

Smt. Rekha Sharma, Hon'ble Member National Commission of Women, New Delhi

Ms. Rekha Sharma stated that the society as a whole needs to counter the mindset that marriage is the only aspiration of the girl. Girls like boys, should be nurtured to be financially independent. She further demystified the prevailing beliefs that the life outside the country is easy and wonderful. She stated that the life outside the country is not necessarily good. She shared that the employment opportunities in developing countries such as India are immense. Moreover, people should follow the rules and laws of the land and help make their own country at the par with the other countries.

Smt. Rekha shared that the National Commission for Women deals with the issues pertaining to marital disputes involving NRI/PIO couples. She gave following recommendations:

Recommendations

- Check the credentials of the prospective groom before getting married.
- Awareness campaigns covering all the villages across the state of Punjab.
- Avoid illegal migration through the course of marriages.
- Approach National Commission of Women with their complaints.

Then, she opened the house for discussion. Few of the cases shared during the open house discussion are:

- ❖ A daughter and mother shared with the member, NCW, that daughter's husband is living in Greece and has deserted her six years back. They have filed the case and are waiting for justice. Ms. Rekha Sharma shared that she will look at the details of the case and shall respond as soon as possible.
- ❖ A 38- year-old woman from Ludhiana shared with the Ms. Rekha Sharma that her husband deserted her after marriage and presently he lives in Ukraine. She is a lecturer and she is taking care of her marital family. The in-laws allege that she is infertile, which according to her is untrue. She stated that it has been more than nine years and she seeks justice.
- ❖ A woman, sister of the complainant shared that her sister, a 28-year-old woman, got married to U.S. citizen in January 2016 and came back in June 2016 after which he sent her the divorce papers. The sister of the complainant suggested that those NRIs who

come in India with the intention of getting married, their marriage should be registered with a clause that in the event of desertion and fraud, he should be extradited immediately.

Ms. Rekha Sharma assured those who shared their problems that she will discuss the matters with the concerned authorities at the end of the seminar.

Key note speech —Hon'ble Justice, Rakesh Kumar Garg (Retd.) Chairman, Punjab State Commission for NRIs

Mr. Rakesh Kumar Garg stated that the seminar is an opportunity and a great platform to interact with all women in order to discuss their problems arising from NRI marriages and to collaboratively find solutions to them. He said that in spite of the Article 14 in the Indian constitution, which mentions that every citizen has equal right and no person shall be discriminated, women are still discriminated against and their situation is deplorable. In Punjab, people still ardently believe that male dominance over women is right.

Discussing on the issue of NRI marriages, Mr. Garg informed the audience that at the present, Punjab is the only state in India to have state NRI commission.

He further informed that the NRI Commission of Punjab is a four-member State commission, which is headed by a retired judge of High court. The other members include an IAS officer, not below the rank of Principle Secretary or Financial commissioner to the State Government, an IPS officer, not below the rank of ADGP and other members who have extensive knowledge on the issue.

He remarked that by not verifying the prospective grooms, families put daughters in a vulnerable position. They have received complaints relating to men staying with the brides for two months before deserting them.

The other major concern that needs to be addressed is that the issue of matrimonial dispute must be included in the scope of extradition treaties. At the present, violation under section 406 and 498 A of Indian Penal Law are not considered as offence by other countries.

He said that in several cases, FIR is at the address of village while the man is out of the country. He informed that the FIRs should have address where the accused man is actually residing. In case he is living outside the country, insist to find his actual address. He further shared that in several cases, finding the shelter for the woman is big problem.

Case: The girl is a doctor who married a doctor in United Kingdom. After marriage, he left India without her. She managed to apply for the visa and went to the country. However, husband did not come to pick her up at the airport and further refused to stay with her at his home at the pretext that he was living he shared accommodation. He had booked another accommodation for the wife. It was later found out that he was already in a live in relationship with another woman and was staying with her.

Recommendations

- Cases of domestic discord must be included in the scope of extradition treaties.
- People should seek sound legal advice and guidance on their matters.
- Proper verification of the prospective groom before committing to marriage.
- More awareness on issues arising out of NRI marriages should be created among people in Punjab.
- People should approach NRI commission with their complaints.

