back with her after she was divorced or forced to leave, sometimes even facing charges of illegally abducting her own children.

## **Initiatives of NCW**

The National Commission for Women during the year 2005 – 2006, took up the issue of NRI Marriages as a priority area, requiring immediate intervention and solutions and conducted two workshops at Chandigarh and at Trivandrum, in June and September 2006, in collaboration with the Ministry of Overseas Indian Affairs, to discuss the possible solutions to the vexed issue. The recommendations made during these workshops are contain in the enclosed booklet titled - The “Nowhere” BRIDES.

One of the recommendations of the Parliamentary Committee on Empowerment of Women (EWC) (14<sup>th</sup> Lok Shabha) on the subject “Plight of Indian women deserted by NRI husbands” was to evolve a well defined/coordinated mechanism to deal with the issue of problematic NRI marriages to enable the aggrieved women to get a respectable solution to the problem. This recommendation of the EWC was deliberated at an Inter Ministerial meeting comprising of representatives from Ministry of Overseas Indian Affairs, External Affairs, Law and Justice, Women and Child Development, National Commission for Women (NCW) and National Human Rights Commission (NHRC) held on 7<sup>th</sup> July, 2008 and it was decided that the National Commission for Women will be the coordinating agency at the national level to receive and process all the complaints related to Indian women deserted by their overseas Indian husbands. Accordingly, the NRI Cell of NCW was formally inaugurated on the 24<sup>th</sup> September, 2009 and is actively engaged in assisting unfortunate victims by taking their cases with foreign missions abroad. Active interaction is also maintained with the Ministry of Overseas Indian Affairs, Ministry of External Affairs, Ministry of Law and Justice and Ministry of Home affairs to sort out the procedural problems faced by NCW in giving timely relief to the victims.

## **NRI Cell of NCW- An Overview**

The National Commission for Woman was nominated as the Coordinating agency at the National level for dealing with issues pertaining NRI marriages by Government of India vide Ministry of Overseas Indian Affairs order dated 28<sup>th</sup> April 2009, based on the recommendation of the Parliamentary Committee on Empowerment of Woman (14<sup>th</sup> Lok Sabha) on the subject “Plight of Indian Woman deserted by NRI husbands” which was discussed and deliberated upon by the Inter Ministerial Committee meeting held on 7<sup>th</sup> July, 2008.

In furtherance of this, the NRI Cell was formally inaugurated on the 24<sup>th</sup> of September, 2009. NRI Cell deals with complaints received from India and abroad resulting from cross country marriages wherein there is any deprivation of women’s rights or any issue involving grave injustice to women. Since its inception around 515 cases have been registered till 31<sup>st</sup> December 2010, in the NRI Cell.

### **Functions of NRI Cell:**

The functions of the NRI Cell broadly consist of the following:-

- a) NRI Cell is the coordinating agency to receive and process all the complaints related to Indian Women deserted by their Overseas Indian husbands.
- b) NRI Cell renders all possible assistance to the complaints including conciliation, mediation between the parties and advising the complainant on related issues.
- c) Associating, networking with NGO’s, community organisations in India and abroad and State women Commissions for wider area coverage, so as to facilitate easy reach and provide support services
- d) NRI Cell endeavour towards a coordinated response amongst various Government agencies/ organisations such as State Governments, The National Human Rights Commission, Indian Embassies and Mission, concerned Ministries etc.
- e) Providing assistance to the aggrieved woman in litigation and other issues pertaining to the complainant/case.
- f) Maintain a data bank of cases registered with NCW

- g) Seek reports from the State Government and other authorities on the complaints filed and action taken thereon.
- h) To give advice and recommendations to the government on any policy or issue relating to the NRI marriages.
- i) To analyze various legal treaties on the issue and advise the Government on the subject, wherever required.
- j) To constitute an advisory committee of reputed advocates/NGOs, both in India as well as abroad, which shall periodically review the functioning of the cell, cases filed and policy issues.
- k) To constitute a panel of experts to assist the aggrieved wife and rendering legal services and other assistance , including mediation and conciliation
- l) Planning of training modules & carrying out training on sensitisation on the subject to the various agencies entrusted with the task of providing justice, viz. Judiciary, police, administration, etc.
- m) To carry out awareness campaigns for the masses on the issue. For this, all the available media services would be utilised by the cell.
- n) To encourage /support research and study in the related field like issues of grievances associated with dual citizenship, enactment of new legislation or signing of international treaties ,marriage laws of other countries ,etc .
- o) To look into complaints and take suo-moto notice on any issue brought to the notice of the NRI Cell in accordance with Section 10 (1)(f) of the National Commission for Women Act , 1990 read with sub-section 4 of Section 10 and Section 8 of the Act.
- p) Perform any other function as assigned to it by the Commission/Central Government.

## Country wise data of complaints received in NRI Cell

(September 2009-31<sup>st</sup> December 2010)

Country Name	Total No. of complaint
India	416
USA	15
Australia	11
U.K.	08
Thailand	06
UAE	05
Singapore	04
Canada	03
Nepal	03
Italy	02
Germany	02
Brazil	01
Kuwait	01
Tanzania	01
Pakistan	01
Norway	01
Mauritius	01
Malaysia	01
Nigeria	01
Oman	01
Others*	31
Total	515

\* Anonymous complaints.

## State wise data of complaints received in NRI Cell

(September 2009-31<sup>st</sup> December 2010)

State	Total No. of Complaints
Delhi	68
Uttar Pradesh	42
Haryana	36
Punjab	27
Maharashtra	27
Gujarat	25
Andhra Pradesh	24
Karnataka	13
West Bengal	13
Tamil Nadu	12
Rajasthan	10
Madhya Pradesh	10
Uttarakhand	07
Kerala	04
Bihar	04
Himachal Pradesh	04
Goa	04
Assam	03
Jharkhand	02
Chattisgarh	02
Tripura	01
Arunachal Pradesh	01
J&K	01
Others*	76
Total	416

\* Complete address not available and details sought.

- 25 cases closed.

## Success Stories of NRI Cell

1. **Gurpreet Kaur Case:** The complainant a poor Indian lady was married to a British citizen. Her husband and father in law bring her India on the false pretext of his father's ill health while her two minor children were in U.K. Her husband and father in law snatched her passport and went back and file divorce and custody of children cases in U.K courts. Even the police was reluctant to register FIR. Then the complainant approached the commission.

Then the Commission approached the CPV Division of MEA, which helped her to get her new passport within a day. But the plight of the poor lady did not stop there. Her sponsorship for U.K was cancelled by her husband and was unable to travel there to contest the proceedings. The Commission then forwarded her case to the U.K courts and make them aware of her inability to contest the proceedings. Her complaint was also forwarded to Consulate General of India, London. And by the efforts her case has been forwarded to a NGO, Good Human Foundation to contest the proceedings on behalf of the complainant in U.K courts.

