

ISSUES RELATING TO LAWS OF DIVORCE IN INDIA, VIS-À-VIS ABROAD

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ABSTRACT

A Happy marriage is a harbour in the tempest of life – an unhappy one a tempest in the harbour of life. Marriage as opposed to relations of blood, is one which we enter into by our own choice and not by virtue of our birth. Conceptually, marriage is both a Sacrament & a Contract. It is a contract because it is based on offer and acceptance and is akin to an agreement to live together. Sacrament because of its religious ties.

The phenomenon of women being abandoned by the bridegroom of Indian origin is not really new. The husbands tended to hide their foreign spouse and later abandoned the Indian wife. However, with burgeoning Indian NRI population drawn from different economic and social strata spreading across the globe the problem has become multi-dimensional. The problem has also not been state-specific as most states have been reporting cases of women abandoned by predators disguised as grooms hence leading to divorces.

The government needs to address the problem by considering suggestions such as marking on the visa marriage status of the person; providing legal assistance and financial aid to women abandoned in foreign shores; liaison with foreign governments to book the grooms in bigamy charge; and to restrain the grant of ex-parte divorce by foreign courts.

Cruelty/Adultery/Desertion/Impotency are grounds that Indian Law recognises, if the divorce is granted on these grounds – The decree is valid in India. Now the basic problem is encountered here – Indian Diaspora is increasingly getting divorces on the ground of ‘irreconcilable differences/irretrievable breakdown of marriage’ which is also known as no fault divorce.

The issues of NRI deserted women are of recent origin and because of its sensitive nature and family influence, no concerted efforts have taken place. Moreover these women do not speak about the violence/crimes they have been subjected to, because of the social stigma attached to the divorced/deserted women. Besides, they want to protect their family. Hence the majority of the deserted cases were not exposed. In India there is more concentration of NRI population in

the states of Punjab, Andhra Pradesh, Gujarat and Kerala as compared with other states. However, the reported cases of desertion of married women by NRIs are more in the states of Punjab and Andhra Pradesh. Since the problem of NRI deserted women is an important issue of the day and there is lack of data or any major research on this problem, there is an urgent need to collect relevant information on this issue.

Divorce was unknown to the Hindu Textual Law but custom and usage recognised it in certain communities and remarriage was also permissible. A decree for divorce puts an end to the status of the parties as married persons and either party after such a divorce is competent to remarry because the prior marriage, having been dissolved, is no impediment to such remarriage. Divorce was unknown to the Hindu Textual Law but custom and usage recognised it in certain communities and remarriage was also permissible. In pre-Islamic, era divorce was easy and of frequent occurrence and this tendency has persisted to some extent in Islamic law. In some exceptional cases, both among the Arabs and Jews, wives of noble families would, before marriage, reserve to themselves the power to divorce themselves from the husband and they exercised that power and pronounced separation by merely changing the position of their tent which conveyed sufficient intimation of the fact to the repudiated husband. Thus, in pre-Islamic Arabia undesirable customs were prevalent which tended to degrade the morality of the Arabs and conditions of women.

Traditionally, divorce/separation was uncommon in India unlike the western nations. Marriage here was considered as a union of souls, and not merely of bodies. However, for the past few decades due to the westernisation, modernisation and emergence of the nuclear family etc there has been a drastic change in the institution of marriage and the rate at which marriages are breaking up is a serious issue. The problems of marriage lead to separation, desertion and finally divorce. In most of the Western countries, problems are linked mostly to sexual compatibility and health of the partners. However, in India economic problems like dowry and related issues play a major role in the problems of marriage and divorce. The respondents of the present study already confirmed that more than 90 percent of them faced the problem of dowry.

Besides, nearly 20 percent of the respondents stated the problem of husband's illegal contacts with other women and related problems and incompatibility in adjustments. The separated and deserted respondents from Punjab and Andhra Pradesh stated that they were not aware of the reason as just after few days of marriage they were deserted without any reason.

Most of the respondents from Punjab stated that the husbands never married them with the intention to take them along abroad, but were only treating them as a source of regular supply of money.

The main issue related to divorce laws in India vis-à-vis abroad is that most of the sufferers take no legal advice prior to the legal action taken after desertion. In a report it was filed that around 60% of the Indian women take no legal advice before filing separation after suffering desertion unlike the women in abroad. Although it is heartening to know that around 70% of the women preferred filing a FIR and a court case. Another problem faced is that a very long time span is taken in undertaking an action after the desertion. In most of the cases it has been seen that an action took place 5 years after desertion. This is because either action is not taken to register the FIR, or it is inordinately delayed.

