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**FAMILY LAW FOR NON-RESIDENT INDIAN FAMILIES – A DILEMMA**

**By ANIL MALHOTRA\* AND RANJIT MALHOTRA\*\***

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Date: 2 January 2010

Anil Malhotra and Ranjit Malhotra

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**NRI's PROPERTY RELATED PROBLEMS – THE PUNJAB MODEL**

**BY ANIL MALHOTRA\* AND RANJIT MALHOTRA\*\***

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Date: 2 January 2010

  
Anil Malhotra and Ranjit Malhotra

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## FIRST REPORT

### RECOMMENDATIONS OF CHAIRPERSON ON TASK FORCE OF POLICY PROCEDURES, RESOLUTION AND GRIEVANCES OF NRIs AND MEMBER, PUNJAB GOVERNANCE REFORMS COMMISSION

#### 1. REGISTRATION OF MARRIAGES MUST BE MADE COMPULSORY IN THE STATE OF PUNJAB:

As per the judgment of the Supreme Court of India in Transfer Petition (civil) 291 of 2005, Seema vs. Ashwini Kumar, by orders dated 14.02.2006 and 25.10.2007, it has been made mandatory that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective States where the marriage is solemnized. The State of Punjab, as of date, has no compulsory registration of marriages prescribed under any enactment or rules made by the State of Punjab in this regard. Moreover, the compulsory registration of NRI marriages is urgently required to ensure that brides and grooms from the State of Punjab have proof and evidence of their marriage as also to prevent matrimonial frauds being practiced commonly in the State of Punjab. To meet all these requirements, a composite Law, namely "The Punjab Compulsory Registration of Marriages Bill, 2012" is proposed to be enacted and a draft of the same is annexed with this report for consideration of the Government of Punjab.

#### 2. CREATION OF FAMILY COURTS IN THE STATE OF PUNJAB

Section 3 of the Family Courts Act, 1984, leaves it open to the respective State Governments to provide for Family Courts. The State of Punjab essentially needs Family Courts to provide fast-track, effective, meaningful and quick relief for abandoned spouses, deserted children and for resolving other disputes arising out of a matrimonial relationship. Under Section 3, the Family Courts are required to be constituted by the State Government in consultation with the High Court. It is thus proposed that the Family Courts should be set up in every district in the State of Punjab so that all such matrimonial disputes get effective, speedy and meaningful adjudication. Accordingly, the Government of Punjab may consider accordingly.



Place: Chandigarh  
Date: 07.07.2012

ANIL MALHOTRA  
Chairperson

Task Force, Policy Procedures, Resolution and Grievances of NRIs

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## SECOND REPORT

### CURBING OF WORKING OF UNREGISTERED RECRUITING AGENTS

### RECOMMENDATIONS OF CHAIRPERSON ON TASK FORCE OF POLICY PROCEDURES, RESOLUTION AND GRIEVANCES OF NRIs AND MEMBER, PUNJAB GOVERNANCE REFORMS COMMISSION

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Place: Chandigarh  
Date: 21.07.2012

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## THIRD REPORT

### RETURN OF IRREGULAR MIGRANTS TO PUNJAB RECOMMENDATIONS OF CHAIRPERSON ON TASK FORCE OF POLICY PROCEDURES, RESOLUTION AND GRIEVANCES OF NRIs AND MEMBER, PUNJAB GOVERNANCE REFORMS COMMISSION

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Place: Chandigarh  
Date: 12.09.2012

ANIL MALHOTRA  
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## FOURTH REPORT

### *NRI's PROPERTY RELATED PROBLEMS – THE PUNJAB MODEL*

### RECOMMENDATIONS OF CHAIRPERSON ON TASK FORCE OF POLICY

### PROCEDURES, RESOLUTION & GRIEVANCES OF NRIs, AND

### MEMBER, PUNJAB GOVERNANCE REFORMS COMMISSION

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Place: Chandigarh

ANIL MALHOTRA

Date: 01.10.2012

Chairperson

*Task Force, Policy Procedures, Resolution and Grievances of NRIs*

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## FIFTH REPORT

Amendments proposed in The Punjab State Commission For Non-Resident  
Indians Act, 2011 (Punjab Act No.33 of 2011)

### RECOMMENDATIONS OF CHAIRPERSON ON TASK FORCE OF POLICY PROCEDURES, RESOLUTION & GRIEVANCES OF NRIs, AND MEMBER, PUNJAB GOVERNANCE REFORMS COMMISSION

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Place: Chandigarh  
Date: 08.11.2012

ANIL MALHOTRA  
Chairperson  
*Task Force, Policy Procedures, Resolution and Grievances of NRIs*

## **REPORT OF SEMINAR ON PROPERTY RELATED ISSUES OF NON-RESIDENT INDIANS HELD ON 7 JANUARY 2010 AT NEW DELHI**

On the eve of the 8th Pravasi Bhartiya Divas held by the Government of India from 7-10 January 2010, a full day was devoted to a special seminar on "Property related Issues of NRIs /PIOs" which was held at Vigyan Bhawan, New Delhi on 7 January 2010. It was a unique gathering devoted to listening to the NRIs problems on property issues which they faced in India. Never before had such a free, fair and frank discussion taken place by the Indian Government agencies in a direct interaction. Anil and Ranjit Malhotra were invited by the Ministry of Overseas Indian Affairs to structure this special session to focus on the important issues, key problems and to assist in drawing up concrete practical solutions to such problems. Anil Malhotra was requested to draw up the key recommendations of the seminar after observing, following up and listening to the entire day's proceedings on 7 January 2010 in which three different sessions deliberated on the key issues. The special seminar in which NRIs from all over the world participated was a big success as it was the first ever initiative by the Indian Government to organise such an event.

Specially put together by the Ministry of Overseas Indian Affairs, Anil and Ranjit Malhotra prepared a special presentation titled "NRIs Property related Problems- the Punjab Model" which was circulated with the seminar brochure amongst delegates.

The seminar was split in three parts. The inaugural session saw formal addresses of Mr. Vayalar Ravi, Minister of Overseas Indian Affairs, Mr. Salman Khursheed, Minister for Corporate and Minority Affairs, Dr. Justice AR. Lakshmanan, Former Chairman Law Commission of India, Mr. Justice A.M. Ebrahim, from Zimbabwe, Professor Bimal Patel and Dr. A. Didar Singh, IAS, Secretary, Ministry of Overseas Indian Affairs.

The second session on the "Overseas Indian Perspective and Interactive Session" saw presentations, discussions and interactions on

- (a) Tenancy related issues
- (b) Succession related issues
- (c) Property registration related issues
- (d) Property investment related issues
- (e) Issues related to institutional mechanism to seek time bound redressal.

Mr. Kumar Gera chaired the session. Presentations were made by Mr. Man Mohan Maheshwari from GOPIO, Dr. Shreedhar Kavil from New York and a case study by Ms. Susheela Verma from USA. Mr. Ranjit Malhotra, Mr. Vivek Gogia, IPS, Additional Commissioner, Delhi Police and Mr. Parry Singh, Real Estate Developer answered the questions in the interactive session.

The third concluding session relating to key recommendations and the valedictory address opened with the introductory remarks by Dr. A. Didar Singh, IAS, Secretary, Ministry of Overseas Indian Affairs. Mr. Anil Malhotra made the key observations of



the seminar and Smt. Preneet Kaur, Minister of State for External Affairs delivered the valedictory address. Mr. Anshuman Magazine gave the concluding remarks.

The gist of the problems identified by Anil and Ranjit Malhotra in their written presentation which was circulated to all the delegates at the Seminar are as follows;

### **INTRODUCTION – THE GIST OF THE IDENTIFIABLE PROBLEMS**

- A foreign based second or third generation descendant of an NRI seeks transfer of title of family property willed to him in rural or urban India. An aging NRI battles in Court to recover possession of urban property in metropolitan India wrested away by unscrupulous elements. Enthusiastic NRI owner sitting abroad desperately seeks remedies to locate share in rural agricultural property to claim ownership on the basis of inheritance. NRI Families battle over division of land and property in exclusive control with custodians in India. Horrified NRI shockingly discovers divested share of family property on arriving in India on the basis of fraudulent documentation. Frantic NRI family members try to implement family settlement thwarted by local relatives occupying property locally. These real life instances are now common to NRIs & PIOs.
- During the last over 50 years, large number of Indians have migrated and permanently settled in foreign countries leaving behind their homes, ancestors and landed properties. Now, when the NRIs wish to recover their properties, they find them in forceful or illegal occupation of their trusted childhood guardians or overstaying tenants who have designs to grab the property. Agreements are dishonoured, trust is violated and faith is destroyed. Commercial real estate property of NRIs is grabbed with impunity. The NRI has neither the patience nor the time to fight a protracted legal battle in an Indian law court which may last a life time, if fought, waged and litigated till the Apex Court. Legal processes are cumbersome, tedious, technical and move at a snail's pace. The bottom line is that the NRIs are at a great disadvantage leaving them disillusioned and disappointed. No existing legislation comes to their rescue or aid.
- Gullible, excited and patriotic NRIs with a fervor happily invests huge sums of Pounds Sterling, Dollars or Euros in real estate, flats, or immovable property in India. When it comes to taking actual physical possession of their prized immovable asset in their homeland, the vulnerable NRI discovers to his horror that either the land or the flat does not exist or that he has been cheated into buying property which does not exist. Unscrupulous, unethical and unprofessional brokers, builders or real estate agents who had made these deals with the NRIs and promised the moon have either disappeared, are untraceable or flatly deny having made any commitment. The dumbfounded NRI is so stunned to react. With little time at his hand on his Indian visit or sitting in a foreign land, he does not know what to do. Who will help him. Should he go to the Police or the Administrative Authorities or to a Court of Law for a judicial remedy. Where should he seek advice and how does he pursue the case. The questions are myriad but the solutions and answers lie submerged in a complicated web of long winded procedures which on initiation will proceed endlessly

at a snail's pace. The frustrated, dejected and defeated NRI gives up not knowing what to do.

➤ The above summarization is in brief a nutshell of the NRIs ailing property problems for which he seeks a consolidated, composite, timely and effective remedy. The NRI wants to reconnect with his homeland but is disillusioned, disenchanting and disheartened. It is in this backdrop that this paper looks at these peculiar problems with a focus on the State of Punjab which contributes highly to the migratory numbers.

➤ Broadly, Property Related Problems can be divided under four heads as follows:

- (A) Issues relating to Landlord-Tenant Relationships in Punjab and Chandigarh.**
- (B) Issues relating to Succession, Wills and Inheritance - INDIA, NRIs and Wills.**
- (C) Problems arising out of Revenue Records and Agricultural Land Disputes - The Position Prevailing in the State of Punjab.**
- (D) Propositions arising out of Property Investment Related Issues in India.**

➤ It is in the above perspective that this paper looks at the above issues and how they are handled and attempted to be resolved in the framework of the existing laws which prevail in the State of Punjab and the Union Territory of Chandigarh in the matters of Tenancy and Agricultural Property Related Issues which are governed by State Legislations.

➤ In so far, problems related to Succession, Wills and Inheritance, as also propositions arising out of Property Investment Related Issues, the same are governed by Central Legislations (except where there are separate State Laws), the problems and solutions are by and large common throughout the Territory of India. Hence, wherever there is a Central Legislation enacted by Indian Parliament, the Indian Law will have universal application throughout the Territory of India. To that extent, the issues and Laws arising for Succession and Property Investment Related Issues may be common for the entire Indian Jurisdiction and applicable in all States of India.

In the back drop of the above problems which were discussed at length at the special seminar, Anil and Ranjit Malhotra came out with the following concrete solutions which were presented in their paper and in the key recommendations.

## **CONCLUSION**

As a common conclusion to all the above problems, some general suggestions can be mooted which can be a panacea to the NRI for the ills which ail him for his property problems. Though, no solution is universal but for the betterment of the properties of the NRI, these possible remedies can improve and make the situation better. These suggestions can be summarized in the following headings:

- At the outset it may be most useful for States and Union Territories all over India to constitute Nodal Cells for NRI Affairs at State Headquarters. These NRI Cells with memberships of Administration, Police and Legal Authorities can be Nodal Bodies for entertaining NRI complaints online and in person from NRIs. They can forward these complaints to the respective departments to which they pertain to and advise NRIs what remedy to adopt for resolving the problem. If the issue can be resolved by seeking a response from the Government machinery internally, the matter can be concluded or the NRI can be guided to approach the appropriate Court for relief.
- The Constitution of the NRI Nodal Cell by the Chandigarh Administration on August 12, 2009 which is headed by a retired High Court Judge and various officials including the Author as members is a role model for other States and Union Territories to adopt. This experiment is definitely worth emulating by other States in India.
- It is strongly advocated that in matters of landlord-tenant relationship, all States and Union Territories in India should enact local Legislations on the lines of the special provisions for the Right to recover immediate possession of Residential and Non-Residential Buildings of NRIs. The Union Territory of Chandigarh by a notification dated October 9, 2009 has made applicable the provisions of Section 13(B) of the East Punjab Rent Restriction Act to the Territory of Chandigarh whereby NRI landlords in Chandigarh can now recover immediate possession of their property. Wherever such a law does not exist in India, States and Union Territories should endeavour to make changes in Local Laws to incorporate such fast track changes in Rent Laws for NRIs.
- Further, it may be suggested that individual States and Union Territories should endeavour to create fast track NRI Courts in matters of agricultural properties, revenue affairs and land revenue disputes besides maintenance of revenue records. The changes in the State of Punjab in this regard are a helpful model to adapt.
- It may also be suggested that appropriate Legislative changes may be brought about in matters of properties of NRIs involving cases where NRI properties have been retained, forcibly occupied or grabbed by unscrupulous or unethical persons. It may be in order if the Central Government seriously considers enacting a Central Legislation applicable throughout the Territory of India to take cognizance of such issues of NRI properties and bring them under their purview of such Legislation. Such an enactment can create special Courts for speedy trials of property disputes of NRIs.
- In so far as issues concerning obtaining copies of land revenue records, title deeds, title documents, ownership records, transfer of ownership papers etc. are concerned, the Government of India should endeavour having a module of Public Private Partnership to whom the limited function of preparation and handing over copies can be outsourced. By commercial bidding, an agency can be identified either at Central or State level to handle this limited function of preparing copies of records on the basis of a regularly updated website to be prepared on the instructions of the respective State Governments and Union Territories within India.

This out sourced agency can fix rates at which copies of all individual ownership records can be supplied on payment of requisite charges either online or in person to the concerned NRI on a written request supported by his identity and his connection with the property. The Local Administration in every State can monitor the function of such agency & restrict its function only to disseminate limited information to concerned NRI.

By no means, the above suggestions are exhaustive or conclusive. They are the beginning of a new thought process initiated by the Government of India in the very useful session on Property Problems of NRIs/PIOs. However, to generate more thoughts, have more suggestions and consider other view points, these limited views have been put forth for a fruitful, interactive and participative session for the NRI brethren. It is a beginning without an end and a start of a new era for the NRI.

**Dated: 7 January 2010**

**Anil and Ranjit Malhotra**



**INDIA  
EMPIRE  
GROUP**



New Delhi

**JANUARY 10, 2010**



## NRI PROPERTY ISSUES

Anil Malhotra, Ranjit Malhotra and K.J.S. Pannu, IG,  
NRI Affairs (front row) in the audience

A special seminar was held on "Property Related Issues of NRIs / PIOs" on January 7, on the eve of the 8th Pravasi Bharatiya Divas in New Delhi. The full-day seminar comprised of a unique gathering that heard out problems that NRIs faced on property issues in India. This was for the very first time that a free, fair and frank discussion had taken place involving the Government of India and various arms and agencies. The special session was structured by Anil and Ranjit Malhotra at the behest of Ministry of Overseas Indian Affairs. The idea was to focus on important issues, key problems and to assist in drawing up concrete practical solutions to such problems. Anil Malhotra was requested to draw up the key recommendations of the seminar after observing, following-up and listening to the entire day's proceedings during which three different sessions deliberated on key issues. By every account, the seminar was a success.

The seminar was split in three parts. The inaugural session saw formal addresses by Vayalar Ravi, Minister of Overseas Indian Affairs, Salman Khursheed, Minister for Corporate and Minority Affairs, Justice AR. Lakshmanan, Former Chairman Law Commission of India, Justice A.M. Ebrahim from Zimbabwe, Bimal Patel and A. Didar Singh, Secretary, Ministry of Overseas Indian Affairs.

The second session on the "Overseas Indian Perspective and Interactive Session" saw presentations, discussions and interactions on

- (a) Tenancy related issues
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- (c ) Property registration related issues
- (d) Property investment related issues
- (e) Issues related to institutional mechanism to seek time bound redressal.

The presence of Minister of State in the Ministry of External Affairs Preeti Kaur (second from right) and Secretary, Ministry of Overseas Indian Affairs A Didar Singh (second from left) raised the level of interactions. Also present (right) was Anshuman Magazine, CMD of CB Richard Ellis



Kumar Gera chaired the session. Presentations were made by Man Mohan Maheshwari from GOPIO, Shreedhar Kavil from New York and a case study was presented by Susheela Verma from the USA. Ranjit Malhotra, Vivek Gogia, Additional Commissioner, Delhi Police and Parry Singh, Real Estate Developer fielded a range of questions in the interactive session.

The third concluding session relating to key recommendations and the valedictory address opened with the introductory remarks by Didar Singh. Anil Malhotra made the key observations of the seminar and Preeti Kaur, Minister of State for External Affairs delivered the valedictory address. Anshuman Magazine gave the concluding remarks.

The gist of the problems identified by Anil and Ranjit Malhotra in their written presentation which was circulated to all the delegates at the Seminar are as follows:

- \* A foreign based second or third generation descendant of an NRI seeks transfer of title of family property willed to him in rural or urban India. An aging NRI battles in Court to recover possession of urban property in metropolitan India wrested away by unscrupulous elements. Enthusiastic NRI owner sitting abroad desperately seeks remedies to locate share in rural agricultural property to claim ownership on the basis of inheritance. NRI families battle over division of land and property in exclusive control with custodians in India. Horrified NRI shockingly discovers divested share of family property on arriving in India on the basis of fraudulent documentation. Frantic NRI family members try to implement family settlement thwarted by local relatives occupying property locally. These real life instances are now common to NRIs and PIOs.

- \* During the last over 50 years, large number of Indians have migrated and permanently settled in foreign countries leaving behind their homes, family and landed properties. Now, when the NRIs wish to recover their properties, they find them in forceful or illegal occupation of their trusted childhood guardians or overstaying tenants who have designs to grab the property. Agreements are dishonoured, trust is violated and faith is destroyed. Commercial real estate property of NRIs is grabbed with impunity. The NRI has neither the patience nor the time to fight a protracted legal battle in an Indian law court which may last a lifetime, if fought, waged and litigated till the Apex Court. Legal processes are cumbersome, tedious, technical and move at a snail's pace. The bottom line is that the NRIs are at a great disadvantage leaving them disillusioned and disappointed. No existing legislation comes to their rescue or aid.

