

## **Report on Regional Seminar on “Problems Relating to NRI Marriages” in Trivendrum on 13<sup>th</sup> and 14<sup>th</sup> September 2006.**

The Ministry organized in partnership with National Commission for Women a Regional Workshop on “Problems relating to NRI Marriages” at Trivendrum on 13<sup>th</sup> and 14<sup>th</sup> of September 2006.

The workshop was attended by representatives from Ministry of Overseas Indian Affairs (MOIA), Ministry of External Affairs (MEA), NCW, legal experts, police, media, researchers and NGOs. List of participants is linked at Annexure 1.

In the first half of the first day the program began with a welcome address by the Joint Secretary, Ministry of Overseas Indian Affairs Mr.Gurucharan who after welcoming all present explained to them the purpose of the workshop, the issue at hand and the steps taken by the Ministry until then to resolve the problem. He explained the importance of the problem and mentioned that more than half of the migrant population comprised of women and women empowerment could resolve the problems to a great extent. He stated that the Ministry has been considering this issue very seriously and the Minister has directed the Ministry to launch an awareness programme regarding this. The State Governments should also launch a wide publicity campaign through various channels to educate the rural peasantry. He urged the NGOs to play an active role in educating the people on this issue. The introductory note to the workshop by the J.S.(MOIA ) was followed by address to the delegates from the Chairperson, National Commission for Women Ms.Girija Vyas and Health Minister of Kerala Ms.Shreemati. The Chief Guest, Minister of Overseas Indian Affairs Hon’ble Shri Vayalar Ravi then inaugurated the workshop formally and addressed the audience. This was followed by a joint press conference by the Minister of Overseas Indian Affairs and Chairperson, NCW. The publicity campaign in Kerala to create awareness on the do’s and don’t’s while going for overseas alliances through posters and pamphlets in Malayalam was then formally launched by the Minister of Overseas Indian Affairs in the press conference.



***Dr Girija Vyas , Chairperson National Commission for Women ,  
welcoming Hon'ble Minister of Overseas Indian Affairs at the  
regional workshop on problems relating to NRI Marriages Held  
in Trivandrum ,Kerala***

The 2<sup>nd</sup> half of the first day revolved around panel discussions on international conventions and bilateral treaties, issues in relation to exparte decrees in foreign courts and review of the existing legislation/ enactments. There were 3 working groups on 1) International Conventions and bilateral treaties issue relating to ex parte decrees, 2) need for a comprehensive legislation on NRI marriages and 3) strategies in tackling violations/creating social awareness, counseling and implementation of safeguards, Institutional and other arrangements. The groups included representatives from MOIA, MEA, NCW, legal experts and NGOs. The 2<sup>nd</sup> day started with presentation by the leaders of the working groups where Mr.Govindraj, Mr.Jairaj, eminent lawyers and the Chairperson, Kerala State Women Commission related the recommendations of the 3 groups. The need of sensitization of various authorities in foreign land as well as

locally was doubly emphasized. This was followed by the summing up speech of the Chairperson NCW and an open house discussion which was also addressed by the NHRC Secretary General Mr. Bhargava and former Secretary of MEA Mr.J.C.Sharma. He mentioned some of the constraints of the embassies as their primary function was to built friendly relations with foreign countries and the strong privacy laws existing in most of the countries.

The Chairperson of the National Commission for Women, Ms. Girija Vyas, stressed the need for enacting a comprehensive legislation within the framework of Indian laws to tackle the problems related to NRI marriages and for an awareness campaign to educate the people in this direction. She stated that the problems related to NRI marriages could not be tackled effectively for lack of treaties with various countries. She stated that all certificates for NRI marriages be issued in duplicate and must compulsorily include the social security number of husband and demanded rectification of the passports to include details of spouses. The Commission will demand the creating of exclusive cells in every Indian High Commission and embassy to provide legal assistance and monetary support to abandoned brides in the countries of residence of their absconding spouses.