INTRODUCTION

The problems of Indian women being abandoned by non-resident Indian (NRI) bridegrooms is an issue lost amongst countless of large issues confronting women in India. For policy makers in India issues like women trafficking, violence against women, rehabilitation of destitute and providing pre-natal and post-natal care are of top most priority than this little spread about social problem that is debilitating the social fabric of the country. Cases of women being subjected to cruelty of false marriage, cheating and dowry extortion have increased in proportion to the growing number of Indians emigrating in search of a better life style abroad. Generally, the greed of bride's family who see in their daughter a way to exploration and comfort of foreign shores makes them easy prey to NRI bridegrooms on hunt. The very act of women being abandoned by the bridegroom of Indian origin is not a new one. Previously there were instances where it was mostly bigamous marriage entered into by men under family pressure to marry within community. The husbands used to hide their foreign spouse and later abandoned the Indian wife. With the passage of time with increase in the number of NRIs spreading across the globe in search of better livelihood there is a huge increase in the magnitude of this problem and it becoming multi-dimensional. The problem in India has also not been limited to some state as

most states have been reporting cases of women abandoned by predators disguised as grooms and ruining life of the Indian women abroad. Unfortunately, it is the rural and middle class people who usually loose against to the temptation of getting their daughters a foreign groom. By the time when the family of such girls realizes the loss incurred they have possibly liquidated their assets to help their daughter enter into the so-called marriage. The government needs to address the problem by considering suggestions such as marking on the visa marriage status of the person; providing legal assistance and financial aid to women abandoned in foreign shores; liaison with foreign governments to book the grooms in bigamy charge; and to restrain the grant of ex-parte divorce by foreign courts.



DIMENSIONS OF THE PROBLEM

Desertion of married women by their non-resident Indian (NRI) husbands is emerging as a unique form of violence against women. The problem of women being deserted by their NRI men is specifically prevalent in the states of Punjab and Andhra Pradesh of India. A large number of NRIs working in North America South America, Canada, Australia, UK and other European countries and the Gulf countries are married to Indian women belonging to the same states. What were earlier restricted to isolated cases has now become a major social problem. This problem is not just restricted to Punjab and Andhra Pradesh but also very common in States like Haryana, Delhi, Kerala, Gujarat and Maharashtra in India.

Over so many the years the problems of Indian women being trapped in fraudulent marriages with overseas men of Indian origin are increasingly occurring. This has given a rise to an urgent need to to protect these women and make them aware of their rights and responsibilities and make them more powerful and on the other hand make them well equipped with safety nets and social defense mechanisms that can help them resist the problem to some extent. The problem stands undefeated with many faces including issues relating to dowry and other kinds of

harassment of married women in foreign countries, instances where the marriages do not work out well, concealment of earlier existing marriage by the husband before marrying an Indian woman and lack of social security faced by an Indian woman in the foreign land.

Once the marriage is broken and *ex parte* divorces are obtained. A most conspicuous trend, that has continued for so long however, appears to be the easy dissolution of such marriages by the foreign courts even though their celebration took place in India as per the Indian laws. Since there is no comprehensive and special law in India to govern such issues and also in view of the jurisdictional issues involved in deciding the matrimonial cases, women are being deprived of justice with impunity. Matrimonial disputes are one of the most challenging and complex areas for legal intervention within any system, what makes the situation complex particularly is the absence of uniform civil laws, the personal laws of various religious communities in India as they continue to be different. Beyond such complications of a uniform civil rule of law a special kind of marriage taking place across the borders and its legal system known as "NRI marriages". These marriages then enter the domain of private international laws of the particular countries that deals with the conflict of laws of different countries, which makes the issues even more complex. 'NRI marriages', are often between an Indian woman and an Indian man residing in another country thus known as NRI – non-resident Indian, either as Indian citizen when he would legally be an 'NRI' or as a citizen of that other country, when he would legally be a PIO – person of Indian origin. With the greed that the family of the girls is attracted to is the experience of migration to foreign countries not only for the girl but for the entire family. In the excitement and hurry of not to let go such a match as an opportunity from their hands the parents of such girls become ignorant of even the slightest of cautions that are traditionally and usually taken. They also ignore that in case of a problem the way to obtain a remedy would not be an easy job rather more difficult as such marriages are not governed any more by only the Indian legal system but by the more complex private international laws involving the legal system of the other country too and recourse to any legal assistance for justice across thousands of miles would be an extremely difficult. There are several other issues such as the girl moving to different land may face a problem 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 not 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.