- \* Gullible, excited and patriotic NRIs with a fervor happily invest huge sums of pounds sterling, dollars or Euros in real estate, flats, or immovable property in India. When it comes to taking actual physical possession of their prized immovable asset in their homeland, the vulnerable NRI discovers to his horror that either the land or the flat does not exist or that he has been cheated into buying property which does not exist. Unscrupulous, unethical and unprofessional brokers, builders or real estate agents who had made these deals with the NRIs and promised the moon have either disappeared, are untraceable or flatly deny

having made any commitment. The dumbfounded NRI is too stunned to react. With little time at his hand on his Indian visit or sitting in a foreign land, he does not know what to do. Who will help him? Should he go to the police or the administrative authorities or to a court of law for a judicial remedy? Where should he seek advice and how does he pursue the case? The questions are myriad but the solutions and answers lie submerged in a complicated web of long winded procedures which on initiation will proceed endlessly at a snail's pace. The frustrated, dejected and defeated NRI gives up not knowing what to do.

\* The above summarization is in brief a nutshell of the NRIs ailing property problems for which he seeks a consolidated, composite, timely and effective remedy. The NRI wants to reconnect with his homeland but is disillusioned, disenchanted and disheartened. It is in this backdrop that this paper looks at these peculiar problems with a focus on the state of Punjab which contributes highly to the migratory numbers.

\* Broadly, property-related problems can be divided under four heads as follows:

- (A) Issues relating to Landlord-Tenant Relationships in Punjab and Chandigarh.
- (B) Issues relating to Succession, Wills and Inheritance - INDIA, NRIs and Wills.
- (C) Problems arising out of Revenue Records and Agricultural Land Disputes—The Position Prevailing in the State of Punjab.
- (D) Propositions arising out of Property Investment Related issues in India.

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**NRI's PROPERTY RELATED PROBLEMS – THE PUNJAB MODEL**

**BY ANIL MALHOTRA\* AND RANJIT MALHOTRA\*\***

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### **NRI's PROPERTY RELATED PROBLEMS – THE PUNJAB MODEL**

**BY ANIL MALHOTRA\* AND RANJIT MALHOTRA\*\***

#### **INTRODUCTION – THE GIST OF THE IDENTIFIABLE PROBLEMS**

- A foreign based second or third generation descendant of an NRI seeks transfer of title of family property willed to him in rural or urban India. An aging NRI battles in Court to recover possession of urban property in metropolitan India wrested away by unscrupulous elements. Enthusiastic NRI owner sitting abroad desperately seeks remedies to locate share in rural agricultural property to claim ownership on the basis of inheritance. NRI Families battle over division of land and property in exclusive control with custodians in India. Horrified NRI shockingly discovers divested share of family property on arriving in India on the basis of fraudulent documentation. Frantic NRI family members try to implement family settlement thwarted by local relatives occupying property locally. These real life instances are now common to NRIs & PIOs.
- During the last over 50 years, large number of Indians have migrated and permanently settled in foreign countries leaving behind their homes, ancestors and landed properties. Now, when the NRIs wish to recover their properties, they find them in forceful or illegal occupation of their trusted childhood guardians or overstaying tenants who have designs to grab the property. Agreements are dishonoured, trust is violated and faith is destroyed. Commercial real estate property of NRIs is grabbed with impunity. The NRI has neither the patience nor the time to fight a protracted legal battle in an Indian law court which may last a life time, if fought, waged and litigated till the Apex Court. Legal processes are cumbersome, tedious, technical and move at a snail's pace. The bottom line is that the NRIs are at a great disadvantage leaving them disillusioned and disappointed. No existing legislation comes to their rescue or aid.
- Gullible, excited and patriotic NRIs with a fervor happily invests huge sums of Pounds Sterling, Dollars or Euros in real estate, flats, or immovable property in India. When it comes to taking actual physical possession of their prized immovable asset in their homeland, the vulnerable NRI discovers to his horror that either the land or the flat does not exist or that he has been cheated into buying property which does not exist. Unscrupulous, unethical and unprofessional brokers, builders or real estate

agents who had made these deals with the NRIs and promised the moon have either disappeared, are untraceable or flatly deny having made any commitment. The dumbfounded NRI is so stunned to react. With little time at his hand on his Indian visit or sitting in a foreign land, he does not know what to do. Who will help him. Should he go to the Police or the Administrative Authorities or to a Court of Law for a judicial remedy. Where should he seek advice and how does he pursue the case. The questions are myriad but the solutions and answers lie submerged in a complicated web of long winded procedures which on initiation will proceed endlessly at a snail's pace. The frustrated, dejected and defeated NRI gives up not knowing what to do.

➤ The above summarization is in brief a nutshell of the NRIs ailing property problems for which he seeks a consolidated, composite, timely and effective remedy. The NRI wants to reconnect with his homeland but is disillusioned, disenchanting and disheartened. It is in this backdrop that this paper looks at these peculiar problems with a focus on the State of Punjab which contributes highly to the migratory numbers.

➤ Broadly, Property Related Problems can be divided under four heads as follows:

- (A) Issues relating to Landlord-Tenant Relationships in Punjab and Chandigarh.**
- (B) Issues relating to Succession, Wills and Inheritance - INDIA, NRIs and Wills.**
- (C) Problems arising out of Revenue Records and Agricultural Land Disputes - The Position Prevailing in the State of Punjab.**
- (D) Propositions arising out of Property Investment Related Issues in India.**

➤ It is in the above perspective, that this paper looks at the above issues and how they are handled and attempted to be resolved in the framework of the existing laws which prevail in the State of Punjab and the Union Territory of Chandigarh in the matters of Tenancy and Agricultural Property Related Issues which are governed by State Legislations.

➤ In so far, problems related to Succession, Wills and Inheritance, as also propositions arising out of Property Investment Related Issues, the same are governed by Central Legislations (except where there are separate State Laws), the problems and solutions are by and large common throughout the Territory of India. Hence, wherever there is a Central Legislation enacted by Indian Parliament, the Indian Law will have universal application throughout the Territory of India. To that extent, the issues and Laws arising for Succession and Property Investment Related Issues may be common for the entire Indian Jurisdiction and applicable in all States of India.

#### **(A) Issues relating to Landlord-Tenant Relationships in Punjab and Chandigarh**

In 2001, the Government of Punjab upon receiving representations from various NRI individuals, and through their associations highlighting the plight of Indian residents returning to India after long years abroad decided to amend the existing East Punjab Urban Rent Restriction Act, 1949, provide NRIs a right to recover immediate possession of their properties. It was represented that the NRIs having spent long years of their life abroad did not find conditions congenial in their own country on their return either to settle down or to take up any business. On account of rigid legal

provisions of existing Rent Laws, the NRIs were unable to recover possession of their own residential/non-residential buildings from the tenants. Accordingly, the Government of Punjab having considered the situation had decided that the existing Rent Legislation viz. East Punjab Urban Rent Restriction Act, 1949, should be amended to provide relief to NRIs to enable them to recover possession of a residential or scheduled building and/or one non residential building for their own use. By a notification dated October 9, 2009, the Central Government has extended to the Union Territory of Chandigarh the benefit of the said amendment and hence as of now, NRI Landlords are entitled to the benefit of immediate recovery of immediate possession of their properties in accordance with this Law as per details below.

### **Summary Eviction of tenants from properties of NRIs in Punjab and Chandigarh.**

- The East Punjab Urban Rent Restriction Act, 1949 (EPURRA), which extends to all urban areas in Punjab as also the Union Territory of Chandigarh, is an Act to restrict the increase of rents of certain premises and to provide for eviction of tenants there from. Other than prescribing a normal process for eviction of tenants, it also provides a summary procedure for recovering immediate possession of residential or scheduled buildings to certain specified landlords. By an amendment in 2001, the Act also created a special class of NRI landlords reposing in them a special right to recover immediate possession from tenants occupying their premises by a special summary procedure.
- Now under Section 13-B of the EPURRA, once in a lifetime, possession can be given to a NRI landlord to get one building vacated in a summary manner. A NRI landlord is accordingly required to prove that he is an NRI, he has returned to India permanently or temporarily, the requirement of the accommodation by him or his dependent is genuine and that he is the owner of the property for the last five years before the institution of the ejectment proceedings.
- By a 2005 landmark judgment titled Baldev Singh Bajwa Vs Monish Saini\*, the Supreme Court has given far reaching positive dimensions both to the definition of an NRI landlord and to the concept of 'his return' to India in the context of the NRIs right to recover possession of his property under the summary procedure under section 13-B of the EPURRA. It does not distinguish between a Non Resident Indian, Person of Indian Origin or an Overseas Citizen of India.
- To be an NRI, it is sufficient that a person of Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account of his employment or for any other purpose which would indicate his intention to stay outside India for an uncertain period.
- A person to be an NRI should be of Indian Origin. Since "Indian Origin" is not defined in the EPURRA, any person whose parents, grandparents or great grand parents were born in India and permanently resided in India would be an NRI. It is not necessary that the NRI should be a citizen of India. It is immaterial that the NRI holds a foreign passport or has shifted to a foreign country.
- Return to India cannot be read as return to India permanently with an intention to settle in India permanently. There is no requirement that the NRI has to permanently settle in India on his return or he has returned to India with an intention

to permanently settle in India. Hence, “return to India” may not be of permanent nature as the premises may be required for the use of any dependent ordinarily living with the NRI. All that is required under Section 13-B is that a NRI should return to India to claim the premises.

### **(B) Issues relating to Succession, Wills and Inheritance - INDIA, NRIs and Wills**

As far as Succession, Inheritance and Wills is concerned, the Hindu Succession Act, 1956 and the Indian Succession Act, 1925 being Central Legislations are applicable throughout the Territory of India. Hence, in so far these issues are concerned, they apply uniformly throughout the Territory of India to all States and Union Territories. The Indian Succession Act, 1925 is an Act to consolidate the Law applicable to testamentary succession for Hindus and the Hindu Succession Act, 1956 is an Act to amend and codify the Law relating to intestate succession among Hindus. Hence, in respect of the matter of Wills i.e. testamentary succession, all NRIs with moveable and immoveable property in India shall be governed by the Indian Succession Act, 1925.

- The Global Indian Diaspora has some problems on the home soil which needs intercontinental solutions. In this perspective, the disposition of property of an NRI living in a foreign domicile, when such property is located partly in India and partly situated abroad, often poses awkward questions. Must an NRI make a Will or leave his property to natural succession. Should the NRI make a joint, composite or common Will of his assets and properties in India and abroad. If so, should such a Will be registered and where. Need a person be appointed to execute the Will in different jurisdictions. Would it be better if there are different wills for separate properties in India and abroad. Should such different wills be registered individually in separate jurisdictions. How should inheritance rights of beneficiaries of NRIs be safeguarded in India and abroad. Which law Indian or Foreign would apply to assets and properties of NRIs in different countries.
- Two distinct Indian legislations exist. The Hindu Succession Act, 1956 (HAS) contains the codified law relating to intestate succession among Hindus i.e. when there is no Will. The Indian Succession Act, 1925 (ISA) consolidates the law applicable to persons other than Hindus for intestate succession and testamentary succession for all persons in India including Hindus. Hence, all NRIs (whether Hindus or non Hindus) can make Wills governed by the provisions of the Indian Succession Act, 1925. To begin with, for an NRI, it is advisable to execute a written Will, get it witnessed and registered to avoid any intricate problems of succession and inheritance. With the abundance of problems of NRI properties in India, natural succession in the absence of a will may pose problems from third party claimants. An NRI ought to Will his property by choice to his natural heirs or others and thus eliminate speculation or bogus claims from claimants and pave a smooth succession. Thus, what ought to follow naturally must be better confirmed by a Will also.
- The HAS/ISA unlike the Hindu Marriage Act does not have extra territorial application. In the wisdom of the Legislature, there are well defined principles of International law, which regulate succession to the movable and immovable

properties of a Hindu NRI domiciled outside the territory of India. Thus, on the basis of International comity, the following three principles can be deduced regarding the application of HAS/ISA :-

- Firstly, for a Hindu domiciled outside India, succession to his immovable property in India is governed by HAS/ISA whereas succession to his movable property shall be governed by the law of the country of his foreign domicile.
- Secondly, where a Hindu is domiciled in India, succession to his immovable property outside India shall be governed by the law of the country where the property is situated. Movables outside India will be governed by HAS/ISA or by the local law of the foreign country in which the movable property is situated.
- Thirdly, in respect of a Hindu domiciled outside India, succession to his movable and immovable property outside India shall not be governed by HAS/ISA but by the law of the foreign domicile of the Hindu.
- In the event of there being no Will, natural succession among the category of heirs as per the order of succession will flow as per the HAS. Then, speculation, outsider claims, disputes among heirs and third party rights are rife. Hence, it is in the best interest of an NRI to pen a Will and put down his wishes and leave nothing to doubt.
- In the light of non-application of HAS/ISA outside India, it is strongly recommended that NRIs of Hindu origin having immovable assets in different countries should execute a joint composite Will pertaining to all their immovable properties located in different jurisdictions. For NRIs, execution of separate Wills for separate immovable properties in different countries is not advisable. Establishing genuineness of a composite Will is easier than proving multiple Wills. It is also recommended that the NRI must register the Will separately in every jurisdiction even though it is optional in India to do so. It may be mentioned that the registration in a particular country may hold good in respect of properties of the NRIs in that jurisdiction. Accordingly, separate rules of registration of different countries ought to be complied with as per rules of the foreign domicile of the NRI.
- It is also advisable that the NRI should specifically appoint an executor to execute the Will in the particular jurisdiction where the property is situated. This assists the beneficiaries and simplifies the division of assets as per the Will. A written Will of an NRI duly witnessed and registered in respect of Indian properties identifies the claimants and legal heirs. Its multiple registration assures the seal of finality. The message for the NRI therefore is, to act well in advance and simplify the task of the beneficiaries who are to inherit their properties.
- Thereafter, the law of the jurisdiction, where the property is situated will govern the process of succession on the basis of rights established under the Will. The global Indian must take advantage of this well codified position of Indian succession law. This is to ensure that there is no uncertainty and ambiguity.

**(C) Problems arising out of Revenue Records and Agricultural Land Disputes - The Position Prevailing in the State of Punjab.**

The love of land and the need to reconnect with his homeland are an ingrained part and parcel of every NRI originating from Punjab. The landed agricultural properties left by forefathers, ancestors and well wishers always creates the innate desire in the Punjabi NRI to visit his homeland and stake his ownership claim to his land he loves. Sometimes, the landed property in the hands of relatives, tenants, family members or employees is difficult to recover, creating a plethora of unforeseen problems which can take a long time to resolve in the Revenue Courts. At times, title disputes are difficult to resolve and lack of documents to establish ownership can be difficult to obtain. This creates a very unpleasant and disturbing situation for the NRI. It is in this perspective that the State of Punjab has made some special endeavours to expedite the process of settling such disputes by simplified procedures and fast track resolution of such cases in this regard, the following summarized points are enumerated as under:

- Superseding its earlier orders under which existing Courts of Tehsildars and Naib-Tehsildars were designated as fast-track Courts for NRI's, the Department of Revenue and Rehabilitation in a directive issued on December 28, 2005 declared that four fast-track Courts would be set-up at Jalandhar, Hoshiarpur, Moga and Nawanshahr to which neighbouring districts would be attached.
- The District Revenue Officer heads a fast-track Court and has the powers to decide on the correction of "Khasra girdwari", partition, contested and un-contested mutations, registered and un-registered wills, "Iambardari", demarcation, rent suit, and ejection under the Punjab Land Revenue Act. They also hear "chowkidari" cases. The Additional Deputy Commissioner or the Divisional Commissioner decide appeals against the orders of the fast-track Courts.
- The Government of Punjab by Notification dated November 16, 2006, has also appointed District Revenue Officers at four District Headquarters to decide Suits under the Punjab Tenancy Act, 1887, for Non-Resident Indians by conferring powers of Assistant Collector 1st Grade upon them.

**(D) Propositions arising out of Property Investment Related Issues in India.**

Investing in real estate, urban property, flats or apartments with builders, colonizers, estate agents and building companies can sometimes be a nightmare for NRIs. Colourful brochures, fancy promises, pictures of properties and attractive installment plans are used as inducement measures to extract huge sums of money from innocent NRIs who walk into such traps. At times, flats, houses, or apartments are not constructed as per the schedule and escalated costs are demanded failing which money already paid is forfeited. There are also times when the same property is sold to multiple owners and the unfortunate NRI has to face insurmountable problems. It is in this context that the following safeguards and remedies can be advocated which are applicable uniformly throughout the Territory of India in all States & Union Territories.

- Before any investment in any property, flat or apartment is made in India, unless and until a physical verification is done through a reliable source or agency to conclusively establish the title or ownership of the builder, colonizer, company or estate agent, no money should be invested blindly without checking
- Every step should be taken by an NRI to ask, confirm and verify whether the person, builder, colonizer or company possesses a valid license, permission or sanction as per local laws to build a colony, set of apartments or the prescribed number of flats which are advertised or propagated at the time of sale.
- If possible, through the assistance of local agencies or contacts, the title of the owner who is selling the property should be verified from the local land records to establish the ownership of the vendor. This will rule out the issues relating to ownership being disputed at a later stage.
- It should be an absolute certainty that proper documents must be executed at the time of paying any initial deposit and no payment should be made unless and until proper contracts or agreements are executed and signed by the builder, estate agent, colonizer or company selling any property.
- It must be clarified in writing that in case the property is not handed over in the stipulated time, there shall be no escalation clause in terms of building costs. Similarly, adequate caution and care should be taken not to sign any agreement or document by which consent is given to agree to escalated building costs. Agreements or documents should be signed only after consultation with Solicitors and no blank documents should be signed at all.
- In case there is any failure to hand over property in a stipulated period of time or there is any breach of promise, an NRI should not wait indefinitely. Every effort should be made to put the grievance or complaint in writing to the concerned colonizer, builder, estate agent or property developer which can serve as written proof and evidence for initiating any legal proceeding later.
- The Consumer Protection Act, 1986, an Act for better protection of the interests of consumers and for the purpose to make provisions for establishment of Consumer Courts for settlement of Consumer Disputes is a very effective remedy in India against errant builder, colonizers and property developers. Consumer Courts exist in every District in India and complaints can be made in simple language with a very small amount of fee payable as Court fee. The complaints can be followed up in person and the procedure of hearing is simple. Trial is expeditious and quick. It serves as a very effective remedy. Hence, it is strongly advised that in case of any deficiency in service or restrictive trade practice suffered by an NRI at the hands of any such errant builder, colonizer or estate agent, the provisions of the Consumer Protection Act, 1986 applicable throughout India should be invoked at the earliest possible. This is a easy, friendly and quick method for getting relief.

