

NATIONAL COMMISSION FOR WOMEN
GOVERNMENT OF INDIA

CONCEPT NOTE

**One Day Consultation on “Standard Operating Procedures (SoPs) for Women
involved in NRI Matrimonial Disputes”
on 26th May, 2017 at Conference Hall No. 2, Indian International Centre
, New Delhi**

Introduction

In the last few decades globalization through the advancement in the technologies has resulted in the worldwide transformations economical, social, political and cultural spheres the world over. The changes wrought by globalization have had major impact on Indian society. This can be illustrated from the impact that globalization has had on that most sacred institution of Indian Society – Marriage. With increasing number of Indians traversing the world in search of a better life, marriage norms have changed. A new form of marriage termed as NRI marriage has emerged, where one party is a resident/citizen of another country or where both parties are Indian, but are living on foreign soil.

Unfortunately, it seems the more things change, the more they remain the same. Marital crimes such as dowry harassment, domestic violence, cruelty, desertion etc are flourishing even in these NRI marriages; the only difference is that due to multiplicity of laws, and lack of support system on foreign shores access to justice for the economically weaker party (primarily the wife) has now become even more difficult. India is seeing an emergence of cases where the husband in an NRI marriage, deserts his wife in India and files for divorce in the foreign courts, taking advantage of the relaxed divorce norms in those countries. When a case for divorce is filed on foreign shores, the wife, in effect is losing all the rights that the Indian laws bestow on her. Further, lack of understanding of Indian Society and its unique problems (especially with respect to dowry) have also led to foreign courts passing judgements and decrees inherently unfavourable and unjust to the Indian Women.

Moreover, the Indian wife, in an NRI marriage faces a herculean task to even get her husband to appear before the Indian authorities to investigate the allegations levelled by her. Even when the matter finally reaches the Courts, lack of knowledge regarding the procedure to be followed leads to further delays. Thus, it is the complainant who is further harassed in the fight to protect her rights.

Role of NCW in NRI matrimonial issues

The National Commission for Women has been designated as the Coordinating Agency at the National level for dealing with issues pertaining NRI marriages vide Ministry of Overseas Indian Affairs (now Division of ministry of External Affairs) order dated 28th April 2008.

In furtherance of this, the NRI Cell was formally inaugurated on the 24th of September, 2009. NRI Cell deals with complaints received from India and abroad resulting from cross country marriages wherein there is any deprivation of women’s rights or any issue involving grave injustice to women. The function of the NRI Cell broadly consists of the following:-

1. **a)** NRI Cell is the coordinating agency to receive and process all the complaints related to Indian Women deserted by their Overseas Indian husbands.
2. **b)** NRI Cell renders all possible assistance to the complaints including conciliation, mediation between the parties and advising the complainant on related issues.
3. Associating, networking with NGO's ,community organisations in India and abroad and State women Commissions for wider area coverage, so as to facilitate easy reach and provide support services
4. NRI Cell endeavour towards a coordinated response amongst various Government agencies/organisations such as State Governments, The National HumanRights Commission, Indian Embassies and Mission, concerned Ministries etc.
5. Providing assistance to the aggrieved woman in litigation and other issues pertaining to the complainant/case.
6. Maintain a data bank of cases registered with NCW
7. Seek reports from the State Government and other authorities on the complaints filed and action taken thereon.
8. To give advice and recommendations to the government on any policy or issue relating to the NRI marriages.
9. To analyze various legal treaties on the issue and advise the Government on the subject, wherever required.
10. To constitute an advisory committee of reputed advocates/NGOs, both in India as well as abroad, which shall periodically review the functioning of the cell , cases filed and policy issues .
11. To constitute a **panel of experts** to assist the aggrieved wife and rendering legal services and other assistance , including mediation and conciliation
12. Planning of training modules & carrying out training on sensitisation on the subject to the various agencies entrusted with the task of providing justice, viz. Judiciary, police, administration, etc.
13. To carry out awareness campaigns for the masses on the issue. For this, all the available media services would be utilised by the cell.
14. To encourage /support research and study in the related field like issues of grievances associated with dual citizenship, enactment of new legislation or signing of international treaties ,marriage laws of other countries ,etc .
15. To look into complaints and take suo-moto notice on any issue brought to the notice of the NRI Cell in accordance with Section 10 (1)(f) of the

National Commission for Women Act , 1990 read with sub-section 4 of Section 10 and Section 8 of the Act.

16. Perform any other function as assigned to it by the Commission/Central Government.

Common Issues in NRI Marriages

Some of the typical instances of the issues that arise in NRI marriages that have been repeatedly reflected in the actual case studies from different States of the country are as follows:

- 1) Woman married to NRI was abandoned even before being taken by her husband to the foreign country of his residence. After a short honeymoon he had went back, promising to soon send her ticket that never came. In many instances the woman would already have been pregnant when he left and so both she and the child (who was born later) were abandoned. The husband never called or wrote and never came back again. The in-laws who could still be in India would either plead helplessness or flatly refuse to help.
- 2) Woman went to her husband's home in the other country only to be brutally battered, assaulted, abused both mentally and physically, malnourished, confined and ill-treated by him in several other ways. She was therefore either forced to flee or was forcibly sent back. It could also be that she was not allowed to bring back her children. In many cases, the children were abducted or forcibly taken away from the woman.
- 3) Woman who was herself or whose parents were held to ransom for payment of huge sums of money as dowry, both before and after the marriage, making her continued stay and safety in her husband's country of residence dependent on that.
- 4) Woman who reached the foreign country of her husband's residence and waited helpless at the international airport there only to find that her husband would not turn up at all.
- 5) Woman who was abandoned in the foreign country with absolutely no support or means of sustenance or escape and without even the legal permission to stay on in that country.
- 6) Woman who learnt on reaching the country of her NRI husband's residence that he was already married in the other country to another woman, whom he continued to live with. He may have married her due to pressure from his parents and to please them or sometimes even to use her like a domestic help or pick up dowry.
- 7) Woman who later learnt that her NRI husband had given false information on any or all of the following: his job, immigration status, earning, property, marital status and other material particulars, to con her into the marriage.
- 8) Woman whose husband, taking advantage of more lenient divorce grounds in other legal systems, obtained ex-parte decree of divorce in the foreign country through fraudulent representations and/ or behind her back, without her knowledge, after she was sent back or forced to go back to India or even while she was still there.
- 9) Woman who was denied maintenance in India on the pretext that the marriage had already been dissolved by the court in another country.

- 10) Woman who approached the court, either in India or in the other country, for maintenance or divorce but repeatedly encountered technical legal obstacles related to jurisdiction of courts, service of notices or orders, or enforcement of orders or learnt of the husband commencing simultaneous retaliatory legal proceeding in the other country to make her legal action
- 11) Woman who sought to use criminal law to punish her husband and in-laws for dowry demands and/ or, or matrimonial cruelty and found that the trial could not proceed as the husband would not come to India and submit to the trial or respond in any way to summons, or even warrant of arrest.
- 12) Woman who was coaxed to travel to the foreign country of the man's residence and get married in that country, who later discovered that Indian courts have even more limited jurisdiction in such cases.
- 13) Woman who had to fight nasty legal battles for custody of her children and for child support, and to bring them back with her after she was divorced or forced to leave, sometimes even facing charges of illegally abducting her own children.

Facts and Figures

State Wise Data of complaints registered in NRI Cell of NCW for the year 2016-17

S.No.	State	Total No. of complaints
1.	Delhi	58
2.	Maharashtra	36
3.	Punjab	32
4.	Gujarat	31
5.	Uttar Pradesh	30
6.	Tamil Nadu	28
7.	Andhra Pradesh	20
8.	Telangana	19
9.	Haryana	14
10.	Bihar	12
11.	Madhya Pradesh	11
12.	Rajasthan	11
13.	Karnataka	10
14.	Kerala	09
15.	West-Bengal	07
16.	Odisha	05
17.	Chandigarh	05
18.	Himachal Pradesh	05
19.	Uttrakhand	04
20.	Jharkhand	04
21.	J&K	03
22.	Chattisgarh	02
23.	Assam	02
	Total	358

Country Wise Data of complaints registered in NRI Cell of NCW for the year 2016-17

S.No.	Countries	No. of complaints
1	India	358
2	USA	24
3	New-Zealand	03
4	Oman	04
5	Indonesia	02
6	Canada	09
7	UAE	10
8	Australia	24
9	UK	08
10	Kuwait	02
11	Singapore	02
12	Austria	01
13	Maldives	01
14	Thailand	04
15	Uganda	01
16	China	01
17	Scotland	01
18	Bangladesh	02
19	Kenya	01
20	Nigeria	01
21	Sweden	01
22	Italy	01
	Total	441

Objective of the Consultation

Recognizing the complexity of issues that arise from marital disputes in NRI marriages the Ministry of Women and Child Development instituted an Inter-Ministerial Committee consisting of representatives from Ministry of External Affairs, Ministry of Home Affairs and Ministry of Law and Justice. The Commission also participated in the meeting as a special invitee. The Committee was constituted to discuss issues and develop guidelines to streamline the procedures related to NRI matrimonial disputes. The Committee has created Draft Standard Operating Procedures for the assistance of these women facing trouble in NRI marriages and has sought comments of the Commission on the same. The Commission on examination of the Draft SOP felt that a consensus of all the stakeholders should be taken before finalising the Draft.

It is with this purpose that the Commission proposes to hold a Consultation with the stakeholders, to discuss in depth the steps that can be taken by a woman who is facing problems in her marriage to an NRI spouse.

The Commission proposes to have an in-depth discussion on the following avenues:

1. Whether the Civil remedies incorporated in the draft SOP are exhaustive or some other possibilities can also be included.
2. Whether the Criminal Remedies detailed in the draft SOP can be expanded further to include more avenues for the distressed women.

3. What modifications to draft SOP could make it more user-friendly and more approachable for an ordinary person to understand?
4. The modus-operandi of Ministry of Home Affairs in service of summons/warrants in cases of criminal law.
5. The modus-operandi of Ministry of Law and Justice in service of summons/warrants in cases of civil law.
6. The modus-operandi of Ministry of External Affairs in providing legal and financial assistance to distressed Indian Women facing divorce proceedings abroad.
7. The modus-operandi of impounding of passport under Passport Act and effects thereof.