BRIEF

Huge number of people of India are constantly migrating to different other countries forming a combination of different personal laws, all this is aimed to make a permanent residence abroad or in search of a better way of livelihood. Due to the success in the advancement of communication and transportation and increased rate of convenience and affluence in families has given rise to increased issues involving NRI's. There are instances where citizens of India country get marriage either within the country or abroad with citizens of the other countries or among themselves, or having married India, either both or one of them migrate to other countries. also cases where parties having married in India residing separately in different foreign countries. This migration, temporary or permanent, has also been giving rise to various kinds of matrimonial disputes that destroys in its turn the family and its peace and the same time snatches all possible ways of prosperity.¹ Though the non-resident Indians have been increasing manifold in foreign jurisdictions, family law disputes and situations are handicapped for want of proper professional information tools being designed and advice on Indian laws. The problems created by such migration largely remain unresolved. There a large number of issues in India vis-à-vis abroad, such as ways of divorce under Indian law, conditions to deem a marriage to be valid, adoption of children from an Indian community and therefore the remedies of the similar instance to enforce the rights of the parents as well as the child, issues concerning transfer of property, succession, banking affairs, taxation and other commercial propositions for non-resident Indians. The remedies to these issues are ones that the judiciary and legal alternative can not get rid off as the problem partially lacks in the provisions of the Indian law and rest demands for anew and effective legislations.

¹Y. Narasimha Rao vs. Y. Venkata Lakshmi, JT 1991 (3) SC 33

CONFLICT OF LAWS

There is a huge number of Indians who have made their lives comfortable in almost all part of the world which arises multiplicity of jurisdiction of different countries .despite of living abroad for years the love for the mother land or different associations with the soil of the country brings them back and with them brings a legal issue so connected with the person. This indifferently makes the NRI intertwine the laws abroad and the jurisdiction of the place so migrated. All this is a consequence of failure of either Indian law or the law abroad to provide remedy, which in turn makes the issue more complicated as both have rarely a parallel way of dealing with it. **“This clash of jurisdictional law is commonly called Conflict of Laws in the realm of Private International Law which is not yet a developed jurisprudence in the Indian territory.”**²

Ruchi Majoo vs. Sanjeev Majoo Case No: Civil Appeal No. 4435 of 2003 with Criminal Appeal No. 1184 of 2011, Date of Decision: 16 May 2011.³

The Supreme Court of India in RuchiMajoo vs. SanjeevMajoo, pronounced an interesting and significant decision which came as hope for Indian women deserted by their NRI/Overseas spouse, fighting a legal battle in India. The Supreme Court ruled that Indian courts to have jurisdiction to deal with custodial disputes of minor children even if a foreign court has passed an order in favor of either of the parents. In a judgment because a foreign court had taken a particular view on any aspect concerning the welfare of the minor is not enough for the courts in this country to shut out an independent consideration of the matter. Objectivity, and not abject surrender, is the mantra in such cases. The apex court passed the judgement while upholding an appeal filed by RuchiMajoo challenging a Delhi High Court judgement that Indian courts have no jurisdiction under the doctrine of "comity of courts" to entertain any petition if a

² Government of India Law commission of India , Need for family law legislations for NRI's , report 2009 , no. 219.

³<http://ncw.nic.in/frmnriimpcaselaws.aspx>

decree or order has already been passed by any foreign court. The couple was living with the kid in the US before she returned to India in 2008. A Delhi court had on Ruchi's application granted her custody of the child under the Guardians and Wards Act. The Delhi High Court had, however, struck down the trial court's order and asked the couple to submit themselves to the Californian court as all the three possessed US citizenship. Aggrieved, the wife appealed in the apex court where she accused her husband of being involved in pornography and adulterous relationship. The husband, while denying the allegations, maintained that Indian courts had no jurisdiction since a decree had already been passed by the Californian court. Rejecting the husband's arguments, the apex court said "recognition of decrees and orders passed by foreign courts remains an eternal dilemma in as much as whenever called upon to do so, courts in this country are bound to determine the validity of such decrees and orders keeping in view the provisions of Section 13 of the Code of Criminal Procedure 1908 as amended by the Amendment Act of 1999 and 2002.

In Harmeeta Singh v RajatTaneja¹⁰² (2003) DLT 822 the wife was deserted by her husband within 6 months of marriage as she was compelled to leave the matrimonial home within 3 months of joining her husband in the US. When she filed a suit for maintenance under the Hindu Adoptions and Maintenance Act in India, the High Court disposed of the interim application in the suit by passing an order of restraint against the husband from continuing with the proceedings in the US court in the divorce petition filed by the husband there and also asking him to place a copy of the order of the High Court before the US court.