Role of Police NRI wing to deal with NRI Marriages— Sh. Ishwar Singh, IPS, NRI wing & women wing, Punjab

Mr. Ishwar Singh elaborated on the institutional setup in the Punjab for responding to the complaints relating to NRI marriages. He informed that there is NRI Affairs Department, Government of Punjab headed by IAS. Then, there is statutory commission, the NRI Commission of Punjab headed by the retired high court judge. NRI and Women Wing in the Punjab police is headed by Inspector General of Police and has mandate to deal with NRI related disputes. There are 15 dedicated NRI police stations that have been notified in the State of Punjab. These police stations have dedicated staff to deal exclusively with NRI issues.

Mr. Singh mentioned that the Punjab Police has launched “Shakti” mobile application that provides help to women and girls in distress. He informed that this app is available for free and can be downloaded from play store or app store. The app also provides the contact numbers of all the nearest police station’s SHOs to the public. ‘Know your Police’ app also provides details of police stations, including their locations, telephone numbers and email ids of SHO, DSP, SSP, including senior officers in the office of DGP, Punjab.

Often people are hesitant in approaching police stations and there is disconnect between community and police stations. In order to address this, Punjab police has taken a lead by creating Saanjh Centres. Saanjh centres in Punjab are based on the community policing model. Saanjh centres provide services such as registration of foreigners on arrival and departure and extension of their residential permit. NRI unit is part of the Saanjh centre.

Mr. Ishwar shared that the extradition is a long drawn process that requires day to day follow up and intensive monitoring.

Recommendations:

- Avoid giving and taking dowry. Marriage should be a genuine union and not a transaction of any kind.
- Credentials of the prospective grooms should be verified and checked thoroughly.
- Make a list of “streedhan” which should bear the signature of the other party. Receipts of the items bought from legitimate source of income become crucial evidence in case of marital disputes.
- Get the marriage registered.
- Do not forge certificates or documents at the compulsion of anyone for emigration purposes.
- Girls and women should always aim for financial independence.

Social aspects of problems arising out of NRI marriages— Sh. Hamir Singh, Senior Journalist

Mr. Hamir Singh stated that the issues and concerns relating to NRI marriages is a serious problem. He said that it is important to see the issue as a problem of the society as a whole and

not as individual cases or in isolation. The systems, practices and norms of the society are at the fault for this issue. Therefore, it would not be effective to find out solutions to the problem at the individual level.

According to Mr. Singh, blame the victim mentality is quite prevalent in our society. He asked the audience as to why an individual should take the entire responsibility for tackling a systemic issue. He reckoned that there are no alternative spaces for people to share their problems and get guidance and sound advice on the matters. He further stated that there is lot of emphasis on techno-centric solutions to the problems. However, human centric strategies are equally needed.

He attributed consumerist culture as one of the reasons of increasing discontent among people in villages and cities of Punjab who continue to seek greener pastures abroad.

Mr. Singh pointed out that the women in Punjab are hardly accepted in the leadership roles. Society still perceives them to be unfit to lead their community. There is limited representation of women in political and social spaces even though girls are more educated than boys in Punjab.

He informed the audience about unique fairs being organized by girls in Punjab better known as 'Mela Dhiyan Da'. These fairs are organized to give an opportunity to all the daughters, married or unmarried, to visit their village and meet their friends and relatives as well as provide a platform to girls to initiate a dialogue with their community and raise awareness on the issues of gender –based discrimination prevalent in their families, community and society at large.

Mr. Singh stated that organizing and coordinating these fairs gives girls an opportunity and space to take leadership roles and become confident in the process. Girls learn to negotiate in the hostile environment of their community.

In Punjab, there is an urgent need to have new social movements in order to reform social norms and practices that are in conflict with the gender justice and are impediments in creating more gender just societies.

He concluded that difficulties arising out of NRI marriages are not only a legal issue but an issue of system and society as a whole as well.

Ms. Vikay Rahatkar, Chairperson, Maharashtra State Commission for Women

Punjab is the only state that has state NRI commission. She requested the other state governments to establish the statutory commission for NRI in their states as well. She informed that the incidents of NRI marital disputes are not limited to Punjab, as the metropolitan city like Mumbai also has its fair share of such cases.

Case study: Commission received a case of a married couple staying abroad but having citizenship of India. In the case, couple had a dispute and decided to get separated. The court of the other country gave shared custody of their child to both the parents. The arrangement was such that the child was supposed to stay alternatively with both the parents. However, the mother did not had home, job and money to take care of the child there and as the child was in that country, she could not even come to India. In such cases, shelter for women becomes an impertinent issue. Commission could play an important role in such cases.

- The issue of citizenship is a crucial concern for which work needs to be done.
- Each state of India should have NRI cells.
- An interdisciplinary team should be considered for handling NRI issues.