## CONCLUSION:

As a common conclusion to all the above problems, some general suggestions can be mooted which can be a panacea to the NRI for the ills which ail him for his property problems. Though, no solution is universal but for the betterment of the properties of the NRI, these possible remedies can improve and make the situation better. These suggestions can be summarized in the following headings:

- At the outset it may be most useful for States and Union Territories all over India to constitute Nodal Cells for NRI Affairs at State Headquarters. These NRI Cells with memberships of Administration, Police and Legal Authorities can be Nodal Bodies for entertaining NRI complaints online and in person from NRIs. They can forward these complaints to the respective departments to which they pertain to and advise NRIs what remedy to adopt for resolving the problem. If the issue can be resolved by seeking a response from the Government machinery internally, the matter can be concluded or the NRI can be guided to approach the appropriate Court for relief.
- The Constitution of the NRI Nodal Cell by the Chandigarh Administration on August 12, 2009 which is headed by a retired High Court Judge and various officials including the Author as members is a role model for other States and Union Territories to adopt. This experiment is definitely worth emulating by other States in India.
- It is strongly advocated that in matters of landlord-tenant relationship, all States and Union Territories in India should enact local Legislations on the lines of the special provisions for the Right to recover immediate possession of Residential and Non-Residential Buildings of NRIs. The Union Territory of Chandigarh by a notification dated October 9, 2009 has made applicable the provisions of Section 13(B) of the East Punjab Rent Restriction Act to the Territory of Chandigarh whereby NRI landlords in Chandigarh can now recover immediate possession of their property. Wherever such a law does not exist in India, States and Union Territories should endeavour to make changes in Local Laws to incorporate such fast track changes in Rent Laws for NRIs.
- Further, it may be suggested that individual States and Union Territories should endeavour to create fast track NRI Courts in matters of agricultural properties, revenue affairs and land revenue disputes besides maintenance of revenue records. The changes in the State of Punjab in this regard are a helpful model to adapt.
- It may also be suggested that appropriate Legislative changes may be brought about in matters of properties of NRIs involving cases where NRI properties have been retained, forcibly occupied or grabbed by unscrupulous or unethical persons. It may be in order if the Central Government seriously considers enacting a Central Legislation applicable throughout the Territory of India to take cognizance of such issues of NRI properties and bring them under their purview of such Legislation. Such an enactment can create special Courts for speedy trials of property disputes of NRIs.
- In so far as issues concerning obtaining copies of land revenue records, title deeds, title documents, ownership records, transfer of ownership papers etc. are concerned, the Government of India should endeavour having a module of Public Private Partnership to whom the limited function of preparation and handing over copies can be outsourced. By commercial bidding, an agency can be identified either



at Central or State level to handle this limited function of preparing copies of records on the basis of a regularly updated website to be prepared on the instructions of the respective State Governments and Union Territories within India. This out sourced agency can fix rates at which copies of all individual ownership records can be supplied on payment of requisite charges either online or in person to the concerned NRI on a written request supported by his identity and his connection with the property. The Local Administration in every State can monitor the function of such agency & restrict its function only to disseminate limited information to concerned NRI.

By no means, the above suggestions are exhaustive or conclusive. They are the beginning of a new thought process initiated by the Government of India in the very useful session on Property Problems of NRIs/PIOs. However, to generate more thoughts, have more suggestions and consider other view points, these limited views have been put forth for a fruitful, interactive and participative session for the NRI brethren. It is a beginning without an end and a start of a new era for the NRI.

**Dated: 2 January 2010**

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**FAMILY LAW FOR NON-RESIDENT INDIAN FAMILIES – A DILEMMA**

By ANIL MALHOTRA\* AND RANJIT MALHOTRA\*\*

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**FAMILY LAW FOR NON-RESIDENT INDIAN FAMILIES – A DILEMMA**

**By ANIL MALHOTRA\* AND RANJIT MALHOTRA\*\***

**I. THE PROBLEMS IN BRIEF**

**(A)** Abandoned bride in distress due to run away 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 spouse 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.

**(B)** 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, but 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.

**(C)** Distraught husband from Patiala settled in Australia litigates for divorce while his Tamil wife settled in Hong Kong petitions courts for maintenance and child custody. Separated US Green Card holder husband relocated in Mumbai sues for divorce while US based wife from Varanasi seeks child support and benefits sitting

in USA. Separated NRI couple in UK seeks British Court intervention to settle terms for their children to visit India with their mother and to ensure their return to UK. Divorced NRI husband in USA seeks child custody from mother resettled in Hyderabad. Harried British Asian Muslim husband in UK seeks to dissolve Nikahnama contracted in Lucknow. Embittered Swiss father of Punjabi origin seeks quick dissolution of marriage solemnized in New Delhi. Traumatized Indian doctor in UK seeks return of children removed to Gujarat by wife who has launched proceedings under Domestic Violence Act in Satara. These are real life professional encounters which defy legislative solutions. Not a single day passes when a desperate and frantic parent or spouse calls from one of the 110 countries inhabited by Non-Resident Indians (NRIs) seeking immediate help or guidance on issues pertaining to marriage, divorce, parental child abduction, adoption or spousal maintenance rights. The need is dire, emergent and seeks instant answers. On a foreign land professional advice is not available. Even back home, Indian family laws do not give straight answers. What is to be done.

**(D)** Of a population of over 1.1 billion Indians, thirty million are NRIs living worldwide in 180 countries. Times have changed but family law legislations enacted by the Indian Parliament in 1955 and 1956 have left family laws for NRIs where they were. The result, an influx of family law problems arising out of NRI marriages with no practical solutions in the legislative enactments as they exist today. To compound the problem, registration of marriages, which is optional under Hindu Family laws, has not been made compulsory in India. The result: multiple marriages by the NRI often without a previous divorce, invariably by duping the previous spouse and providing no maintenance to the abandoned wife and the unfortunate child of such union if any. Foreign divorce decrees are not accepted by Indian Courts. Defending a matrimonial matter abroad sitting in India is an impossible task. Legal recourse in India is difficult, time consuming, expensive and complicated. Despite a Family Courts Act, 1984, most States have none despite 22 years having elapsed since this law was made. The end result: about twenty five thousand abandoned women in Punjab alone fending for themselves in an uphill legal system which provides no solutions or answers. Then, there are issues relating to Inter parental child abduction. Legal recourse is difficult, undefined and India not being a signatory to The Hague Convention on Child Abduction, there is practically no law on the subject. Still further, inter country adoptions are governed by a maze of laws and procedures. How are all these family law related issues to be resolved. Who will do it. How will it be done.

### **(E) SYNOPSIS OF THE MARRIAGE PROBLEMS**

In the light of the above description, the genesis and the aftermath of the major matrimonial problems arising from Foreign Matrimonial Unions can be condensed in a seven point itemized statement which runs in the following description:

- ❖ Spouse taken to country of husband's residence or wife going to foreign country but coming back within a year, either sent back or forced to flee. Alternatively,

there may be cases where the wife is abandoned on Indian soil either on account of the husband not sponsoring her to the foreign country or on account of visa refusal.

- ❖ Marital discord may arise due to the wife herself or her parents held to ransom for payment of huge sums of money as dowry, both before and after the marriage or due to the wife learning later that the person she had married was already married in the foreign country to another woman, whom he continues to live with. Domestic violence is also an issue which the wife faces sometimes in a foreign country.
- ❖ Cases of spouses learning later that they were given false information on all or any of the personal details like spouse's job, immigration status, income, property details, marital status and/or family details on which misrepresentation is alleged.
- ❖ The husband obtaining an *ex parte* decree of divorce in the foreign country behind her back and without her knowledge. The wife being abandoned in a foreign country with absolutely no support or means of sustenance or maintenance. Sometimes, even the visa of the wife is revoked and she is forced to leave the country.
- ❖ The wife going to a Court of law in India for maintenance or divorce and/or child custody but repeatedly encountering legal obstacles relating to jurisdiction of courts, service of notices or orders or enforcement of Court decisions. The wife encountering an uphill task of contesting foreign Court proceedings simultaneously initiated by the husband as a counterblast to the matrimonial proceeding in Indian courts.
- ❖ The wife faced with the hurdle of challenging a foreign Court matrimonial order of divorce, child custody and/or maintenance with no legal assistance abroad. Invariably, the wife has no option since she is even declined a visa to return to the foreign country to contest such matrimonial proceedings. This is further precipitated by the fact that the professional services in the foreign countries for legal assistance are extremely expensive and the Indian spouse does not qualify for legal aid.
- ❖ Refusal of foreign courts to accept or take cognizance of parallel proceedings of matrimonial courts in India and declining to accept the validity of any Indian Court orders on marital issues besides maintenance and child custody. Failure of abandoned spouses in India to seek enforcement and implementation of Indian Court orders in foreign courts on such issues on the erring spouse abroad who willfully flouts such Indian orders.

## **II. THE SEARCH FOR SOLUTION IN LAW**

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 are abound relating to non-resident Indians. 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 leaves the problems unresolved even though remedies partially exist in Indian law and partly need new urgent legislation.

The number of Non Resident Indians 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 Laws which is not yet a developed jurisprudence in the Indian territory.

## **III. DIFFICULTIES FACED UNDER INDIAN LAW**

Areas of family law in which the problems of jurisdiction of law is 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.

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.

#### **IV. INTERPARENTAL CHILD REMOVAL – A PECULIAR PROBLEM**

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**

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

A reading in totality of the matters in the overseas family law jurisdiction 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.

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 effected 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 by amendment of existing legislation. In this regard, in the opinion of the authors, the possible solutions as per the suggested **eight point charter summary are proposed for consideration.**

**1. 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, 1956 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. This is in compliance with the recent directions of the Supreme Court of India directing all states, union territories and the Central Government to make new rules or amend existing rules for providing the procedure for compulsory registration of marriages of all persons belonging to various religions in the respective States in India wherever such marriage is solemnized on Indian soil.

Simultaneously, it should be made obligatory that the NRI spouse must give intimation of his registration of 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.

**2. Additional Safeguards in NRI Marriages:** In addition to compulsory registration of marriages for NRIs, details of every NRI marriage should be furnished to the Consular Department of the concerned Embassy/Mission in New Delhi, India in which the foreign national of Indian origin is habitually resident. If the marriage is solemnized overseas in a case where one of the spouses is of foreign nationality and of Indian origin, while the other spouse is resident in India, even such marriages should be reported to the Consular Department of the Embassy/Mission in New Delhi, of the country in which the NRI spouse is resident.

There should be a nodal agency in every Embassy/Mission maintaining record of NRI marriages. It can be part of Consular obligations, which have assumed immense importance in the present day and age in the realm of Private International Law.

That in the event of any dispute or eventuality, the wife or the aggrieved spouse should be entitled access to personal details of the spouse as maintained by the nodal officer/agency of the Consular Department of the concerned Embassy/ Foreign Mission. This is because, experience suggests that deserted and dumped spouses in India are denied access to any personal details of their NRI spouse by the Embassies/Foreign Missions in the event of any matrimonial litigation. The stock reply of the Embassies in such unfortunate situations is that it is a personal and a private dispute, which does not warrant their interference. This leads to a dead end and the hapless Indian spouse deserted on Indian soil is left in the lurch.

**3. Amendment of Family Laws:** 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 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.

**4. Safeguards for Service of Summons, issued from Foreign Family Courts in Divorce Cases to be served on Wives Residing in India:** There is a serious need for enacting safeguards to protect girls of Indian origin, residing in India and married to NRIs. When divorce proceedings are commenced overseas by the NRI husband whilst the wife is in India, every effort is made by the NRI husband to serve the divorce summons on the estranged wife residing in India. There are several Supreme Court judgments categorically holding that such an ex-parte divorce obtained abroad by the husband, by merely effecting service of summons on the respondent wife residing in India, shall not be valid in terms of Section 13 of the Code of Civil Procedure, 1908. Regardless, the practice continues unabated.

Therefore, the need of the day is that service of summons issued by foreign courts in divorce matters should be hedged with adequate safeguards, for the spouse residing in India. In this regard the following suggestions are mooted.

Firstly, 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.

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/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 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 service of 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 plugged by providing sufficient safeguards to the hapless wife, dumped and deserted by her NRI husband. Obviously, such a deterrent will refrain Foreign Courts from passing ex-parte divorce decrees.

**5. Creation of Family Courts:** Wherever one of the spouses is an NRI, parallel additions must be made in Hindu Marriage Act, 1955 and 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.

**6. Creation of Fast Track Courts and Simplification of Procedures:** 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.

**7. India to become Party to Hague Convention:** 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 Civil Aspects of International Child Abduction, 1980 to provide a treaty to be followed for observance and implementation of foreign Court orders.

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 / Embassies in New Delhi 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 and who often land in such States in India with no clue on whom to approach for assistance.

**8. Simplification of Adoption Procedures:** 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.

#### **CONCLUSION:**

In the view of the authors, 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. The Law Commission of India has already prepared an interim report to suggest reform and change in law on the above perspectives affecting the lives of NRIs in India everyday. 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.

**Date: 11 December, 2010**

**Anil Malhotra and Ranjit Malhotra**

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## **AUTHOR PROFILES**

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## FIRST REPORT

### RECOMMENDATIONS OF CHAIRPERSON ON TASK FORCE OF POLICY PROCEDURES, RESOLUTION AND GRIEVANCES OF NRIs AND MEMBER, PUNJAB GOVERNANCE REFORMS COMMISSION

In the matter of suggesting necessary changes, reforms and bringing in appropriate legislation in the State of Punjab for resolving problems arising out of marital relationships, particularly in the NRI community, the following measures are proposed in the present report submitted hereunder:-

#### **1. REGISTRATION OF MARRIAGES MUST BE MADE COMPULSORY IN THE STATE OF PUNJAB:**

As per the judgment of the Supreme Court of India in Transfer Petition (civil) 291 of 2005, Seema vs. Ashwini Kumar, by orders dated 14.02.2006 and 25.10.2007, it has been made mandatory that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective States where the marriage is solemnized. The State of Punjab, as of date, has no compulsory registration of marriages prescribed under any enactment or rules made by the State of Punjab in this regard. Moreover, the compulsory registration of NRI marriages is urgently required to ensure that brides and grooms from the State of Punjab have proof and evidence of their marriage as also to prevent matrimonial frauds being practiced commonly in the State of Punjab. To meet all these requirements, a composite Law, namely "The Punjab Compulsory Registration of Marriages Bill, 2012" is proposed to be enacted and a draft of the same is annexed with this report for consideration of the Government of Punjab.

#### **2. CREATION OF FAMILY COURTS IN THE STATE OF PUNJAB**

Section 3 of the Family Courts Act, 1984, leaves it open to the respective State Governments to provide for Family Courts. The State of Punjab essentially needs Family Courts to provide

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Task Force, Policy Procedures, Resolution and Grievances of NRIs

fast-track, effective, meaningful and quick relief for abandoned spouses, deserted children and for resolving other disputes arising out of a matrimonial relationship. Under Section 3, the Family Courts are required to be constituted by the State Government in consultation with the High Court. It is thus proposed that the Family Courts should be set up in every district in the State of Punjab so that all such matrimonial disputes get effective, speedy and meaningful adjudication. Accordingly, the Government of Punjab may consider accordingly.

PUNJAB BILL NO. OF 2012

**THE PUNJAB COMPULSORY REGISTRATION OF MARRIAGES  
BILL, 2012**

A BILL

*to provide for compulsory registration of marriages solemnized or performed in the State of Punjab, irrespective of religion, caste, creed or nationality and for matters connected therewith or incidental thereto.*

Be it enacted by the Legislature of the State of *Punjab* in the Sixty-first year of the Republic of India as follows:-

**CHAPTER I  
PRELIMINARY**

Short title,  
extent and  
commencement

**1.** (1) This Act may be called the Punjab Compulsory Registration of Marriages Act, 2012.

(2) It extends to the whole of the State of Punjab.

(3) It shall come into force on such date, as the State Government may, by notification in the Official Gazette, appoint.

Definitions

**2.** In this Act, unless there is anything repugnant to the subject or context-

(a) “age of bridegroom and bride” shall mean the age not less than twenty-one years in the case of bridegroom and eighteen years in the case of bride on the date of marriage except for those who are governed by customary or personal law subject to the production of proof thereof;

(b) “Chief Registrar ” means the Chief Registrar of marriages appointed by the State Government under section 3;

- (c) “marriage” means to solemnize or enter into a marriage under any personal law or in any other form or manner and includes remarriage;
- (d) “District Registrar” means the District Registrar of marriages appointed by the State Government for a district under section 4;
- (e) “prescribed” means prescribed by rules made under this Act;
- (f) “priest” means any person who solemnizes or performs a marriage;
- (g) “Non Resident Indian” (NRI) means a person of Indian origin who is resident abroad, is holding Indian or foreign nationality and who is either permanently or temporarily settled outside India for any of the following purposes-
- (i) for or on taking up employment outside India; or
  - (ii) for carrying on a business or vocation outside India; or
  - (iii) for any other purpose, as would indicate his/her intention in such circumstances to stay outside the territorial limits of India for a uncertain or determined period for fulfilling or completing such purpose.
- (h) “foreign national” means any person who is not a citizen of India and would include Persons of Indian Origin (PIO) and Overseas Citizens of India (OCI)
- (i) “register ” means a register of marriages maintained under this Act;
- (j) “Registrar” means a Registrar of marriages appointed by the State Government under section 5;
- (k) “State Government” means the Government of the State of Punjab.

## CHAPTER –II

### REGISTRATION ESTABLISHMENT

Appointment of  
Chief Registrar

3. (1) The State Government shall, by notification in the Official Gazette, appoint a Chief Registrar for the whole of the State.

(2) The Chief Registrar may, in consultation with the State Government, also appoint such other officers with such designations as he thinks fit for the purpose of discharging, such of his functions, as he may from time to time, authorize them to discharge.

(3) The Chief Registrar shall be the Chief Executive Authority in the State for carrying into execution the provisions of this Act and the rules made thereunder subject to the directions, if any, given by the State Government.

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Chairperson

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(4) The Chief Registrar shall take steps, by issuing suitable instructions or otherwise, to co-ordinate, unify and supervise the work of registration in the State for securing an efficient system of registration and shall prepare and submit to the State Government, in such manner and at such intervals, as may be prescribed, a report on the working of this Act in the State.

Appointment  
Of District  
Registrar

4. The State Government shall appoint a District Registrar for each revenue district and such number of Additional District Registrars, as it thinks fit, who shall, subject to the general control and direction of the District Registrar, discharge such of his functions as the District Registrar may from time to time authorize them to discharge.

Appointment  
Of Registrar

5. (1) The State Government shall appoint a Registrar for each local area comprising the area within the jurisdiction of a tehsil or sub-tehsil or a combination of any two or more of them for carrying into execution in such areas the provisions of this Act:

Provided that the State Government may appoint, in the case of any municipal corporation, municipality or for any other local authority or for a group of villages or other territories in the State, any officer or employee thereof, to be a Registrar under the provisions of this Act.

(2) The Registrar may also *suo motu*, or on notice, without fee or reward, enter and register any marriage which takes place in his jurisdiction in the register maintained under this Act, after calling the parties concerned and ascertaining the facts which require such marriage to be registered.

(3) Every Registrar shall have an office in the local area of his jurisdiction for which he is so appointed.

(4) Every Registrar shall attend his office for the purpose of registering marriages on such days and at such public hours as the Chief Registrar may direct and shall cause to be placed in a conspicuous place on or near the outer door of the office of the Registrar, a board bearing, in the local language, his name and the designation of the word "Registrar" for the local area for which he so is appointed, and the public days and hours of his attendance.

### **CHAPTER III REGISTRATION OF MARRIAGES**

Every marriage  
to be registered

6. After the date of commencement of this Act, every marriage between Indian nationals, Non-resident Indians or foreign nationals, solemnized or performed in the State of Punjab, irrespective of religion, caste, creed or nationality, shall be registered in the manner, as provided in section 7.

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Chairperson

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Provided, that in case of any marriage, where either or both the parties are Non-resident Indians or foreign nationals, it shall be mandatory for such parties to disclose and mention in writing, his/her passport number, its country of issue and its period of validity, besides his/her permanent residential/official address in the country of current overseas abode and his/her valid, present social security number or any such similar other identification proof officially issued by the country of foreign abode, which information shall be entered in the certificate of marriage as also in the register of marriages.