2. **Suniana Chaudhary Case:** The complainant has been subjected to severe mental and physical cruelty by her husband and in laws for years. She was even rescued from her matrimonial house by the New Zealand Police. Her husband has attained the custody of her minor children by producing a false medical certificate proving the complainant to be an insane. When the complainant came back to India the police was reluctant to register FIR as the threatening and harassment by her in laws still continues. Then the Commission intervened and the FIR was registered. And the Commission is still following up her complaint both in India and New Zealand.
3. **Veronika Case:** The complainant was deserted by her husband and in laws for dowry demand. The Commission forwarded her complaint to Consulate General of India, San Francisco, California. The Commission responded immediately and imparted legal

advice to her to contest her proceedings in USA through a NGO, Matiri and also guided her to apply for MOIA scheme.

4. **Roma Russell Case:** The complainant was deserted in India by her UAE citizen husband. Her husband even cancelled her visa for UAE. The Commission intervened and forwarded her complaint to Embassy of UAE. And by the intervention both the parties reconcile and the complaint was closed on the request of the complainant.
5. **Kusum Panchal Case:** The complainant's in laws had been harassing her for dowry while husband was in Kuwait who was not corresponding with her. The Commission intervened on the complaint of the complainant and both the parties settled their differences.

## **Scheme for giving legal /financial assistance to Indian women deserted by their overseas Indian spouses**

### **I. Objective:**

The objective of the scheme is to provide some financial assistance to needy women in distress who have been deserted by their overseas Indian spouses for obtaining counseling and legal services. The term “Overseas Indian” would include NRIs and foreign citizens of Indian origin. The counseling and legal services would be provided through credible Indian Women’s Organizations/Indian Community Associations and NGOs identified for providing such services and empanelled with the Indian Missions in the USA, the UK, Canada, Australia, New Zealand and the Gulf. The scheme is a welfare measure to support women of Indian origin in distress, through the mobilization of the local Indian community in the endeavor and with some financial assistance from the Government.

### **II. Scope of and Eligibility for the Scheme:**

The scheme would be available to the women who have been deserted by their overseas Indian spouses or are facing divorce proceedings in a foreign country subject to the following conditions:-

- (i) The woman is an Indian passport holder.
- (ii) The marriage of the woman has been solemnized in India.
- (iii) The woman is deserted in India or after reaching abroad within five years of the marriage.
- (iv) Divorce proceedings are initiated within five years of the marriage by her overseas Indian spouse.
- (v) An ex-parte divorce has been obtained by the overseas Indian spouse within 10 years of marriage and a case for maintenance and alimony is to be filed
- (vi) The scheme would not be available to a woman facing criminal charges or having a criminal case decided against her.

- (vii) The domicile of the woman seeking relief under the scheme is not relevant for allowing the benefit. The woman may be domiciled in the country of her overseas Indian spouse or in India at the time of making the application.
- (viii) Preference may be given to applicants on the basis of financial needs.
- (ix) Assistance will be limited to meeting initial cost and incidental charges for documentation and filing of the case by the Indian women's organization/NGO on the woman's behalf.
- (x) The assistance will be limited to **US \$1500** per case and will be released to the Indian community organizations/NGO concerned to enable it to take steps to assist the woman in documentation and preparatory work for filing the case.
- (xi) The women's organization/NGO will make efforts to enlist community advocates, preferably women advocates, to extend further legal assistance/appearance in court etc on a pro-bono basis.

#### Pattern of Assistance

Under the scheme Indian Missions in the countries concerned would empanel credible Indian Women's Organizations/ Indian Community Associations/NGOs and their member advocates, preferably women, to provide legal aid to the victims in distress and whose names have been approved by the Ministry of Overseas Indian Affairs. The applications for providing legal aid received by the Missions would be examined by an officer designated by the Head of the Mission on case-to-case basis and approved by Head of Mission/Deputy Chief of the Mission.

The applications received in the Ministry of Overseas Indian Affairs will be examined by an internal committee consisting of a legal advisor and an officer of the rank of Director/Deputy Secretary and approved by Secretary. Thereafter, the Ministry will recommend the case to Mission concerned to provide legal aid support. The applicant would also be informed to approach the Mission concerned in this regard.

\*\*\*\*\*

**Proforma for giving legal and financial assistance to Indian women deserted by their overseas Indian spouses under MOIA's scheme**

1. Name of the Complainant :
2. Residential Address with Passport No. :

(Copy of Passport may be furnished)

**Details of spouse**

3. Name of her spouse :
4. Country of Spouse with complete address :

employers' address, contact telephone No. etc

5. Date of Marriage :

6. Place of Marriage with documentary proof :

(Note: Requirement of the Scheme -Marriage solemnized in India)

7. Date of Registration of Marriage in India :

with copy of registration of marriage (Note: Requirement of the Scheme - Marriage registered in India)

8. Date of desertion by overseas spouse :

(Note: Requirement of the Scheme –desertion within 5 years of marriage)

9. Date of initiation of divorce proceedings by overseas spouse :

(Note: Requirement of the Scheme –initiation of divorce proceedings within 5 years of marriage)

10. Passport No. and Issuing Authority & Social

Security No. of overseas spouse :

- 11 Date of ex-parte divorce if any (with proof) :

(Note: Requirement of the Scheme –Ex-parte divorce obtained within 10 years of the marriage.)

12. Annual income from all the resources of the :

Complainant

13. Whether getting financial assistance from any other authority/NGO, etc. If so details :

14. Details of cases filed in India with their present Status:

15. Details of cases filed by overseas spouse abroad with their present status:
16. State the purpose(s) of availing legal/financial benefits under the scheme i.e
- (i) Getting Maintenance order
  - (ii) Restoration of conjugal rights
  - (iii) Prosecution of overseas spouse for fraud etc
  - (iv) Enforcement of old maintenance order of a court
17. Whether convicted ever in a criminal case or facing proceedings for the same
18. Additional facts/information relevant to the
- case : (i)
- (ii)
- (iii)

#### UNDERTAKING

I have gone through the Ministry of Overseas Indian Affairs Scheme for giving legal and financial assistance to deserted Indian women. The clauses of the scheme apply to me and I give authority to the Embassy of India ...../High Commission of India in ..... /Consulate General of India ..... to give my case to the Indian Women's Organizations/ Indian Community Associations/NGOs on their panel to file my legal papers to take up/defend my case in the court of .....I understand that I am liable to be prosecuted and penalized in case any information provided by me is found to be false.