Dr. Tripurana Venkataratnam, Chairperson of Telangana State Commission for Women

She welcomed the chief guest and all the dignitaries present at the dais. She shared that the Telangana State Commission for Women conducted a one day consultation on “NRI marriages and related issues” in Hyderabad on 5th November 2016. She mentioned that their commission receives one-two cases every day.

Engineer divorces first wife and marries for the second time with a woman who is engineer as a profession. Man took the second wife to the United States and had two children, a daughter and a son, with her. He sent his second wife back to Hyderabad in India and files for the divorce in United States. Even though it is expensive to hire a lawyer, woman's parents engaged a lawyer and contest the divorce on the bases that the married took place in India as per the Hindu Marriage Act. The United States' court did not take cognizance of this and sent divorce decree to the woman through the police. Further, the court asked the woman to pay 78\$ to each child as both the children are United States citizens. Moreover, woman was asked to share college fees of the children with her husband.

She emphasized that the government of India should have bilateral ties with the other countries on issues of marriage.

Recommendations

1. Explore the possibility of having a proviso printed on the marriage certificate which is agreed to and signed by the couple. The proviso must mention the following-
 - No foreign court will have jurisdiction over a marriage between a NRI and an Indian woman which has taken place in India under their respective personal laws.
 - Domicile or Habitual residence of either of the parties should not be a ground to assume jurisdiction by the foreign court.
 - It is the Lexi Fori (the Personal law) of the parties that should be applicable for any matrimonial relief sought by either of the parties.

- Foreign Courts could assume jurisdiction only and only if both the parties to the petition willingly and voluntarily submits themselves to the said Court.
2. There is an urgency to educate women and raise their awareness levels of legal rights they have and the laws they are governed by.
 3. Amend the rule of “Dependence Domicile of a married Woman”. This dependence status of the married woman on her husband is in fact creating a lot of trouble for many. Her domicile dependency status requires the married woman to submit to foreign court’s jurisdiction and if she doesn’t she violates the Indian Private International Law Rule.
 4. Indian Courts have to recognize and enforce the foreign decrees if identity crises have to be averted. The very ethos of Private International Law is to facilitate ones personal laws to be attached to the person no matter where he/she travel or stay or marries. PIL also requires one to have the same statutes no matter where one is. If one is a legitimate son of his parents, he should be so the world over. If the Nation States do not recognize and enforce decrees across the borders then identity crises may arise.
 5. The Uniform Private International Law Rules’ is an impossible dream. Therefore, what is possible and feasible is to have bilateral agreements between States especially on issues arising out of matrimony.
 - Agreements mainly between common law countries which follow *lex domicilii* rule.
 - Agreements between civil law countries which follow *lex Nationality* rule.
 6. India can have bilateral agreements with Islamic States on Sharia Law on issues of marriages, age of marriage, consent to marriage, and issues of age gap between couples to be married, amount of Mehr, provision for maintenance of children and their mother on divorce.
 7. Explore the possibility of criminalizing desertion.
 8. Simplification of procedure for quick issuance of visa by foreign missions in India to deserted women to enable them to contest the proceedings filed by NRI/PIO husband in a foreign land.
 9. Introduction of a system of cross check/consent, when a NRI/PIO husband wants to cancel sponsorship of his spouse’s visa. Cancellation should not be permitted as long as

dependency of the aggrieved women continues as per Indian law so as to enable her to continue to stay and context proceedings in the foreign land without being deported and thus deprived of the opportunity to contest the case.

10. Grant of ex-parte divorce by foreign courts should be barred in the case of marriages solemnized in India as per Indian law.
11. Cases of domestic discord to be included in the scope of extradition treaties. (219th report of the Law Commission recommends inclusion of cases of domestic discord within their scope).
12. Procedural delay/low priority to issue LOC/RCN against accused NRI/PIO husband in cases of marital discord needs to be addressed.
13. Difficulty and consequent delay in serving judicial processes issued by Indian Courts through the Indian Missions abroad to be addressed.
14. Simplification of procedure to facilitate extradition/deportation of errant husband and cancellation of passport to face civil/criminal trial in India especially if judicial processes of Indian courts are not responded to.
15. Need to develop mechanisms to enable quick tracking of NRIs/PIOs in case of desertion. Funds may also need to be allocated for locating such persons through agencies available for the purposes.
16. Recognition of NCW, and also State Women Commission as an authorized body to directly make applications before foreign courts and foreign missions on behalf of aggrieved women whenever so required.
17. The Passport office must be asked to cooperate in impounding the Passport of the accused NRI husband in 498 (A) case when he is not attending the Court.
18. The Indian High Commission in foreign country must take responsibility of keeping records including marital record of Indians living and working in a foreign country.
19. Passport details of NRI husbands must be mentioned in the marriage registration certificates.
20. Regulation of the matrimonial sites by the Information Technology department.

