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Need for Family Law Legislations for Non-resident Indians

Report No. 219

March 2009

LAW COMMISSION OF INDIA
(REPORT NO. 219)

Need for Family Law Legislations for Non-resident Indians

Forwarded to the Union Minister for Law and Justice, Ministry of Law and Justice, Government of India by Dr. Justice AR. Lakshmanan, Chairman, Law Commission of India, on the 30th day of March, 2009.

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D.O. No. 6(3)/135/2007-LC (LS) 30th March, 2009

Dear Dr. Bhardwaj Ji,

Subject: Need for Family Law Legislations for Non-resident Indians

I am forwarding herewith the 219th Report of the Law Commission of India on the above subject.

Over the years a large number of Non-resident Indians (NRI) have multiplied in every jurisdiction abroad and so the problems. Abandoned bride in distress due to runaway foreign country resident Indian spouse, stressed non-resident Asian parent frantically searching spouse in India who has removed their child from a foreign jurisdiction in violation of a foreign court order, desperate parent seeking child support and maintenance, non-resident spouse seeking enforcement of foreign divorce decree in India, agitated children of deceased non-resident Indian turning turtle in trying to seek transfer of property in India and its repatriation to foreign shores, anxious and excited foreign adoptive parents desperately trying to resolve Indian legal formalities for adopting a child in India, bewildered officials of a foreign High Commission trying to understand the customary practices of marriage and divorce exclusively saved by Indian legislation, foreign police officials trying to understand intricacies of Indian law in apprehending offenders of law on foreign soil: these are some instances of problems arising every day from cross-border migration. Thus the number of problems is myriad, but the solutions are a few or non-existent.

In view of this, the Law Commission took up the subject *suo motu* for study. The Commission examined various issues and is of the opinion that the following remedies by making appropriate law may solve the problems of NRIs.:

A. Registration of marriages must be made compulsory;

B. Dissolution of marriage on the ground of irretrievable breakdown of marriage be introduced in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954;

C. Where one of the spouses is an NRI, parallel additions must be made in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 to provide for provisions for maintenance and alimony of spouses, child custody and child support and as also settlement of matrimonial property;

D. In the matter of succession, transfer of property, repartition of NRI funds etc., the respective State governments must simplify and streamline procedures;

E. The Commission has already recommended in its 218th Report as to the need to accede to the Hague Convention on the Civil aspects of International Child Abduction;

F. Inter-country Child Adoption Procedures must be simplified and a single uniform legislation must be provided for in the matter of adoption of Indian children by NRIs. India has also ratified the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption. Thus a simplified law should be enacted on the subject in the light of this Convention.

With warm regards,

Yours sincerely,

(Dr. AR. Lakshmanan)

Dr. H. R. Bhardwaj,
Union Minister for Law and Justice,
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Need for Family Law Legislations for Non-resident Indians

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I THE PROBLEMS IN BRIEF

1.1 Many a man and woman of this land with different personal laws have migrated and are migrating to different countries either to make their permanent abode there or for temporary residence. Likewise there is also immigration of the nationals of other countries. The advancement in communication and transportation has also made it easier for individuals to hop from one country to another. It is also not unusual to come across cases where citizens of this country have been contracting marriages either in this country or abroad with nationals of the other countries or among themselves, or having married here, either both or one of them migrate to other countries. There are also cases where parties having married here have been either domiciled or residing separately in different foreign countries. This migration, temporary or permanent, has also been giving rise to various kinds of matrimonial disputes destroying in its turn the family and its peace.[1]

1.2 Abandoned bride in distress due to runaway foreign country resident Indian spouse, stressed non-resident Asian parent frantically searching spouse in India who has removed their child from a foreign jurisdiction in violation of a foreign court order, desperate parent seeking child support and maintenance, non-resident spouse seeking enforcement of foreign divorce decree in India, agitated children of deceased non-resident Indian turning turtle in trying to seek transfer of property in India and its repatriation to foreign shores, anxious and

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

excited foreign adoptive parents desperately trying to resolve Indian legal formalities for adopting a child in India, bewildered officials of a foreign High Commission trying to understand the customary practices of marriage and divorce exclusively saved by Indian legislation, foreign police officials trying to understand intricacies of Indian law in apprehending offenders of law on foreign soil: these are some instances of problems arising every day from cross-border migration.