The Court made some other observations while passing this order, mainly that even if the husband succeeded in obtaining a divorce decree in the US, that decree would be unlikely to receive recognition in India as the Indian court had jurisdiction in the matter and the jurisdiction of the US courts would have to be established under Section 13, CPC. The Court then said that till the US decree was recognized in India, he would be held guilty of committing bigamy in India and would be liable to face criminal action for that. The court also said that since the wife's stay in the US was very transient, temporary and casual, and she may not be financially capable of prosecuting the litigation in the US court, the Delhi courts would be the forum of convenience in the matter.

In **SurinderKaurSandhu v. Harbax Singh Sandhu, AIR 1984 SC 1224** the Supreme Court had to decide the custody of the wife/mother in circumstances where while the wife was still in England, the husband had clandestinely taken away the children to India(20)to his parents place even as the English Court had already passed an order on the children's custody in England. The Court looked into all the relevant facts of the case to decide what was in the best interest of the children and ultimately on the basis of this consideration directed the custody of the children to be given to the mother.

In **KuldeepSidhu v. Chanan Singh (AIR 1989 P&H 103)** the High Court of Punjab and Haryana also took the view that it was in the best interests of the children that the mother who was in Canada be allowed to take back the children from India to Canada where the mother continued to live as they were with their paternal grandparents in India, the father still being in Canada and as, in any case, the mother had been awarded their custody by a competent court in Canada.

Another important exposition of Section 13 came in the judgment of Supreme Court in **Narasimha Rao v Venkata Lakshmi [1991] 2 SCR 821**. This case had very similar fact-situation: the decree of dissolution of marriage passed by the Circuit Court of St. Louis County, Missouri, USA was passed by the court by assuming jurisdiction over the divorce petition filed by the husband there, on the ground that the husband had been a resident of the State of Missouri for 90 days preceding the commencement of the action as the minimum requirement of residence. Secondly, the decree had been passed on the only ground that there remained no reasonable likelihood that the marriage between the parties could be preserved, and that the marriage had, therefore, "irretrievably broken". Thirdly, the respondent wife had not submitted to the jurisdiction of the foreign court.⁴

⁴<http://ipc498a.files.wordpress.com/2007/09/judgments-on-nri-cases-by-the-courts-in-india.pdf>

STATISTICS ABROAD

In many national statistical offices abroad, and in some local statistical offices in the U.S., divorce data are often properly classified along with marriage data as vital statistics. In view of the fact that the U.S. ranks first in its divorce rate, and recognizing the apparent threat of divorce to the family, it represents an evident lag that statistics of marriage and divorce have been so largely neglected in the U.S. The reasons for this, and the reasons why one of the first governmental "economies" in 1932 was to cease collection of this most vital of all statistical data (while fostering an immensity of other statistical reports), would be interesting to search out. This paper purposes to exploit as completely as possible all data in the Census reports on divorce according to duration of marriage (presuming a fair degree of accuracy for the data") by application of the duration-specific technique. In addition, three aspects of the dynamic hypothesis will be tested by the results of the analysis. The method applied for the study merely refers divorces in each duration group back to the year in which the marriages were most likely contracted, thus obtaining a true base for the calculation of the divorce rate. The sum of the duration-specific rates represents the probability of divorce for the particular year.⁵

Reports on the move of All India Muslim Board Personal Law Board to approve a new comprehensive guideline for marriage in India. Advocacy on the reconciliation and equitable rights for women; Identification of the divorce code; Effort of enabling women to get maintenance and allowances for children in the event of divorce.⁶

Are there any legal alternatives to divorce?

In legal terms, there are two alternatives to a divorce: judicial separation and separation by agreement. A decree of judicial separation does not dissolve a marriage, as does a divorce. For instance, a woman cannot remarry while she is judicially separated; if her husband dies during

⁵<http://ehis.ebscohost.com/ehost/detail?sid=ceaa6fda-ea32-4c4e-921f-1a85945bd0e4%40sessionmgr112&vid=1&hid=114&bdata=JnNpdGU9ZWwhvc3QtbGl2ZQ%3d%3d#db=a9h&AN=12914559>

⁶<http://ehis.ebscohost.com/ehost/detail?sid=1912f923-fdc5-4910-8475-08f68209ccd8%40sessionmgr104&vid=1&hid=114&bdata=JnNpdGU9ZWwhvc3QtbGl2ZQ%3d%3d#db=a9h&AN=17586861>

the period of separation, she has the right, which she does not have if she is divorced, to inherit his property along with his other heirs. A woman can apply for judicial separation at any time during her marriage; when filing for a divorce, however, she has to wait for at least a year. During the period of judicial separation, her conjugal rights, and those of her husband, remain suspended. Hence, even though marital rape is not recognized as a crime in India, forcible sexual intercourse during judicial separation is a criminal offence. A separation agreement is like a contract in which a woman and her husband agree to live separately and release each other from the obligations that come with marriage. Their marriage will continue to exist, but they need to go to court to validate this agreement.