The suggestions which emerged from the discussions are as follows:

- There is an urgent need to comprehensively and extensively examine the International Conventions which have relevance and importance for the issues relating to NRI Marriages. These conventions are as under.
  - ❖ Convention on the service abroad of judicial and extrajudicial documents in civil or criminal matters, 1965 (Service Convention)
  - ❖ Convention on the recognition of divorce and legal separation 1970
  - ❖ Convention on the laws applicable to maintenance obligation, 1973
  - ❖ Convention on celebration and recognition of validity of marriage, 1968
  - ❖ Convention on the civil aspects of international child abduction, 1980
  - ❖ Convention of Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of parental responsibility and measures for the protection of the children 1996

- Review the existing laws and strengthen their scope and provisions to specifically cover situations within NRI Marriages, especially the Passport Act (special provision for cancellation of passport of offending NRI spouse, also include more detailed particulars of spouse in passports apart from attaching photograph) extradition act incorporating the typical offences in NRI Marriages like fraud, dowry, matrimonial cruelty, IPC (recognizing offences) Cr. PC and CPC, citizenship act.
- Dowry to be recognized as an important component of the problem and publicity campaign should also concentrate on persuading parents to insist on marrying their daughters without dowry
- To take care of financial need of girls abroad some insurance scheme could be envisaged for them
- The different schemes of the State Women Commissions to be coordinated.
- Implementation of the domestic violence act through training and involvement of lawyers, Police, Social Workers etc. NCW to take steps to sensitize the authorities as lack of awareness is there
- Short stay homes in every state to be sanctioned by the State authorities.
- Jagrta Samits to be establish in every panchyat we should give honour and regard for women
- NCW should identify the NGOs who can work in this area
- Details of spouses to be mentioned in passports
- Participation and involvement of the youth in the solution to the problem
- Publishing of do's and don't's in matrimonial columns by State Women Commissions and NCW
- To include children in the package for solution
- Officers who are sensitive to the problem to be posted in the interpole bank of the police
- Comprehensive act for NRI Marriages which should compulsory include affidavit containing details of both spouses
- Helplines should be established in every district
- They should be a separate cells in the embassies to deal with such problem
- Economic security of the girls to be emphasized

- Small expert group comprising MOIA, MEA, ISIL and Ministry of Law and Justice to be set up in Delhi
- Responsibility of parents to see that marriage does not become a trade
- The issue to be treated as a social-legal-economic-political issue
- In corporation in domestic laws immediately after signing of Hague Conventions
- Parliamentary committee should play an important role in exchanging remedies with the foreign countries and to see that they take effect of legislations.
- Filing of false affidavit to be including as criminal offence in the extradition treaties.
- Filing of desertion to be including as criminal offence in the extradition treaties.
- Counseling to be made compulsory before overseas marriage
- Informal MOUs with overseas NGOs to be entered into by NCW
- Gender sensitization to be carried out in family courts
- Collection of all related material/studies related to the topic to be compiled at one place by the Ministry
- Three regional cells to operate in NORKA
- Individual responsibility to report to the embassies as soon as they reach a foreign country as also mentioned on the back page of everyone's passport
- Data base of overseas NGOs/legal aid societies to be maintained by the embassies

## **RECOMMENDATIONS**

### **A. LEGAL INTERVENTIONS –INTERNATIONAL**

1. The Hague Conventions, especially the following ones, which are related to the issue of NRI marriages, needs to be examined closely and the feasibility of signing the Hague conventions needs to be looked into.

- Convention On the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 1965 (“Service Convention”)
- Convention On the Recognition of Divorce and Legal Separations, 1970
- Convention on the Law Applicable to Maintenance Obligations, 1973
- Convention on Celebration and Recognition of Validity of Marriage, 1978
- Convention on the Civil Aspects of International Child Abduction, 1980
- Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, 1996

Note: **The United States of America is also a party to the following conventions**

And has signed the convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption

Even Canada is a party to some of the Hague Conventions

2. Bilateral agreements need to be concluded with countries where Indian Diaspora is in large numbers. The existing legislation for bilateral agreements is available on the basis of reciprocity i.e. section 44A of CPC , Section 3 of Maintenance Orders enforcement Act 1921 and section 13 of CPC. These laws enable recognition and

enforcement of foreign divorce decrees, maintenance orders, child custody, etc

3. Bilateral agreements on critical issues covered by the Conventions mentioned above, especially validity and recognition of divorce decrees, maintenance, child abduction and custody and service of orders and Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters.