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

II THE SEARCH FOR SOLUTION IN LAW

2.1 Solicitors and litigants overseas worldwide frantically look for professional opinions and advice when the problems come to the Indian resident abroad. Instances of conditions of validity of marriages solemnized in India, modes and means of divorce under Indian law, legal formalities to be complied with for adopting children from India, remedies available in Indian law for enforcing parental rights in child abduction and other family law issues relating to non-resident Indians abound. Likewise, there are a plethora of problems in matters concerning succession and transfer of property, banking affairs, taxation

issues, execution and implementation of wills and other commercial propositions for non-resident Indians. However, application of multiple laws, their judicial interpretation & other legalities often leave the problems unresolved even though remedies partially exist in Indian law and partly need new urgent legislation.

2.2 The number of non-resident Indians (NRI) has multiplied in every jurisdiction abroad. However, family, property, kith and kin or the love for the motherland keeps bringing the NRI back on Indian soil in body or in soul. With this return the NRI seeks a remedy for his legal problem connected with his temporary or permanent return to India. This invariably makes the NRI import the foreign law of the overseas jurisdiction from where he has migrated. Such a situation is created because either Indian law provides him no remedy or because he finds it easier and quicker to import a foreign court judgment to India on the basis of alien law which has no parallel in the Indian jurisdiction. This clash of jurisdictional law is commonly called Conflict of Laws in the realm of Private International Law which is not yet a developed jurisprudence in the Indian territory.

III DIFFICULTIES FACED UNDER INDIAN LAW

3.1 Areas of family law in which the problems of jurisdiction are seen occurring very frequently relate to dissolution of marriage, inter-parental child abduction, inter country child adoption and succession of property of non-resident Indians. In matters of divorce, since irretrievable breakdown of marriage is not a ground for dissolving the marriage under

Indian law, Indian Courts in principle do not recognise foreign matrimonial judgments dissolving marriage by such breakdown. Surprisingly, even very little help is available in areas of matrimonial offences and problems arising out of child abduction. Leaving a helpless deserted Indian spouse on Indian shores confronted with a matrimonial litigation of a foreign court which he or she neither has the means or ability to invoke often results in despair, frustration and disgust. Likewise, enforcement of a foreign court order in whose violation a child of the family has been removed and brought to Indian soil brings a parent to India desperately seeking a legal remedy. The list of problems is myriad but the solutions are few or non-existent.

3.2 Unfortunately, no special Indian legislation exists to combat such remedies. The numbers of Indians on foreign shores have increased multifold but the multiple problems which bring them back to India are still left to be resolved by the conventional Indian legislation. Times have changed but laws have not. However, the dynamic, progressive and open minded judicial system in the Indian Jurisprudence often comes to the rescue of such problems by interpreting the existing laws with a practical application to the new generation problems of immigrant Indians. Fortunately, judicial legislation is the only crutch available.

3.3 In *Y. Narasimha Rao vs. Y. Venkata Lakshmi*[2], the Supreme Court observed that no country can afford to sacrifice its internal unity, stability and tranquility for the sake of uniformity of rules and comity of nations which considerations are important and appropriate to facilitate international trade, commerce, industry, communication, transport, exchange of services,

[2] Ibid.

technology, manpower etc. This glaring fact of national life has been recognised both by the Hague Convention of 1968 on the Recognition of Divorce and Legal Separations as well as by the Judgments Convention of the European Community of the same year. Article 10 of the Hague Convention expressly provides that the contracting States may refuse to rocognize a divorce or legal separation if such recognition is manifestly incompatible with their public policy. The Judgments Convention of the European Community expressly excludes from its scope (a) status or legal capacity of natural persons, (b) rights in property arising out of a matrimonial relationship, (c) wills and succession, (d) social security and (e) bankruptcy. A separate convention was contemplated for the last of the subjects. The Supreme Court referred to the 65th Report of the Law Commission on "Recognition of Foreign Divorces" and elaborately discussed the import of section 13 of the Code of Civil Procedure in the context of recognizing foreign matrimonial judgments in the country, and further observed:

