NRI MARRIAGES AND HARASSMENT OF WOMEN: A SOCIO-LEGAL STUDY IN INDIA

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Chapter 9

CONCLUSIONS & SUGGESTIONS

9.1 Conclusions

The present study therefore aimed at studying the pattern of harassment faced by a woman marrying a Non-Resident Indian. The advancement in communication and transportation has made the movement of individuals from one country to another much easier. As a result many man and woman from India with different personal laws have migrated and are migrating to different countries. It is not unusual to come across cases, where a citizen of this country marries here, and either, one or other or both migrate to foreign countries. There are many instances, "where parties having married here have been either domiciled or residing separately in different foreign countries".[1]Over the last few years the population of NRIs have increased in all the countries abroad. This migration, temporary or permanent, has given rise to various kinds of matrimonial disputes which in turn destroys the family and its peace. Such problems in the field of marriage and divorce have been confronted by courts in India many a times.

Conventionally marriages in India were considered to be sacred, made in heaven, while in the West it was considered to be contractual. Earlier with village exogamy in place parents were never in favour of sending their daughters to far off places after marriage. With the coming of globalisation, however, geographical movement across the continent became easy. In the last few decades with a huge migration of individuals and families from certain regions of India to different countries of the world, a new class of people emerged, who being NRIs got started being recognised as affluent, rich, successful and enviable by the locals.[2] In India marriages is closely associated with social status. It is for this reason that the marriage of a woman with an NRI has significant allure among many families in India.

In the eagerness not to let go of the prospective NRI groom, the families do not even

[1] *Y. Narasimha Rao* v. *Y. Venkata Lakshmi*, (1991) 2 SCR 821

[2]National Commission for Women. (2006). Report relating to NRI marriages: Legal and other *interventions on NRI marriages*. New Delhi, India: National Commission for Women. Retrieved on July 8, 2015, from National Commission for Women Web site: http://ncw.nic.in/Book-NRI_Marriage.pdf

take the common cautious that are observed in traditional matchmaking. The anxiety of the parents of these girls to get their daughters settled with an NRI had led to hurried marriages with NRIs without verifying their antecedents.[3] As a result in most of the cases the woman is susceptible to significant abuse and harassment at the hands of the NRI husband and in-laws. Over the years the harassment of Indian women trapped in sham marriages with an NRI are increasingly reported.

Quite often the Indian woman is faced with multiple problems straight away after her marriage with an NRI. The most common problems turn out to be continuous harassment and abuse (physical, mental, sexual, psychological and economic); domestic violence, continuous nagging for dowry demands; and the most rampant is where the NRI husband abandons the women and then manage to obtain an *ex-parte* decree of divorce in foreign jurisdictions either fraudulently or without her knowledge. This trauma just leave these women with a bleak future ahead and continuous deprival of their basic right to live with dignity.

Abandonment of wives and children has grown significantly over the last few decades in the wake of increased mobility of workers from India. The patterns of such abandonment of women often fall into two categories, "(a) women who were never sent visa sponsorship papers by their immigrant spouses; and (b) women who were living abroad with their spouses but were coercively or deceptively taken back to their natal countries and abandoned. Transnational abandonment of Indian women constitutes an emerging face of violence against women. Thus, when an NRI husband abandons his wife either by deception or without any way of securing legal justice, he jeopardises her social, economic and emotional viability which in turn makes such woman's future unstable. It is not surprising, with the increasing Indian diaspora, the number of matrimonial disputes in the NRI marriages have also raised proportionately, in fact much more than proportionately".[4]

Over the last few decades the phenomenon of 'run away NRI grooms' and 'limping NRI marriages' has become a serious socio-legal problem in India. Such fraudulent and non-committal marriages with Non-Resident Indians have become an important matter of concern for the Government of India and other agencies. These marriages

[3]National Commission for Women, *The Nowhere Brides: Report on Problems Relating to NRI Marriages*, (2011) 6

[4] For details see infra chapter 2, page 16

have led to the abandonment of thousands of brides in various States, particularly in Punjab. Not only the girls belonging to rural or semi-urban areas or the girls who are less qualified or totally uneducated are being harassed and abused by their NRI husbands but even well educated girls also become victims of such harassment. It has increasingly been felt by the authorities that it is not only essential to protect the affected Indian women from such fraud, but it is also important to educate them about their rights and defence mechanisms both social and legal so that they do not fall prey to such alliances and are cautious in future.

The laws at present in India, statutory or judge-made are not being emancipatory to the growing trend of abandoned wives. The Sixty-Fifth Law Commission Report also could not improve the situation. Recognition of foreign divorce decrees in India is dealt with under the provisions of Section 13 of the Code of the Civil Procedure 1908 and Section 41 of the Indian Evidence Act. A foreign divorce is also recognised on the basis of existence of a real and substantial connection between the parties and the court which exercised the divorce jurisdiction.

The Supreme Court in *Y. Narasimha Rao* v. *Y. Venkata Lakshmi*,[5] positioned itself to deal with the rules of private international law pertaining to recognition of foreign divorce decrees in India. The court in the present case being well aware of the primitive and least developed conditions of the rules of private international law in India even aptly observed that, "we cannot loose sight of the fact that today more that even in the past, the need for definitive rules for recognition of foreign judgements in personal and family matters, and particularly in matrimonial disputes, has surged to the surface. A large number of foreign decrees in matrimonial matters is becoming order of the day. A time has come to ensure certainty in the recognition of the foreign judgements in these matters".

Thus the judicial initiative to provide the necessary changes to the existing situation in the form of "minimum rules of guidance for securing certainty" is indeed a welcome move. The Apex court without waiting for the legislative beginning has rendered these guidelines within the framework of the present statutory provisions through a rational and flexible interpretation to achieve the purpose. The court has rightly pointed out that the provision of Section 13 of the Code of Civil Procedure, 1908 are

[5] (1991) 2 SCR 821

capable of appropriate interpretation "to secure the required certainty in the sphere of this branch of law in conformity with public policy, justice, equity, and the rules so evolved will protect the sanctity of the institution of marriage and unity of family which are the cornerstone of our societal life".[6]

However, even after various recommendations from the Law Commission of India, till date the legislature has not enacted rules of Private International Law in this area. Thus in the absence such initiatives, the judiciary often takes inspiration from English rules and fall back upon the English precedents. Aside the court's appeal to the legislature to come forward with suitable enactments setting out specific guidelines to regulate matrimonial relationships where foreign elements are present, the court, in the absence of such legislative initiative, has laid down the following legal norms for the recognition and enforcement of foreign matrimonial decrees.

The ratio employed by lordship Justice Sawant in *Y. Narasimha Rao* v. *Y. Venkata Lakshmi* that, "the jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married". The alternative jurisdiction must be based on consent and voluntary submission by the parties concerned. The aforesaid rule with its stated exceptions has the merit of being just and equitable. It does no injustice to any of the parties. The parties do and ought to know their rights and obligations when they marry under a particular law. They cannot be heard to make a grievance about it later or allowed to bypass it by subterfuges as it happens in majority of NRI marriages.

