

**NRI MARRIAGES: LEGAL ISSUESCHILD CUSTODY, INTER PARENTAL CHILD
ABDUCTION**

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The Foreign Exchange Management Act,1999 provides in its Sec.2 the definition of a person resident in India and a person resident outside India and although it does not give a straight forward meaning to the words Non-Residential Indians, it gives an idea of who would be said to be covered in the ambit of being residents and non-residents of India. A notification by the Reserve Bank of India issued on 2nd July,2012 defines NRI to mean a person resident outside India, who is either a citizen of India or is a person of Indian origin.However, the generally accepted definition of a Non-Residential Indian (NRI) is taken to be, a person holding Indian citizenship and stays outside the territory of India for reasons of employment or business for an uncertain duration.

A person acquires the title of beingan 'Indian Citizen'through the compliance of conditions and provisions so provided in the Constitution of India.PartII of the Indian Constitution, Articles 5 to 11, provide for the Citizenship for the people of India. The provisions therein state clearly -when a person may be rightfully entrusted with the title of an 'Indian Citizen'.

Thus, the NRIs too through the satisfactory fulfilment of all conditions so provided in Part II of the constitution acquire the right to be legally the Citizens of India, and the only difference then lies from them being called an Indian like the others is that of their physical residency.

Keeping that in mind, it is important to note that, it is not merely the title which poses a concern but the repercussion and complication that the tile of being an NRI has now come to possess such citizens.A person, who has come to be identified as a NRI, is not bound by the jurisdiction of just one country. This simple fact of being subject to more than one legal jurisdiction may appear a small detail but its effects are muchchallenging.Data of the year 2006 indicates that, in a population of over a billion persons, 30 million are Non-Resident Indians.

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When a person comes within the purview of any law of the land, he is bound and obliged to such law in its full spirit. The law then possesses the power to expect such person to act as per and obey all such provisions. But the situation does not remain as straight forward when the same person has to respect not one but more than one laws of different land. Such is the state of affairs for a NRI. The Non Residential Indians (NRI) thus by virtue of their current residence and origin, get caught between the laws of the land and the laws of the country they hold nationality of. This clash of the jurisdictional law is referred to as, 'Conflict of Laws' covered in the ambit of the Private International Laws that is a still developing concept in the Indian jurisprudence and therefore lacks substantial consideration in the Indian statutes, now demanding reconsideration.

With globalization taking form of an ever expanding phenomenon, with the advancement in the technological and education sector, the world is now witnessing the enlargement of the domestic territories of functioning professionals. Access to countries and continents has now come to become much easier and affordable than it was two decades ago. But, with this advancement, the law has failed to keep up in its rejuvenation. This is understandable considering that the pace of evolution in the relations and networking between nations is far quicker than the drafting of good laws. Laws cannot just be made, they have to be invested in a fair share of time to make these laws which affect all people and a bad law made in haste can hold far worse consequences than the crime itself. But that being said, the prevailing hassles which many NRIs are facing cannot be ignored either. These situations refer to the existing jurisdictional conflicts.

When an aggrieved NRI seeks justice or remedy from law, he has to face more legal impediments than any other citizen, due to his presence in the jurisdiction of his nationality and the law of the land where he so resides. Many of the legal issues remain unresolved in cases of NRI marriage issues due to lack of substantial statutes in the Indian legislature providing for tools to deal and make clear the ambiguity caused by conflicting legislations. The only form of disposal of such cases takes place through the judgements in the courts of law, which are thus judged on merit basis.

Such conflicts are also unavoidable, keeping in mind the wholesome picture that, a case involving an NRI does not just include two or more parties but also two or more nations, which bring along with it their diplomatic ties, their economic treaties and other

memorandums of understanding. Any court thus in such situation finds themselves more hesitant and apprehensive in giving away a quick case disposal.

Among many issues that come before the courts of law, there have now risen an alarming number of legal issues relating to marriages involving NRIs. These issues include matrimonial issues relating to maintenance, property, prenuptial agreements etc. but the major issue which also stands as the most important and sensitive issue by virtue of its impact on parties is that of Child Custody and Inter Parental Child Abduction. As spouses part ways by actions such as a divorce, the custody of the children comes upfront as a major issue of dispute. While it may appear to be a mere question of dispute to a lawyer, it is a decision that will further then determine the life and relations of the child and parents. Thus hold importance beyond its legal respect.