Signature

Name in capital

Address

Annual Income:

Date

**List of Indian women’s organizations/ Indian community associations /NGOs empanelled with the Indian missions/posts abroad to provide legal/ financial assistance to Indian women deserted by their overseas spouses**

Sr. No	Indian Mission	Indian Women’s Association /NGOs empanelled with the Indian Missions /Posts
1	Embassy of India, Washington DC, USA	ASHA (Asian Women’s Self –help Association) , Post Box 2084, Rockville, MD 20847-2084
2	Consulate General of India, San Francisco. ,USA	(i) MAIRI, 234 , East Gish Road, Suite 200, San Jose, CA 95112  (ii) NARIKA Post Box NO. 14014, Berkeley, CA 94714  (iii) SevA Legal Aid 37053 Cherry Street # 207 Newark, CA 94560 <b>Email: <a href="mailto:anu@worldwideibs.com">anu@worldwideibs.com</a></b>
3	Consulate General of India, New York, USA	(i) SAKHI, New York  (ii) AWAKE, (Asian Women’s Alliance for Kinship and Equality )  (iii) MANAVI, New Jersey  (iv) SEWAA(SERVICE AND EDUCATION FOR WOMEN AGAINST ABUSE ) Philadelphia  (v) INTERNATIONAL INSTITUTE OF BUFFALO  (vi) Asian Women’s Safety Net  (vii) Sneha Inc; Post Box No. 271650, West Hartford, CT-06127

4	Consulate General of India Chicago, USA	APNA GHAR INC (OUR HOME), Chicago
5	Consulate General of India, Houston, USA	Daya Inc., 5890 Point West Dr, Houston TX 77036
6	Embassy of India , Doha, Qatar	Indian Community Benevolent Fund (ICBF) , Doha, Qatar
7	High Commission of India, Canberra ,Australia Consulate General of India, Melbourne	(i) The Indian Welfare & Resources Centre (IWRC), the Welfare wing of Federation of Indian Association of Victoria, Melbourne .  (ii) Federation of Indian Associates of Victoria Inc (FIAV), Melbourne  (iii) Federation of Indian Communities of Queensland Inc, (FICQ) Brisbane ,
8	Consulate General of India, Sydney, Australia	United Indian Association Inc; Post Box 575, Strathfield, NSW 2135
9	High Commission of India, Ottawa , Canada	(i) Indian Canada Association 1301 Prestone Drive, Ottawa, ON K1E , 2Z2  (ii) Ottawa Community Immigrant Services Organization , 959 Wellington Street West, Ottawa, ON K1Y 2X5.  (iii) National Association of Canadians of Indian Origin, 24 Saint-Paul East, Suite 201. Montreal , QC H2Y 1G3.  (iv) AWIC Community & Social Services 3030 Don Mills Road, Peanut Plaza , North York, ON M2J 3C1.
10	Indian Embassy, Bahrain	Migrant Workers Protection Society (MWPS)
11	High Commission of India, Wellington , New Zealand	Shakti Community Council INC, Auckland
12	High Commission of India, London, U.K	Good Human Foundation , 42 Eaton House, 39-40 Upper Grosvenor Street, London W1K2NG

## **ISSUES FOR CONSIDERATION AT NATIONAL SEMINAR**

### **1. International Protocol and jurisdiction issues.**

There is a need to provide for the following:

- Simplification of procedure for quick issuance of visa by foreign Missions in India to deserted women to enable them to contest the proceedings filed by NRI / PIO husband in a foreign land.
- Introduction of a system of cross check / consent, when a NRI/PIO husband wants to cancel sponsorship of his spouse's visa. Cancellation should not be permitted as long as dependency of the aggrieved women continues as per Indian law so as to enable her to continue to stay and contest proceedings in the foreign land without being deported and thus deprived of the opportunity to contest the case.
- Grant of *ex-parte* divorce by foreign courts be barred in the case of marriages solemnized in India as per Indian law.
- Procedural delay/low priority to issue LOC/RCN against accused NRI/PIO husband in cases of marital discord needs to be addressed.
- Cases of domestic discord to be included in the scope of extradition treaties. (219<sup>th</sup> Report of the Law Commission recommends inclusion of cases of domestic discord within their scope).
- Difficulty and consequent delay in serving judicial processes issued by Indian courts through the Indian Missions abroad to be addressed.
- Simplification of procedure to facilitate extradition/deportation of errant husband and cancellation of passport to face civil/criminal trial in India especially if judicial processes of Indian courts are not responded to.
- Need to develop mechanisms to enable quick tracking of NRIs/PIOs in case of desertion. Funds may also need to be allocated for location of such persons through agencies available for the purposes.

- Recognition of NCW as an authorized body to directly make applications before foreign courts and foreign missions on behalf of aggrieved women where so required.

## **2. Interventions by Central Government**

- (a) Role of National Commission for Women, Ministry of Overseas Indian Affairs, Ministry of Women & Child Development and Ministry of External Affairs and need for Inter-Ministerial Coordination Committee.
- (b) Review of Scheme for providing legal//financial help to the deserted women in foreign lands.

The scope of the scheme needs to be widened to include: -

- Marriages involving Indian women solemnized abroad
  - Deserted Indian women having a foreign spouse
  - Quantum of assistance needs to be increased to be commensurate with legal costs in concerned country.
  - Simplification of procedure required for release of assistance. In case NGOs have not been empanelled, assistance may be released directly to the victim or her authorized representative.
- (c) Need for setting up complaint and counselling desks in Indian Missions abroad with professional counselling to help the victim especially in countries where there is a higher incidence of such cases.

## **3. Role of State Governments:**

- Building awareness

- Designating nodal officers/department for dealing with NRI issues.
- Sensitization of police and authorities for registration of FIR & other NRI issues.

#### **4. Role of NGOs and Civil Society in India & Overseas.**

- Building awareness.
- Identification of appropriate NGOs and community organizations overseas.
- Identification of legal experts willing to work on pro bono (voluntary) basis overseas.
- Mechanism for regular interaction/Consultation with NGOs working overseas & in India.
- Provision of Shelter homes & support systems.

#### **5. Role of Media**

- Building awareness
- Showcasing specific interventions.

# Appendix

## **Note on experience of the state government of Kerala in the issue of Non-Resident Indian marriages and the distressed wives**

This State Government had formed a separate Department, namely Non-Resident Keralites Affairs Department (NORKA) considering the large number of expatriates from this State and to actively deliver device to their needs. A facilitative role is being played encompassing nearly all issues pertaining to Non- Resident Keralites. A number of Representations were received in this Department concerning the issue of distress faced by Non- Resident Indian wives. A major problem pertains to desertion of wives. The poor women often face utter financial penury, hardships in carrying an entire responsibilities of the family by themselves often indifferent and callous attitude from in-laws etc. Their health and children's education also are at risk.