The rule has an advantage of rescuing the institution of marriage from the uncertain maze of the rules of Private International Law of the different countries with regard to jurisdiction and merits based variously on domicile, nationality, residence-permanent or temporary or ad-hoc forum, proper law etc and ensuring certainty in the most vital field of national life and conformity with public policy. The rule further takes into account of the needs of modern life and makes due allowance to accommodate them. Above all, it gives protection to woman the most vulnerable section of the society. In particular it frees them from the bondage of the tyrannical rule that wife's domicile follows that of her husband and that it is the husband's domicilary law which determines the jurisdiction and judges the merits of the case.

[6] *Ibid*

The Supreme court in yet another case *Neerja Saraph* v. *Jayant Saraph*,[7] repeated its concern for the abandoned Indian wives of NRI husbands whose very survival is threatened for lack of means of livelihood, not to speak of their loss of dignity and irreparable sense of shame, aggravated further by the societal apathy to their predicament, and pleaded for remedial reforms akin to the legislative measures. The lordship Mr. Justice Sahai, in the present case set down three recommendations, urging the Indian legislature to give them a thoughtful consideration: "No marriage between a NRI and an Indian woman which has taken place in India may be annulled by a foreign court; provision amy be made for adequate alimony to the wife in the property of the husband both in India and abroad; the decree granted by Indian courts may be made executable in foreign courts both on principle of comity and by entering into reciprocal agreements like Section 44A of the Code of Civil Procedure which makes a foreign decree executable as it would have been a decree passed by that court".

In *Satya* v. *Teja Singh*,[8] the Supreme Court speaking through Justice Chandrachud made a fervent appeal to the Indian legislature to come forward with a law that would avoid flagrant injustice to the Indian wives whose NRI husbands sought and obtained *ex-parte* decree of divorce. Hon'ble Justice Chandrachud added "our Legislature ought to find a solution to such schizoid situations as the British Parliament has to a large extent done by passing the Recognition of Divorces and Legal Separations Act, 1971. Perhaps, the International Hague Convention of 1970 which contains a comprehensive scheme for reliving the confusion caused by different systems of conflict of laws may serve as a model. But any such law, shall have to provide for the non-recognition of foreign decrees procured by fraud bearing on jurisdictional facts as also for the non-recognition of decrees the recognition of which would be contrary to our public policy. Until then the courts shall have to exercise a residual discretion to avoid flagrant injustice for, no rule of private international law could compel a wife to submit to a decree procured by the husband by trickery. Such decrees offend against our notions of substantial justice".[9]

Thus in the absence of any law in India with respect to matrimonial issues that arise

[7](1994) 6 SCC 461
[8]AIR 1975 SC 105
[9] *Ibid*

out of NRI marriages, the judiciary has done a commendable job in order to mete out justice to these women. However, even doing so they have not been uniform in practice with the result that we have some conflicting decisions in this area. There is a strong lobbying going on to sign the Hague Convention Treaties. The Law Commission of India has also recommended joining the Hague Convention on family law and Private International Law. It is believed that the possibility of limping marriages would be reduced if India becomes a party to the Hague Conventions. Time and again the National Commission for Women and the judiciary have also expressed the desire that India should become a party to the Hague Conventions.

We must now consider the question as to whether India should accede to the Hague Conventions. The answer to this question is not easy because firstly, the private international rules are not codified in India. Secondly, due to the existence of different personal laws, no uniform rule can be laid down for all the citizens.Thirdly, the law concerning personal and family affairs is greatly influenced by social, religious considerations and public policy. Fourthly, as with other countries India cannot afford to sacrifice its internal unity, stability and tranquility for he sake of uniformity of rules and comity of nations. Fifthly, while international unification of private international law rules relating to recognition of validity of foreign marriages and foreign decrees of divorce or legal separation has many advantages, there may be situations where it would be quite unjust and inappropriate for the law of this country to be bound by a determination of the law of another country as to a person's marital status. Sixthly, since there are important differences in the substantive and private international law rules of countries throughout the world, however much our legislature and judges may wish to overcome these differences, they cannot do so because they do not have any control over the approach to be taken in other countries. Finally, the Hague Conventions went only a short distance towards removing the differences among states on the subject. They have certainly paved the way for solution of some of the difficulties but globalisation and greater mobility of the world population continues to generate fresh problems.

Yet there much to be said in favour of development of our private international law rules on the lines of Hague Conventions. It is an undisputed fact that the rules of private international law on marriage and divorce are not well developed and the courts in this country have so far tried to follow in these matters the English rules of

private international law whether common law rules or statutory law. But the sheepish imitation of the English rules of private international law can hardly be an appropriate response to legal conundrums in conflict of law situations that our courts might be required to solve in the era of globalisation. As the apex court has emphasised, "today more than even in the past, the need for definitive rules for recognition of foreign judgements in personal and family matters and particularly in matrimonial disputes has surged to the surface". True, the courts in India have tried to evolve some rules to deal wight he cases of foreign marriage and foreign decrees of divorce and legal separations. But judicial activism displayed by the judiciary in this area can hardly be a substitute for a well thought out legislative measure and policy response.

In addition to the above stated reasons, it may be argued that formulating private international law rules for marriage and recognition of divorce decree in conformity with the provisions of the Hague Conventions will prevent the incidence of limping marriages. Leflar while referring to the position in the United States of America said, "It would be messy to have a couple married in one state and not in another, or to be uncertain of their status pending litigation to determine if they are married or unmarried. A mobile society such as ours needs clear and uniform answers to validity of marriages".

This observation is equally relevant in Indian context Sujata V. Manohar, former judge of the Supreme Court observed that, "it is necessary that we have internationally accepted principles cutting across cultural values for determining validity of marriages, and certain universally accepted grounds on which parties can obtain divorce which will be universally recognised, crosscutting jurisdictional issues. One possible way to achieve this goal is to accede to the Hague Conventions. Doing so may also help this country in upholding the favour *matrimonii principle.*

Thus, our law should adopt an approach, which would harmonise with and not frustrate the legitimate expectations of the parties to a marriage. If a particular legal rule applied to them in circumstances where they could not prudently have anticipated this, there are grounds for doubting the appropriateness of the outcome. In matters of such practical importance as marriage and divorce there is a clear benefit in private international law rules being certain and easy to administer. As the Irish Law Reform Commission aptly points out that, "if the private international rules relating to

marriage are obscure and complicated, this may result in a considerable amount of practical difficulty for all concerned". Therefore, these rules should not only be certain, practical and predictable but they should seem appropriate to an objective bystander in the circumstances of the case.

Notwithstanding the above actual or potential advantages of accession to the Hague Conventions, India cannot afford to accept the Hague regime if the latter is not in harmony with its standards of morality and its conceptions of marriage and divorce. Like other countries India too has a strong interest in specifying the formal requirements of marriage celebrated within its jurisdiction. It also needs a certain degree of freedom of choice to withhold recognition of the validity of a foreign marriage which offends its public policy or which is obnoxious to the *lex fori*. Similarly, it will not recognise foreign decrees of divorce, especially those involving its own citizens or domiciled, which have been obtained by fraud or without giving adequate notice and opportunity to the defendants to defend their case.