4. Sign reciprocal bilateral treaties, with target states, i.e. countries with large presence of Indians, such bilateral agreements on critical issues may take into account issues such as

- Grounds for non-recognition – being against public policy, judgment given in case where no due notice was served to the respondent in the proceedings, where a judgment given in a proceeding is irreconcilable and contrary to public policy /law of the country, particularly relating to law of marriages and divorce, child custody, etc
- the issue of commissions for witness examination in criminal trials

5. Jurisdiction has emerged as one of the significant aspects, particularly, in providing matrimonial relief for failed marriages involving non-resident Indians. The leading basis that have been considered are: domicile, nationality residence including habitual residence. The rule of habitual residence needs to be considered as a possible basis of matrimonial jurisdiction in any attempt of future legislation. The principal reason for this suggestion being, that the rule of habitual residence has struck a balance between domicile on

the one hand and nationality on the other. Besides, this rule is also capable of providing a minimum common basic understanding amongst majority of the countries.

6. On the issue of recognition of foreign divorce/nullity decree, three lines of approach to be adopted to improve the present situation.

- a) The contextual interpretation of the existing legal provisions as suggested in Narasimha Rao's case.
- b) Widening the scope for more bilateral agreements under Sec.44-A of CPC which is based on reciprocity. Particularly, the government should include those countries where the Indian Diaspora is in substantial in numbers and also those countries which have been already included for conferring dual citizenship.

7. On matters of child custody and abduction, It is recommended here that giving importance to best interest for child welfare must be a sine qua non to govern the issue relating to child custody. The Australian state practice provide important tips in determining the welfare of the child. Some of them are:

1. When children are progressing well in a reasonably secure environment, court will require good reasons for ordering a different placement (Curr vs. Curr 1979 FLR 90-611).
2. Siblings should not be separated.

3. Children's wishes should be respected. Family Law Act provides that the wishes of a child of fourteen years as to custody/access will prevail unless court thinks otherwise. (Family Law Act, & 64 (i)(b). Court may also give considerable weight to the wishes of the younger children who have certain degree of maturity and understanding of the situation (Schmidt vs. Schmidt, 1979 FLC 90-685).
  4. Young children, especially girls are normally best placed in the care of their mother's.
  5. Generally speaking, access should be ordered as aspect of children's welfare and not as a "consolation prize" for the parents who loses custody unless, it poses some fairly demonstrable risk to the child.
8. Examining the feasibility of invoking the provisions of **Extradition Act, 1962**. Section 20 provides for return of any person accused of or convicted for an extradition offence, from the foreign country to India.

*"Section 20: Conveyance of accused or convicted person surrendered or returned: Any person accused or convicted of an extradition offence who is surrendered or returned by a foreign State may, **under the warrant of arrest for his surrender or return issued in such State or country, be brought into India and delivered to the proper Authority to be dealt with according to law.**"*

## **B. LEGAL INTERVENTIONS – DOMESTIC**

1. **Compulsory Registration of Marriages** – Registration of marriages be made compulsory – the *Supreme Court in Transfer Petition(C) No 291 of 2005 – Smt Seema Vs Aswini Kumar* , vide judgement dated 14<sup>th</sup> February 2006 has issued the directions that the central and State Governments shall take the following steps.

- Marriages of all persons who are citizens of India belonging to various religions should be compulsorily be registered in their respective states.
- The procedure for registration should be notified by the respective states within 3 months.
- Thus it is now incumbent upon the states to provide for registration of marriages which needs to be implemented in case of NRI marriages taking place in India. Also marriage certificates for NRI marriages should be issued in duplicate copies and must carry social security number of the NRI spouse.