On what grounds can the court refuse to grant a divorce in India?

In a divorce by mutual consent, the court will refuse to grant a divorce if it feels that consent has been obtained by force or fraud. In the case of a contested divorce, the court must be satisfied that certain “bars to matrimonial relief” are not present. These include:

Taking advantage of one’s own wrong or disability: The person who seeks divorce (i.e. the petitioner) must satisfy the court that he or she has not been the cause of the ground of divorce, whether directly or indirectly. For instance, if a woman contracted a venereal disease from her husband, he cannot divorce her on the ground that she has a venereal disease. Being an accessory or conniving: This is usually applicable to cases of adultery. A woman cannot get a divorce on the grounds of her spouse’s adultery if she has actively or passively encouraged it.

Condonation: If a woman files for divorce on the grounds of cruelty or adultery, she must satisfy the court that she has not “condoned” or forgiven her spouse for the matrimonial “offence”. Condonation means not only that she has forgiven her spouse, but also that he has been “reinstated”, i.e. that she and her spouse continue to live together as they did before the matrimonial offence was conducted.

Delay: If there has been a long delay between the commission of the matrimonial offence and the petition for divorce, the petitioner will have to give a satisfactory explanation for the delay. The courts have generally been sensitive to a range of reasons for long delays in filing for divorce, especially for women in the Indian context.

What can a woman do if her husband abandons her?

She has three options. She may:

- **File for a divorce if her husband has deserted her for two years or more;**
- **File a claim for maintenance:** Under the Hindu Adoptions and Maintenance Act, a woman is entitled to maintenance and separate residence even without getting a divorce.
- **Petition the court for restitution of conjugal rights:** If the court is satisfied that her husband deserted her “without reasonable cause”, it can order the husband to “cohabit” with her. If he does not do so, he can be fined by the court. A woman can also file for a divorce within one year of the passing of the order if her husband has not returned to her. Men can also file for restitution of conjugal rights. However, even if the court orders in favour of the person who is seeking restitution, there is no compulsion on the other partner to cohabit with his or her spouse. If the person who has been directed by the court to resume cohabitation with his or her spouse refuses or fails to do so, the only remedy available to the aggrieved spouse is to file for divorce. Failure to cohabit with a partner after a restitution order by the court is, by itself, sufficient ground for divorce. However, the law does not lay down any punishment for failure to cohabit.

What are a woman's rights regarding confidentiality and privacy in a divorce proceeding in India?

For both Hindu marriages and civil marriages, divorce proceedings may be held in camera, which means that only the parties, their lawyers and the judge are present. Nobody is allowed to publish anything in relation to these proceedings, except a judgment of the High Court or Supreme Court. A woman can also ask the court to suppress her identity during court proceedings and in all court records.⁷

⁷http://www.manushi-india.org/pdfs_issues/PDF%20140/03%20kyr%2024-25.pdf

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

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.

Note from Government of India 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 intercountry 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.

Reasons behind NRI marriages

It is found that the parents solicit NRI grooms for enhancing their social status. There is a race among the relatives to be the first to get the matches for their children with NRIs. 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. 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. 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 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. 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. 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.

CONCLUSION

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 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.

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. 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.

REFERENCES

- Y. NarasimhaRao vs. Y. Venkata Lakshmi, JT 1991 (3) SC 33
- Data Retrived from Government of India Law commission of India , Need for family law legislations for NRI's , report 2009 , no. 219. <http://ncw.nic.in/frmnriimpcaaselaws.aspx>
- Data Retrived from <http://ipc498a.files.wordpress.com/2007/09/judgments-on-nri-cases-by-the-courts-in-india.pdf>
- Data Retrived from http://www.manushi-india.org/pdfs_issues/PDF%20140/03%20kyr%2024-25.pdf¹<http://ehis.ebscohost.com/ehost/detail?sid=ceaa6fda-ea32-4c4e-921f-1a85945bd0e4%40sessionmgr112&vid=1&hid=114&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d#db=a9h&AN=12914559>
- Data Retrived from <http://ehis.ebscohost.com/ehost/detail?sid=1912f923-fdc5-4910-8475-08f68209ccd8%40sessionmgr104&vid=1&hid=114&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d#db=a9h&AN=17586861>