On the whole it is seen that it is because of lack of proper verification of antecedents of Non-Resident Keralite husbands and lack of education or job skills which ultimately lead them to this pitfall. As far as this Department is concerned, its main objective is to ensure welfare of Non-Resident Keralites while they are abroad or return to homeland. Many Embassies have often reported their inability to ensure repatriation of Non-Resident Indian from abroad. The Norka Department has been advising such deserted Non-Resident Keralite wives to approach appropriate courts and to obtain extradition warrants to facilitate their repatriation.

Some of the Non-Resident Keralites enter into another marriage contract with some other woman while abroad. Psychologically, lack of marital intimacy can be attributed for such desertions. Some such deserted women, who personally approached this Government, had stated that either the husband did not provide them with his contact number or address abroad or if they were available, that they did not maintain a close relation with him over communication facilities. However, in a number of instances, this Department actively pursued the case with the Indian Mission abroad concerned; the opposite party was persuaded to reach an amicable settlement and to ensure maintenance to their wives.

Another serious issue that has often come across this Government is the case of Indian women deserted by husbands who happen to be foreign citizens. Those cases which came up before this Government were found to have husbands from Pakistan and Maldives, mainly. In some cases, the foreign citizens visit India and the marriage with Indian woman takes place within India. Conversely in some other cases, the marriage of Indian woman with foreign citizen takes place abroad which she may be working or residing there. The children born out of this wedlock are denied Indian Citizenship and hence these helpless deserted women find it difficult to come back and reside in India.

Legal provisions need to be enacted wherein if Non-Resident Keralite husband denies maintenance, in spite of intervention by all concerned, extradition warrants are issued to them and a mechanism is devised by Indian Missions for its implementation and for early repatriation of the Non-Resident Keralite. Active mechanism for education/counseling to women who intend to marry a Non-Resident Keralite or a foreign citizen should enable them to avoid such pitfalls. Counseling should also be extended to those women whose husbands intend to go abroad for work for a long time. They may be advised to keep copies of all basic records with them as well as to maintain continuous contact with him and to extend emotional support as much as possible.

## **Note from Punjab State Government on suggestions relating to NRI marriages**

- 1. Awareness Programmes :** It is necessary to launch a proper awareness programme and more particularly in the rural areas from where most of the gullible brides come to make them and their parents aware of the risk they are taking by entering into foreign matrimonial alliances without proper verification of the antecedents of the NRI groom. Awareness of cultural, social and legal aspects of NRI marriages need to be publicized through the media, newspapers and TV. NGOs and State Government agencies through various channels can launch a wide publicity campaign to educate rural masses not to blindly enter into NRI marriages.
- 2. New NRI Legislation:** There should be a new comprehensive legislation on NRI marriages so that there are legal remedies available in India to such abandoned brides in distress which bar application of foreign marriage laws. By such a new law, Indian law should be made applicable to NRIs settled abroad and holding Indian Passports. Special Courts without legislation would have no meaningful purpose. A composite NRI law of marriage, divorce, maintenance, child custody and settlement of matrimonial property now needs to be enacted as existing and settlement of matrimonial property now needs to be enacted as existing family law legislations do not have wholesome effective remedies to handle cross border family law problems.
- 3. Registration of NRI Marriages:** Registration of NRI marriages should be made compulsory in the case of overseas Indians. This will ensure compliance of conditions of a valid marriage. A complete proof of marriage would be a very strong deterrent for bigamous marriages. Certificates of NRI marriages must include the social security number of the foreign home of the NRI husband. The passport number and brief relevant details of the NRI husband should be compulsorily mentioned in the marriage certificate. Also, photocopy of the valid passport of the NRI husband should be pasted in the Marriage Register maintained with the authorities, before the marriage certificate is actually issued to the parties. Recent steps of the Ministries of Women and Child Development Overseas Indian Affairs to have a mandatory certificate of marriage on the wife's passport will provide her

- documentary evidence and proof of her marriage on being abandoned. Additionally, there should be nodal tip off government officers in every district in the State, having records of the marriages solemnized by NRIs in India, from whom the information regarding the marital status of an NRI can be checked and verified. Additionally, there should be strong and stringent check on registration of NRI marriages. In certain regions, marriages are registered without the presence of bride or bridegrooms. This malpractice should entail cancellation of marriage certificates.
- 4. International Conventions and Bilateral Treaties:** There is an urgent need to comprehensively and extensively examine the international conventions and bilateral treaties which have relevance and importance for the issues relating to NRI marriages. A cross-border dialogue with countries with substantial Indian Diaspora is the need of the hour. Harmonising Legislations for recognizing inter-country court verdicts in family law areas has become increasingly significant. Marriages solemnized in India must be dissolved in accordance with Indian Laws. This inter-country arrangement must be resolved by bilateral agreements for protection of such marriages where the Indian Diaspora is in large numbers.
  - 5. Amendment of Existing Legislations:** Reviewing the existing laws and strengthening the provisions and their scope for providing effective remedies in fraudulent cases of NRI marriages. The Passports Act 1967 and rules made there under can contain special provisions for cancellation of passport of an offending NRI spouse if he is an Indian Passport Holder. More detailed particulars of wife with photograph must be mandatorily added in the husband's passport. Likewise, the Citizenship Act 1955 can entail penalties for matrimonial frauds. Specific amendments in the Indian Penal Code, Criminal Procedure Code and Civil Procedure Code to take cognizance of NRI matrimonial offences/ wrongs are needed. Bar of limitation for matrimonial cruelty in NRI marriages should be relaxed in cases of abandoned NRI wives. The Extradition Act 1962 can be amended to seek return of matrimonial offenders for trial in India who have settled in foreign countries.
  - 6. Conciliation and Legal Assistance Schemes:** Government monitored conciliation process of settlement of matrimonial disputes must be initiated. The Ministry of

Overseas Indian Affairs proposes to introduce a scheme to provide free legal and counseling services in foreign jurisdictions to NRI women as well as foreign citizens of Indian origin. NGOs in foreign countries will be given financial assistance to the tune of 1000 USD for every woman they assist. The scheme will cover women deserted in India or overseas. More such schemes and programmes must be floated particularly in Punjab. Legal Cell can be set up in Punjab to liaise with these NGOs for better implementation of the scheme. Nodal officers should be appointed in Indian Embassies in countries with a large Indian Diaspora who can come to the aid and rescue of deserted Indian spouses. A network of Core groups of caring people in different countries can be coordinated and monitored through the good offices of the Ministry of Overseas Indian Affairs for establishing an institutional contact with NRI facilitation chapters which are in place in these countries. These in turn can be linked to agencies and social groups in India for proper liaison and for providing information and assistance to spouses in distress.