Memorandum  
of marriages

7. (1) The parties to a marriage shall prepare and sign a memorandum, in such form, as may be prescribed and deliver or send by

registered post, the said memorandum in duplicate to the Registrar of the area concerned in which the marriage was solemnized or performed, or at the ordinary place of residence of the bride/her parents or of the bridegroom/his parents, within a period of ninety days from the date of solemnization or performance of marriage.

(2) The memorandum shall be accompanied by such fee in the form of court fee stamps or in any other prescribed mode of deposit of fee and shall be attested by such person, as may be prescribed.

(3) Where the Registrar, before whom the memorandum is presented under sub-section (1), on scrutiny of the documents submitted with the memorandum or, on other facts noticed or brought to his notice, is satisfied or has reason to believe that-

- (a) the marriage between the parties is not solemnized or performed in accordance with the personal or other law applicable to the parties; or
- (b) the identity of the parties or the witnesses or the persons testifying the identity of the parties and the solemnization or performance of the marriage is not established beyond reasonable doubt; or
- (c) the documents tendered before him do not prove the marital status of the parties,

he may, after hearing the parties and recording the reasons in writing, refuse to register any such marriage and may-

- (i) call upon the parties to produce such further information or documents as deemed necessary, for establishing the identity of the parties and the witnesses or correctness of the information or documents presented to him or for any other reason specified in writing; or

(ii) if deemed necessary, also refer the papers to the local police station within whose jurisdiction the parties reside, for verification and confirmation.

(4) Where on scrutiny of documents presented to him or on further verification as provided in sub-section (3), the Registrar concerned is satisfied that there is no objection to register the marriage, he shall register the same within the period as may be prescribed and issue a certificate of marriage in the prescribed form. If in the opinion of the Registrar, the marriage is not fit for registration, he shall pass an order of refusal in writing after recording the reasons therefor and send the duplicate copy thereof to the District Registrar.

(5) Such parties to a marriage who were married prior to the date of commencement of this Act, may also get their marriage registered if they are residents of the State of Punjab at the time of registration of the marriage, subject to the terms and conditions as mentioned in subsections (2), (3) and (4) above.

(6) Such parties to a marriage who have married outside the State of Punjab, but are residents of the State of Punjab, may also get their marriage registered in the State of Punjab as per provisions of sub-section (1), subject to the terms and conditions as mentioned in sub-sections (2), (3) and (4) above.

(7) If the marriage is already registered outside the State of Punjab, it shall not be registered again in the State of Punjab.

Appeal

**8.** (1) Any person aggrieved by the order of the Registrar refusing to register the marriage under sub-section (4) of section 7 may, within a period of ninety days from the date of receipt of such order, appeal to the District Registrar in such manner and accompanied by such fees, as may be prescribed.

(2) The District Registrar, after giving an opportunity of being heard to the party concerned, shall pass an order confirming the order of the Registrar or after recording the reasons in writing, direct the Registrar concerned to register the marriage or shall pass such order as he may deem fit.

Second Appeal

**9.** (1) Any person aggrieved by the order of the District Registrar refusing to register the marriage under section 8 may, within a period of ninety days from the date of receipt of such order, appeal to the Chief Registrar in such manner and accompanied by such fees, as may be prescribed.

(2) The Chief Registrar, after giving an opportunity of being heard to the party concerned, shall pass an order confirming the order of the District Registrar or Registrar concerned or after recording the reasons in writing, direct the District Registrar or Registrar concerned, as the case may be, to register the marriage or shall pass such order as he may deem fit.

Register

**10.** (1) The Registrar shall maintain a register of marriages solemnized or performed in the State of Punjab in such form and manner as

may be prescribed. On receipt of the memorandum of marriage under section 7, the Registrar shall make a record of the same in the register.

(2) On registration of the marriage, the Registrar shall issue a certificate of marriage to the parties in such form as may be prescribed.

Memorandum of marriage submitted after ninety days

**11.** (1) A memorandum accompanied by such fee along with such fine as may be prescribed regarding any particular marriage, may be submitted to the Registrar after the expiry of the period specified under sub-section (1) of section 7 and the Registrar shall proceed accordingly after following the due procedure enumerated in section 7.

(2) Nothing in sub-section (1) shall affect the liability or responsibility of any person who has willfully omitted or neglected to deliver or send the memorandum within the period specified in sub-section (1) of section 7 to any penalty that may be imposed under section 16 of this Act.

(3) Any marriage of which delayed information is given to the Registrar after the period specified in sub-section (1) of section 7 but within one year of its solemnization or performance, shall be registered only with the written permission of the District Registrar and on payment of such fee along with such fine as may be prescribed and on production of a self attested affidavit justifying and explaining the cause of delay.

(4) Any marriage of which delayed information is given to the Registrar after one year of its solemnization shall be registered only with the written permission of the Chief Registrar and on payment of such fee along with such fine as may be prescribed and on production of a self-attested affidavit justifying and explaining the cause of delay.

(5) Nothing contained in sub-sections (1), (2), (3) and (4) shall affect the liability of any person under the provisions of section 16.

Register to be open for public inspection

**12.** (1) The register maintained under this Act shall at all reasonable times, be open to inspection and certified extracts therefrom shall, on application, be given by the Registrar on payment of such fee as may be prescribed.

(2) All extracts given under sub-section (1) shall be certified by the Registrar or any other officer authorized by the State Government to give such extracts as provided in section 76 of the Indian Evidence Act, 1872 (1 of 1872) and shall be admissible in evidence for the purpose of proving the marriage to which it relates.

Non-registration not to invalidate marriage

**13.** No marriage in the State of Punjab shall be deemed to be invalid solely by reason of the fact that it was not registered under this Act or that the memorandum was not delivered or sent to the Registrar or that such memorandum was defective, irregular or incorrect.

## CHAPTER IV MAINTENANCE OF REGISTERS AND RECORDS

Maintenance of register

**14.** (1) Every Registrar shall keep a register of marriages for the concerned area or any part thereof in relation to which he exercises jurisdiction in such form and manner as may be prescribed.

(2) The Chief Registrar shall cause to be printed and supplied a sufficient number of register books for making entries of marriage according to such form as may, from time to time, be prescribed; and a copy of such form in the local language shall be pasted at some conspicuous place or near the outer door of the office of Registrar.

Correction or cancellation of entry in register

**15.** If it is found to the satisfaction of the Registrar, on complaint or *suo moto*, that any entry of a marriage in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the condition on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign and attest such entry made in the margin and add the date of correction or cancellation.

## CHAPTER V PENALTIES

Penalty

**16.** Any person who-

- (a) willfully omits or fails to deliver or send memorandum as required by section 7, shall be punishable with fine which may extend to five hundred rupees; or
- (b) (i) makes any statement in such memorandum which is false in material particulars, and which he knows or has reason to believe to be false ; or
- (ii) secretly destroys or dishonestly or fraudulently alters the marriage register or any part thereof, shall be punishable with fine which may extend to one thousand rupees or which may extend to imprisonment for one year or both.

## CHAPTER VI MISCELLANEOUS

**17.** The Chief Registrar, District Registrars, Additional District Registrars, Registrars and other officers or officials appointed under this Act,

Registrars to be public servants.

Place: Chandigarh  
Date: 07.07.2012

ANIL MALHOTRA  
Chairperson

Task Force, Policy Procedures, Resolution and Grievances of NRIs

while acting or purporting to act in pursuance of any of the provisions of this Act, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Act 45 of 1860).

Indemnity.

**18.** No suit, prosecution or other legal proceedings shall be instituted against any person for anything which is done in good faith or intended to be done under this Act.

Power to make rules.

**19.** (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the manner and interval at which the report of working of this Act is to be submitted under subsection (4) of section 3;
- (b) the details and particulars of the parties to be mentioned and disclosed in writing under proviso to Section 6 in an application for registration of marriage;
- (c) the fee of the memorandum and the person who shall attest the same under sub-section (2) of section 7;
- (d) the period within which the marriage is to be registered under sub-section (4) of section 7;
- (e) the contents to be mentioned in the certificate of marriage to be issued under section 7(4) in terms of the requirements prescribed in section 6;
- (f) the manner and fee for filing an appeal under sub-section (1) of section 8;
- (g) the manner and fee for filing of second appeal under sub-section (1) of section 9;
- (h) the form and manner in which register is to be maintained under sub-section (1) of section 10 to incorporate all necessary particulars under sections 6 and 7;
- (i) the form in which certificate of marriage shall be issued under sub-section (2) of section 10;
- (j) the fee and fine to be paid under sub-section (1) of section 11;
- (k) the fee for obtaining certified copy under subsection (1) of section 12;

- (l) the form and manner in which register of marriages is to be maintained and forms for making entries of marriage under section 14;
- (m) the conditions and circumstances in which entries of marriage shall be corrected or cancelled under section 15;
- (n) any other matter which is to be or may be prescribed under this Act.

(3) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the House of the State Legislature, while it is in session.

Provisions not to be derogatory to certain laws.

**20.** The provisions of this Act shall be in addition to and not in derogation of the provisions of the Special Marriage Act, 1954 (43 of 1954), the Indian Christian Marriage Act, 1872 (15 of 1872), the Parsi Marriage and Divorce Act, 1936 (3 of 1936) and the Foreign Marriage Act, 1969 (33 of 1969).

Place: Chandigarh  
Date: 07.07.2012

ANIL MALHOTRA  
Chairperson  
Task Force, Policy Procedures, Resolution and Grievances of NRIs

Place: Chandigarh  
Date: 07.07.2012

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**SECOND REPORT**

**CURBING OF WORKING OF UNREGISTERED RECRUITING AGENTS.**

**RECOMMENDATIONS OF CHAIRPERSON ON TASK FORCE OF POLICY PROCEDURES, RESOLUTION AND**  
**GRIEVANCES OF NRIs AND MEMBER, PUNJAB GOVERNANCE REFORMS COMMISSION**

**THE PROBLEM**

1. That in the absence of any law made by Parliament to define the offence of Human Smuggling and illegal trafficking of human beings, unscrupulous agents and unregistered agencies indulge in the unauthorised business of sending gullible residents of Punjab abroad by wrong means upon extracting huge sums of money. This rampant practice goes unchecked. Unfortunate victims of this thriving illegal business are duped and often pay with their lives. Over the years, despite various tragic events where gullible citizens of Punjab have either gone missing or cannot return to India due to having no valid travel documents, media reports regularly indicate that more and more innocent persons are still trapped frequently. It is in this context that the present report seeks to make recommendations for ending malpractices of such unauthorized agents.



## **PREVALENT LAW ON THE SUBJECT**

2. That as of date, there is no independent law on the subject made by Punjab, but the Punjab Prevention of Human Smuggling Bill, 2010, passed by the Punjab Vidhan Sabha in its sitting held on 01.10.2010 is to be reintroduced in the Punjab Vidhan Sabha after incorporating amendments suggested by the Government of India. The Emigration Act, 1983 (hereinafter 1983 Act) is an Act to consolidate and amend the law relating to emigration of citizens of India. This is the only legislation on the subject made by Parliament. All the recruiting agents/employers working in any place are duty bound to follow the provisions laid down under the 1983 Act, before carrying on/conducting the business of sending people outside India on the pretext of jobs or employment outside India. The unregistered recruiting agents/employers not working as per the 1983 Act are unlicensed and unauthorised. A Protector of Emigrants at Chandigarh exercises jurisdiction in the States of Punjab, Haryana and Union Territory of Chandigarh overseen by a Protector General of Emigrants functioning at New Delhi under the 1983 Act to ensure the compliance of the provisions of the 1983 Act.

3. That both, the Protector of Emigrants at Chandigarh and the Protector General of Emigrants work under the authority of the Ministry of Overseas Indian Affairs, Government of India. The recruiting agents/employers in Punjab, before commencement and carrying on business of recruitment/overseas employment, need to get a valid registration certificate and a permit which is issued by the Protector General of Emigrants. Without getting any such registration certificate or a valid permit, the

recruiting agent/employer cannot legally conduct this business or send any person abroad. As per the website of the Ministry of Overseas Indian Affairs, [www.poeonline.gov.in](http://www.poeonline.gov.in), where a list of registered recruiting agents registered under the Emigration Act, 1983 is maintained, as on 13.06.2012, there are only 47 recruiting agents currently registered in Punjab under the Emigration Act, 1983.

### **SITUATION AT HAND**

4. Reports in the media indicate that various unauthorized persons and huge number of unregistered agencies function in the State of Punjab without any registration or compliance of the provisions of the Emigration Act, 1983. A large number of mishaps, i.e. the Malta Boat tragedy, incidents of human trafficking in Iraq, detention of illegal immigrants in Europe and tragic deaths elsewhere on account of human smuggling from Punjab, indicate that this illegal business flourishes unchecked. The unregistered agencies are stated to be working unauthorisedly without registration under the Emigration Act, 1983. These activities are likely to affect the prospective NRIs and thereby discredit the Government of Punjab in its failure to protect the mandate handed out by the Legislature under the provisions of the Emigration Act, 1983.

### **PROVISIONS OF THE EMIGRATION ACT, 1983**

5. That it may be necessary to highlight the provisions of the Emigration Act, 1983 which provides for safeguards, checks and controls to be enforced by the Protector of

Emigrants as well as the Protector General of Emigrants. The Emigration Act, 1983, is an Act that was enacted to consolidate and amend the law relating to emigration of citizens of India. Sections 2 (f), (g), (k), (l), (m) and Section 2 (o) of the 1983 Act define various words stipulated in the 1983 Act and Sections 3, 9, 10, 13, 15, 16, 24, 36 and 37 lay down mandatory provisions for governing the working of recruiting agents/employers who send people abroad. These statutory provisions are reproduced as hereunder for a better understanding of the subject of this report:

**“S. 2 Definition:-** (1) *In this Act, unless the context otherwise requires, -*

*(f) "emigrate" and "emigration" mean the departure out of India of any person with a view to taking up any employment (whether or not under an agreement or other arrangements to take up such employment and whether with or without the assistance of a recruiting agent or employer) in any country or place outside India;*

*(g) "employer" means any person providing or offering to provide, employment in any country or place outside India;*

*(k) "Protector of Emigrants" means a Protector of Emigrants appointed under section 3 and includes a person authorised under section 5;*

*(l) "recruiting agent" means a person engaged in India in the business of recruitment for an employer and representing such employer with respect to any matter in relation to such recruitment including dealings with persons so recruited or desiring to be so recruited;*

*(m) "recruitment" includes the issuing of any advertisement for the purpose of recruitment, the offering by advertisement to secure or assist in securing any employment in any country or place outside India and the entering into any correspondence, negotiation, agreement or arrangement with any individual for or in relation to the employment of such individual in any country or place outside India;*

*(n) "registering authority" means the officer appointed under section 9 to be the registering authority for the purposes of this Act;*

*(o) "work" means—*

*(i) any unskilled work, including any form of industrial or agricultural labour;*

*(ii) any domestic service;*

*(iii) any service, not being a service in a managerial capacity, in any hotel, restaurant, tea-house or other place of public resort;*

*(iv) work as a driver of a truck or other vehicle, mechanic, technician or skilled labourer or artisan;*

*(v) work as an office assistant or accountant or typist or stenographer or salesman, or nurse or operator of any machine;*

*(vi) work in connection with, or for the purposes of, any cinema, exhibition or entertainment;*

*(vii) any such work of a professional or of any other nature as the Central Government may, having regard to the need for the protection of citizens of India who may be employed in such work outside India and other relevant circumstances, specify by notification:*

*PROVIDED that the Central Government may, if satisfied that it is necessary so to do having regard to the conditions of service applicable with respect to employment in any of the aforementioned categories of work or any sub-category thereof, whether generally or in relation to any particular country or place and other relevant circumstances, declare by notification that such category of work or sub-category of work shall not be deemed to be work within the meaning of this definition*

### ***S. 3 Protectors of Emigrants***

*(1) The Central Government may, by notification, appoint a Protector General of Emigrants and as many Protectors of Emigrants, as it deems fit, for the purposes of this Act.*

*(2) The Central Government may, by general or special order, define the area to which the authority of a Protector of Emigrants so appointed shall extend and, where two or more Protectors of Emigrants are appointed for the same area, also provide, by such order, for the distribution and allocation of the work to be performed under this Act, in relation to such area.*

*(3) The Protectors of Emigrants shall perform the functions assigned to them by or under this Act under the general superintendence and control of the Protector General of Emigrants.*

(4) *The Protector General of Emigrants may, in addition to the special functions assigned to him by or under this Act, perform all or any of the functions assigned to any Protector of emigrants.*

### **S.9 Registering authority**

*The Central Government may, by notification, appoint the Protector General of Emigrants or any other officer of that government of a rank higher than that of a Protector of Emigrants to be the registering authority for the purposes of this Act.*

### **S. 10 No person to function as recruiting agent without a valid certificate**

*Save as otherwise provided in this Act, no recruiting agent shall, after the commencement of this Act, commence or carry on the business of recruitment except under and in accordance with a certificate issued in that behalf by the registering authority:*

*PROVIDED that a person carrying on the business of recruiting agent immediately before the commencement of this Act may continue to carry on such business without such a certificate for a period of one month from such commencement, and if he has made an application for such certificate under this Act within the said period of one month and such application is in the prescribed form and contains the prescribed particulars, till the disposal of such application by the registering authority.*

### **S. 13 Renewal of registration**

*A certificate may be renewed from time to time and the provisions of this Act and the rules made thereunder (including provisions as to fees) shall apply to the renewal of a certificate as they apply to the issue thereof:*

*PROVIDED that no certificate shall be renewed unless, the application for its renewal is made not less than three months prior to the date on which the certificate, would, but for such renewal, cease to be valid.*

*PROVIDED FURTHER that registering authority may entertain an application for the renewal of a certificate which has been made at any time during the period of three months prior to the date on which the certificate would, but for such renewal, cease to be valid if the applicant satisfies the registering authority that he had sufficient cause for not making such application before the said period.*

### **S.15 Competent authority**

*(1) The Central Government may, by notification, appoint the Protector General of Emigrants or any other officer of that government of a rank higher than that of a Protector of Emigrants to be the authority (hereinafter referred to as the Competent authority) for issuing permits under this chapter.*

*(2) Notwithstanding anything contained in sub-section (1), the Central Government may, by notification, authorise any person who is employed under that government in any country or place outside India to exercise the powers of the Competent Authority, and issue permits under this chapter to employers who are not citizens of India for the purpose of recruiting any citizen of India for employment in such country or place and a*

*person so authorised shall endorse a duly certified copy of every permit issued by him under this chapter to the Protector General of Emigrants.*

### **S.16 Recruitment by employers to be through recruiting agent or under permit**

*Save as otherwise provided by or under this Act, no employer shall recruit any citizen of India for employment in any country or place outside India except—*

- (a) through a recruiting agent competent under this Act to make such recruitment, or*
- (b) in accordance with a valid permit issued in this behalf under this chapter.*

### **S. 24 Offences and penalties**

*(1) Whoever—*

- (a) except in conformity with the provisions of this Act emigrates; or*
- (b) contravenes the provisions of section 10 or section 16; or*
- (c) by intentionally furnishing any false information or suppressing any material information obtains a certificate or a permit or an emigration clearance under this Act; or*
- (d) without lawful authority makes or causes to be made any alteration in any certificate or permit or in any document or endorsement by way of emigration clearance issued or made under this Act; or*
- (e) disobeys or neglects to comply with any order of the Protector of Emigrants under this Act; or*



*(f) collects from an emigrant any charge in excess of the limits prescribed under this Act; or*