> "11. The rules of Private International Law in this country are not codified and are scattered in different enactments such as the Civil Procedure Code, the Contract Act, the Indian Succession Act, the Indian Divorce Act, the Special Marriage Act etc. In addition, some rules have also been evolved by judicial decisions. In matters of status or legal capacity of natural persons, matrimonial disputes, custody of children, adoption, testamentary and intestate succession etc. the problem in this country is complicated by the fact that there exist different personal laws and no uniform rule can be laid down for all citizens. The distinction between matters which concern personal and family affairs and those which concern commercial relationships, civil wrongs etc. is well recognised in other countries and legal systems. The law in the former area tends to be primarily determined and influenced by social, moral and religious considerations, and public policy plays special and important role in shaping it. Hence, in almost all the countries the jurisdictional, procedural and substantive rules which are applied to

disputes arising in this area are significantly different from those applied to claims in other areas. That is as it ought to be. …

12. We are in the present case concerned only with the matrimonial law and what we state here will apply strictly to matters arising out of and ancillary to matrimonial disputes. 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 rules. The dependence on English Law even in matters which are purely personal, has however time and again been regretted. But nothing much has been done to remedy the situation. The labours of the Law Commission poured in its 65th Report on this very subject have not fructified since April 1976, when the Report was submitted. Even the British were circumspect and hesitant to apply their rules of law in such matters during their governance of this country and had left the family law to be governed by the customary rules of the different communities. It is only where there was a void that they had stepped in by enactments such as the Special Marriage Act, Indian Divorce Act, Indian Succession Act etc. In spite, however, of more than 43 years of independence we find that the legislature has not thought it fit to enact rules of Private International Law in this area and in the absence of such initiative from the legislature the courts in this country have been forced to fall back upon precedents which have taken their inspiration, as stated earlier, from the English rules. Even in doing so they have not been uniform in practice with the result that we have some conflicting decisions in the area.

13. We cannot also lose sight of the fact that today more than ever in the past, the need for definitive rules for recognition of foreign judgments 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 the order of the day. A time has, therefore, come to ensure certainty in the recognition of the foreign judgments in these matters. The minimum rules of guidance for securing the certainty need not await legislative initiative. This Court can accomplish the modest job within the framework of the present statutory provisions if they are rationally interpreted and extended to achieve the purpose. It is with this intention that we are undertaking this venture. We are aware that unaided and left solely to our resources the rules of guidance which we propose to lay down in this area may prove

inadequate or miss some aspects which may not be present to us at this juncture. But a beginning has to be made as best as one can, the lacunae and the errors being left to be filled in and corrected by future judgments.

14. We believe that the relevant provisions of Section 13 of the Code are capable of being interpreted to secure the required certainty in the sphere of this branch of law in conformity with public policy, justice, equity and good conscience, and the rules so evolved will protect the sanctity of the institution of marriage and the unity of family which are the corner stones of our societal life.

15. Clause (a) of Section 13 states that a foreign judgment shall not be recognised if it has not been pronounced by a court of competent jurisdiction. We are of the view that this clause should be interpreted to mean that only that court will be a court of competent jurisdiction which the Act or the law under which the parties are married recognises as a court of competent jurisdiction to entertain the matrimonial dispute. Any other court should be held to be a court without jurisdiction unless both parties voluntarily and unconditionally subject themselves to the jurisdiction of that court. The expression "competent court" in Section 41 of the Indian Evidence Act has also to be construed likewise.

16. Clause (b) of Section 13 states that if a foreign judgment has not been given on the merits of the case, the courts in this country will not recognise such judgment. This clause should be interpreted to mean (a) that the decision of the foreign court should be on a ground available under the law under which the parties are married, and (b) that the decision should be a result of the contest between the parties. The latter requirement is fulfilled only when the respondent is duly served and voluntarily and unconditionally submits himself/herself to the jurisdiction of the court and contests the claim, or agrees to the passing of the decree with or without appearance. A mere filing of the reply to the claim under protest and without submitting to the jurisdiction of the court, or an appearance in the Court either in person or through a representative for objecting to the jurisdiction of the Court, should not be considered as a decision on the merits of the case. In this respect the general rules of the acquiescence to the jurisdiction of the Court which

may be valid in other matters and areas should be ignored and deemed inappropriate.

17. The second part of Clause (c) of Section 13 states that where the judgment is founded on a refusal to recognise the law of this country in cases in which such law is applicable, the judgment will not be recognised by the courts in this country. The marriages which take place in this country can only be under either the customary or the statutory law in force in this country. Hence, the only law that can be applicable to the matrimonial disputes is the one under which the parties are married, and no other law. When, therefore, a foreign judgment is founded on a jurisdiction or on a ground not recognised by such law, it is a judgment which is in defiance of the Law. Hence, it is not conclusive of the matters adjudicated therein and, therefore, unenforceable in this country. For the same reason, such a judgment will also be unenforceable under Clause (f) of Section 13, since such a judgment would obviously be in breach of the matrimonial law in force in this country.