- 7. Information Disclosure by Foreign Authorities:** Foreign Missions, Embassies and High Commissions in India can be requested by the official agencies to provide details, whereabouts, antecedents and particulars of NRIs who have acquired foreign nationality and have committed matrimonial offences in terms of Indian matrimonial laws. As part of their consular obligations, it should be mandatory for consular divisions to have designated nodal officers who can supply relevant information regarding offending NRI husbands to aggrieved spouses abandoned in India. Embassies should not shrug their responsibility by simply stating that they shall not interfere or assist in a private matrimonial dispute. Lack of information leaves the hapless Indian wife without recourse or remedy. Reciprocal arrangements, bilateral treaties and MOUs can be arrived at by the Indian government with countries of high NRI migration for setting up of such facilities.
- 8. Amendment of Indian Law of Maintenance:** The law of matrimonial maintenance in India both in family law legislations and the Criminal Procedure Code must be amended for making special provision for providing matrimonial maintenance and settlement of matrimonial property for the abandoned Indian spouse in accordance with the income and living standards of the husband living in

the foreign jurisdiction. It is only then that the Indian Courts would be able to award befitting matrimonial relief in India which on becoming a precedent would be a major deterrent for future matrimonial defaulters living abroad. In so far relating to maintenance, the currency of the habitual residence of the NRI should be a standard benchmark for award of maintenance in NRI marriages which have broken down or there is a case of willful abandonment.

**9. Creation of Family Courts:** It may also be worthwhile to suggest that under Section 3 of The Family Courts Act, 1984, the respective State Governments where Family Courts have not been established should be directed to provide for Family Courts. Wherever one of the spouses is an NRI, these family Courts can better provide for provisions for maintenance and alimony of spouses, child custody and child support as also settlement of matrimonial property. This will ensure that the spouse/children on Indian soil are maintained & provided for in accordance with the income & standard of the NRI spouse in the foreign jurisdiction.

**10. Addition of Breakdown as a Ground for NRI Divorces:** Dissolution of marriage on the ground of breakdown of marriage as an additional ground for divorce should be introduced when at least one of the spouses is an NRI subject to safeguards provided by legislation. This would require amendment of the provisions of the Hindu Marriage Act, 1955 and Special Marriage Act, 1954. Such a ground would provide NRI spouses a judicial forum in India to seek a remedy on Indian soil rather than importing foreign judgments of alien courts on breakdown grounds and give a chance to the Indian spouse to defend on convenient and equitable terms in Indian courts & to avoid exorbitant overseas litigation expenses.

## **Survey of Marriages in Punjab – Ashwini Luthra, Asian Education Society**

The problem with regard to NRI marriages is well known and is often highlighted and reported in the newspapers. However, it is pointed out here that there is serious shortage of sociological research in this area. In order to study ground realities, we have gathered empirical data on the following issues

- 1) Impact of NRI marriages on the girl's family
- 2) In particular, on the girls left behind

The situation is alarming and pitiable as the victims are the young girls in the age 18 to 25 whose entire life is spoiled with this one action of her parents. Most of the girls are not in a position to be economically independent.

It has come up clearly in our study that the girl's parents have been ruined financially because of the expenses incurred at the time of the marriage and by the recurring expenses incurred in the form of dowry items and later in order to get justice for their daughters. This finding is based on the outcome of interviews of 50 affected families and 20 women left behind after their marriage with NRIs in the villages of Districts Jalandher, Nawashahr, Kapurthala and Hoshiarpur,

The most important question for the study was to know as to why do the families continue to marry their daughter to NRIs despite the awareness campaign by the governments and NGOs in this area and why do the girls agree to it? The second question was to see if there is some pattern of such marriages, the third objective of the study was to understand the problems faced by the NRI brides left behind.

We were also interested to know the attitude and response of the administration viz. the police, Ministry of External Affairs, judiciary, NGO s working in this field and role of the local politicians.

- a) It was found that the parents solicited NRI grooms for enhancing their social status.
- b) There is a race among the relatives to be the first to get the matches for their children with NRIs.
- c) Most of the parents admitted that they marry their daughters with a hidden agenda that through this marriage, they will be able to send abroad the other members of the family.
- d) In some of the cases, the parents don't involve their relatives in finalizing the marriage deal fearing that they may impede or steal the NRI for their own daughter.
- e) The pretentious behavior of the NRI family is a very common reason for the girl's parents to fall into the trap. In many cases, the boy's parents come with a lot of pomp and show. They often come in luxury cars, wear costly dresses and ornaments. They boast about their son's income abroad. This results in the girl's parents being caught into the trap and they start considering themselves lucky in getting such a match in their lap
- f) They think that their daughter will have better life when married to NRI, as the grooms available in the area are either uneducated, not employable, &/or addicted to drugs.
- g) The parents of the girls feel that the girls' marriage will result in a gateway for the other members of the family to go abroad. In the hurry to grab the NRI, they overlook the essentials such as age gap, difference in the education qualifications and at times they tend to ignore the fact that he has a living partner abroad.
- h) The parents were specifically asked as to why they did not carry out a pre marriage check regarding the groom when they knew of so many frauds happening. Many of the parents said that they lacked resources and lack of awareness as to whom to contact in the short time available The pressure

exerted by the boy's family to make early decision also discouraged them to verify the credentials.

### **Why do the girls marry the NRI?**

The girls in most of cases themselves like to get married to an NRI due to the peer pressure. They dream of freedom and open society in other countries. The easy way for their dream to come true is to marry an NRI.

In other cases, the daughters just accept the wishes of their parents.

### **The problems of the girls left behind**

Several case studies have clearly brought out that the girls face the trauma of a failed marriage as it leads to a lot of economic, social and psychological problems.

The girl is not able to tell about her suffering to her parents as she does not wish to hurt them. She also does not tell her friends because it will reflect poorly on her and her in-laws family. In many cases, the communication with the husband becomes less frequent or totally stops. The girl has nobody to fall back upon.

The girl is financially insecure and is dependent on in laws. She is dependent even for clothing and food. The girl is under severe pressure of her in-laws who force her to get the money and gifts on various festivals and occasions in the family. Most of the girls in such cases lack the qualification which makes them more dependent on the inlaws. This is one important factor which makes them vulnerable to the physical and sexual abuse.

The girls are supposed to do all kind of manual work in their inlaws family from the cleaning the utensils, washing of clothes, and feeding. As single women left behind, and giving birth to the child she faces a lot of problems in child rearing. The education of children is another problem.

The feeling of loneliness, stress of work, the insecurities of various forms such as financial and emotional puts them under tremendous psychological pressure.

Economic helpness and lack of communication with the husband and at the same time non receipt of money coupled with the above mentioned problems makes her helpless pray for males for sexual exploitation and in some cases the girls themselves compromised accepting it as their fate accompli.