*(g) cheats any emigrant,*

*shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees:*

*PROVIDED that in the absence of any special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than six months and such fine shall not be less than one thousand rupees.*

*(2) Whoever attempts to commit any offence under sub-section (1) shall be punishable with the punishment provided for such offence under that sub-section.*

*(3) Whoever contravenes any term or condition subject to which any emigration clearance has been given under this Act, shall, if no other punishment is provided elsewhere in this Act for such contravention, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both.*

*(4) Whoever abets any offence punishable under this Act shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided for that offence.*

*(5) Whoever, having been convicted of an offence under any provision of this Act is again convicted of an offence under the same provision, shall be punishable, for the*

*second and for each subsequent offence, with double the penalty provided for that offence.*

### **S. 36 Returns and registers**

*(1) Every recruiting agent shall maintain such registers and other records and shall submit to the prescribed authorities such periodical or other returns as may be prescribed.*

*(2) The Protector General of Emigrants, the registering authority, the Competent Authority or a Protector of Emigrants may, by order, call for any other return or information from a recruiting agent.*

*(3) The Protector General of Emigrants, the registering authority, the Competent Authority or a Protector of Emigrants or an officer incharge of an emigration check-post may inspect any register or other record maintained by a recruiting agent under subsection (1) and for the purpose of such inspection, enter, at any reasonable time, the business premises of a recruiting agent.*

### **S. 37. Authorities and officers to have certain powers of civil court**

*(1) The Protector General of Emigrants, the registering authority, the Competent Authority and every Protector of Emigrants shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—*

- (a) summoning and enforcing the attendance of witnesses;*
- (b) requiring the discovery and production of any document;*
- (c) requisitioning any public record or copy thereof from any court or office;*
- (d) receiving evidence on affidavits; and*
- (e) issuing commissions for the examination of witnesses or documents.*

*(2) Every proceeding before the Protector General of Emigrants, or the registering authority or the Competent Authority of a Protector of Emigrants shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Protector General of Emigrants, the registering authority, the Competent Authority, and every Protector of Emigrants shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."*

It is submitted that the strict enforcement of these provisions in the jurisdiction of Punjab, Haryana and Chandigarh vests with Protector of Emigrants based at Chandigarh which is to be ensured by Protector General of Emigrants under the direct control and supervision of the Ministry of Overseas Indian Affairs, Government of India. However, repetitive tragic incidents of deaths and missing persons reports of Indian nationals from Punjab in various foreign countries indicates that the business of illegal human smuggling operates with impunity as unlicensed / unauthorised agents run illegal rackets to promote this trade in Punjab. The effective implementation and

enforcement of the above statutory provisions of the Emigration Act, 1983 is clearly lacking and wanting as large number of unregistered recruiting agents actually function with impunity and indulge in all sorts of malpractices and criminal activities. Since the unregistered agents do not come within the ambit of the provisions of the Emigration Act, 1983, it may be the duty of the District Authorities in the State of Punjab to take remedial action in their respective territorial jurisdiction to stop such illegal business.

### **UNODC REPORT**

6. That based on data, a copy of a report on a Study on Punjab and Haryana of Smuggling of Migrants from India to Europe and in particular to UK, was conducted by the United Nations Office on Drug and Crime (UNODC) in 2009 and a copy of this report was prepared by Mr. K.C Saha, IAS, Former Consultant UNODC and released in Chandigarh in March 2010. This report is an excellent composite study on the magnitude of irregular migration from Punjab and Haryana and highlights various factors. It indicates that every year more than 20,000 youths from Punjab attempt irregular migration which is spreading to Haryana & neighbouring States and the menace is multiplying every year. The report also quotes that large number of residents of Punjab faced deportation from different countries for not travelling on valid documents during the last five years. This report was released in Chandigarh on 11.03.2010 in the presence of officials of the office of The Ministry of Overseas Indian Affairs and the States of Punjab and Haryana. However, despite the release of this report and its free availability in Punjab, no tangible steps have been taken to check illegal migration and the provisions of the Emigration Act, 1983 are not being implemented effectively. No information or data is available publicly to establish whether

any effective steps have been taken by the State of Punjab or any policy decision has been drawn up by the State of Punjab to look into the said report and take steps to curb the menace of illegal human smuggling which primarily ails Punjab.

### **ISSUE NEEDING REDRESSAL**

7. That a large number of unregistered recruiting agents/employers have proliferated in recent times and may be functioning with impunity in Punjab, without obtaining any registration under Section 10 or any permit under Section 16 of the Emigration Act, 1983, by issuing newspaper advertisements or using other means to unethically recruit innocent persons for employment abroad. Apparently, most of these individuals or firms operate under the guise of a consultancy to attract innocent victims through websites, advertisements or other luring messages. Such recruiting agents are invariably unregistered and unlicensed. Most of the victims do not even know that such unauthorised agencies need to be licensed and authorised under the Emigration Act, 1983. Therefore, in larger public interest and public welfare, this menace must be checked and stopped in the State of Punjab.

### **SUGGESTIONS**

8. That it may be thus just and appropriate that the State of Punjab furnishes the updated list of registered recruiting agents/employers in Punjab as per Ministry of

Overseas Indian Affairs records, who have current valid registration and are authorised for conducting overseas employment. These details so furnished should be made available to the Deputy Commissioners and Senior Superintendent of Police in all the Districts in the State of Punjab for purposes of cross checking and verification by them.

9. That upon the said list of registered recruiting agents/employers with valid permits under Sections 10 and 16 of the 1983 Act being made available, the administrative/police authorities in the State of Punjab should conduct fact finding exercises to verify, check and authenticate particulars of all recruiting/manpower agents/overseas employment agencies in all the districts in the State of Punjab, to ascertain such unlicensed and unauthorised agents/employers who are contravening the provisions of the 1983 Act. If the District and Police authorities of Punjab make their independent list of all recruiting agents/overseas manpower agencies who are working in the State of Punjab, upon matching the list given by the Protector General of Emigrants, all unregistered/unauthorised agents/employers can be identified.

10. That once this fact finding exercise authenticates the unauthorised agents/employers, the District/Police authorities in the State of Punjab can shut down /close the premises of all such unauthorised agents/employers who do not comply with the provisions of Sections 10 and 16 of the 1983 Act. The respective Deputy Commissioners/ Senior Superintendents of Police in Punjab, in the concerned districts can *suo-moto* or upon the instructions of the Protector General of Emigrants ensure that no unlicensed or unauthorised agent/employer be allowed to operate in their respective jurisdictions/territories in Punjab. In this way, members of public at large will be greatly benefited and will be prevented from being cheated or misled by unregistered

agents/employers who are not authorised under Sections 10 and 16 of the 1983 Act. If the mandatory disclosure under Sections 3 and 4 of the 1983 Act, which requires all registered agents/employers to prominently display at their place of business their registration certificates /permits and mention the same on all correspondence which authorises/empower them to conduct business of overseas employment, is not complied with, the respective Deputy Commissioners/ Senior Superintendents of Police in Punjab, in the concerned districts can take action by closing down all such unregistered offices of unregistered agents. It should also be ensured that even all media advertisements should compulsorily display the license number and registration details of all such registered agencies/institutions/individuals working in Punjab.

11. That till such time Punjab Prevention of Human Smuggling Bill, 2010, is enacted or enforced to check the problem of illegal immigration, human smuggling and sending of persons overseas in contravention of the provisions of the 1983 Act, it may be in the interest of justice, public welfare and benefit of citizens at large in Punjab, that the above exercise be conducted forthwith. It will be greatly beneficial to possibly avoid further innocent and gullible victims of illegal immigration to be cheated at the hands of unregistered agents/employers in the State of Punjab who do not comply with the provisions of the 1983 Act.

### **HIGH COURT DIRECTIONS**

12. That, in Civil Writ Petition no. 7698 of 2012, Mr. Justice (Retd.) Amar Dutt vs. The Union of India and others, at the Punjab and Haryana High Court, at Chandigarh,

on 30.05.2012, where the above issues have also been raised in the said Public Interest Litigation, the following directions were issued by the Hon'ble High Court:

*“In view of the above, we deem it appropriate to direct respondent no. 3 to send the list of registered recruiting agencies/employers who are entitled to operate in the areas of Punjab, Haryana and U.T. Chandigarh by e-mail or by any other method expeditiously preferably within two weeks. The respective States and the U.T. Chandigarh, i.e. Respondent Nos. 5 to 8 shall highlight the list in Electronic and Print Media so that the general public may come to know about the registered agents. Respondent Nos. 5 to 8 shall also undertake suitable operation through respective Deputy Commissioner/SSP to close down the unauthorised recruiting agents/employers who are operating under the name of emigrant agency.*

*Let a status report be filed within four weeks with a copy in advance to learned counsel for the petitioner.*

*Respondent Nos. 5 to 8 would also be authorised to scrutinize the advertisement which are being issued by the so called emigrant consultancy and check their antecedents. If they are found wanted then suitable action may also be initiated against them.”*



It may be pertinent to point out that in pursuance and compliance with the said directions of the High Court, by an advertisement appearing in The Tribune, dated 20.07.2012, a list of 47 registered recruiting agents with valid, reinstated or renewed Registration Certificates, as on 13.06.2012, as per records of the Ministry of Overseas Indian Affairs, already stands circulated. A copy of this advertisement dated 20.07.2012, is appended as **Annexure A** with this report.

## **RECOMMENDATIONS**

13. It is therefore recommended that in line with the above action, the respective Deputy Commissioners/ Senior Superintendents of Police in the concerned districts in Punjab may not permit any unlicensed/ unregistered recruiting agent to conduct any activity related to recruitment as defined in Section 2(m) of the Emigration Act, 1983. It is further recommended that after ascertaining full facts, if it is found that any such business of recruitment is being conducted by any unregistered agent, the respective district authorities may take appropriate action in accordance with law. All advertisements in the Print and Electronic Media should be scrutinised regularly to check and screen recruiting agents functioning as consultancies. It should be made mandatory that the registration details of all registered agents be displayed prominently at offices and on all other material utilised for the purpose. Violations be reported to the Protector General of Emigrants for follow-up action as per the 1983 Act.

14. It is strongly recommended that the Punjab Prevention of Human Smuggling Bill, 2010, which was passed by the Punjab Vidhan Sabha in its sitting held on 01.10.2010,

and in which amendments suggested by the Ministry of Overseas Indian Affairs have to be incorporated, should be taken up on priority and reintroduced in the next session of the Punjab Vidhan Sabha for necessary approval of the State Legislature. Punjab being the first State in the country to introduce this Law after defining Human Smuggling, should not slow down or delay its endeavours in promulgating this beneficial Law.

15. It is also recommended for the feasibility of using the media i.e. print, audio, visual and electronic for educating the masses about the pitfalls which await them while trying to immigrate from the country on account of dubious means offered by unauthorised agents as also to patronise only registered agents/employers holding certificates/permits under the Emigration Act, 1983.

16. The advisability of taking concrete steps through Punjab Government resources to educate the masses for channelized employment is recommended, about prospects abroad which are offered by countries allowing for such immigration.

17. It is recommended that the Government of Punjab may consider the possibility of making available to all and sundry the demands sent by various countries for skilled and un-skilled labour and regulate their recruitment through official Overseas Employment Bureaus/Cells so as to disable the middleman from making un-warranted profits at the time of recruitment of persons in response to overseas employment demands.

18. Utilizing the services of the Punjab State Legal Services authorities to sensitize members of Public about the pitfalls of human smuggling through training of para-legal volunteers, holding of legal aid camps, conducting of workshops and seminars at District levels as also through any other appropriate means so deemed fit and desirable.

**Accordingly, the present report is submitted for the consideration of the Government of Punjab.**

A handwritten signature in blue ink that reads "Anil Malhotra". The signature is written in a cursive style with a horizontal line underneath the name.

Place: Chandigarh  
Date: 21.07.2012

ANIL MALHOTRA  
Chairperson  
Task Force, Policy Procedures, Resolution and Grievances of NRIs



**GOVERNMENT OF INDIA**  
**MINISTRY OF OVERSEAS INDIAN AFFAIRS**  
**STATEWIDE LIST OF RECRUITING AGENTS WITH**  
**VALID, REINSTATED OR RENEWED RCs**  
 Please Read State/UT Code State Code:  
 Total Number of RAs in Punjab=47  
 (R-Renewed, S-Suspended, V-Valid, C-Cancelled,  
 E-Expired, T-Reinstated)  
 Status as on 2012-06-13

Nation

THE TRIBUNE, CHANDIGARH, FRIDAY, JULY 20, 2012

Sr No	Registration No Firm Name and Address	Date of Registration	Valid upto	City	Status
1.	B-0022/PUN/PER/1000+/5/5607/2001 Adarash Enterprises Opp Civil Hospital, Sidhwan Bet, Teh Jagraon, Distt Ludhiana	2001.08.24	2016.11.23	Ludhiana	R
2.	0260/PUN/COM/300/5/8100/2007 AGAS CONSULTANTS PVT. LTD. 115, Second Floor, Super Plaza Market, Cooper Road	2008.10.16	2013.10.15	Amritsar	V
3.	3544/PUN/COM/1000+/5/1000 PLUS/2AND/4/5684/2002 AIRWINGS SERVICES PVT. LTD. Model Town Road, Near SkyLark Hotel, Jalandhar	2002.05.08	2013.02.07	Jalandhar	T
4.	B-0451/PUN/B/PER/300/5/6491/2009 AMAN OVERSEAS SHOP NO 8, Civil Lines, Opp. SBI Cable Old Mahipur Adda, Hoshiarpur.	2009.07.06	2014.07.05	Hoshiarpur	V
5.	3128/PUN/PER/1000PLUS/5165/98 ASIATIC POWER SERVICES New Tehsil Road, Hoshiarpur	1999.03.03	2013.02.28	Hoshiarpur	V
6.	B-0979/PUN/PER/1000+/5/7309/2005 B.S. OVERSEAS PLACEMENT D-33/A, Industrial Area, Phase-I, Mohali	2006.03.03	2016.03.02	Mohali	R
	B-0484, Chandigarh/Part/300/5/8455/2009 Bal Gill Consultants Shop No 63, City Centre, Amritsar, Punjab	2009.11.16	2014.11.15	Amritsar	V
	3617/PUN/PER/1000/2AND/3/4/5874/2002 BITTU INTERNATIONAL MADHAV TOWER COURT ROAD HOSHIARPUR	2002.10.07	2013.07.06	Hoshiarpur	V
	B-0873/CHD/PER/1000+/5/8775/2011 CWC Immigration Solutions SCO-26, Crystal Plaza, Chhoti Baradari Part-I, Garha Road.	2012.04.24	2016.09.19	Jalandhar	V
	4051/PUN/PER/300/4/1/4/6881/2004 D.S. ENTERPRISES BABA NAND SINGH MARKET KACHA MALAK ROAD OPP COLD STORE JAGRAON	2005.09.14	2014.01.13	Ludhiana	V
11.	3708/PUN/PER/1000/2AND/1/4/6082/2002 DUB TRAVEL SERVICE Railway Road Nakodar	2002.11.21	2013.05.25	Jalandhar	V
12.	B-0092/PUN/PER/1000+/5/6349/2003 Ess Kay Travel Advisor Court Road	2004.02.25	2017.02.24	Hoshiarpur	R
13.	B-0073/PUN/PART/1000+/5/6300/2003 Gill International Recruiting Agency 7-9, 1st Floor, Nankana Sahib Complex Nr. Main Bus Stand, Jawahar Nagar	2007.09.11	2017.03.10	Ludhiana	R
14.	B-0515/PUN/PER/1000+/6/112/8586/2009 Global Manpower Services Schzad Market Main Pakhowal Road, PO Dolo Kalan	2010.04.12	2016.09.04	Ludhiana	V
15.	3590/PUN/PER/300/3/5857/2002 GULF LINES OPP GREEN PARK COURT ROAD HOSHIARPUR	2002.08.16	2013.08.15	Hoshiarpur	V
16.	B-0197/PUN/PER/1000+/3/6224/2003 I.B.M. Tours & Travels 25-26, Modern Market, Nehru Garden Road	2003.09.25	2014.08.24	Jalandhar	V
17.	3696/PUN/PER/1000/3/5963/2002 J.S. International Dehlon Road, Near JK Dharamkanda, Sahnewal, Distt. Ludhiana.	2003.01.31	2014.01.30	Sahnewal	V
18.	B0434/PUN/8456/2009 KRISHNA MANPOWER SERVICES PVT LTD Old Jain Model School Bldg, Nihal Singh Wala Road, Bagha Purana	2009.05.28	2014.05.27	Purana	V
19.	B-0841/PUN/PER/1000+/5/7346/2005 M.P. Enterprises, Octroi Post No. 1, Nagal-Chandigarh Road, Nagal Dam	1006.09.08	2016.09.07	Distt Ropar	R
20.	B-0917/PUN/PER/1000/4-3/4819/2008 Mahhak Overseas, 30, Modern Market, Nehru Garden Road	2008.06.05	2013.03.04	Jalandhar	V
21.	B-0939/PUN/PER/1000+/4-3/4/6972/2005 Munna Enterprises, Mohall Kaulsar Khotran Road, Phagwara, Kapurthala.	2005.09.01	2015.06.30	Phagwara	V
22.	4714/PUN/PER/300/5/7202/2005 New H.S. International, 1st Floor Building Punjab Himachal Transport, Near Speedways Tyre, G.T. Road, Transport Nagar.	2006.06.07	2016.06.06	Ludhiana	R
23.	B-0466/PUN/COM/300/5/6457/2009 Ohm Forex Services Ltd., D-178, Industrial Area, Phase 8-B, Mohali, Punjab.	2009.09.14	2014.09.13	Mohali	V
24.	B-0829/PUN/PER/1000+/5/4879/97 P.C. Enterprises, Court Road, Hoshiarpur.	1997.12.19	2016.09.18	Hoshiarpur	R
25.	0202/CHAND/PER/300/5/8145/2008 P.L. International, Plot No. 36-37, Lamba Pind Chowk, Back side Chara Mandi Near New Born Church.	2008.06.24	2013.06.23	Jalandhar	V
26.	4851/PUN/COM/300/5/7680/2008 Paras Manpower Services Pvt. Ltd., B-16/463, Court Road, Hoshiarpur.	2006.09.19	2012.07.31	Hoshiarpur	R
27.	B-0287/PUN/PER/300/5/8279/2008 Parkash Travels, Doaba Market, Opp. Bus Stand, Gate No. 3.	2008.12.22	2013.12.21	Jalandhar	V
28.	2684/PUN/PER/300/3/4439/95 Paul Travels, Shop No. 11, 1st Floor, ES-9, Civil Lines, Model Town Road.	1995.09.29	2012.09.28	Jalandhar	V
29.	002684/PUN/PER/1000/3/4439/95 Paul Travels, Shop No. 11, 1st Floor, ES-9, Civil Lines,	0000.00.00	2029.09.20	Model Town Road	V
30.	B-0113/PUN/PER/1000+/4-3/4/6942/2004 Puran Overseas Employment Bureau Chamber-1, Main Road, Sunder Nagar, Nakodar, Distt. Jalandhar	2005.04.05	2020.01.04	Nakodar	R
31.	B-0121/PUN/PER/1000+/5/6401/2003 Rajdeep Enterprises Ground Floor, Dashmesh Nagar, Diggins Road.	2004.04.23	2016.10.22	Hoshiarpur	R
32.	B-0072/PUN/PER/1000+/5/6403/2003 Ravindra Job Track Front Portion, Govt. College Road, Ward-8, Pate Da Bagh Wali Gali.	2004.03.16	2017.03.15	Disst. Hoshiarpur	R
33.	B-0881/PUN/PER/1000+/5/6287/2003 Rayat Foreign Travels V8, PO Samundra, Chak Guru Rd. Teh. Gathankar	2003.12.05	2016.12.04	Hoshiarpur	R
34.	274/PUN/PER/1000/3/129/84 ROZGAAR INTERNATIONAL 10-A, DILKUSHA MARKET, JALANDHAR.	1984.05.25	2013.05.24	Jalandhar	V
35.	B-0036/PUN/PER/1000+/5/7569/2006 S.R. Overseas Services R.D. Complex, Jaja Chowk to Rly Phatak Road, Tanda, Distt. Hoshiarpur.	2007.03.01	2016.11.30	Tanda	R
36.	B-0134/PUN/PER/1000+/5/6352/2003 Satyam Enterprises Hoshiarpur Road, Opp. Punjab & Sind Bank, Rama Mandi.	2004.01.23	2017.01.22	Jalandhar Cantt.	R
37.	4139/PUN/PER/300/3/6459/2003 SHADI RAM JAGAN NATH 60, DANA MANDI, GROUND FLOOR.	2004.07.26	2012.07.25	Philtaur	V
38.	B-0804/DEL/PER/1000+/5/7524/2008 Shivam Exports R-7, 2nd Floor, Ravi Manzil, Dilkusha Market.	2008.08.17	2016.05.16	Jalandhar	R
39.	B-0097/PUN/PER/1000+/5/7627/2006 Shri Nimbark Travels Swam Rai Building, Chandigarh-Zirakpur Road, Zirakpur.	2007.08.10	2017.05.09	Mohali Distt.	R
40.	B-0055/PUN/PER/1000+/5/5651/2001 Soni Placement Services 42, 1st Floor, Railway Road, Nangal Dam Distt. Ropar.	2001.10.10	2017.04.09	Ropar	R
41.	B-312/PUN/PART/300/5/8160/2008 SOOD ENTERPRISES B-1-356/1, GROUND FLOOR, SHAHI MOHALL CIVIL LINES, LUDHIANA	2008.04.24	2013.04.23	Punjab	V
42.	B-0777/PUN/PER/1000+/5/7210/2005 Sukhdev Enterprises VPO Gardhiwala, Near Tanda Road, Teh Dasuya, Distt. Hoshiarpur	2006.06.07	2016.03.06	Hoshiarpur	R
43.	B-0026/PUN/PER/1000+/5/4190/1994 Sunny Travels 16, Guru Amardass Market, Near Bank of India, Garha	1994.12.31	2016.12.30	Jalandhar	R
44.	B-0046/PUN/PER/1000+/5/6457/2003 T.S. Enterprises. Office-2, Batra Market, Didar Singh Dairy, Mohalla Makhdoompura.	2004.04.01	2017.03.31	Jalandhar	R
45.	3881/PUN/PER/300/3/6247/2003 VASHISHT MANPOWER CONSULTANTS 1ST FLOOR, NEAR YAMAHA MOTOR CYCLE AGENCY OPP MAKKAR HOSPITAL, G. T. ROAD, MUKERIAN	2003.10.15	2012.06.30	Hoshiarpur	R
46.	002633/PUN/PER/300/2-3/4/4386/95 WALIA TRAVEL ADVISER Court Road, Shop No. 8 & 9, Nawanshahr, Distt.	0000.00.00	2018.04.20	Jalandhar	V
47.	03884/PUN/PER/1000/3/1053/84 WELCOME TRAVEL SERVICE OPP EMPLOYMENT EXCHANGE, SATNAMPURA, PHAGWARA	1984.12.01	2013.11.30	Phagwara	V