Thus, the million dollar question is whether the Hague Conventions leave the needed space for India to workout its conflict rules on the lines of these Conventions without offending its culture, tradition and social policy and whether they allow it to remove or mitigate the evil consequences of solemnisation of marriage involving its citizens under a foreign law or of grant of a decree of divorce or legal separation by a feign court under the foreign law.

In this backdrop looking at the Hague Convention the initial reaction is that it should not be difficult for India to accede to this Convention. The Hague Convention, it should be noted, places emphasis on jurisdiction rather than upon choice of law. The inherent flexibility of the Convention along with reservations and limitations contained therein should enable a contracting State to modify the application of its provisions either by ignoring foreign divorces or legal separations which offend its public policy or by utilising the reservations provided under the Convention. It is true that as a compromise solution the Hague Convention is hardly in a position to address all the concerns of a contracting state and that, too, the way it desires, but it has undoubtedly paved the way for solution of some of the difficulties that come in the way of the recognition of foreign decrees of divorces or legal separations.

India lays emphasis on several policy goals viz. sanctity of the institution of marriage,

justice to both spouses, certainty in the law, needs of the modern life protection of the interests of the women who very often become victims of a foreign decree of divorce. Since the Hague Convention also seeks to secure these policy goals in a varying degree, it is submitted that India can use it as a useful framework for the development of its private international law rules. It should be recognised that a wife abandoned by her husband not only needs a forum which is the most appropriate for her to sue but also certainty of the execution of a divorce she obtains on internationally accepted grounds. In the past whenever a wife approached an Indian court to seek justice against an *ex parte* foreign decree of divorce and the court granted her an appropriate relief maintenance or restitution of conjugal rights, it generally failed to serve her purpose due to serious difficulties in execution of the decree. Since the Hague Convention offers some solution in this regard India should consider the desirability of its accession.

It is true that in order to become a party to the Hague Convention, the State shall also have to accept certain rules which are not easily palatable to it, but this is not unusual in any global regime. The Hague Convention merely implies toleration by participating states of certain grounds of jurisdiction adopted by other States. So an answer to the question whether India should accede to the Hague Convention on the Recognition of Divorces and Legal Separations depends on whether India is willing and prepared for such toleration in view of advantages that this international legislation offers to a contracting State.

To conclude, there would be distinct advantages for India to join some, if not all, the Conventions discussed above and also to take an active part in the ongoing negotiations on new global instruments. By becoming a part of the various networks established by 35 treaties is bound to benefit not only economic and commercial interests of India and Indian communities all over the world but also to facilitate the recognition of validity of marriages of foreign decree of divorce and decision relating to maintenance obligations. A cautious and gradual approach reflecting a realistic and pragmatic policy should guide us in this respect.

In the present thesis an empirical study was conducted which was based on a structured questionnaire designed to assess the perception and experience of selected respondents with regard to marriages with an NRI. For this purpose, 50 respondents

who have undergone harassment due to *ex-parte* decree of divorce being fraudulently obtained by their NRI husbandsin 3 districts of Punjab were interviewed at length about various issues. The problems with regard to NRI marriages is well known and is often highlighted and reported in social media and newspapers. The field survey contributed significantly in understanding the prevailing family, social, cultural and other factors in the context of NRI marriages.

- "The situation is alarming and pitiable as the victims are the young girls whose entire life is spoiled with this one action. This is mainly due to the fact that many a times families in Punjab do not want to let this opportunity of marrying their daughter to an NRI go off their hands. Also it was found during the study that most of the girls are not in a position to be economically independent. It is disheartening to see that a major chunk of the respondents i.e. 56% have been abandoned at such a young age(between 18-25years) who are still fighting for their rights.

- It is not that only girls from rural areas who have low level education fall prey to sham marriages with an NRI. During the study it was found that girls from urban and semi-urban areas who are well educated also get trapped in such alliances. Thus it is a sad state of affair that although nearly half of the respondents have a good educational level i.e. upto graduation level but still these women fall prey to fraudulent NRI marriages. It was further admitted by the respondents that in most of the cases the girls themselves like to get married to an NRI due to the peer pressure. They dream of freedom and open society in other countries. They believe that the easy way for their dream to come true is to marry an NRI. In other cases the daughters just accept the wishes of their parents.

- About 54% of the respondents belong to the house wife category. Some of them reported that they discontinued their education when they got married. Further, once they were abandoned they started their education mainly for obtaining job and in turn economic independency. Also it was found during the study that most of the girls are not in a position to be economically independent. It is a pitiable situation that more than 50 percent of the respondents are dependent on their parents and have no independent source of

income.

- The majority i.e. 31 out of 50 respondents confirmed that their NRI husbands belong to a lower profile of service category. Many respondents did not have any idea of their husband's profession. 24 percent of the total respondents do not have any clue about the profession of their NRI husbands. The prime reason being these respondents never accompanied their husbands abroad and the information provided by the grooms family proved to be false. As expected, in Punjab at no stage, do parents of the girl before marrying her off made thorough enquiries about the NRI groom, his previous marital status, profession, work place, income etc. The parents spend lakhs of rupees on marriage and a huge amount is paid as dowry and get their daughters married in good faith with NRI boys. The girls also dream of a peaceful conjugal life, but immediately after marriage their dreams are shattered.

- Faith in mediators, family relatives or friends is the common mode for the proposal of such alliances. In Punjab friends and relatives also play a major role in settlement of marriage that too in such a hurry that girl's parents are not left with any option to make inquiry about the bridegroom. They promise affluent and comfortable life to the girls abroad. Parents of the girls do away with the formalities like verifying the credentials of the prospective bridegroom or taking the precaution of getting the marriage registered. The motives ofmarrying off a girl to a NRI boy are numerous. Marriage is indeed considered a favourite ticket to settle abroad not only for the girl herself, but also for the rest of her family members. The increasing desperation of rural Punjabis to send their kith and kin abroad has made it much easier for unscrupulous men to seize such opportunity. It is the greed of parents to get their daughters settled abroad which ends up with their getting trapped in fraudulent and sham NRI marriages.

- Regarding the enquiry about the bridegroom to find out his status, only 26 percent of the respondents mentioned that their parents made an inquiry before marriage. However majority of them i.e. 74 percent of the respondents reported that there were no proper enquiry about the groom and his employment and other status before marriage.

- In the eagerness not to let go of such a match , the parents of the girls do away with the formalities like verifying the credentials of the prospective bridegroom or taking the precaution of getting the marriage registered. They even ignore the plain and simple fact that just logistically for a woman to negotiate her way to justice across thousands of miles would be a thoroughly exasperating experience.

- It is sad to note that nearly 76 percent of the marriages of the respondents are not registered. The reason being ignorance regarding the importance of registration of marriage, lack of time with the NRI husband, second marriage of husband which is not legally valid etc. Those who have not registered their marriage do have the proof of marriage in the form of photographs and video film of the marriage ceremony. Since abandonment and divorces are on the increase among the NRI marriages, one should really consider the importance of Registration of marriage. Due to the lack of registration of marriages most of the victims of abandonment could not make any legal claim for maintenance from their husbands.