18. Clause (d) of Section 13 which makes a foreign judgment unenforceable on the ground that the proceedings in which it is obtained are opposed to natural justice, states no more than an elementary principle on which any civilised system of justice rests. However, in matters concerning the family law such as the matrimonial disputes, this principle has to be extended to mean something more than mere compliance with the technical rules of procedure. If the rule of *audi alteram partem* has any meaning with reference to the proceedings in a foreign court, for the purposes of the rule it should not be deemed sufficient that the respondent has been duly served with the process of the court. It is necessary to ascertain whether the respondent was in a position to present or represent himself/herself and contest effectively the said proceedings. This requirement should apply equally to the appellate proceedings if and when they are filed by either party. If the foreign court has not ascertained and ensured such effective contest by requiring the petitioner to make all necessary provisions for the respondent to defend including the costs of travel, residence and litigation where necessary, it should be held that the proceedings are in breach of the principles of natural justice. It is for this reason that we find that the rules of Private International Law of some countries insist, even in commercial matters, that the action should be filed in the forum

where the defendant is either domiciled or is habitually resident. It is only in special cases which is called special jurisdiction where the claim has some real link with other forum that a judgment of such forum is recognised. This jurisdictional principle is also recognised by the Judgments Convention of the European Community. If, therefore, the courts in this country also insist as a matter of rule that foreign matrimonial judgment will be recognised only if it is of the forum where the respondent is domiciled or habitually and permanently resides, the provisions of Clause (d) may be held to have been satisfied.

19. The provision of Clause (e) of Section 13 which requires that the courts in this country will not recognise a foreign judgment if it has been obtained by fraud, is self-evident. However, in view of the decision of this Court in *Smt. Satya v. Teja Singh* … it must be understood that the fraud need not be only in relation to the merits of the matter but may also be in relation to jurisdictional facts.

20. From the aforesaid discussion the following rule can be deduced for recognising foreign matrimonial judgment in this country. The jurisdiction assumed by the foreign court as well as the ground on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.

21. 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 in the present case. The rule

also has an advantage of rescuing the institution of marriage from the uncertain maze of the rules of the 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 pubic policy. The rule further takes account of the needs of modern life and makes due allowance to accommodate them. Above all, it gives protection to women, the most vulnerable section of our society, whatever the strata to which they may belong. In particular it frees them from the bondage of the tyrannical and servile rule that wife's domicile follows that of her husband and that it is the husband's domiciliary law which determines the jurisdiction and judges the merits of the case.

22. Since with regard to the jurisdiction of the forum as well as the ground on which it is passed the foreign decree in the present case is not in accordance with the Act under which the parties were married, and the respondent had not submitted to the jurisdiction of the court or consented to its passing, it cannot be recognised by the courts in this country and is, therefore, unenforceable."

3.4 In the case of *Smt. Neeraja Saraph vs. Shri Jayant V. Saraph*[3], the Supreme Court held that although it is a problem of Private International Law and is not easy to be resolved, but with change in social structure and rise of marriages with NRI the Union of India may consider enacting a law like the Foreign Judgments (Reciprocal Enforcement) Act, 1933 enacted by the British Parliament under Section 1 in pursuance of which the Government of United Kingdom issued Reciprocal Enforcement of Judgments (India) Order, 1958. The Court recommended that feasibility of a legislation safeguarding interest of women may be examined by incorporating such provisions as-

[3] JT 1994 (6) SC 488

(a) no marriage between a NRI and an Indian woman which has taken place in India may be annulled by a foreign court;

(b) provision may be made for adequate alimony to the wife in the property of the husband both in India and abroad;

(c) 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 Civil Procedure Code which makes a foreign decree executable as it would have been a decree passed by that court.