### **Problems of the families of the NRI brides**

The girl's parents realize their mistake very late. In the short period of stay for the NRI boys, they are many times responsible for making the young girls pregnant. They can not bring back their daughters because of the social pressure. They are also unable to meet the demands for dowry from the inlaws of their daughter, because they are already in heavy debts due to the money spent by them on the marriages and dowry items. The girl's parents are also unable to intervene and solve the problems in the inlaws family and secure better. When they ask that their daughter be sent abroad to join her husband, they are refused in most of cases. In some cases, a large amount of money is demanded to send their daughters abroad. Many a time the boys are not well settled abroad or are married abroad.

### **The system failure**

The administrative set up local politicians and various other agencies of the government it was realised lacked humane touch and sensitivity to deal with these cases. The parents are made run from pillar to post to get justice for their daughter and for themselves but their efforts are often fruitless. The parents of the girl don't get support from their relatives even. The police is very insensitive in many cases. Many parents of the girl complained that the boy's parents are able to bribe the policemen who don't register the cases against them. In some cases it was found that the boy had not even gone abroad and the marriage was solemnized showing the fake passports. The judiciary itself is too insensitive. The lawyers will not move without charging a heavy fee. The snail pace at which our judicial system moves also denies the justice to the girl's parents. The politicians were also accused of providing lip service.

## **Suggestions**

- a) The government's campaign to educate the people in this regard needs to be very effective as people continue to remain ignorant about the possible consequences of such marriages.
- b) The police personnel need to be sensitized and trained to handle such cases. We have found out NRI cells as well as women cells in the police are understaffed and under equipped. Such crimes are considered low in priority.
- c) The basic data with regards to the persons going abroad should be easily available on the ministries / RPO s website to check the authenticity of the passport.
- d) The government needs to start the process of rehabilitation of such deserted women by giving them training and psychological counselling and the consultancy for such family is still lacking.

## **Note on the legal difficulties being faced by NRI women**

**BY**

**Indira Jaisingh**

In most cases, when a marriage breaks overseas, the woman is left high and dry in a foreign country and is often forced to return to India, with or without children to live with her natal family. In such cases, the husband files for divorce and custody in a foreign country (mostly USA) and gets ex parte orders of divorce. Unlike India, the laws governing divorce in USA are very liberal and it is possible to get ex parte divorce decree with ease. These orders are then produced in India and on the basis of these orders, courts in India are asked to hand over custody of the child to the father leaving the woman helpless. Added to this is the problem that Supreme Court has taken the view that since the woman and child are USA citizens and are domiciled in USA, courts in India will have no jurisdiction to entertain the petition. This situation needs to be remedied.

A possible solution to remedy this situation is amendment of the Guardian and Wards Act. In section 9 of the Act, which deals with jurisdiction of the court to entertain application and states, that District Court will have jurisdiction to entertain an application for guardianship if the minor “ordinarily resides” within the jurisdiction of the District Court. In place of “ordinary resident” the word “resident for the time being” should be substituted. And in every case where a child is brought before the court, the matter should be decided on merits keeping in mind the welfare principle. Also, child wish should also be taken into account before deciding whether the child should stay with her mother or be returned to a foreign country.

Also, the view that a woman coming with her child to her maternal home is “abduction” of the child needs to be reviewed. This situation can be remedied by amending the Guardian and Wards Act and to declare that woman is the natural guardian of the child. This will prevent use of the term “abduction” as the child will be in care of her natural guardian.

Although, Clause (b) of Section 13 states that if a foreign judgment has not been given on the merits of the case, Indian Courts will not recognise such judgment. However, the problem that arises is that courts refuse to entertain the petition on the ground of lack of jurisdiction as the parties are USA residents. Section 13(b) CPC should be interpreted to mean (a) that the decision of the foreign court should be on a ground available under the law under which the parties are married, and (b) that the decision should be a result of the contest between the parties. The latter requirement is fulfilled only when the respondent is duly served and voluntarily and unconditionally submits himself/herself to the jurisdiction of the court and contests the claim, or agrees to the passing of the decree with or without appearance. A mere filing of the reply to the claim under protest and without submitting to the jurisdiction of the court, or an appearance in the Court either in person or through a representative for objecting to the jurisdiction of the Court, should not be considered as a decision after hearing the parties on the merits of the case. In this respect the general rules of the acquiescence to the jurisdiction of the Court which may be valid in other matters and areas should be ignored and deemed inappropriate.

Law Commission in its 219th report has recommended that India should sign the Hague Convention. In countries which have ratified Hague Convention, the child's welfare is not the primary concern of the court, and the court to which the child has been abducted will not hear argument on merits if the child is under 16 years of age or is habitually resident in the state to which he is to be returned and that state is a signatory to the convention or if the child has either been wrongfully removed or retained

Signing of Hague Convention will lead to a situation where our Courts will have no jurisdiction to entertain the petition and would have to send children out of India. This will lead to serious consequences for woman who have no resources to fight their battle in a foreign country and therefore India should not sign the Hague Convention.

Another issue is payment of maintenance in respect of divorced NRI woman. In cases where such woman return to India and file for a claim of maintenance, these claims are often objected to on the ground that the parties were staying abroad and hence the claim of maintenance cannot be adjudicated upon by India Courts. However, the judiciary has

consistently taken a view that in such cases, a beneficial interpretation to the language of the section should be given. The mere fact that the parties have resided abroad and woman has returned to her maternal home should not be allowed to defeat the object of the Act.

However, a specific amendment to the Cr.P.C, Hindu Marriage Act, Special Marriage Act for providing maintenance in case of NRI woman should be added. This can only be done after granting jurisdiction to entertain such petition.

Another breakthrough for the rights of married woman was guaranteed after the enactment of Protection of Woman From Domestic Violence Act 2005. This law enabled a partner in a relationship in the nature of consanguinity, marriage, relationship in the nature of marriage the right of residence and maintenance. However, the *Batra Vs. Batra* judgment rendered by Supreme Court has been relied upon on numerous occasions to deny women the right to reside. This judgment has severe implications for the rights of women, particularly in cases of NRI marriages where women are left in the in-laws house while the man seeks employment in other countries. This judgment has the potential of denying to such women whose husband are abroad, the right to live in the house of the parents-in-law, even though this is their matrimonial home

## **NRI Marriages – the Punjab perspective**

**By**

**Anil Malhotra and Ranjit Malhotra, advocates**

### **I) INTRODUCTION**

Of a population of over one billion Indians, nine million Punjabi NRIs constitute the biggest community from any Indian State to contribute to the total of twenty five million NRIs living worldwide. Times have changed but family law legislations enacted by the Indian Parliament in 1955 and 1956 have left Indians where they were. The result, an influx of family law problems arising out of NRI marriages with no practical solutions in the legislative enactments as they exist today. To compound the problem, registration of marriages, which is optional under Hindu Family laws, has not been made compulsory in most States including Punjab. The result: multiple marriages by the NRI often without a previous divorce, invariably by duping the previous spouse and providing no maintenance to the abandoned wife and the unfortunate child of such union if any. Legal recourse is difficult, time consuming, expensive and complicated. Despite a Family Courts Act, 1984, Punjab has none despite 22 years having elapsed since this law was made. The end result: about thirty thousand abandoned women in Punjab fending for themselves in an uphill legal system which provides no solutions or answers. These figures have been compiled by the National Commission for Women and the Ministry of Women and Child Development as reported in the Indian Express, Chandigarh Edition dated 5 February 2011 in the article “Runaway NRI grooms now risk losing their passports.” As a matter of fact, fifteen thousand abandoned NRI wives are from Punjab’s Doaba region.