- Usually the NRI groom is on a short visit to India. In majority of the NRI marriages husbands leave the country within a short period after marriage and the spouses hardly get time to know each other. More than one-third of the respondent shared that they were abandoned even before being taken by her husband to the foreign country. 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 were abandoned. The husband never called or wrote and never came back again, they never heard from him again. In Punjab, these failed transnational marriages are increasingly referred to as “holiday marriages” and deserted wives are called “holiday wives”. This leaves a long lasting effect on the girl’s honour and her family prestige and the family becomes a victim of social mockery.

- Only 12 respondents out of 50 had made visits abroad. However, the respondents who went abroad from Punjab stated that they had their stay only up to six months only in exceptional cases they had a stay of above one year.

All those who visited their husbands abroad shared that on their visit to their husband's home in the other country they were harassed, brutally battered, assaulted, abused both mentally and physically, malnourished, confined and ill-treated by him in several other ways.

- After enjoying hospitality, the NRI groom normally vanished assuring his spouse that he would sponsor her later, a promise that was never fulfilled. If an NRI husband somehow happened to send sponsorship to his wife, it was withdrawn at the last moment on some pretext thus disabling her from getting immigration. This again became the ground for NRI husbands to demand heavy cash from girl's parents to send sponsorship papers for their wives. If the wife by any chance succeeded in joining her husband abroad, her stay was either made miserable there or her stay was will-fully cut short. She was brought back home to India on some pretext, and deprived of her passport and other documents, leaving her as a helpless victim. She was badly abused by her in laws and became vulnerable to sexual harassment in the private sphere of her in- laws home.

- About 72 percent of the respondents were staying at their parental home. In majority of the cases their parents are the real supporter for them for their livelihood as well as providing moral support. Nearly 20 percent of the respondents were living with their in-laws. It was shared by the respondents that having spent a hefty amount at the time of marriage, their parents were not in a position to maintain the abandoned girl anymore. So these women decided to stay with in-laws as they did not have any other alternative. They were given the space either in the store room or cattle shed but not in the main house. After a long struggle they were able to manage to get hold of some space there. They were staying there to get justice to get share from their husband's property, to get maintenance, to show them their right in in- laws house. As mentioned by them they were living under continuous threat from their in- laws. They experience violence in the form of beatings, sexual harassment by male members, confined in one room only, not allowed to move out, no contact with any neighbours or outsiders or relatives from parental side. Despite all this these women continue to live in such misery.

- A number of women had received ex parté divorce, many others had lost touch with their husbands who had deliberately disappeared from their lives. This was particularly problematic for women who had decided to seek maintenance, child support, or/and sue their husbands for divorce in Indian courts. Without contact addresses, they could not hope to deliver court notices to the respondents. Many of these women felt that without any contact with their husbands, financial support, and social standing, they were practically condemned to exist in a state of limbo.

- Often they received incorrect information about foreign laws and the legal system; misleading assurances from attorneys; and erroneous advice that would land the women in further difficulties. For example, many women said that their attorneys advised them to ignore notices from U.S. courts in the belief that the divorce proceedings could not go forward without their consent. The U.S. courts tend to ignore decisions by Indian courts, thus thwarting any possibility of executing maintenance and child support decisions in the U.S. Even bench warrants are impotent against NRIs, particularly if the men decide not to return to India, since these tend to be non-implementable in the U.S.Thus, the whole legal process in India is rendered useless for these abandoned women.

- They had not known how to counter the pressures, violence, or at least gather resources for their survival. In almost all the cases when these women came to know about availability of help and decided to take actions, often it was too late for them, as the divorces might have happened more than a year ago and either the NRI men had remarried or moved away from their last known addresses. Thus, these women ended up with virtually nothing besides them apart from a few shattered years of their lives, torture and harassment and a bleak future ahead".[10]

In India no specific statutory provision on the recognition of foreign judgements in matrimonial matters has been enacted though the Law Commission of India proposed nearly forty years ago that a law be enacted on the subject. The subject of when courts in one country will recognise and enforce the judgement of a foreign court and the

[10] For details see infra chapter 8

extent and scope of such recognition and enforcement is extensive. After the decision of the Supreme Court in Satya v. Teja Singh, the Government of India requested the Law Commission of India to look into the problems created in recognition of foreign divorces in India. This led the Law Commission, in 1976, to submit its sixty-fifth report.

After a detailed survey of the problem, and the solution adopted in England, and the solution recommended in the Hague Convention, the Law Commission of India prepared a draft bill on the subject. The principal features of the Recognition of Foreign Divorce and Legal Separation Bill 1976 are:

1. A divorce or order of legal separation passed abroad should be recognised if at the time of the institution of proceedings in a country, either spouse was habitually resident in that country or either spouse was a national of that country or both souses were domiciled in that country. For determining the domicile of the wife her domicile of dependence is to be ignored.

2. If cross proceedings have been filed, the order would be recognised if the tests for jurisdiction are satisfied in either the original or the cross proceedings.

3. Recognition will be refused if:

    a. under the law of India, including its rules of private international law, there was no valid or subsisting marriage between the parties;

    b. the order was obtained by one spouse without taking such steps relating to giving notice to the other as, having regard to the nature of the proceedings and the circumstances of the case should be taken into account;

    c. reasonable opportunity to take part in the proceedings had been denied to a party;

    d. the order has been obtained by fraud;

    e. the recognition of the order would be manifestly contrary to public policy.

4. Where a foreign divorce or judicial separation order is recognised under the Bill, and whether such order provides for ancillary matters such as

maintenance of either party, custody of children, a court in India competent to grant divorce to a party shall be entitled to pass such ancillary orders on the application of either party.

Consequential amendments were proposed to section 13 of the Code of Civil Procedure, 1908 and section 41 of the Indian Evidence Act, 1872 to provide that those would not apply in matters covered by the proposed Act.

However, nothing came of the Report and no law on the subject has been enacted by Parliament till date.

9.2 Suggestions and Recommendations

Both primary as well as secondary data reveals that the problem of harassment of Indian women due to ex-parts decree of divorce being fraudulently obtained by their NRI husbands is a very serious issue which requires to be attended to. Following suggestions are being made in keeping with the opinion of various government agencies, National Commission for Women, Law Commission of India and other legal luminaries and specialists of Private International Law.

9.2.1 Suggestions for Legislature

I. Acceding to Hague Conventions

India should sign the Hague Conventions. In particular the following conventions which are directly related to the issue of NRI marriages. The harassment of women due to *ex-parte* decree of divorce obtained by their NRI husbands is a major cause of concern at the present. Thus the Government of India must seriously think about signing the Hague Convention on the Recognition of Divorces and Legal Separations, 1970. The Hague Convention is concerned only with the recognition of foreign decrees and places emphasis on jurisdiction rather than upon choice of law. The basic techniques applied in the Convention is to require the contracting state to accord recognition to a foreign decree of divorce or legal separation if the granting state had complied with the tests of jurisdiction laid down in Article 2.