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**THIRD REPORT**

**RETURN OF IRREGULAR MIGRANTS TO PUNJAB**

**RECOMMENDATIONS OF CHAIRPERSON ON TASK FORCE OF POLICY**

**PROCEDURES, RESOLUTION AND GRIEVANCES OF NRIs AND MEMBER,**

**PUNJAB GOVERNANCE REFORMS COMMISSION**

**I. THE PROBLEM AND RECENT INPUTS ON IT**

1. The travel of residents from Punjab across international boundaries in violation of established laws has acquired grave dimensions. Irregular migration to Europe, Canada, U.S.A, Australia, New Zealand and other parts of the world has assumed alarming proportions. Lack of employment opportunities and dwindling land holdings at home perpetuated by increasing aspirations for a better life stimulated by opportunities for high overseas earnings has triggered fast track migratory dreams. Unscrupulous, unregistered and unethical agents exploit aspirant migrants to use illegal methods often using forged travel documents or dangerous modes of travel. As of now, there is no law to check the offence of human smuggling used by these merchants of death. Some migrants lose lives in this hazardous

journey, some are destined to a life of illegal existence in a foreign country and some are imprisoned in foreign jails or detention centres when apprehended and caught by police abroad.

2. That as per a report of *The United Nations Office on Drugs and Crime (UNODC)* on “*Smuggling of Migrants from India to Europe and in particular to UK: A Study on Punjab and Haryana, 2009*” which was released in Chandigarh on March 11, 2010, it is quoted that over one lac illegal immigrants from India have been caught by foreign police authorities and are behind bars in foreign jurisdictions. The report quotes that according to statistics sourced from the Ministry of External Affairs, over one lac residents of six districts of Punjab i.e. Jalandhar, Nawanshahar, Gurdaspur, Amritsar, Hoshiarpur and Kapurthala, faced deportation from different countries for not travelling on valid travel documents during the last five years. The report also states that every year more than 20,000 youths from Punjab attempt irregular migration which is now spreading to the neighbouring States of Haryana etc. The release of this report was widely reported in the media. Despite over two years and six months having elapsed since the release of the UNODC report, there seems to have been no reported progress or action taken in securing the release of these Indian citizens languishing in jails abroad who have no travel documents, financial or legal aid or resources to return to India. Most of these Indian nationals in jails or detention centres abroad on account of irregular migration are from Punjab.

3. The author of this report was invited to a “*National Consultation Workshop on Facilitating Safe and Legal Migration and Preventing Irregular Migration*” held on September 6-7, 2012 at Hotel Claridges, New Delhi to make a “*Case Presentation*”

*of Successful Return of Irregular Migrants from Iraq” in Session VI titled “Irregular Migration : Lessons from Punjab”* where the Punjab model i.e. State action Plan and Punjab Prevention of Human Smuggling Bill besides awareness and information Dissemination in Punjab was also discussed. This workshop was organized by the European Union (EU) and India Centre for Migration (ICM), New Delhi which is an independent think tank on International Migration set up by Ministry of Overseas Indian Affairs, Government of India for developing a knowledge base for policy making on India EU Migration. The exercise and efforts conducted in Punjab to curb irregular migration evinced great interest among European delegates, foreign diplomats, international organizations and representatives of other Indian states.

4. In New Delhi, the author of this report had independently an opportunity to also separately interact with the Minister (Immigration) India, Nepal & Bhutan, High Commission of Canada, New Delhi, as also with Minister – Counsellor (Immigration) and Regional Director (South Asia), Australian High Commission, New Delhi and Minister – Counselor for Consular Affairs, Embassy of the United States of America, New Delhi, Regional Director, U.K. Border Agency, British High Commission, New Delhi besides meeting Charge’s d’affaires and First Counsellor Political Affairs, Delegation of the European Union to India, to discuss various issues of illegal immigration from Punjab as also ways, modes and means to possibly bring back irregular migrants from the State of Punjab in foreign jails/detention centres in their respective jurisdictions on account of immigration related offences exclusively.

5. At the EU-ICM meet, New Delhi, the author had the occasion to interact exclusively with Senior Immigration Counsellors/Officers from U.K, USA, Canada, Germany, Greece, Netherlands, Austria, Belgium, Spain, Sweden, Finland, Turkey,

and the Slovak Republic for an indepth perspective with a particular focus on possible modes, methods and means to possibly bring back irregular migrants in confinement in their countries in jails/detention centres whilst deliberating upon issues related to illegal migration from Punjab to their respective jurisdictions. Views and observations on facilitating safe/legal migration as also preventing irregular migration of Representatives of International Centre for Migration Policy Development, Vienna, Migrants Rights Network, London, Department of International and European Law, Maastricht, Netherlands, Migration Policy Specialist, International Labour Organisation, EUI Florence, International Organisation for Migration (IOM) and Ministry of Overseas Indian Affairs, New Delhi were carefully and diligently absorbed by the author during the two day workshop on September 6-7, 2012 at New Delhi. Views of Representatives of Migration Rights Council India, Hyderabad, besides officials of Government agencies from Punjab, Andhra Pradesh, Kerala, Rajasthan, New Delhi and ICM Research Officers were also heard & noted. It was felt that most foreign jurisdictions were very keen on a resolution and effective method to be devised for expeditious return of illegal/irregular migrants from India by some process to be evolved and developed.

## **II. THE DIMENSIONS OF THE PROBLEM OF IRREGULAR MIGRATION**

6. The Mandate of the United Nations Office on Drugs and Crime (UNODC) stipulates that as the guardian of the United Nations Convention against Transnational Organized Crime and its supplementary protocols, the primary goal of UNODC with respect to combating the smuggling of migrants is to promote global adherence to the Migrant Smuggling Protocol and to assist States in their efforts to



effectively implement it. As per the UNODC Brochure, the Migrant Smuggling Protocol aims ;

- *To prevent and combat the smuggling of migrants.*
- *To protect the rights of smuggled migrants.*
- *To promote cooperation between States.*

In the brochure of the UNODC, it is also stated that *“the smuggling of migrants : a deadly business”* has flourished and is described as follows:

*“Virtually every country in the world is affected by the smuggling of migrants, either as a country of origin, transit or destination for migrants smuggled by criminals.*

*Smuggled migrants are vulnerable to exploitation and their lives are often put at risk; thousands of smuggled migrants have suffocated in containers, perished in deserts or drowned at sea. Smugglers of migrants often conduct their activities with little or no regard for the lives of the people whose hardship has created a demand for smuggling services. Survivors have told harrowing tales of their ordeal; people crammed into windowless storage spaces, force to sit still in urine , sea water, faeces or vomit, deprived of food and water, while others around them die and their bodies are discarded at sea or on the road side. The smuggling of migrants and the activities related to it generate huge profits for the criminals involved and fuels corruption and organized crime. The smuggling of migrants is a deadly business that must be combated as a matter of urgency.*

*The information currently available is too scattered and too incomplete to be able to show accurately the numbers of people smuggled each year and the routes and methods used by those who smuggle them. However, the evidence available reveals the following trends and patterns:*

- *Criminals are increasingly providing smuggling services to irregular migrants to help them evade national border controls, migration regulations and visa requirements. Most irregular migrants resort to using the services of profit seeking smugglers. As border controls have improved, migrants have been deterred from attempting to cross borders illegally on their own and have been diverted into the hands of smugglers.*
- *Since the smuggling of migrants is a highly profitable business with a low risk of detection, the crime is becoming increasingly attractive to criminals. Smugglers of migrants are becoming more and more organised, establishing professional network and transcend borders and regions.”*

Hence, the aforementioned report of the UNODC, which is a focused study on the States of Punjab and Haryana, is a serious, deliberated and well researched document prepared by a well reputed organisation of credibility which has expertise, knowledge and reliable information on the subject of human smuggling and trafficking of illegal immigrants. Furthermore, on the basis of the individual and independent interactions of the author of this report with various international immigration specialist organisations, foreign officials, diplomats, key immigration researchers and Government functionaries, it transpires that the State of Punjab is a major contributory to the large number of irregular migrants to foreign countries and therefore, a focused, pin pointed besides independent action plan should be drawn up in Punjab exclusively to find possible ways, means and modes to bring back to Punjab such residents of Punjab who are in jails/detention centres abroad on account of irregular/illegal migration offences only. Hence, the present report.

### III. INDIAN LAW ON THE POINT

7. The Passports Act, 1967 (hereinafter referred to as the Act) applicable in India and meant to provide for the issue of passports and travel documents to Indian citizens, interalia other purposes defines the words “*Passport*” and “*Travel Document*” in Sections 2 and 3 of the Act. Section 4 of this Act reads as hereunder:

**“4. Classes of passports and travel documents.** – (1) *The following classes of passports may be issued under this Act, namely:-*

- (a) *Ordinary passport;*
- (b) *Official passport;*
- (c) *Diplomatic passport.*

(2) *The following classes of travel documents may be issued under this Act, namely:-*

- (a) *emergency certificate authorising a person to enter India*
- (b) *certificate of identity for the purpose of establishing the identity of a person;*
- (c) *such other certificate or document as may be prescribed.*

(3) *The Central Government shall, in consonance with the usage and practice followed by it in this behalf, prescribe the classes of persons to whom the classes of passports and travel documents referred to respectively in sub-section (1) and sub-section (2) may be issued under this Act.”*

**Section 24 (2) (b) of the Act further reads and prescribes as under:-**

**“24. Power to make rules.** – (1) *The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.*

(2) *In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-*

(a) *The appointment, jurisdiction, control and functions of passport authorities;*

(b) *The classes of persons to whom passports and travel documents referred to respectively in sub-section (1) and sub-section (2) of section 4 may be issued.”*

**In exercise of the powers conferred by section 24 of the Act, The Passports Rules, 1980 have been made by the Central Government. Rules 3 and 4 prescribing Passport Authorities and persons to whom passports and travel documents may be issued are as hereunder:-**

**“3. Passport Authorities.** – (1) *In addition to the Central Government, the officers specified in column (2) of Schedule 1 shall, subject in the provisions of sub-rule (2), be the passport authorities for all purposes of the Act and these Rules.*

(2) *An officer referred to in column (2) of Schedule 1 shall, for the purpose of issue of a passport or travel document, exercise jurisdiction in respect of applications for such issue made by persons ordinarily residing in the territories specified in the corresponding entries in column 3 of the said Schedule:*

*Provided that in exceptional and urgent cases the said officer may entertain an application for the issue of a passport or travel document from a person ordinarily residing in any other territory in India and may issue a passport or travel document to such person for a period not exceeding twelve months and transfer the application to the passport authority having jurisdiction in the territory wherein such person ordinarily resides:*

*Provided further that no such transfer of application for passport under the preceding proviso shall be made if the applicant has migrated from the territory where he was originally resident with the intention of setting down in the territory within the jurisdiction of the passport authority which issued the passport under the preceding proviso.*

**4. Classes of persons to whom the different classes of passports and travel documents may be issued.** – (1) *The classes of persons to whom the classes of passports or travel documents referred to respectively in sub-section (1) and sub-section (2) of section 4 may be issued, shall be as specified respectively in Part I or Part II, as the case may be, of Schedule II.”*

**The relevant extract at serial number 27 of Schedule I of Rule 3 of the Passport Rules is reproduced as hereunder:-**

**“Schedule I**

(See Rule 3)

<i>Sl. No.</i>	<i>Passport Authorities</i>	<i>Jurisdiction</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>27.</i>	<i>Consular Officer or Consular Agents in the Indian Mission or Posts outside</i>	<i>The area within the consular jurisdiction of</i>

	<i>India.</i>	<i>the Indian Mission or Posts concerned.”</i>
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***Likewise the relevant extract of Part II of Schedule II which is prescribed under Rule 4 of the Passport Rules is as hereunder:-***

***“Schedule II***

*(See Rule 4)*

*Part II*

***TRAVEL DOCUMENTS***

<i>Classes of Travel Documents</i>	<i>Classes of persons to whom issuable</i>
<i>(1)</i>	<i>(2)</i>
<i>1. Emergency Certificate</i>	<p><i>(i) Citizen of India abroad who have been refused passport, or whose passports have been impounded or revoked, or who have to be repatriated to India.</i></p> <p><i>(ii) Persons who have produced prima facie evidence of Indian citizenship but the evidence is considered insufficient to justify the issue of a passport without further verification.</i></p> <p><i>(iii) Citizens of India abroad whose passports have been lost, stolen or</i></p>

	<p><i>damaged, and to whom new passports cannot be issued without verification of their passport particulars by reference to the offices of issue.</i></p> <p><i>(iv) Persons of Indian origin abroad when allowed to come to India for settling down here.”</i></p>
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8. A joint reading of Sections 3, 4 and 24 of the Act as also Rules 3 and 4 read with the respective Schedules quoted above amply clarify that emergency certificates authorising an Indian citizen to enter India can be issued in exceptional and urgent cases for a period not exceeding 12 months. These provisions also provide that after doing so, the applications of such cases can be transferred to the concerned Indian Passport Authority having jurisdiction in the territory where such person who has been issued emergency certificates ordinarily resides. Under Rule 12, an emergency certificate so issued shall continue in force for a period of six months from the date of its issue. Under Schedule II, Part II to Rule 4, an emergency certificate can be issued to any person, who is prima facie an Indian citizen and whose current Indian Passport is not available. Before doing so, the antecedents, parental family, permanent residence and all other details of parentage of such Indian citizens from the States of Punjab can be established with the assistance of the respective Deputy Commissioners and Senior Superintendents of Police in all the Districts of Punjab in their respective territories. Under serial number 27 of Schedule I to Rule 3, quoted above, the competent authority to issue a travel

document to all such Indians citizens abroad would be the Consular office of the Indian Embassy/High Commission abroad in such foreign jurisdiction.

9. That The Protection of Human Rights Act, 1993 (hereinafter Human Rights Act) defines “*human rights*” in Section 2 (d) as follows;

*“(d) human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by Courts in India.”*

Likewise, International Covenants in Section 2 (f) is defined as follows;

*“(f) International Covenants means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16<sup>th</sup> December 1966.”*

Article 6 (1) of the International Covenant on Civil and Political Rights, 1966 is quoted hereunder for ready reference;

*“Article 6(1) – Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”*

It may also be relevant to quote Articles 3 and 5 of the Universal Declaration of Human Rights, 1948, which provide for the Protection of Life and Human Rights of Human beings in the following words;

*“Article 3 – Every one has the right to life, liberty and security of person.”*

*“Article 5 – No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*



It may also be added that a Constitution Bench of the Apex Court in **Satwant Singh Sawhney Vs. A.P.O New Delhi AIR 1967 SC 1836**, has held that deprivation of passports amounts to infringement of right to personal liberty under Article 21 of the Constitution. In terms of law laid down by the Apex Court in **Satwant Singh Sawhney v. APO, New Delhi, AIR 1967 SC 1836**, it has been held that deprivation of passports amounts to infringement of right to personal liberty under Article 21 of the Constitution and right to travel abroad includes the right to return to India. Consequently, it can be concluded for the present case that all such Indian citizens from Punjab detained abroad in jails with no resources or aid are entitled to return to India under emergency travel documents under Section 4 (2) of The Passports Act, 1967 read with Rules 3 and 4 of The Passport Rules, 1980.