2. Enact special Indian enactments to address the various issues that arise in NRI marriages, incorporating progressive principles being evolved international on private international law, as well as through the Indian judgments, especially the issues of validity of the marriage itself and the choice of law of marriage and divorce that would be applicable in case of disputes in such marriages, the

jurisdiction of courts, validity, recognition and enforceability of orders passed by foreign courts, particularly the ex parte divorces or orders of custody or maintenance, powers of Indian courts to restrain legal proceedings of the foreign court and/ or to pass contrary judgments in India in cross-actions; service of notices, orders passed by the Indian Courts, dealing with criminal acts committed by the husband and in-laws like dowry demands, battering and other forms of matrimonial cruelty, fraud or misrepresentation, adultery/ bigamy, forcibly taking away custody of or abduction of children – choice of law/ forum, subjecting offender to trial dealing with absconding, and enforcement of punishment, property rights of the deserted or ill-treated wife and children, especially in ancestral or in-laws' properties in India.

3. It is not uncommon that the parents tend to feign ignorance regarding the whereabouts of their son and disown the son, leaving the woman with no protection or shelter. Therefore it is strongly recommended that the Property laws be amended to allow the NRI wife to claim maintenance and share in parental properties expeditiously as also to claim rights of residence in their properties even if the NRI son has no share in it legally, if the nexus between the parents and the NRI son can be shown and also to invalidate any alienation or change in ownership of family properties after case is filed by the NRI wife.

Provision of section 19 of the Hindu adoption and maintenance Act 1956 could also be looked into to in order to make it applicable in case of deserted daughter in laws.

4. Amend if necessary the Passport Act and add special provision for cancellation of passport of offending NRI spouse. Also include more detailed particulars of spouse in passports apart from attaching her photographs. Also add provisions for requirement of updating of passports of NRI men after marriage to include marital status, to make a stricter offence for fake/false passport

5. Formulate guidelines for the police and law enforcing agencies to deal with cases/complaints arising out of NRI marriages including suppression of marital status by NRI Grooms, by using existing legal mechanisms and procedures such as initiating action under Section 3 and other relevant provisions of the IPC/CRPC such as Section 188 of Cr.P.C, Section 82: Proclamation for person absconding ,CRPC Attachment of properties (if any) in India (Section 83: Attachment of property of person absconding) initiating action against the parents and relatives who refuse to or feign ignorance on the whereabouts of their son, etc. Further in the event of initiation of any criminal proceedings against the accused NRI husband or his relatives the provisions of section 285(3) of the Criminal Procedure Code can be put into action.

The guidelines for initiating action may also include application of Section 18 Hindu Adoption & Maintenance Act, 1956 application for a stay on husband's property – whether in his name or ancestral properties and the right of the women to matrimonial home which includes the right to reside with her in laws.

6. Examine the feasibility to recognize “irretrievable breakdown of marriage “as a ground for divorce subject to safeguards

### **C. OTHER GOVERNMENTAL INTERVENTIONS**

1. “Special Cells” be set up for NRI Marriages, at the state (where the problem is serious) as well at the Central level, having representation from professionals like lawyers and counselors and also having close cooperation with the National/State Women’s Commission , to facilitate flow, legal assistance, and other necessary action on prompt basis from a single window.

2. A **Special Cell** be set up with Indian embassies, especially in target countries, to provide crisis assistance, legal support and information as well as all other support to Indian women abroad as well as in India.

3. There should an online access to information on the laws and procedures and support services in other countries that an NRI wife may need to know. For this relevant laws of these countries will have to be compiled and if necessary translated into at least English, if not in important Indian languages, to begin with

4. Networking and tie-ups with agencies (including the Indian embassies, foreign Government bodies, police and support services) abroad to advice and aid to women who are stranded there or those

who are facing legal actions by husbands there. Especially provide facilities like extended Residence Permits to the NRI wife who wishes to stay on for defending her case or any other valid reason, expeditiously issuing her visa for visiting the other country if served with summons or notice from the courts of that country in any legal action initiated by the NRI husband there.