The jurisdictional rules that the courts in India have developed also give due weight to the domicile or habitual residence of the respondent. But, there is a requirement that matrimonial relief is granted on a ground available under the law under which parties

were married. The Indian courts are also willing to recognise a foreign decree of divorce or legal separation granted by a foreign court if the respondent had voluntarily and effectively submitted to the jurisdiction of forum and contested the claim which was based on a ground available under the matrimonial law of the parties or where the respondent had consented to the ground of relief although the jurisdiction of the forum was not in accordance with the provisions of the matrimonial law of the parties. These rules have been evolved mainly in the context of cases in which India was the place of celebration and parties involved were Indian nationals or domiciled. Most of these concerns are also addressed in the Hague Convention.

India lays emphasis on several policy goals viz. sanctity of the institution of marriage, justice to both spouses, certainty in the law, needs of the modern life protection of the interests of the women who very often become victims of a foreign decree of divorce. Since the Hague Convention also seeks to secure these policy goals in a varying degree, it is submitted that India can use it as a useful framework for the development of its private international law rules. It should be recognised that a wife abandoned by her husband not only needs a forum which is the most appropriate for her to sue but also certainty of the execution of a divorce she obtains on internationally accepted grounds. In the past whenever a wife approached an Indian court to seek justice against an *ex- parte* foreign decree of divorce and the court granted her an appropriate relief maintenance or restitution of conjugal rights, it generally failed to serve her purpose due to serious difficulties in execution of the decree. Since the Hague Convention offers some solution in this regard India should consider the desirability of its accession. Thus to fight cases against NRIs in other countries, Indian Government must become a member of the Hague Conference on Private International Law to evolve our own parallel laws based on our national interests and state policy.

II. Amendment of Existing Legislations

Amendments to the Hindu Marriage Act, 1955

The jurisdictional rules under section 19 of the Hindu Marriage Act, 1955 and section 31 of the Special Marriage Act, 1954 should be suitably amended to provide for domicile of either party or habitual residence of either party as basis of jurisdiction of the courts in this country in order to enable the latter to deal with conflictual cases. As

Parliament has recently enacted a citizenship law to confer nationality on people of Indian origin of certain countries, nationality may also be recognised as a connecting factor in the matter of assumption of jurisdiction by the Indian courts. These changes would not only enable the courts to entertain a petition in a matrimonial petition in respect of which they presently do not have jurisdiction under the existing law but would also bring the existing law closer to the Hague Convention on the Recognition of Divorces and Legal Separations, 1970.

The Legislature must examine the feasibility of irretrievable breakdown of marriage as an additional ground of divorce subject to the safeguards as recommended by the Law Commission of India. Thus, amendments must be made to the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. The addition of this ground would provide the NRI spouses a judicial forum in India, where in they can seek a remedy in India itself rather than importing foreign judgements. It will also give a chance to the Indian womento contest the case on convenient and equitable terms in Indian courts and which would further save her from the expenses of litigation in foreign jurisdictions.

The states with high ratio of NRI population must strongly moot the need for the introduction of breakdown as an additional ground of divorce in the existing matrimonial legislations. The Law Commission of India in its 217th Report has recommended the incorporation of “irretrievable breakdown of marriage” as a ground for divorce in the said Acts. Such a step would also help in dealing with the problem of rising limping marriages.

Amendments to the Foreign Marriage Act, 1969

The Act should provide for, “a wide range of remedies, not just limited to divorce, judicial separation, maintenance, alimony and custody. It must also entitle the wife to a half share in the husband’s share of the immovable property acquired during the period of marriage, and also a half share in the movable properties and damages and compensation for harassment, abuse and abandonment. Access to these reliefs by the wife should not be dependent on her permanent or habitual residence or domicile. Currently, women may avail of remedies under the Foreign Marriage Act only if they have resided in India for three years preceding the petition for relief”. Thus it is suggested that this provision in Foreign Marriage Act must be amended in line with

the section 125, CrPC and the Protection of Women from Domestic Violence Act, where jurisdiction vests in a court on the basis of the present residence of the woman. for the benefit of women married to NRIs,

Amendment to the Guardian and Wards Act, 1890

In most of the cases women in NRI marriages are, "denied custody of their children, since their departure from the foreign country incapacitate them from participating in the custody proceedings abroad. When a woman assumes custody of her children by bringing them to India, she is construed as a kidnapper. A possible solution to remedy this situation would be making an amendment to the Guardian and Wards Act. Section 9 of the Act, which deals with jurisdiction of the court to entertain application states that the District Court will have jurisdiction to entertain an application for guardianship if the minor ordinarily resides within the jurisdiction of the District Court. In place of ordinary resident the word resident for the time being should be substituted". This amendment will provide jurisdictional authority to the courts in India. Further it will enable the courts to decide efficiently whether the child should stay with the mother or to be returned to a foreign country where the NRI man resides.

Amendment to the Passport Act, 1967

The Passport Act, 1967 should be amended and a special provision for cancellation of passport of offending NRI spouse should be added. There should be a provision which asks for the detailed particulars of the NRI spouse in his passport apart from his photographs. Also, the passports of NRIs must be updated after their marriage which would include their marital status. Strict punishment should be prescribed by law for fake and false passport affidavits or statements given by the NRIs. There is a valuable proposal from the Government of India to issue a dual passport for women marrying NRI husbands and to keep a copy with their parents in India for help in times of emergency. This would address those cases where the NRI husband forcibly takes away the passport of the bride and then abandon her leaving two possibilities for her either to be deported back to India or if she is India then she would loose the opportunity to contest the divorce proceedings initiated by him in foreign courts.

The provisions of S.10(3)(e) of the Passport Act, 1967 should be actively enforced. It

provides that, “the passport authority may impound or cause to be impounded or revoke a passport or travel document, if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India”. Therefore the authorities need to be more active in such matters and if need comes must use their discretion to impound the passport of the NRI under this section by acting immediately if it is found that the NRI husband is not cooperating by presenting himself before the courts in India.

Amendment in the Procedure of Service of Summons

The difficulty in serving the summons to NRI spouses or in-laws, is the major obstacle faced by a woman in claiming matrimonial relief. It is suggested that there must be some provisions to issue lookout notices for such NRI men, against whom complaints have been registered. National Legal Services Authority may take up the issue of service of summons or notices through e-mails with the concerned department. This would ensure that the abandoned women in India would get the information about the suit filed by the NRI husband. In a way this step would put a serious check where the NRI husband often give the false addresses of the abandoned women and the summons never reaches to her. As a result the NRI husband gets away obtaining the *ex-parte* decree of divorce.

It should be made mandatory that all summons issued by foreign courts in matrimonial and ancillary litigation pertaining to NRIs should be first presented to the Registrar General of the High Court or the District Judge, as the case may be, within whose jurisdiction the respondent spouse is residing. This practice would automatically bring down the number of *ex-parte* decree of divorceagainst the abandoned women and the ancillary trauma and harassment which they have to go through.

The service of summons, along with the report of the process server should be accompanied by an affidavit of service or attempted service of the counsel or lawyer instructed by the foreign spouse residing overseas. Also, after the service has been effected, the summons along with the report of the process server and affidavit of lawyer acting on behalf of the foreign spouse, should be sent back only by the Registrar General of the High Court or the District Judge as the case may be. This official communication, should be sent with a letter addressed directly to the foreign

family court, also stating that mere serving foreign divorce summons on the spouse residing in India will not constitute a valid divorce in terms of Indian law. This is a major lacuna which needs to be addressed by providing sufficient safeguards to the wife abandoned by the NRI husband. Obviously, such a deterrent will refrain foreign courts from passing *ex-parte* divorce decrees.