#### **IV. APPLICABILITY OF THE ABOVE POSITION OF LAW FOR POSSIBLE RETURN OF IRREGULAR MIGRANTS FROM PUNJAB IN JAILS/DETENTION CENTRES**

10. As per the UNODC report above, more than one lac persons from the jurisdiction of Punjab and Haryana are reportedly detained in jails abroad of foreign jurisdictions after having travelled abroad illegally. Such Indian citizens are unfortunate victims of unscrupulous travel agents who have duped and defrauded them to travel by illegal means. These Indian citizens from Punjab having been arrested and detained in foreign jurisdictions on being detected and caught have no resources, documents, financial or legal aid. They have no means of contact with their well wishers and families in India. In such a situation, they have lost their self respect, dignity and liberty and they are in no situation to secure their personal liberty by any legal or administrative means. The respective Consular offices of the Indian Embassies/High Commissions abroad can come to the aid and rescue of

such illegal Indian immigrants to aid and assist in their return home. The International Covenants quoted above clearly establish that such Indian citizens have a right to secure their liberty, respect and dignity. Article 21 of the Constitution also secures such right to life and personal liberty to them.

11. That these gullible, innocent and unfortunate victims of human smuggling have been left to the mercy of fate. No tangible steps have been taken by the Government of India to secure their release for return to India despite the matter having been publicized in the media well over two years ago. There is no future hope of their release. International instruments, covenants and Indian legislation besides basic human rights warrants their release and return to India. The aforementioned provisions of the Passports Act and Rules made thereunder clearly establish that all such Indian Detenués abroad can be permitted to return on emergency travel documents upon verification of their antecedents by the Government of Punjab since majority of such persons are residents of Punjab.

12. That it may be submitted that an exercise has been conducted by the Government of India to review lists of black listed non-resident Indians who could not return to India on account of alleged offences said to have been committed by them. Such an exercise is also possible in the case of illegal immigrants detained abroad who wish to return to India being Indian citizens. The Government of India can seek information regarding such detained Indian nationals from the respective Embassies/High Commissions in India where such persons have immigrated illegally. Upon such list being obtained from the foreign embassies/high Commissions in India, the Government of India can be asked to verify the antecedents and particulars of such Indian citizens who belong to the States of

Punjab and Haryana. Thereafter, the Consular Section of the Indian Embassies/High Commissions abroad in such foreign jurisdictions can grant them emergency travel documents to enable their return to India. These emergency certificates can be issued under the provisions of the Passport Act and Rules quoted above. In this way, the entire exercise can be conducted in the larger interest of Protection of human life and personal liberty guaranteed under Articles 14, 19 and 21 of the Constitution besides the International instruments quoted above. This exercise is a possible method for resolution of this burning problem.

#### **V. FACTUAL ANALYSIS OF THE PROBLEM IN PUNJAB**

13. That at the outset, it may be pertinent to first analyse the approximate number and current location abroad where these hapless illegal Indian immigrants are languishing in jails abroad. For this purpose, the United Nations Office on Drugs and Crime (UNODC) report may be the most relevant document of reference in this regard. It may be stated that the copy of the report of the UNODC titled ***“Smuggling of Migrants from India to Europe and in particular to UK: A Study on Punjab and Haryana,”*** whose principal author is Mr. K.C Saha, IAS (Former Consultant, UNODC) and this 124 page report is based on an exhaustive study on the subject of irregular migration from Punjab and Haryana after extensive field work, case studies and collection of data from various districts in Punjab. For purposes of ready reference, an extract from the Executive Summary of the aforementioned report is quoted hereunder for a better understanding and analysis of the problem in Punjab.

*“Analysis of the data and the information available, suggests that irregular migration from Punjab is substantial. Every year more than 20,000 youths from Punjab attempt irregular migration. The pattern of irregular migration has undergone*

*a change over the years whereby it has not only spread to new areas in Punjab but also to the neighbouring States of Haryana, Himachal Pradesh and Jammu and Kashmir, which had hitherto not seen high numbers of irregular migrants going to other countries. Haryana, in fact is fast emerging as a State for irregular migration. Moreover, earlier irregular migration was confined to a few caste groups like Jat Sikhs and Lubana Sikhs in Punjab but it has now spread to other caste group also. More and more youths are now able to afford the high cost of irregular migration. A rising trend of irregular migration from Punjab was noted.”*

It may further be added that Chapter II of this exhaustive report deals with Findings on Irregular Migration from Punjab and Haryana. In Chapter 2.1.2 dealing with Volume of irregular migration, on pages 26 and 27 of the report quoting sources from the media, the report reproduces the following extracts which are relevant for the present context and are set down hereunder for purposes of ready reference.

*“The unending lust of Punjabi youths to settle abroad, mostly through illegal channels, has proved to be a saga of harassment and nightmare for these youths as well as their families. **Over one lakh such illegal immigrants have been finally caught by the foreign police authorities and most of them have landed behind bars on foreign lands.** According to statistics sourced from the Ministry of External Affairs, over one lakh residents of six districts of Punjab (Jalandhar, Nawanshahar, Gurdaspur, Amritsar, Hoshiarpur and Kapurthala), mostly from Doaba region, faced deportation from different countries for not travelling on valid travel documents during the last five years. The immigration experts revealed that in most cases, the unscrupulous travel agents arranged visas for the countries that had come into existence after the break up of the erstwhile USSR. The strategic geographical*

*proximity of these countries with the EU countries was a significant factor. After “safe landing” of the gullible Punjabi youths on the land of these countries, they were pushed to the nearest EU country, using land route during the night. Mr. Amarjit Singh, Regional Passport Officer, here reveals, “Whenever someone is caught by the foreign police on the charge of travelling without valid documents, the latter refer their names to the Indian Embassies and Missions concerned for the verification of their antecedents and nationality. According to information available here, the Regional Passport Officer (RPO), had received 15,785 inquiries in the year 2000, while the figure touched new heights in the year 2001 with 21,571 inquiries. In the year 2002, 24,398 inquiries were received. Similarly, the RPO authorities received as many as 21,156 such cases in the year 2003, while 19,101 cases were received in the year 2004. The actual figure of such illegal immigrants was on the higher side, as the authorities concerned first try to get information through the inter-office computerized network to facilitate the deportation process,” he said, adding that most of such cases had been referred to by the Indian Embassies in Germany, Italy, UAE, USA and the UK.” (emphasis supplied)*

Quoting further from Page 27, Chapter 2.1.2 of the said report, the relevant extract is reproduced as hereunder for kind consideration:

*“From this report it is evident that over 20,000 youths from Punjab have been apprehended every year since 2000 to 2004. The number attempting irregular migration is likely to be more than 20,000 every year. It has further been reported that :*

*“Smuggling human beings is a multi-million rupee business in Punjab where hundreds of youth, unable to face poverty and unemployment and lured by the*

*promise of a comfortable life style in developed countries, have been the willing victims. The business of illegal immigration has risen sharply, especially in the Doaba belt and parts of the Malwa area (Southern Punjab). Investigations reveal that 10,000 to 20,000 able bodied youth from Punjab contribute to this flourishing business each year by paying anything between Rs.2.5 lakh and Rs.10 lakh each on being promised greener pastures abroad. **The destinations, though varied are mainly the USA, Canada, Australia, England, Germany, Italy and Greece.**”*  
(emphasis supplied)

14. Hence, from a reading of the above extracts from the UNODC report, it transpires that over 1 lakh illegal Indian immigrants mainly originating from 6 districts of Punjab (Jalandhar, Nawanshahr, Gurdaspur, Amritsar, Hoshiarpur and Kapurthala) have been caught by foreign police authorities in different jurisdictions and have landed behind bars on foreign lands. The probable countries where illegal Indian immigrants are mainly in detention are USA, Canada, Australia, England, Germany, Italy, Greece, Spain, France, Belgium, Austria, New Zealand, Netherlands, Hong Kong, Dubai, Kuwait and parts of United Arab Emirates (UAE).

#### **VI. SUGGESTED SOLUTIONS FOR SEEKING RETURN OF IRREGULAR/ILLEGAL MIGRANTS FROM PUNJAB IN JAILS/DETENTION CENTRES ABROAD**

15. A **Five Step** suggestion is put forth as hereunder to propose possible means of bringing back illegal Indian immigrants who are languishing in jails abroad. The five steps are enumerated in detail are as hereunder:

##### **FIRST STEP:**

16. That since there is no authentic, confirmed and exact data country wise where such illegal Indian immigrants are suffering in detention in jails abroad, the first possible step suggested would be to ascertain the foreign countries, the numbers and identities of the Indian Nationals who are languishing in jails in these countries abroad. It is therefore suggested that The Ministry of External Affairs, New Delhi, (MEA) ought to be directed to use diplomatic channels to write to the Embassies/High Commissions in New Delhi of countries namely, USA, Canada, Australia, England, Germany, Italy, Greece, Spain, France, Belgium, Austria, New Zealand, Netherlands, Hong Kong, Dubai, Kuwait and other parts of UAE patronized by Indians for immigration. Any other possible country may be added to the list if required. MEA through Diplomatic channels can request the Embassies/High Commissions of the said Countries at New Delhi to supply and furnish to MEA, names, parentage, addresses and other possible particulars of illegal Indian immigrants in detention in their respective countries. This is the only possible method of compiling a country wise authentic data and for making a comprehensive database foreign country wise without which the entire exercise cannot proceed.

**SECOND STEP:**

17. That once, the names and other details of the illegal Indian immigrants country wise are obtained and the said data is compiled, all persons originating from the State of Punjab can be put in separate lists. Thereafter, MEA can send these respective lists of residents of the State of Punjab to the State of Punjab who can be given these names and other details by MEA, to verify, ascertain and establish through administrative and police authorities the antecedents as made known above. Once, the network of State authorities in Punjab conclusively establish and

authenticate the respective identities of these Indian nationals from Punjab, the confirmed details of every individual can be verified back to MEA.

**THIRD STEP:**

18. That after a country wise data of Indian nationals languishing in jails abroad is authentically established and compiled upon confirmation from the State of Punjab, MEA and MOIA (Ministry of Overseas Indian Affairs, New Delhi) can prepare a foreign country wise list where these Indian Nationals from Punjab are in detention in jails abroad. Thereafter, MEA/MOIA can write individually to the Indian Ambassadors/Indian High Commissioners in these respective foreign countries enclosing the list of Indian Nationals from Punjab in jail/detention centres in their respective foreign jurisdictions where the diplomatic Indian Missions are located and situated. The respective Indian Consulates/Embassies/High Commissions abroad can be directed by the MEA and MOIA to establish contact with local foreign authorities in their respective jurisdictions to start a dialogue with them for processing return of Indian nationals from Punjab who are illegal immigrants or who have completed their sentence abroad & who have no means or resources to return to India on their own. Local foreign authorities can liaise for setting up return channels by contacting the individual family members/well wishers in Punjab.

**FOURTH STEP:**

19. That thereafter the Consular Sections of the Indian High Commissions/Embassies in the respective foreign countries where Indian Nationals from Punjab are languishing in jails on account of illegal immigration, can first confirm the presence of the said Indian nationals from Punjab in jails/detention



centres through the competent authorities in their respective foreign jurisdictions. The Indian Consular Sections abroad through their networks in the respective foreign jurisdictions can then establish direct contact with jailed Indian Nationals in the respective foreign countries where they are in detention and provide them aid and assistance to return to India by meeting them physically in foreign jails.

Under the Passports Act, 1967 read with the Passports Rules, 1980, emergency travel documents can be issued to Indian citizens abroad by Consular Officers/Agents in the Indian Mission abroad within their Consular jurisdiction and all Indian citizens whose passports have been impounded, revoked, lost, stolen or damaged and who have to be repatriated are entitled to be given emergency return certificates. All persons producing prima facie proof of Indian citizenship are entitled to new passports & are also covered for grant of emergency travel documents to enable them to return to India. Their relatives/families in Punjab can also be contacted for providing assistance, aid or any other resources required for them.

#### **FIFTH STEP:**

20. That with the aid and assistance of MOIA, which is the nodal Ministry responsible for welfare of Indians abroad, the Indian Community Welfare Fund can be utilized in helping all such Indian illegal immigrants languishing in jails abroad. These funds controlled by the Diaspora Services Division of the Ministry of Overseas Indian Affairs, New Delhi, can be diverted to the respective Indian High Commissions/Embassies/Consulates abroad and where Indian Nationals in jails abroad in the respective jurisdictions need them.

The Indian Community Welfare Fund meant for providing emergency services on a means testing basis are meant to provide for air passage to stranded Indians abroad, to provide boarding and lodging overseas as also for emergency medical care and initial legal assistance wherever required. Accordingly, the funds monitored by the Indian High Commission/Embassy/Consulate abroad can be effectively utilized for securing the safe return of illegal Indian immigrants whose identity has been authentically established.

The aforementioned suggested Five Step Procedure could be deliberated upon by the Government of India and the Government of Punjab and any further modifications, additions, deletions or improvements can be made by circulating the suggested measures to them. Any such procedure devised and adopted could serve as a very useful and effective method for the future as well and will prevent Indian nationals particularly from Punjab languishing in jails for long periods as also enable them to return to India expeditiously.

**B) Alternate Suggestion:**

However, it is respectfully submitted that an alternative suggested measure set down in terms below is also proposed for kind consideration and evaluation.

21. That besides the above suggested formula, another possible suggestion can be mooted. Once, exact numbers and identities of Indian nationals in a foreign country are known or established, the Ministry of Home Affairs, Government of India on the recommendation of MEA, can enter into bilateral agreements on Security Co-operation and on Transfer of Sentenced Persons. These pacts on Security Co-

operation can develop bilateral frameworks by which Indian nationals languishing in jails abroad can also return to India and further to the State of Punjab.

22. The above example of a Bilateral Agreement for return of Indian Nationals was reported in the media and recently said to be executed on November 23, 2011 paving the way for 1,200 reported Indian prisoners languishing in Emirati Jails to serve the rest of their terms back home in India. It is reported that the agreement on Transfer of Sentenced Persons executed between India and United Arab Emirates provides the framework to facilitate the social rehabilitation of Sentenced Persons in their respective countries by giving citizens of the contracting States, who have been convicted and sentenced, the opportunity to serve the sentence in their own society. Accordingly, all Indians in jails in the UAE could return to India and serve their remaining sentences in jails in India particularly in the State of Punjab where they are domiciled according to the said Bilateral Agreement if executed by India.

23. Hence, all victims of human trafficking, illegal entry and human smuggling from Punjab particularly who are in jails abroad in foreign countries, can benefit if similar bilateral agreements are executed between India and other foreign jurisdictions where Indian nationals are in jails abroad in large numbers. It may be suggested that this suggestion can be mooted for possible implementation with UK, Canada, USA, Australia, New Zealand, France, Germany, Italy, Spain, Austria, Belgium and/or other European jurisdictions. Wherever necessary, illegal immigrants upon return to India and particularly Punjab can be made to serve their remaining sentence if they have been convicted of violation of laws of such foreign countries. However, if they have completed their sentences in the respective foreign jurisdictions, they can return to India upon such bilateral agreements being executed

between India and other individual foreign countries reporting high numbers of illegal Indian immigrants. This alternative suggestion is also an effective resolution for the problem moreso, for State of Punjab which has high immigration numbers.

## **VII. IMPLEMENTATION OF THE ABOVE REMEDY AT THE HIGH COURT**

24. That the above suggestions and the posed and discussed above, was a subject matter of Civil Writ Petition no.15041 of 2010, Mr. Justice (Retd) Amar Dutt Vs. The Union of India and Others and in which the State of Punjab was also a party. The following orders were passed by the High Court of Punjab and Haryana, Chandigarh in the aforementioned writ petition.

*“Mr. Justice (Retd.) Amar Dutt Vs. Union of India and Others*

*CWP No.15041 of 2010*

*Present: Mr. Anil Malhotra, Advocate for the petitioner*

*Mr. O.S Batalvi, Standing Counsel for UOI.*

*Ms. Palika Monga, DAG, Haryana*

*Mr. Suvir Sehgal, Addl. A.G Punjab.*

*Mr. Anil Malhotra, learned counsel for the petitioner in his report concerning return of Indian Nationals in jails in abroad who are illegal immigration has come out with five steps suggestions proposing a possible method of bringing back such illegal Indian immigrants who are languishing in jail abroad. A copy of the report prepared by Mr. Anil Malhotra, learned counsel for the petitioner has already been handed over to all the learned counsel including Mr. O.S Batalvi, learned Standing Counsel for UOI who is perceived to all the suggestions. Accordingly, we direct that Mr. O.S Batalvi, learned Standing Counsel would contact the officers in*

*the Ministry of External Affairs and any other Officer for consideration of the suggestive five steps proposed by Mr. Anil Malhotra, learned counsel for the petitioner. We feel that suggestions given by Mr. Malhotra, learned counsel are very fruitful and should be adopted and followed by the Ministry of External Affairs with any possible addition.*

*A response to these suggestions may be filed within four weeks. If it is acceptable to the Ministry of External Affairs then action taken may also be filed before this Court.*

*List again on 25.01.2012.*

*Sd/-  
(M.M Kumar )  
Judge*

*December 08, 2011*

*Sd/-  
(Rajiv Narain Raina)  
Judge”*

25. It may be pointed out that in pursuance to the above directions issued by the Hon'ble High Court, by a communication dated February 27, 2012, which was placed on record of the High Court by C.M No.3262 of 2012 dated March 5, 2012, Mr. R.K Perindia, Under Secretary (Consular), Ministry of External Affairs, New Delhi had informed the Standing Government Counsel, Union of India as follows:

*“Please refer to the correspondence on the above mentioned CWPs and the suggestions of Shri Anil Malhotra, counsel for the petitioner, for bringing back illegal Indian nationals jailed abroad.*

*In this connection, it is submitted that as per the directions of the Hon'ble Court, the Ministry has sent Notes Verbale to 15 diplomatic missions in New Delhi, requesting them to provide at the earliest possible the details about the Indian nationals detained/lodged in their jails. These foreign diplomatic missions belong to the United Arab Emirates, Kuwait, Spain, Canada, Greece, Federal Republic of Germany, France, Belgium, Austria, New Zealand, the Netherlands, USA, Australia, Great Britain and Italy. Their response when received, will be communicated to you.*

*Meanwhile, you are requested to convey the above to the Hon'ble High Court."*

Accordingly, the communication referred to above confirms the action taken.

26. That it may be relevant to point out that CWP 15041 of 2010 alongwith other connected matters i.e. CWP 7778 of 2010 and CWP 8138 of 2010 were disposed off by the Hon'ble High Court on March 26, 2012 in the following terms:

*"Apart from the aforesaid affidavits, details of which have been mentioned above, we find that affidavits have been filed on behalf of the Director General of Police, Haryana mentioning the number of requests received for verification of the Indian nationality of persons detained in foreign prisons and the action taken on such requests. Elaborate suggestions, on behalf of the petitioners, as to what should be the proper steps that should be taken to effectively redress the situation have also been filed before the Court.*

*We have considered the facts of the case as revealed by the affidavits on record as well as the several documents enclosed thereto. The stand taken by the Union of India, as evident from the affidavits details of which have been discussed above,*

would go to show that within the framework of the laws of the foreign countries where the Indian nationals are in custody for alleged commission of various offences, adequate steps have been taken by the Indian Missions to keep track of the Indian citizens detained in foreign prisons and to look after their welfare while they are in custody. Such steps also extend to providing legal advice and assistance and request to the host country to expedite the trials. The Indian Missions, whenever contacted, also provide travel documents to the released Indian nationals to enable them to come back home. In the gulf countries, particularly, Dubai, Sharjah etc. periodic visits to the jails are organized by the Consulate and Embassy officials and in the course of such visits Indian nationals who are detained in prison in those countries are contacted and steps are taken to ensure their well being. The role of the Indian Missions in foreign countries will naturally be circumscribed by the laws and other norms prevailing in such countries. All steps that are taken to ensure the well being of Indian citizens who are detained in foreign prisons have to be carefully taken so that no displeasure of the host country is occasioned much less any violation of the established procedures or practices is caused. The extent to which permissible action can be taken and the manner thereof should naturally be left to the concerned Ministry and any direction in this regard by the Courts would be wholly misplaced. It is from the above perspective that the offer of the petitioner-organization in CWP No. 7778 of 2010 to visit foreign countries and to offer legal aid to the Indian nationals detained in the prisons of such countries will have to be viewed. After taking into account the stand of the Union of India in this regard that such visits may not be welcomed by many of the foreign countries we are of the view that the said request should not be entertained by us.

