

The common issues present in the nris marriages law family essay

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. Introduction

Nervous, excited, anxious... it is indeed a cocktail of feelings when you're about to get married, and to a non-resident Indian (NRI) at that. But doesn't the emotional hullabaloo appear trivial as compared to the attraction that the West offers? Well, in the present times, the consensus has to be, negative. Marriage is a universal human institution which has formed the foundation of the family throughout history it usually means a voluntary union for life of one man with one woman to the exclusion of others. By and large, Indians have a rather misplaced fancy for the word " foreign". It is the extreme desire to make one's family settle abroad that leads parents to marry their daughters off to NRIs (Non Resident Indians). These foreign dreams can also turn out to be a nightmare as they may come at a cost of innocent lives and the future of the spouses. Going to foreign countries is seen as a " ticket to prosperity". But, this is just a mirage, as this turns out to be a very deceitful affair and very often a significant number of Indian women suffer after such marriages. 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

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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

critical analysis of the common issues present in the NRIs marriages

Many a man and woman of this land with different personal laws have migrated and are migrating to different countries either to make their permanent abode there or for temporary residence. Likewise there is also immigration of the nationals of other countries. The advancement in communication and transportation has also made it easier for individuals to hop from one country to another. It is also not unusual to come across cases where citizens of this country have been contracting marriages either in this country or abroad with nationals of the other countries or among themselves, or having married here, either both or one of them migrate to other countries. There are also cases where parties having married here have been either domiciled or residing separately in different foreign countries. This migration, temporary or permanent, has also been giving rise to various kinds of matrimonial disputes destroying in its turn the family and its peace¹. ² Abandoned bride in distress due to runaway foreign country resident Indian spouse, stressed non-resident Asian parent frantically

searching spouse in India who has removed their child from a foreign jurisdiction in violation of a foreign court order, desperate parent seeking child support and maintenance, non-resident spouse seeking enforcement of foreign divorce decree in India, agitated children of deceased non-resident Indian turning turtle in trying to seek transfer of property in India and its repatriation to foreign shores, anxious and excited foreign adoptive parents desperately trying to resolve Indian legal formalities for adopting a child in India, bewildered officials of a foreign High Commission trying to understand the customary practices of marriage and divorce exclusively saved by Indian legislation, foreign police officials trying to understand intricacies of Indian law in apprehending offenders of law on foreign soil: these are some instances of problems arising every day from cross-border migration. 1. 3

There are a large number of legal issues that concern a sizeable section of the Global Indian Community residing abroad. Though the non-resident Indians have increased multifold in foreign jurisdictions, family law disputes and situations are handicapped for want of proper professional information and advice on Indian laws. The lure for settling in foreign jurisdictions attracts a sizeable Indian population but the problems created by such migration largely remain unresolved. 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. 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.

Legal hiccups, international conventions and bilateral treaties

While submitting a detailed note on specific legal problems/difficulties detected by the Government in resolving the problems faced by Indian Women trapped in fraudulent marriages with overseas Indians, the MOIA furnished the following reply:-MOIA in association with the NCW had organized a seminar on 15th February 2011 at Vigyan Bhavan, N. Delhi to consider problems/difficulties faced by Indian women trapped in fraudulent marriages with overseas Indians. The legal problems/difficulties were enumerated as follows:(a) 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.(b) 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.(c) Grant of ex-parte divorce by foreign courts be barred

in the case of marriages solemnized in India as per Indian law.(d) Procedural delay/low priority to issue Look Out Certificate (LOC)/ Red Corner Notice (RCN) against accused NRI/PIO husband in cases of marital discord needs to be addressed.(e) Cases of domestic discord to be included in the scope of extradition treaties.(f) Difficulty and consequent delay in serving judicial processes issued by Indian courts through the Indian Missions abroad to be addressed.(g) 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.(h) 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.(i) 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.(j) Review of MOIA Scheme for providing legal//financial help to the deserted women in foreign lands.(j) Role of State Governments in sensitization of police and authorities for registration of FIR & other NRI issues. The resolution of most of the above issues is complex since they fall within the purview of Private International Law.