Amendment to the Civil Procedure Code, 1908

The law relating to the recognition of foreign decrees of divorce or legal separations in India, should be developed on the lines of the Hague Convention. In this regard feasibility of inserting a new provision Section 13A on the recognition of foreign decrees of divorce or legal separation in the Code of Cvil Procedure, 1908 may be explored. The proposed section should set out the condition for recognition of such decrees, for the purpose the jurisdictional requirements of the foreign courts as laid down in the *Narasimha Rao* case may be taken as a starting point for the eventual formulation of the provision.

The proposed section should also set out the grounds for refusal of recognition of foreign decrees of divorce etc. Such grounds may include:(a) If reasonable steps were not taken to give notice of the proceedings to the other party or the other party was not given a reasonable opportunity of taking part in the proceedings;(b) where the decree of divorce or legal separation was obtained by fraud;(c) cases where the recognition of the decree would be manifestly contrary to public policy;(d) if the decree is found to be incompatible with a previous decision determining the matrimonial status of the spouses rendered by an Indian court;(e) In the case of a divorce or legal separation between the spouses who, at the time of divorce or legal separation, were Indian nationals and a law other than indicated by the rules of private international law of this country was applied and the results so reached was different from one which would have been reached by applying the law indicated by those rules.

As the grounds are tentative, other grounds may also be included in this list. If for any reason the development of the law is left to be dealt by case law, the Supreme Court could do so by incorporating the relevant provisions of the Hague Convention as it has already done so in respect of human rights treatise. Such an amendment will be effective on keeping a check on the trend of obtaining *ex-parte* decree of divorce

fraudulently by NRI husbands.

III. Need for Compulsory Registration of NRI Marriages

There is a need for compulsory registration of NRI marriages. Such a step will be a complete legal proof of a valid marriage and will be a deterrent for bigamous marriages on part of NRIs. There should be provisions which provides for inclusion of the social security number of the NRI and also his passport number and other brief relevant details must be furnished and mentioned on the marriage certificate. As in most of the NRI marriages the abandoned women usually have no clue of the whereabouts of their NRI husbands, such a step providing for compulsory registration would tab the situation. Certain schemes initiated by the Government of India, which provides that the wife's passport should mandatorily have a certificate of marriage will provide a documentary evidence on her part as proof of her marriage on being abandoned. The state governments can appoint some nodal officers in every district, who may provide relevant information of the prospective NRI grooms to the girls' families so that the chances of getting duped are lessened.

States like Punjab which witness large scale migration to foreign countries and where the problem of NRI marriages is acute must make provisions which provides for compulsory registration of marriages. Simultaneously the authorities in the state of Punjab should liase with Indian embassies abroad, must collect complete information about the prospective NRI groom. Such steps will keep a strong check on the malpractices of NRIs, especially it will restrain them from committing a bigamous marriage with an Indian woman.

IV. Creation of Family Courts and Fast Track Courts

Fast track courts or Family courts exclusively for matrimonial issues arising out of NRI marriages should be set up and judicial process should further be simplified to expedite the delivery of judgements. As per 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". Whenever, one of the spouse is an NRI, such courts would be a better and efficient platform to settle the common disputes such as maintenance issues, disputes related to custody of the child and the settlement of matrimonial property which often arises in NRI marriages. Such

issues need a speedy justice to be delivered to the victims and such fast track courts or family courts would assure that their rights are given to them.

Setting up of Family Courts in Punjab where the problem is witnessed on a large scale, has been urged at various forums as these courts are better equipped to handle the issues arising out of NRI marriages. In Punjab the first NRI Court at Jalandhar has already been established and the process of setting up of Family Courts in Punjab at other places has also been started. The state government must ensure that it is being done expeditiously because the rights and dignity of many women are at stake.

V. Comprehensive Legislation on NRI Marriages

There is a need for comprehensive legislation to meet the peculiar legal necessity of matrimonial disputes in NRI marriages about validity of marriage, divorce, maintenance and enforcement of foreign judicial orders in India and implementation of Indian judicial orders by the foreign courts.

It is therefore suggested that a new comprehensive legislation on NRI marriages should be enacted to address the various issues that arise in NRI marriages. Such a comprehensive legislation would ensure and provide legal remedies to the oppressed Indian women. Such a legislation should be in consonance with the progressive principles laid down in the Hague Conventions. The desired legislation should specifically cover issues like enforceability of foreign court orders in India, issues related to jurisdiction of courts, dilutes related to custody of the child etc which are most commonly witnessed in disputes related to NRI marriages.

The proposed law should provide for preventive mechanism to save an India woman from being tricked upon a sham decree of divorce obtained by the NRI husband by artificially procuring jurisdiction of the foreign court on the basis of his residence and without effectively serving the summons on the wife in India. The proposed law should clearly state that a divorce decree obtained by the NRI husband will not be enforced within India if the decree was obtained not in accordance with the provisions of the proposed law governing the legitimacy of the NRI marriages.

It is strongly suggested that, “deliberate abandonment by NRI husbands that deprives women of financial and social rights must be included in the definition of domestic violence. As we understand it now, domestic violence is not necessarily about

physical and sexual abuse only, but about the perpetrator having power and control over the victim and rendering her helpless in relation to him. Abandonment of wives by their NRI husbands clearly falls within this domain. Abandonment of wives in India while their husbands reside in different jurisdictions, effectively erects barriers around women to prevent them from accessing legal and financial justice". Thus, the definition of domestic violence be re-conceptualised to accommodate such type of harassment of women.

Thus there is a need for a separate legislation on NRI marriages to address various issues as the existing family law legislations are inefficient to deal with the issues arising out of NRI marriages and often fail to provide the oppressed women a respectable solution to their problems. Such a legislation can serve as a comprehensive ready reference for foreign courts deciding litigation between an NRI and an Indian woman. Also this should help resolve the dilemma of limping marriages, economic well being of the abandoned women and their children will be looked into and it would prevent fraudulent practices on the part of NRIs in the future by prescribing deterrent penalties. Formulation of new laws which are in conformity with the Hague Conventions will help achieve the purpose of marriage related Hague Conventions.

Therefore the most appropriate course will be to formulate a separate and self contained legislation which would deal with recognition of foreign decrees of divorce in India. As said by Lord Penzeance in *Wilson* v. *Wilson* it is just and reasonable that the matrimonial matters must be decided in accordance with the laws of the community to which the parties belong and must be dealt by the courts which can administer such laws. Adherence to this principle would no doubt tend to decrease the number of limping NRI marriages.

9.2.2 Suggestions for the Government

I. Conciliation and Legal Assistance Schemes for Oppressed Women

Lack of resources and access to legal recourse in a foreign country is the biggest hurdle faced by the oppressed Indian women in her fight for her interest. In majority of the cases the oppressed women had to accept the *ex-parte* decree of divorce because of the inability on their part to appear before the foreign court. It is suggested

that the Government of India should initiate a scheme, wherein a pool of lawyers should take on such cases pro bono or for a nominal fee. Certain amount may be paid to these lawyers out of the funds of the Government.