3.5 The following Conventions[4] need to be examined as to their relevancy and adaptability in the Indian context:

1. Convention of 24 October 1956 on the law applicable to maintenance obligations towards children

2. Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children

3. Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants

4. Convention of 15 November 1965 on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions

5. Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations

[4] http://www.hcch.net/index_en.php?act=conventions.listing, visited 23.03.2009

6. Convention of 2 October 1973 Concerning the International Administration of the Estates of Deceased Persons

7. Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations

8. Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations

9. Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes

10. Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages

11. Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

12. Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons

13. Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children

14. Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance

15. Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations

IV INTER-PARENTAL CHILD REMOVAL – A PECULIAR PROBLEM

4 A very interesting, human and engrossing area of cross-border litigation arises in cases of inter-parental child abduction from foreign shores when a spouse removes the child to India in violation of a foreign court order. Unfortunately, India is not a party to the Hague Convention on the Civil Aspects of International Child Abduction, 1980. Neither was Pakistan. But the UK-Pakistan Judicial Protocol was signed on January 17, 2003 by the President of the Family Division of the High Court of England and Wales and by the Chief Justice of the Supreme Court of Pakistan. It incorporated the effective provisions of the Hague Convention for the return of the abducted children to the country of the habitual residence. Perhaps, the crying need of the day exists for one in India also. Even though the British and Indian Governments have recently signed a treaty to extradite offenders of criminal law but in respect of matrimonial problems there is no such agreement, treaty or protocol. Even Legislative changes are still a far cry.

V SUGGESTED SOLUTIONS AND REMEDIES

5.1 What then is the remedy as a panacea for all such ills and legal problems?

5.2 A reading in totality of the matters in the overseas family law jurisdictions gives an indication that in such affairs, it is the judicial precedents which provide the much available guidance and judicial

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 composite legislation is enacted to deal with the problems of non-resident Indians to avoid them from importing judgments from foreign courts to India for implementation of their rights. The answer, therefore, lies in giving them law applicable to them as Indians rather than letting them invade the Indian system with judgments of foreign jurisdictions which do not find applicability in the Indian system. Hence, it is the Indian legislature which now seriously needs to review this issue and come out with a composite legislation for non-resident Indians in family law matters. Till this is done, foreign court judgments in domestic matters will keep cropping up and courts in India will continue with their salutary efforts in interpreting them in harmony with the Indian laws and doing substantial justice to parties in the most fair and equitable way. However, in this process, the Indian judiciary has made one thing very clear, i.e., the Indian Courts would not simply mechanically enforce judgments and decrees of foreign courts in family matters. The Indian courts have now started looking into the merits of the matters and deciding them on the considerations of Indian law in the best interest of the parties rather than simply implementing the orders without examining them. Fortunately, we can hail the Indian Judiciary for these laudable efforts and till such time when the Indian legislature comes to rescue with appropriate legislation, we seek solace with our unimpeachable and unstinted faith in the Indian Judiciary which is rendering a yeoman service.

5.3 In the context of the NRI, the following suggestions are mooted for improving the existing family law problems posed daily before NRIs and faced by affected people resident in India when they come in contact with NRIs. The solutions partly exist in proper implementation of existing laws, framing of proper regulations, creation of Family Courts and Fast-track Courts and amendment of existing legislation. The six point charter summary is set down as hereunder in the following sequence:

A. Registration of marriages must be made compulsory. This will in turn ensure compliance of conditions of a valid marriage, provide proof of marriage and act as a deterrent for bigamous practices. Section 8 of the Hindu Marriage Act, 1955 makes it optional for State Governments to provide for rules for providing for registration of marriages. It is opined that States with significant NRI migration must make marriage registration compulsory particularly when one of the spouses is an NRI. Simultaneously, it should be made obligatory that the NRI spouse must give intimation of registration of his marriage to the concerned Embassy / High Commission in India, in which country he is presently resident. The States in India with high migration incidence should make and notify rules under Section 8 providing for compulsory registration of marriages and incidental matters related thereto. The Commission has already made similar recommendation as to registration of marriage and divorce in its 211th Report titled "Laws on Registration of Marriage and Divorce - A Proposal for Consolidation and Reform".

B. Dissolution of marriage on the ground of breakdown of marriage as an additional ground for divorce should be introduced when at least one of the spouses is an NRI subject to safeguards provided by legislation. This would require amendment of the provisions of the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. Such a ground would provide NRI spouses a judicial forum in India to seek a remedy on Indian soil rather than importing foreign judgments of alien courts on breakdown grounds and give a chance to the Indian spouse to defend on convenient and equitable terms in Indian courts. The need for this amendment must be strongly mooted by the States with high NRI population to the Government of India to enact appropriate legislation by suitable amendments in the existing Hindu Marriage Act, 1955 and Special Marriage Act, 1954 since inter-country migration from such States is significant and in large numbers. The Commission has recently recommended in its 217th Report as to incorporation of "irretrievable breakdown of marriage" as a ground for divorce in the said Acts. Further, the Law Commission in its 65th Report on "Recognition of Foreign Divorces" (1976) made a radical departure in suggesting that, in considering the questions about the recognition of foreign decrees of divorce, our courts should base their decisions not only on the question of domicile, but also on the basis of habitual residence and nationality. The said Report also considered the problem about the ancillary orders passed by the foreign courts in dealing with matrimonial proceedings and on this matter, the conclusion of the Commission was that these ancillary orders should not be treated