In India there exists no legislation which may be able to help resolve the questions in conflict as the child custody or for cases of child abduction in NRI cases. India has also not made itself party to the Hague Convention, which could have provided some guide through to such case. The possible reason for keeping India from being a part of the convention is sighted to be the social setup of the Indian Culture and society which could not have efficiently held true to the requirements and provisions of the Convention.

The need for codification therefore stands to be the need of the hour. Some may be of the opinion that, the Indian courts are already dealing with the cases coming up before it and are delicately dealt with due diligence and provided justice on merit of each case giving attention to every individual case's sensitivity and difference in the matter of facts on their own thus no legislation is essentially required. But such a view when considered from the perspective of a lawyer, it can be understood that such consideration would bring us in the like of the system so followed in England, that is the system based on precedents. But the legislators of India had always kept in mind the possibility of erroneous judgement of a judge in the court of law, by virtue of them being mere humans, the unavoidable chance of manipulation of rules and other hassles that may come to be caused by such ambiguity and preferred to not rely solely on precedents but have formal statutes and codifications. There is hence the need that the legislators of the nation put down the rules and regulations for such instance on paper that they may be taken help of in the conflict resolution. The existence of concrete laws would aide to secure justice for all parties. It would also help each case from being at the mercy of

the courts and hope by opposing parties that the court's discretion falls in their favour. The law and its instrument of justice, the courts are not intended to be based on the will or opinion of a person, but that of the law. As the basics of jurisprudence communicate that there should be rule of law than of man.

The absence of a consolidated statute also gives persons the opportunity to take advantage of this loophole and thus flee themselves to lands seeking a court of law that would sympathise their cause, or not hold the competence to have a say in favour or even against them. It is this current state of affairs of law nation that has given persons the lead to seek approaches to have their way and be in the win-win situation.

Amidst the legal disputes of marriages, the silent sufferers are the children who get caught between the tussle of their parent. These parents in such disputes overlook the fact that children are not objects. In these legal battles, the prolonged litigations of the NRI child custody related cases while may be financially and mentally taxing, they are also mentally harassing for the parents and more so for the children. It is less realized that the children who are unfortunately trapped in the disagreements of their parents are known to have life scaring psychological effects. In many cases, the sudden change of residence and environment because of child removal or abduction, cause insecurity and paranoia among these children.

The issue and the need of absence of statutory provisions for NRI marriage relating legal issue again came into light in India after the recent Norway case. The case was a clear representative of the conflict of laws. Therein was highlighted the fact that there cannot be uniform legal outlines for all people because of the cultural and ethical differences of the people of different nations. The case also brought into lime light how the NRIs face trouble to get through to justice and bear prolonged battles. The case also brought forward the complications further caused due to lack of readymade solutions to the issues of child custody. In all cases of child custody and child abduction, it has been laid stress on by the court that the paramount concern for all courts should be the interest and welfare of the child. In the case of *Dhanwanti Joshi v. MadhavUnde*, it was clarified by the Supreme Court that, judgements with respect to child custody should be judged on the merit of the case, based on the welfare of the child. The court then also stated that, certain circumstances may also necessitate non-compliance with the order of a foreign court as to the custody. Thus highlighting, the prime importance that the court of law is not the ruling of any court but the welfare and interest of the child.

The determination of all cases seeking justice cannot be left in the hands and the judges to assess every case in a new manner and in a manner that they consider to be correct. There has to be established a uniformity of regulation followed by the courts. For this purpose it would only be wise that the court of law of India chalk out guidelines for the disposal of cases involving NRI legal issues. Although this would not serve to be a complete solution, but would provide a more concrete set up that the courts may be able to follow till the legislation is able to come up with laws to cover the issues and find solutions to the same. The Law Commission of India in its 218th report recommended as to the need to accede to the Hague Convention on the Civil Aspects of International Child Abduction.

It can thus be concluded from the discussion above that the legal issues of NRIs hold an important position which should be dealt with due attention. These issues hold all the more sensitivity considering the diplomatic, political, economic aspects that come into play between nations. The legal provisions of nations have to be respected and due regard to the legal set up of the opposing party nation should be given. As of now the only process of dispute resolution in these issues is through the merit based decisions of the courts, however the need for substantial laws cannot be ignored. The Hague convention comes to provide possible solutions to some extent and India can thus take into account that with advancement in its political, social, environmental and legal circumstances, forming to be a member of this convention India could now form to be a fulfilling member of the convention with better ability and resources to comply with the provisions of the same. It could prove to be a way forward in finding solution to the loopholes and fall backs in the current legal situation of India.