After due deliberation of the issues involved in matrimonial alliances between an Indian woman and NRIs, it is urged that a mechanism be devised to extend legal aid to the wives abandoned by their NRI husbands. In this regard, it is felt that a separate department must be set up in the governments of those states where this problem of abandonment of wives is acute. Such departments would look into the complaints from aggrieved wives and take necessary follow-up steps that would include contesting their matrimonial disputes before courts, both in India and foreign, by engaging a counsel from among the standing panel of lawyers. Furthermore, many a times it has been found that the lawyers are not well versed with the laws of foreign courts and often tend to give incorrect advice to these women. Therefore, in order to provide a respectable solution to such oppressed women it is very important that the lawyers must be well versed with international matrimonial laws, which would ensure a fair hearing to these women.

Financial insolvency is the major reason because of which the oppressed Indian women are unable to contest the litigation filed by the NRI husband in foreign jurisdictions. A policy could be set up that would provide for some deterrence in such a way that whenever the NRI husband initiates the case in foreign courts, he must pay for the defendant's i.e. the abandoned Indian woman's travel, room and boarding during the proceedings, and also the attorney's fees. This would not only allow women to appear in court in person to plead their cases, it might discourage NRI husbands from believing that they can get away with ex parté divorce decrees.

The Government of India should initiate self monitored conciliation process for the settlement of matrimonial disputes within NRI marriages. The Ministry of Overseas Indian Affairs proposes, "to introduce a scheme to provide free legal and counseling services in foreign jurisdictions to women married to NRIs. As per this scheme NGOs in foreign countries will be given financial assistance of 1000 USD for every woman they assist. The scheme will cover women abandoned in India or overseas". It is recommended that the state government of Punjab should also initiate such schemes where large number of women are facing this problem as has been highlighted

through the empirical study. In order to tab this social evil we must have holistic approach from various sectors. Thus, there should be provisions where in some nodal officers should be appointed in Indian Embassies in foreign countries, with high migratory Indian population. Such nodal officers would come to the rescue of Indian women when being abandoned by the NRI spouse in the foreign jurisdictions.

II. Better Coordination Among Various Stake Holders

A convergence approach must be adopted among all the official Indian agencies working towards the betterment of oppressed Indian women at the hands of NRI husbands. Efforts should be made where in the Ministry of Overseas Indian Affairs, Ministry of Women and Child Development and the National Commission for Women jointly set up 'special cells' to deal wight he problems arising out of NRI marriages. Further this will provide a single window system for the redressal of the grievances of the victims.

NRI Cells should be set up for NRI Marriages at Central level, state level as well as with Indian Embassies to monitor complaints at priority basis as it involves family welfare. These Cells should provide legal aid to victims of ex-*parte* decree of divorce or annulmentof marriage by a foreign court and help them financially as well as legally to contest their litigations.Help lines should be set up to provide psychosocial counseling to wives and families who have been harassed in NRI marriages. A few states have taken an initiative in this direction but such steps in isolation would not bring the desired results until all the states come forward especially the states where this problem is too frequent.

There should be Inter-Ministerial coordination committee and single window system to avoid delay and ensure quick decisions to the victims. National Commission for Women is already engaged in protection of the interests of women who have been harassed and abandoned by NRI husbands and constantly monitors legislative and executive action to address gender related matters. An inter ministerial committee can be set up for monitoring the welfare measures taken for the assistance of the victims. Time to time review meetings must be organised to assess the implementation of various schemes.

As has been discussed earlier in majority of the NRI marriages the wives do not know

the whereabouts of their NRI husbands in order to deal with this problem specially designated nodal agencies should be set up who can supply relevant information regarding offending NRI spouses to the aggrievedwomen in India or abroad as lack of information is the greatest handicap for the abandoned women in seeking legal remedy.Another major problem is where these NRI men end up in contracting multiple bigamous marriages by duping the girl and her unsuspecting parents. To prevent such incidents Indian embassies and Missions abroad in conjunction with the Ministry of Overseas Indian Affairs and National Commission for Women with respective state governments should maintain a link on their websites containing all the information about the NRI men.

Quite often, abandoned wives of NRI husbands are denied visas to contest matrimonial litigation, in the foreign country where the husband is permanently and habitually residing. The embassies refuse such spouses on the ground that the marriage is not subsisting and the inability of the wife to maintain and accommodate herself in the foreign land. Bearing such situations in mind, it is proposed that provisions should be introduced for recording of evidence of such abandoned spouses through the satellite link or video conferencing facilities. The provision can be made that the expense shall be payable by the husband who has initiated the divorce proceedings in the foreign land. Since the problem of *ex-parte* divorce has become such a social evil as has been highlighted by the empirical study majority of the women who did not even accompanied their NRI husbands abroad had to accept the *ex-parte* divorce decree without any fault on their part. The above mentioned steps would create some deterrence among the NRIs against obtaining *ex-parte* divorce against the abandoned women.

III. Consular Assistance to the Women

It is suggested that the Indian embassies, Missions and Consulates in foreign countries should have some provisions where in they should furnish all the relevant details to the victims of the NRI spouse, residing or domiciled in foreign jurisdictions. Often it is seen that the Indian women is abandoned by the NRI spouse in foreign jurisdictions, consequently she faces language barriers and lack of access to legal recourse and the financial constraint with no shelter. In order to overcome such situations the embassies should come to the rescue of such oppressed women in the

foreign land where she has no one to help her apart from the NRI spouse who has already abandoned her either coercively or fraudulently. To counter this problem some sort of directions can well be framed by the various ministries of the Government of India to direct Embassies and Foreign Missions to provide consular assistance to abandoned Indian brides.

Many a times the woman in India is not able to contest the litigation abroad because of delay in getting visa. It is suggested that with a view to assist her to fight the legal battle abroad visa issuing procedure must be simplified for a quick issuance of visa to abandoned women to contests the suits filed by the NRI husband. Also some initiatives must be taken to cross check when the NRI husband tries to cancel the sponsorship of his spouse's visa as long as her dependency continues as per the Indian laws. The abandoned woman must be allowed to stay and contest her proceedings abroad without being deported to India which takes away her opportunity to contest the suit. Also in such cases efforts must be made to extend her residence permits so that she is in a position to fight the legal battle there.

Online access to information on the laws and procedure and support services in feign countries must be provided to Indian women getting married to an NRI. There should be a policy where in visas are issued to abandoned women in foreign land so that their return to India can be facilitated. The consulates should have an officer deputed to enquire about the present employment details, place of residence, and especially the marital status of the NRI groom to prevent any fraud. Officers from the Indian embassy should visit the homes in foreign lands to ensure the well being of women married to NRIs. Help desks should be there with well trained officers appointed exclusively to provide proper assistance and channelisation to such oppressed women facing distress in foreign jurisdictions.