as binding by our courts even though the foreign decrees of divorce are recognized. These ancillary orders concern the custody of children and other allied questions, and it was felt that it would be juristically imprudent to treat them as binding. The Commission had appended a Bill entitled “The Recognition of Divorces and legal Separation Bill, 1976” with the said Report to give shape to its recommendations.

C. Wherever one of the spouses is an NRI, parallel additions must be made in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 to provide for provisions for maintenance and alimony of spouses, child custody and child support as also settlement of matrimonial property. This will ensure that the spouse / children on Indian soil are maintained and provided for in accordance with the income and standard of the NRI spouse in the foreign jurisdiction. It may also be worthwhile to suggest that under section 3 of The Family Courts Act, 1984, the respective State Governments where Family Courts have not been established should be directed to provide for Family Courts. The States with high NRI population which essentially needs Family Courts as a matter of dire urgency should immediately create such Courts to deal with family law problems and give priority to settlement of family law issues where parties are NRIs.

D. In the matters of succession, transfer of property, making / execution / implementation of wills, repatriation of NRI funds, the respective State Governments must simplify and streamline

procedures. Ideally speaking, in matters having property problems, Fast-track Courts must be set up to deal with such cases expeditiously in accordance with a time bound schedule. The Punjab Government has made amendments in The East Punjab Rent Restrictions Act and the Punjab Security of Land Tenures Act for the summary trial of disputes regarding agricultural, commercial and residential property. However, no special Fast-track Courts exist in most States with high NRI population to settle these matters on priority. A fresh proposal should be mooted to set up such courts as soon as possible.

E. In the area of inter-parental child abduction or removal of children to India from foreign jurisdictions against court orders, India must become a signatory to the Hague Convention on the Civil Aspects of International Child Abduction, 1980. As of now, there is no international convention or treaty applicable in India since India is not a signatory to the said Convention and other than conventional procedures, there are no remedies for enforcing such rights. Till such time there is no signing of such treaty, the State Governments with high NRI population should permit liaison with foreign missions in India through whom courts should be assisted to ensure return of children to the country of their foreign residence if they are removed in violation of foreign court orders. The administrative and police authorities in Indian States with high NRI population should give some uniform guidelines to observe to assist such parents in distress who often land in such States in India with no clue as to whom to approach for assistance. The

Commission has already recommended in its 218th Report as to the need to accede to the said Convention of 1980.

F. Inter-country child adoption procedures must be simplified and a single uniform legislation must be provided for in matter of adoption of Indian children by NRIs. This should be hedged with ample checks and safeguards but at the same time should provide a unified, straightforward and single agency procedure. The present system is lengthy, complicated, involves multiple agencies, is very time consuming and thus needs to be suitably amended. Further, again the States in India with high NRI population should lay down some uniform policy guidelines to be observed by State agencies, adoption homes and administrative authorities so that proper help and guidance is available in adoption matters. The Law Commission in its 153rd Report on "Inter-country Adoption" prepared draft of a Bill on Inter-country Adoption. India has also ratified the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption. Thus a simplified law should be enacted on the subject in the light of this Convention.

5.4 The above changes can be made either by providing a new composite legislation for NRIs or suitable changes can be made in existing legislations for streamlining the laws and procedures. It is suggested that a core committee of specialists in the field of Private International Law should be constituted at the earliest to prepare a comprehensive draft to suggest the said changes in legislation in the

best possible way. It is the endeavour of the Law Commission to suggest to the Government of India to do whatever possible to improve the life of the NRIs in India. It is important to see what India can do for the NRI and not what the NRI can do for India.

We recommend accordingly.

(Dr. Justice AR. Lakshmanan)
Chairman

(Prof. Dr. Tahir Mahmood)
Member

(Dr. Brahm A. Agrawal)
Member-Secretary