### **II) COMMON ISSUES ARISING FROM NRI MARRIAGES**

A) Women go overseas after the wedding only to find themselves abandoned with no one to turn to, no money, no ability to speak the foreign language and no knowledge of the customs of the alien country and having no friends to turn to.

B) Women who are battered or kept prisoner in the foreign home are often treated like domestic workers and sometimes not allowed to work outside the house.

C) Innocent woman who later finds that her NRI husband is already married in the foreign country of his residence or has a live in partner in close contact.

D) Appalling but true there are also cases of "holiday brides" - women abandoned in India within days or weeks of marriage, with the husband promising to return once visa arrangements have been made, but never to be seen or heard again.

E) Women who later realise that their NRI husband had furnished false information about his job, immigration status, earning, property, marital status and other material particulars about his personal life.

F) Women whose husbands taking advantage of more lenient divorce grounds in other legal systems in foreign jurisdictions obtain ex-parte divorce by fraudulent representations and the helpless women remain oblivious of such a divorce. Recent cases have shown that women are duped, returned to India and abandoned without a passport in their parental home. They have thus no recourse to return to the foreign land.

G) Women who are denied maintenance in India on the technical ground that her NRI husband had already procured a divorce abroad and she has no proof of his income, financial status and his assets abroad. Consular protection obligations in this regard need serious introspection and deliberation, at a policy level involving meaningful cross border cooperation between member states.

H) Women running from pillar to post fighting never ending legal battles but repeatedly encountering technical impediments relating to jurisdiction, service of notice, enforcement of orders etc. Often, on the passing of a three-year separation period, sometimes Courts decline to interfere, quoting a bar of limitation.

I) Women who sought the legal recourse to bring the erring NRI spouse to task by initiating proceedings under the criminal law but failing because the NRI husband does not respond to the summons or even the warrant of arrest. Sometimes the women have no address or contact details to serve the summons overseas.

J) Women have to fight legal battles for the custody of their children after their divorce abroad or after they are forced to leave the foreign home. Often such women also have to face charges of illegal abduction in addition to the emotional trauma of being duped. Such women are embroiled in time-consuming court cases

### **III) LEGAL ISSUES INVOLVED IN NRI MARRIAGES:**

1) **Conflict of laws:** On the issue of the validity of the marriage, the choice of law of marriage and divorce i.e. whether the Indian law would apply or the law of the husband's country of habitual residence would apply in dissolving the marriage.

2) **Issue of Jurisdiction:** Whether the Courts in India or the Courts of the country of the husband's residence have the jurisdiction to deal with the matrimonial dispute, issues relating to maintenance and other ancillary matters of child custody.

3) **Maintenance and Custody Laws:** Whether the Indian law on these issues will apply or the law of the husband's country of habitual residence will apply to them.

4) **Validity of foreign court orders:** Situations are abound when a non resident Indian invokes the jurisdiction of the foreign Court where he is resident and convinces the overseas Court to pass favourable Orders in such matters which are thereafter sought to be executed in the Indian jurisdiction through the Courts of law in India. Another very important question, which comes up at, the end relates to enforcement and execution of foreign judgments when they are sought to be implemented in India. The Indian Courts do not accept foreign Court Judgements, which violate Sections 13 and 44 of the Indian Code of Civil Procedure, 1908.

5) **Power of the Indian Courts:** Whether the Indian Courts have the power to restrain legal proceedings in the foreign courts and/or pass contrary judgments/orders. The foreign courts mostly do not accept Indian Court Orders.

6) **Property rights and other ancillary issues:** Does the abandoned wife and her children out of the broken wedlock have property rights in the ancestral or the property of her in law's in India. Indian Courts mostly decline any such rights.

7) **Other legal remedies available:** Whether the abandoned wife can avail other remedies like extradition, impounding of passport, cancellation of citizenship, attachment of property, look out orders, suit for damages, injunction, declaration or invoking the Writ of Habeas Corpus. Experience shows that foreign missions and embassies in India of the respective foreign countries offer little or no help. For the abandoned spouse to reach the foreign country is expensive, difficult and cumbersome, if in the first place the spouse manages to obtain a visa at all.

#### **IV) RECOMMENDATIONS/PROPOSALS FOR REFORM AND CHANGE:**

a) India should sign the Hague Conventions. In particular the following conventions which are directly related to the issue of NRI marriages: Till the decision for signing The Hague Conventions remains pending, India can contemplate signing bilateral or multilateral treaties especially with countries having considerable population of Indian origin. However, mechanical enforcement of foreign orders should not take place as provided under Sections 13,44 and 44A of the CPC. Recent trends of the Indian Supreme Court show that in matters of marriage, divorce, child custody and maintenance, there is no mechanical application of a foreign court order and the Courts go into the merits of the matter.

b) To review the existing legal system and to formulate new laws which are in conformity with The Hague Conventions and help achieve the purpose of marriage related Hague conventions.

c) **Specific amendments to:** I) The Passport Act, 1967 providing for cancellation of the passport of the offending NRI spouse and including more details of the spouse in the

passport. II) The Extradition Act, 1962 to incorporate offences relating to NRI marriages like fraud, dowry , abandonment and cruelty. III) The Indian Penal Code, 1890 in order to recognise specific offences relating to NRI marriages. IV) The Code of Criminal Procedure, 1973 and The Code of Civil Procedure, 1908 laying down clear and definite procedures where NRIs are concerned. V) The Citizenship Act, 1955 for the cancellation of the citizenship of the offending spouse.

d) Enact special Indian enactments to address the various issues that arise in NRI marriages and at the same time incorporating progressive principles being evolved in the field of private international law especially through the Hague Conventions. These enactments should specifically cover issues like validity of the marriages in the NRI context, Choice of law of marriage and divorce, Jurisdiction of courts , enforceability of foreign court orders, offences relating to marriages and the right of the abandoned spouse to property.