IV. Rehabilitation Programmes for Oppressed Women

As has been discussed earlier and further authenticated through the empirical study in majority of the cases the prospective brides see their marriage to an NRI as the getaway to overseas where they dream of a luxurious and comfortable matrimonial life with their spouses. However, this dream is short-lived and gets shattered within few years or months of marriage when the NRI husband never sends the visa and she never gets a chance to join him abroad. To add on to the misery the woman is served

with an *ex-parte* decree of divorce which she has to accept as her fait accompli. The trauma of failed marriages lead to economic, social and psychological problems for such women. It is suggested that the various agencies both governmental and non-governmental even the civil society must initiate certain programmes for their rehabilitation. Such schemes must focus upon imparting education to those women who could not complete their education earlier, or imparting some kind of vocational training to these women so that they become economically independent. The National Commission for Women being the coordinating agency should incorporate such measures for the welfare of these women so that they are not being looked as a social burden.

9.2.3 Suggestions for NGOs

I. Awareness Building Programmes

Building awareness on the issues relating to women trapped in fraudulent marriages with NRIs and also to find solutions in order to combat the problem is the most important task to be done by the NGOs. It is necessary to launch proper awareness programmes particularly in the rural areas from where most of the gullible brides come. The purpose of such programmes must be to make these girls and their parents aware of the risk they are taking by entering into matrimonial alliances with NRIs without proper verification of the antecedents of the NRI groom. Awareness of cultural, social and legal aspects of NRI marriages need to be publicised through the media, newspapers and TV. NGOs through various channels can launch a wide publicity campaign to educate rural masses not to blindly trust the NRI families.

In each state various NGOs can be identified for creating awareness on the issues involved in NRI marriages and monitoring and evaluation of various schemes launched by the government should also be done. In combatting the menace of fraudulent and malicious NRI marriages the major responsibility falls upon the non-governmental organisations working towards this social evil which has engulfed almost every state os India. NGOs and State Commissions for Women can play a major role in organising conferences in rural areas at panchayat level, block level and district level. Publicity should be made in educational institutions for guiding the girls about dos and don’ts of entering into a matrimonial alliance with NRIs. Such instructions must be readily available in all local languages so that it is easily

comprehended by the victims. Time to time advertisements should be placed in media, which would educate the masses to be cautious about the NRI marriages. Indian Consulates located abroad should initiate a practice of organising seminars for those women who are about to travel abroad to join the NRI spouse, in order to provide them information of their legal rights and other mechanisms available for the protection of their rights and interests. So that in future is she faces any kind of harassment she can immediately take recourse of the legal procedure abroad, once she has become familiar to such laws during these seminars.

NGOs must come forward and organise pre-departure counselling of Indian women at International Airports. While efforts are being made by the Government and National Commission for Women, but many a times the information does not reaches down to the mainstream audiences. Here the non-governmental organisations can do their bit by creating awareness among the local masses, mainly the unsuspecting girls' parents and the girls themselves who faces the brunt of abandonment later on. Increased public awareness regarding the malicious practice of abandoning the Indian women has been overdue for a long time. Thus public awareness drive must be initiated against such social evils and the malicious actions of NRIs must be exposed.Various NGOs and other organisations must also provide assistance to the Indian families by verifying the antecedents of the NRI men. Further various NGOs working in this field should keep such information handy in order to guide and aid the families planning to marry off their daughter to an NRI. Such records with NGOs will also be helpful in tracing the whereabouts of the NRI husband. Such a preventive step will be greatly helpful in combating the malicious NRI marriages.

Summation

The problem of recognition of foreign decrees of divorce is not new but because of the increase in mobility of individuals from one continent to another and because of the individuals encounter with a variety of legal systems due to the crossing of boundaries of his state the frequency of such issues has increased in todays times. It is easy to say that a limping marriage must be avoided. As is the case in majority of the NRI marriages decree of divorce is granted by the foreign courts without giving an hearing opportunity to the woman in India. In such cases the consideration that a limping marriage should be avoided is over ridden by the principles of natural justice.

Thus to formulate and lay down in wide and unqualified terms the criterion for the recognition of a foreign decree of divorce would no doubt reduce the number of limping NRI marriages but it would not always lead to justice. Therefore the rules to be formulated on the subject concerned should aim to do substantial justice to both the parties and subject to this consideration limping marriages must be avoided as far as practicable.

In all the NRI marriages the trend is that soon after marriage the NRI husbands return to the country of their residence, the Indian bride remaining behind. The NRI husband then obtain a decree of divorce in the foreign jurisdiction on the basis of his habitual residence there and the fact being the Indian bride may not have visited the foreign country or may have resided there only for a short period. In such cases if the foreign decree of divorce is recognised in India it would lead to great injustice to the Indian woman. Thus in order that recognition may be granted by Indian law to a foreign decree of divorce, the proposed law should require that both the parties should satisfy the jurisdictional tests. However, if recognition is granted on the basis of the domicile, habitual residence or nationality of one of the parties, injustice would be caused to the Indian woman as has been mentioned earlier. No doubt such a strict approach carries certain implications but this aspect must be weighed against the possibility of serious injustice particularly to the Indian woman, if the test of habitual residence of either party is adopted.

Hence in the present study the researcher has been able to prove the hypothesis with which the research was undertaken. Having proved the hypothesis i.e. the existing Indian laws are deficient in dealing with the problem of recognition of foreign divorce decrees and the rising problem of limping NRI marriages which is the result of uncontested decrees of divorce fraudulently obtained by NRI men in foreign jurisdictions. In order to reduce the possibility of limping NRI marriages and the problem of recognition of foreign decrees of divorce the appropriate course will be a separate and self contained legislation, which would deal with recognition, in India, of foreign divorces and legal separations.

Often it is seen that when the marriage with an NRI turns abusive or problematic, the oppressed Indian women are left with little or no legal recourse neither in India nor in foreign jurisdictions. The existing legal framework force these oppressed women to

either be remediless or to keep on enduring the harssment. These women lack access to the foreign courts which are empowered to grant her the remedy, and the courts in India to which she has access lack remedies. Thus, the law should be so evolved and framed, to overcome the helplessness on their part.

Thus after having dealt in totality the matters in the overseas family law jurisdictions, it gives an indication that in such affairs, it is the judicial precedents which provide the much available guidance and judicial legislation on the subject. With the large number of non-resident Indians now permanently living in overseas jurisdictions, it has now become important that some comprehensive legislation is enacted to deal with the problems arising out of NRI marriages. 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.

Thus the Indian legislature must seriously need to review the situation and must enact a composite and comprehensive legislation for NRIs in matrimonial matters. till this is done, we will keep facing the problem of recognition of foreign decrees of divorce and the judiciary in India will continue with their efforts of harmonising the interpretation of the foreign courts with the Indian laws and tis doing substantial justice to the parties in a fair and equitable manner.

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”.

Indian judiciary has now started looking into the merits of the case and deliver their decisions only after the considerations of Indian laws, in the best interest of the spouses rather than simply enforcing the foreign court orders even without examining them. Fortunately, we can hail the Indian Judiciary for these laudable efforts and until the Indian legislature comes to rescue with an appropriate legislation, we continue to seek solace with our unimpeachable faith in the Indian Judiciary.