SUGGESTED SOLUTIONS AND REMEDIES

5. 2 A reading in totality of the matters in the overseas family law jurisdictions gives an indication that in such affairs, it is the judicial precedents which provide the much available guidance and judicial. With the large number of non-resident Indians now permanently living in overseas jurisdictions, it has now become important that some composite legislation is

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enacted to deal with the problems of non-resident Indians to avoid them from importing judgments from foreign courts to India for implementation of their rights. The answer, therefore, lies in giving them law applicable to them as Indians rather than letting them invade the Indian system with judgments of foreign jurisdictions which do not find applicability in the Indian system. Hence, it is the Indian legislature which now seriously needs to review this issue and come out with a composite legislation for non-resident Indians in family law matters. Till this is done, foreign court judgments in domestic matters will keep cropping up and courts in India will continue with their salutary efforts in interpreting them in harmony with the Indian laws and doing substantial justice to parties in the most fair and equitable way. However, in this process, the Indian judiciary has made one thing very clear, i. e., the Indian Courts would not simply mechanically enforce judgments and decrees of foreign courts in family matters. The Indian courts have now started looking into the merits of the matters and deciding them on the considerations of Indian law in the best interest of the parties rather than simply implementing the orders without examining them. Fortunately, we can hail the Indian Judiciary for these laudable efforts and till such time when the Indian legislature comes to rescue with appropriate legislation, we seek solace with our unimpeachable and unstinted faith in the Indian Judiciary which is rendering a yeoman service. 225. 3 In the context of the NRI, the following suggestions are mooted for improving the existing family law problems posed daily before NRIs and faced by affected people resident in India 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 amendment of existing legislation. The six point charter summary is set down as hereunder in the following sequence: A. 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 registration of his marriage to the concerned Embassy / High Commission in India, in which country he is presently resident. The States in India with high migration incidence should make and notify rules under Section 8 providing for compulsory registration of marriages and incidental matters related thereto. The Commission has already made similar recommendation as to registration of marriage and divorce in its 211th Report titled "Laws on Registration of Marriage and Divorce - A Proposal for Consolidation and Reform". 23B. 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 the 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 States with high NRI population 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 such States is significant and in large numbers. The Commission has recently recommended in its 217th Report as to incorporation of "irretrievable breakdown of marriage" as a ground for divorce in the said Acts. Further, the Law Commission in its 65th Report on "Recognition of Foreign Divorces" (1976) made a radical departure in suggesting that, in considering the questions about the recognition of foreign decrees of divorce, our courts should base their decisions not only on the question of domicile, but also on the basis of habitual residence and nationality. The said Report also considered the problem about the ancillary orders passed by the foreign courts in dealing with matrimonial proceedings and on this matter, the conclusion of the Commission was that these ancillary orders should not be treated as binding by our courts even though the foreign decrees of divorce are recognized. These ancillary orders concern the custody of children and other allied questions, and it was felt that it would be juristically imprudent to treat them as binding. The Commission had appended a Bill entitled "The Recognition of Divorces and legal Separation Bill, 1976" with the said Report to give shape to its recommendations. C. Wherever one of the spouses is an NRI, parallel additions must be made in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 to 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 and standard of the NRI spouse in the foreign jurisdiction. 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 States with high NRI population 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. D. 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 25 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 Restrictions Act and the Punjab Security of Land Tenures Act for the summary trial of disputes regarding agricultural, commercial and residential property. However, no special Fast-track Courts exist in most States with high NRI population to settle these matters on priority. A fresh proposal should be mooted to set up such courts as soon as possible. E. In the area of inter-parental child abduction or removal of children to India from foreign jurisdictions against court orders, India must become a signatory to the Hague Convention on the Civil Aspects of International Child Abduction, 1980. As of now, there is no international convention or treaty applicable in India since India is not a signatory to the said Convention and other than

conventional procedures, there are no remedies for enforcing such rights. Till such time there is no signing of such treaty, the State Governments with high NRI population should permit liaison with foreign missions in India through whom courts should be assisted to ensure return of children to the country of their foreign residence if they are removed in violation of foreign court orders. The administrative and police authorities in Indian States with high NRI population should give some uniform guidelines to observe to assist such parents in distress who often land in such States in India with no clue as to whom to approach for assistance. The 26 Commission has already recommended in its 218th Report as to the need to accede to the said Convention of 1980. F. Inter-country child adoption procedures must be simplified and a single uniform legislation must be provided for in matter of adoption of Indian children by NRIs. This should be hedged with ample checks and safeguards but at the same time should provide a unified, straightforward and single agency procedure. The present system is lengthy, complicated, involves multiple agencies, is very time consuming and thus needs to be suitably amended. Further, again the States in India with high NRI population should lay down some uniform policy guidelines to be observed by State agencies, adoption homes and administrative authorities so that proper help and guidance is available in adoption matters. The Law Commission in its 153rd Report on " Inter-country Adoption" prepared draft of a Bill on Inter-country Adoption. India has also ratified the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. Thus a simplified law should be enacted on the subject in the light of this Convention. 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. It is the endeavour of the Law Commission to suggest to the Government of India to do whatever possible to improve the life of the NRIs in India. It is important to see what India can do for the NRI and not what the NRI can do for India