**Legal remedies and other sources to deal with problems of NRI —Madam Daljit Kaur,
Advocate, expert in dealing NRI issues**

Advocate Daljit Kaur gave an overview of the legal problems and legal remedies that are available on issues pertaining to abandonment cases in NRI marriages. She remarked that it is a matter of great shame that abandoned women and girls in Punjab are being called 'Holiday wives' globally. She shared with the audience that several documentaries on the issue are available and the issue is now been discussed in countries where Indians migrate prominently.

Discussing the barriers that deserted women face with legal system of India and other countries, she cited an example of United States of America, wherein, different states have different laws. There are few states that have 'no fault' divorces where no explanation is demanded from the applicants. However, in cases of desertion in NRI marriages, the marriage is taken place in India as per Indian law. Therefore, the other courts do not have jurisdiction on this case. If someone file for an ex-parte divorce in their courts, and files an affidavit that the wife has deserted me for stated period of time, that means he is cheating the courts of both the countries. This leaves women in a vulnerable position.

Further, there are some countries, like in Germany, where English is not the language of the courts. The translation of the court orders and responding to the court orders is an expensive affair. This becomes an impediment for girls and women in accessing legal system for justice.

In India, there is lack of coordination among implementing agencies, ministries, police officials and other stakeholders. Moreover, there is lack of awareness among people on the issues of abandonment, desertion and domestic violence in NRI marriages.

Ms. Kaur stated that there have been cases where children have not seen their father since their birth. She shared one such case where a woman who was deserted by her NRI husband has a daughter of 18 years and is fighting for her right for more than 20 years. She got the residence rights. The daughter has not seen her father even once.

She suggested that if man is taking ex parte divorce and marries for the second time then Punjab police should file a case of 420 against the man. If a man is already married and marries in India without disclosing his married status and consummates the second marriage. Then the IPC 376 has been filed in few such cases.

Recommendations:

- Prospective grooms should be asked for passport copy, income and address proof, social security number and proof of divorce if divorcee.
- There are countries, where English language is not the judicial language and the translation of court orders becomes a huge challenge. Girls and women should be financially supported in getting the orders translated as well as responded.
- Need to work as pressure groups. Village Panchayats have huge potential to work as effective pressure groups.
- Naming and shaming publicly of the men who have deserted their wives has worked as an effective strategy in the past.
- Saanjh centres should provide legal guidance on the matters pertaining to NRI marital disputes.
- Police should be emphatic towards girls and women facing such difficulties and should be proactive in such cases.
- There should be family courts in Punjab.

Interactive Session

- ❖ Question: A female complainant among the audience asked Advocate Daljit Kaur, whether the legal services provided by the State Legal Service Authority are for free of charge? Answer: Advocate Daljit Kaur responded that the legal services provided by the State Legal Services Authority are for free of a charge.
- ❖ A case was shared with Sh. Devinder Singh. The girl is U.S citizen from California who befriended a boy from India through Facebook. She was 16 years old at that time. When she turned 18 years old, the boy invited her to India to meet him. After her visit, she went back to U.S and prepared all the documents sponsoring him to come to U.S. The boy on reaching U.S absconded and did not meet her. The girl came back to India and filed a case against the boy. The case is under investigation.
- ❖ A mother of the complainant shared that she had filed a case in 2015 but her 'parcha' got cancelled and there has been no hearing on the case. Madam Paramjit suggested to the

mother of the complainant to share the details of the case with her and NRI wing officers and assured her that the case will be heard.

- ❖ Could a case be filed against relatives who played as matchmakers and took the responsibility of the prospective groom and his family?

Vote of Thanks

Ms. Parmajit Kaur Landran felicitated all the guests. She thanked Dr. Rafi for hosting the event with such grace and warmth. She thanked Ms. Satvir Kaur Manhera, Vice Chairperson, Punjab State Women Commission and the entire staff of Punjab State Commission for Women for their support. Dr. Rafi thanked the dignitaries and the audience for participating in the seminar and for making it a success.