5. Set up help lines to provide psychosocial counselling to wives and families who have suffered in NRI marriages.

#### **D. SOCIAL AND AWARENESS DRIVES**

1. At civil society and social level, take up community mobilization and capacity building, especially by taking rigorous steps towards three crucial aspects:

- (a) Precautions
- (b) Rights of wives in NRI marriages, under Indian Laws
- (c) Rights of wives in NRI marriages, under Laws of the country where the husband is located

The awareness raising could be undertaken along the following lines:

- ***Laying down Don'ts such as:***
  - Do not take any decision in haste and do not get pressurized to do so for any reason whatsoever
  - Do not finalize matters over long distances, on phone or through e- mails

- Do not blindly trust any bureau, agent, tout or middleman
  - Do not ever agree to forge papers or enter into any fake transactions for any reason or on any pretext
  - Do not fall for any schemes to be able to migrate to another country, or promises for green card, through marriage
  - Do not finalize matters in secrecy – publishing the proposal among the near and dear ones, friends and close relatives could help you in getting vital information which you may not be able to collect otherwise
  - Do not agree to having only a registered marriage or to getting the marriage solemnized in a far off place
  - Do not agree on the marriage taking place in the foreign country
- 
- Laying down the parameters for carrying out verifications on the NRI groom's personal information particulars such as:
    - Marital status: if he is single, divorced, separated
    - Employment details: qualification and post, salary, address of office, employer and their credentials
    - Immigration status, type of visa, eligibility to take spouse to the other country
    - Financial status
    - Properties said to be owned by him in India, residence address
    - Criminal antecedents, if any
    - Family background

- Indicating the documents related to the NRI groom that could be checked for pre marital verification:
  - Visa, passport
  - Voter or alien registration card
  - Social security number
  - Tax returns for the last 3 years
  - Bank account papers
  - Property papers
  
- Indicating the contacts that would be helpful such as:
  - Indian embassy in the foreign country
  - Local Indian associations and network of Indian citizens
  - Local police and other support agencies
- Indicating the minimum formalities that must be observed such as:
  - Compulsory registration of marriage along with social marriage
  - Carrying out all the paperwork for issue of visa and other required formalities at the wife's end and not at husband's end
  - Affidavit from the man stating his present marital status
  - Using Right to Information Act to access the Passport and visa information and status (this should accompany changes in the Passports Act to contain more information in passports)
- Laying down the other Dos such as:
  - Have regular and meaningful communication with the man and his family over a period

- Make sure that the two persons to be married meet personally and interact freely and frankly in comfortable atmosphere to make up their minds, as many times as they feel necessary
- Publicize the marriage and have a social marriage ceremony
- Whom to contact when in trouble
- Try to arrange for an account for the woman in the foreign country for her to be able to withdraw money in emergency
- Equip the woman to take help in emergencies by providing her with contact details like phone numbers and e-mail IDs of police and other state authorities, helplines and legal aid bodies in the foreign country as well as of the Indian embassy there, especially of the Indian welfare officers, if appointed there. It would also help her to know the contact details of social support groups and networks
- Equip the woman with knowledge of the laws of the foreign country and the rights she enjoys there, especially against any form of abuse or neglect, including domestic violence and if she can get residence permit and other protections as a victim of domestic violence or abuse

- Equip the woman with professional/ vocational qualifications and skills to be independent
  - Equip the woman with social skills to be able to develop associations with the neighborhood people and make friends on the foreign country
  - Sensitize, educate and involve media to publicize the issues of NRI marriages, the rights of the wives and children of NRI men, and to take forward the campaign at the social level.
2. Outside India, involve Indian embassies to provide crisis assistance and response as well as all other support through Welfare Officers appointed specifically for this in the embassies, especially in countries with large number of Indians. Make arrangements in the other countries for grant of permanent residence status or in crisis situation extended residence permits to wives in NRI marriages, providing monetary and shelter support, access to police protection to the wife and action against the NRI husband in case of cruelty, and for prompt grant of visa for the wife for defending herself in legal action initiated by NRI husband in the other country.
  3. Within India, provide legal advice and aid to wives in NRI marriages. Also explore tie-ups with agencies in other countries to provide legal advice and aid to women stranded there or while facing legal actions by husbands there.

4. Submission of Affidavit prepared in the foreign country where the NRI resides by the potential NRI husband stating his economic status, marital status and citizenship status with respect to his host country. This would involve the legal system of the host country as well, if the deponent defaults and attract the proceedings under laws for 'perjury' in the host country.