e) Registration of marriages must be made compulsory. The marriage certificate of the NRI spouse must carry his social security number of his foreign home and the certificate must be lodged with the embassy in India compulsorily. There should be specific columns in the marriage registration certificates for NRIs having complete substantive details about the foreign spouse.

f) Adopt the convergence approach among official Indian agencies like the Ministries of Government of India: Women and Child development, Overseas Indian affairs and External affairs. Also efforts should be made to coordinate the initiatives on the issue of NRI marriages and to jointly set up “special cells” for dealing with problems relating to NRI marriages. Ongoing efforts of the Ministry of Overseas Indian affairs in this regard are indeed laudable.

g) Involve the Indian Embassies to provide crisis assistance and support to abandoned brides through Welfare Officers. Make arrangements for providing extended residence permits or permanent residence status to abandoned spouses. Also to extend legal, monetary support and shelter to them.

h) To provide free legal aid to distressed abandoned women in India and to try and explore joining hands with agencies in other countries to aid and advice women stranded in other countries.

i) To set up help lines to educate people about this growing menace and to provide counseling to women in need.

j) To sensitise the police and the judiciary on the problem being faced by women in NRI marriages.

k) Undertake specialised training of lawyers to deal with the problems relating to NRI issues. NRI related issues especially with regard to International family law should be part of the curriculum and continuing legal education programme for the legal fraternity.

l) To develop cooperation between the non-governmental organisations and the government agencies to deal with this specific problem.

**V) CONCRETE LEGAL PROPOSALS TO ACT AS IMMEDIATE DETERRENTS:**

In the context of the State of Punjab, the following suggestions are being put forward for improving the existing family law problems posed daily before NRIs and faced by effected people resident in the State of Punjab consequentially when they come in contact with NRIs. The solutions partly exist in proper implementation of existing laws, framing of proper regulations, creation of Family Courts and Fast Track Courts and by amendment of existing legislation. The seven point charter summary is set down as hereunder in the following sequence.

**1. REGISTRATION OF MARRIAGES MUST BE MADE COMPULSORY.**

This will in turn ensure compliance of conditions of a valid marriage, provide proof of marriage and act as a deterrent for bigamous practices. Section 8 of the Hindu Marriage Act, 1955 makes it optional for State Governments to provide for rules for providing for

registration of marriages. It is opined that states with significant NRI migration must make marriage registration compulsory particularly when one of the spouses is an NRI. Simultaneously, it should be made obligatory that the NRI spouse must give intimation of his registration of marriage to the concerned Embassy / High Commission in India, in which country he is presently resident. The State of Punjab should make and notify rules under Section 8 providing for compulsory registration of marriages and incidental matters related thereto.

2. **CREATION OF FAMILY COURTS:** It may also be worthwhile to suggest that under section 3 of The Family Courts Act, 1984, the respective State Governments where Family Courts have not been established should be directed to provide for Family Courts. The State of Punjab which essentially needs Family Courts as a matter of dire urgency should immediately create such Courts to deal with family law problems and give priority to settlement of family law issues where parties are NRIs. Wherever one of the spouses is an NRI, these family Courts can better provide for provisions for maintenance and alimony of spouses, child custody and child support as also settlement of matrimonial property. This will ensure that the spouse/children on Indian soil are maintained and provided for in accordance with the income & standard of the NRI spouse in the foreign jurisdiction.

3. **CREATION OF FAST TRACK COURTS AND SIMPLIFICATION OF PROCEDURES:** In the matters of Succession, Transfer of Property, Making /execution / implementation of Wills, repatriation of NRI funds, the respective State Governments must simplify and streamline procedures. Ideally speaking, in matters having property problems, fast track Courts must be set up to deal with such cases expeditiously in accordance with a time bound schedule. The Punjab Government has made amendments in The East Punjab Rent Restriction Act, 1949 and The Punjab Security of Land Tenures Act, 1953 for the summary trial of disputes regarding agricultural, commercial and residential property. However, no special Fast Track Courts exist in the State of Punjab to settle these matters on priority. A fresh proposal should be mooted to set up such Courts as soon as possible.

4. **AMENDMENT OF FAMILY LAWS:** Dissolution of marriage on the ground of breakdown of marriage as an additional ground for divorce should be introduced when at least one of the spouses is an NRI subject to safeguards provided by legislation. This would require amendment of the provisions of the Hindu Marriage Act, 1955 and Special Marriage Act, 1954. Such a ground would provide NRI spouses a judicial forum in India to seek a remedy on Indian soil rather than importing foreign judgments of alien courts on breakdown grounds and give a chance to the Indian spouse to defend on convenient and equitable terms in Indian courts. The need for this amendment must be strongly mooted by the State of Punjab to the Government of India to enact appropriate legislation by suitable amendments in the existing Hindu Marriage Act, 1955 and Special Marriage Act, 1954 since inter country migration from the State of Punjab is significant and in large numbers.

5. **DEDICATED CENTRAL/STATE GOVERNMENT REGULATED WEBSITE OF ERRING NRI SPOUSES.** The Ministry of Overseas Indian affairs at a Central level, and in coordination with the respective State Governments should maintain a dedicated website of erring NRI husbands and habitual NRI offenders, who contract multiple marriages. This will to some extent act as a major deterrent, but more importantly it will be a source of information/caution to general members of the public so that they are not trapped into marrying a NRI groom, who is already guilty of contracting multiple marriages on the Indian soil and escaped the clutches of law. Such a website could also be translated into regional languages, for reasons of greater and easier accessibility.

6. **MEANINGFUL CONSULAR ASSISTANCE AS PART OF CONSULAR PROTECTION OBLIGATIONS.** That as part of Consular protection obligations, Foreign Embassies, Missions and Consulates in India should mandatorily furnish all the relevant data to aggrieved spouses of erring spouses of NRI marriages, who are habitually resident and domiciled in foreign countries. Some sort of practice directions by the Ministry of External Affairs in conjunction with the Ministry of Overseas Indian Affairs, Ministry of Women and Child Development can well be framed to direct Embassies and Foreign Missions to provide meaningful consular assistance to abandoned NRI brides. In

fact all such foreign missions, should have dedicated desks or officers exclusively to provide proper assistance to such spouses in distress.

7. Lastly, The Punjab Government in the year 2010 enacted the Punjab Prevention of Human Smuggling Act, 2010 which is currently awaiting the assent of the President of India. Likewise, the Central Government as also the Punjab Government could well serious consider enacting the NRI abandoned legislation, also having extra territorial application like the provisions of the Hindu Marriage Act, 1955.

In the view of the author, the above changes can be made either by providing a new composite legislation for NRIs or suitable changes can be made in existing legislations for streamlining the laws and procedures. It is suggested that a Core Committee of specialists in the field of Private International Law should be constituted at the earliest to prepare a comprehensive draft to suggest the said changes in legislation in the best possible way.