*Having dealt with the issues arising in the writ petitions in the manner indicated above, we are of the view that none of these writ petitions will call for any specific direction from the Court. On the contrary, we are of the view that all the three writ petitions should be ordered to be treated as closed in terms of our observations as noted above.*

(RANJAN GOGOI)  
CHIEF JUSTICE

(MAHESH GROVER)  
JUDGE

26.03.2012”

Hence, the cases stands concluded without any further directions by the High Court.



## **VIII. CONCLUSION/RECOMMENDATIONS**

27. In view of the above detailed position, it is suggested that the five step suggestion proposed in paragraphs 15 to 20 of the above report can be still pursued for implementation by the Government of Punjab administratively with the Government of India. The Hon'ble High Court of Punjab and Haryana has closed the matter in terms of the observations made in the final order dated March 26, 2012 and the matter is no longer sub judice or subject of any specific direction of the Hon'ble High Court. Consequently, as of now there is no hurdle or bar on the Government of Punjab to take up the matter on the administrative side with the Government of India to pursue the five step procedure detailed in paragraphs 15 to 20 of the present report. This is the best possible suggestion/recommendation for resolving the problem of return of illegal immigrants from Punjab who have no means or resources to come back to India on their own.

28. That it may be added that the first step of the above five step procedure has already been put in motion and the communication dated February 27, 2012 indicates that a note verbale has already been issued to 15 diplomatic missions in New Delhi to which there may have been responses from foreign diplomatic missions in New Delhi to the MEA Government of India. Accordingly, the Government of Punjab could request the MEA to provide the names and details of all persons from Punjab who are in such lists and are in detention in foreign countries abroad. Thereafter, the steps provided in paras 17 to 20 of the above report can be put into action as per the statutory rights of Indian nationals to claim emergency travel documents to return to India as stipulated in the Indian Passports Act, 1967. This process can now be pursued by the Government of Punjab

administratively with the Government of India for the solution of the problem. Accordingly, large number of persons from Punjab who wish to return to India can benefit from this proposal. This is a legal way of resolving the issue under the provisions of the Passports Act, 1967 and has a effective resolution of the matter deliberated in the report relating to return of illegal/irregular migrants to Punjab.

29. The Government of India has sought information regarding such detained Indian nationals from the respective Embassies/High Commissions in India where such persons have immigrated illegally. Upon such list having been already obtained from the foreign embassies/high Commissions in India, the Government of India can ask the State of Punjab to verify the antecedents and particulars of such Indian citizens who belong to the State of Punjab. Thereafter, the Consular Section of the Indian Embassies/High Commissions abroad in such foreign jurisdictions can grant them emergency travel documents to enable their return to India. These emergency certificates can be issued under the provisions of the Passport Act and Rules quoted above. In this way, the entire exercise can be conducted in the larger interest of Protection of human life and personal liberty guaranteed under Articles 14, 19 and 21 of the Constitution besides the International instruments quoted above. This exercise is a possible method for resolution of this burning problem.

**Accordingly, the present report is submitted for the consideration of the Government of Punjab.**



Place: Chandigarh

ANIL MALHOTRA

Date: 12.09.2012

Chairperson  
Task Force, Policy Procedures, Resolution and Grievances of NRIs

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**FOURTH REPORT**

**NRI's PROPERTY RELATED PROBLEMS – THE PUNJAB MODEL**

**(1) INTRODUCTION – THE GIST OF THE IDENTIFIABLE PROBLEMS**

➤ A foreign based second or third generation descendant of an NRI seeks transfer of title of family property willed to him in rural or urban Punjab. An aging NRI battles in Court to recover possession of urban property in urban Punjab wrested away by unscrupulous elements. Enthusiastic NRI owner sitting abroad desperately seeks remedies to locate share in rural agricultural property to claim ownership on the basis of inheritance. NRI Families battle over division of land and property in exclusive control with custodians in Punjab. Horrified NRI shockingly discovers divested share of family property on arriving in Punjab on the basis of fraudulent documentation. Frantic NRI family members try to implement family settlement thwarted by local relatives occupying property locally. These real life instances are now common to NRIs & PIOs.

➤ During the last over 50 years, large number of Indians have migrated and permanently settled in foreign countries leaving behind their homes, ancestors and landed properties. Now, when the NRIs wish to recover their properties, they find them in forceful or illegal occupation of their trusted childhood guardians or overstaying

tenants who have designs to grab the property. Agreements are dishonoured, trust is violated and faith is destroyed. Commercial real estate property of NRIs is grabbed with impunity. The NRI has neither the patience nor the time to fight a protracted legal battle in an Indian law court which may last a life time, if fought, waged and litigated till the Apex Court. Legal processes are cumbersome, tedious, technical and move at a snail's pace. The bottom line is that the NRIs are at a great disadvantage leaving them disillusioned and disappointed. No existing legislation comes to their rescue or aid.

➤ Gullible, excited and patriotic NRIs with a fervor happily invests huge sums of Pounds Sterling, Dollars or Euros in real estate, flats, or immovable property in Punjab. When it comes to taking actual physical possession of their prized immovable asset in their homeland, the vulnerable NRI discovers to his horror that either the land or the flat does not exist or that he has been cheated into buying property which does not exist. Unscrupulous, unethical and unprofessional brokers, builders or real estate agents who had made these deals with the NRIs and promised the moon have either disappeared, are untraceable or flatly deny having made any commitment. The dumbfounded NRI is too stunned to react. With little time at his hand on his Indian visit or sitting in a foreign land, he does not know what to do. Who will help him. Should he go to the Police or the Administrative Authorities or to a Court of Law for a judicial remedy. Where should he seek advice and how does he pursue the case. The questions are myriad but the solutions and answers lie submerged in a complicated web of long winded procedures which on initiation will proceed endlessly at a snail's pace. The frustrated, dejected and defeated NRI gives up not knowing what to do. Therefore, availability of information of remedies leaves him at sea.

➤ The above summarization is in brief a nutshell of the NRIs ailing property problems for which he seeks a consolidated, composite, timely and effective remedy. The NRI wants to reconnect with his homeland but is disillusioned, disenchanting and disheartened. It is in this backdrop that this paper looks at these peculiar problems with a focus on the State of Punjab which contributes highly to the migratory numbers.

➤ Broadly, Property Related Problems can be divided under four heads as follows:

**(A) Issues relating to Landlord-Tenant Relationships in Punjab and Chandigarh.**

**(B) Issues relating to Succession, Wills and Inheritance - INDIA, NRIs and Wills.**

**(C) Problems arising out of Revenue Records and Agricultural Land Disputes - The Position Prevailing in the State of Punjab.**

**(D) Propositions arising out of Property Investment Related Issues in Punjab.**

➤ It is in the above perspective, that this report looks at the above issues and how they are handled and attempted to be resolved in the framework of the existing laws which prevail in the State of Punjab and the Union Territory of Chandigarh in the matters of Tenancy and Agricultural Property Related Issues which are governed by State Legislations. Inheritance, Wills and Succession are subject to Central Laws.

➤ In so far, problems related to Succession, Wills and Inheritance, as also propositions arising out of Property Investment Related Issues, the same are governed by Central Legislations (except where there are separate State Laws), the problems and solutions are by and large common throughout the Territory of India. Hence, wherever there is a Central Legislation enacted by Indian Parliament, the Indian Law will have universal application throughout the Territory of India. To that extent, the

issues and Laws arising for Succession and Property Investment Related Issues may be common for the entire Indian Jurisdiction and applicable in all States of India.

## **(2) Issues relating to Landlord-Tenant Relationships in Punjab and Chandigarh**

In 2001, the Government of Punjab upon receiving representations from various NRI individuals, and through their associations highlighting the plight of Indian residents returning to Punjab after long years abroad decided to amend the existing East Punjab Urban Rent Restriction Act, 1949, provide NRIs a right to recover immediate possession of their properties. It was represented that the NRIs having spent long years of their life abroad did not find conditions congenial in their own country on their return either to settle down or to take up any business. On account of rigid legal provisions of existing Rent Laws, the NRIs were unable to recover possession of their own residential/non-residential buildings from the tenants. Accordingly, the Government of Punjab having considered the situation had decided that the existing Rent Legislation viz. East Punjab Urban Rent Restriction Act, 1949, should be amended to provide relief to NRIs to enable them to recover possession of a residential or scheduled building and/or one non residential building for their own use. By a notification dated October 9, 2009, the Central Government has extended to the Union Territory of Chandigarh the benefit of the said amendment and hence as of now, NRI Landlords are entitled to the benefit of immediate recovery of immediate possession of their properties in accordance with this Law as per details below.

### **Summary Eviction of tenants from properties of NRIs in Punjab and Chandigarh.**

➤ The East Punjab Urban Rent Restriction Act, 1949 (EPURRA), which extends to all urban areas in Punjab as also the Union Territory of Chandigarh, is an Act to

restrict the increase of rents of certain premises and to provide for eviction of tenants there from. Other than prescribing a normal process for eviction of tenants, it also provides a summary procedure for recovering immediate possession of residential or scheduled buildings to certain specified landlords. By an amendment in 2001, the Act also created a special class of NRI landlords reposing in them a special right to recover immediate possession from tenants occupying their premises by a special summary procedure.

➤ Now under Section 13-B of the EPURRA, once in a lifetime, possession can be given to a NRI landlord to get one building vacated in a summary manner. A NRI landlord is accordingly required to prove that he is an NRI, he has returned to Punjab permanently or temporarily, the requirement of the accommodation by him or his dependent is genuine and that he is the owner of the property for the last five years before the institution of the ejectment proceedings.

➤ By a 2005 landmark judgment titled Baldev Singh Bajwa Vs Monish Saini, the Supreme Court has given far reaching positive dimensions both to the definition of an NRI landlord and to the concept of 'his return' to Punjab in the context of the NRIs right to recover possession of his property under the summary procedure under section 13-B of the EPURRA. It does not distinguish between a Non Resident Indian, Person of Indian Origin or an Overseas Citizen of India.

➤ To be an NRI, it is sufficient that a person of Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account of his employment or for any other purpose which would indicate his intention to stay outside India for an uncertain period.

- A person to be an NRI should be of Indian Origin. Since “Indian Origin” is not defined in the EPURRA, any person whose parents, grandparents or great grand parents were born in India and permanently resided in India would be an NRI. It is not necessary that the NRI should be a citizen of India. It is immaterial that the NRI holds a foreign passport or has shifted to a foreign country.
  
- Return to India cannot be read as return to India permanently with an intention to settle in India permanently. There is no requirement that the NRI has to permanently settle in India on his return or he has returned to India with an intention to permanently settle in India. Hence, “*return to India*” may not be of permanent nature as the premises may be required for the use of any dependent ordinarily living with the NRI. All that is required under Section 13-B is that a NRI should return to India to claim the premises.

### **(3) Issues relating to Succession, Wills and Inheritance - INDIA, NRIs and Wills**

As far as Succession, Inheritance and Wills is concerned, the Hindu Succession Act, 1956 and the Indian Succession Act, 1925 being Central Legislations are applicable throughout the Territory of India. Hence, in so far these issues are concerned, they apply uniformly throughout the Territory of India to all States and Union Territories. The Indian Succession Act, 1925 is an Act to consolidate the Law applicable to testamentary succession for Hindus and the Hindu Succession Act, 1956 is an Act to amend and codify the Law relating to intestate succession among Hindus. Hence, in respect of the matter of Wills i.e. testamentary succession, all NRIs with moveable and immoveable property in India shall be governed by the Indian Succession Act, 1925.



- The Global Indian Diaspora has some problems on the home soil which needs intercontinental solutions. In this perspective, the disposition of property of an NRI living in a foreign domicile, when such property is located partly in India and partly situated abroad, often poses awkward questions. Must an NRI make a Will or leave his property to natural succession. Should the NRI make a joint, composite or common Will of his assets and properties in India and abroad. If so, should such a Will be registered and where. Need a person be appointed to execute the Will in different jurisdictions. Would it be better if there are different wills for separate properties in India and abroad. Should such different wills be registered individually in separate jurisdictions. How should inheritance rights of beneficiaries of NRIs be safeguarded in India and abroad. Which law Indian or Foreign would apply to assets and properties of NRIs in different countries some of which are in India and remaining are abroad.
- Two distinct Indian legislations exist. The Hindu Succession Act, 1956 (HAS) contains the codified law relating to intestate succession among Hindus i.e. when there is no Will. The Indian Succession Act, 1925 (ISA) consolidates the law applicable to persons other than Hindus for intestate succession and testamentary succession for all persons in India including Hindus. Hence, all NRIs (whether Hindus or non Hindus) can make Wills governed by the provisions of the Indian Succession Act, 1925. To begin with, for an NRI, it is advisable to execute a written Will, get it witnessed and registered to avoid any intricate problems of succession and inheritance. With the abundance of problems of NRI properties in India, natural succession in the absence of a will may pose problems from third party claimants. An NRI ought to Will his

property by choice to his natural heirs or others and thus eliminate speculation or bogus claims from claimants and pave a smooth succession. Thus, what ought to follow naturally must be better confirmed by a Will also.

- The HAS/ISA unlike the Hindu Marriage Act does not have extra territorial application. In the wisdom of the Legislature, there are well defined principles of International law, which regulate succession to the movable and immovable properties of a Hindu NRI domiciled outside the territory of India. Thus, on the basis of International comity, the following three principles can be deduced regarding the application of HAS/ISA :-

- ❖ *Firstly, for a Hindu domiciled outside India, succession to his immovable property in India is governed by HAS/ISA whereas succession to his movable property shall be governed by the law of the country of his foreign domicile.*
- ❖ *Secondly, where a Hindu is domiciled in India, succession to his immovable property outside India shall be governed by the law of the country where the property is situated. Movables outside India will be governed by HAS/ISA or by the local law of the foreign country in which the movable property is situated.*
- ❖ *Thirdly, in respect of a Hindu domiciled outside India, succession to his movable and immovable property outside India shall not be governed by HAS/ISA but by law of foreign domicile of the Hindu.*

- In the event of there being no Will, natural succession among the category of heirs as per the order of succession will flow as per the HAS. Then, speculation, outsider claims, disputes among heirs and third party rights are rife. Hence, it is in the best interest of an NRI to pen a composite Will for all his assets and thus put down his wishes in the Will and leave nothing to doubt.
- In the light of non-application of HAS/ISA outside India, it is strongly recommended that NRIs of Hindu origin having immovable assets in different countries should execute a joint composite Will pertaining to all their immovable properties located in different jurisdictions. For NRIs, execution of separate Wills for separate immovable properties in different countries is not advisable. Establishing genuineness of a composite Will is easier than proving multiple Wills. It is also recommended that the NRI must register the Will separately in every jurisdiction even though it is optional in India to do so. It may be mentioned that the registration in a particular country may hold good in respect of properties of the NRIs in that jurisdiction. Accordingly, separate rules of registration of different countries ought to be complied with as per rules of the foreign domicile of the NRI in respect of adhering to foreign laws.
- It is also advisable that the NRI should specifically appoint an executor to execute the Will in the particular jurisdiction where the property is situated. This assists the beneficiaries and simplifies the division of assets as per the Will. A written Will of an NRI duly witnessed and registered in respect of Indian properties identifies the claimants and legal heirs. Its multiple registration assures the

seal of finality. The message for the NRI therefore is, to act well in advance and simplify the task of the beneficiaries who are to inherit their properties.

✚ Thereafter, the law of the jurisdiction, where the property is situate will govern the process of succession on the basis of rights established under the Will. The global Indian must take advantage of this well codified position of Indian succession law. This is to ensure that there is no uncertainty and ambiguity.

**(4) Problems arising out of Revenue Records and Agricultural Land Disputes  
- The Position Prevailing in the State of Punjab.**

The love of land and the need to reconnect with his homeland are an ingrained part and parcel of every NRI originating from Punjab. The landed agricultural properties left by forefathers, ancestors and well wishers always creates the innate desire in the Punjabi NRI to visit his homeland and stake his ownership claim to his land he loves. Sometimes, the landed property in the hands of relatives, tenants, family members or employees is difficult to recover, creating a plethora of unforeseen problems which can take a long time to resolve in the Revenue Courts. At times, title disputes are difficult to resolve and lack of documents to establish ownership can be difficult to obtain. This creates a very unpleasant and disturbing situation for the NRI. It is in this perspective that the State of Punjab has made some special endeavours to expedite the process of settling such disputes by simplified procedures and fast track resolution of such cases in this regard, the following summarized points are enumerated as under:

- Superseding its earlier orders under which existing Courts of Tehsildars and Naib-Tehsildars were designated as fast-track Courts for NRI's, the Department

of Revenue and Rehabilitation in directives issued from time to time has declared that fast-track Courts would be set-up at Jalandhar, Hoshiarpur, Moga and Nawanshahr to which neighbouring districts would be attached.

- The District Revenue Officer heads a fast-track Court and has the powers to decide on the correction of “Khasra girdwari”, partition, contested and un-contested mutations, registered and un-registered wills, “Iambardari”, demarcation, rent suit, and ejection under the Punjab Land Revenue Act. They also hear “chowkidari” cases. The Additional Deputy Commissioner or the Divisional Commissioner decide appeals against the orders of the fast-track revenue Courts thereby expediting the appeal decision making process.
- The Government of Punjab by Notification dated November 16, 2006, has also appointed District Revenue Officers at four District Headquarters to decide Suits under the Punjab Tenancy Act, 1887, for Non-Resident Indians by conferring powers of Assistant Collector 1st Grade upon them.
- The Government of Punjab is fast moving into the era of computerization in the matter of recording of revenue records. Farad Kendras enable applicants to obtain copies of jamabandis and khasra girdwari on email requests.

**(5) Propositions arising out of Property Investment Related Issues in Punjab.**

Investing in real estate, urban property, flats or apartments with builders, colonizers, estate agents and building companies can sometimes be a nightmare for NRIs.

Colourful brochures, fancy promises, pictures of properties and attractive installment plans are used as inducement measures to extract huge sums of money from innocent NRIs who walk into such traps. At times, flats, houses, or apartments are not constructed as per the schedule and escalated costs are demanded failing which money already paid is forfeited. There are also times when the same property is sold to multiple owners and the unfortunate NRI has to face insurmountable problems. It is in this context that the following safeguards and remedies can be advocated which are applicable uniformly throughout the Territory of India in all States & Union Territories.

- ✚ Before any investment in any property, flat or apartment is made in Punjab, unless and until a physical verification is done through a reliable source or agency to conclusively establish the title or ownership of the builder, colonizer, company or estate agent, no money should be invested blindly without checking
- ✚ Every step should be taken by an NRI to ask, confirm and verify whether the person, builder, colonizer or company possesses a valid license, permission or sanction as per local laws to build a colony, set of apartments or the prescribed number of flats which are advertised or propagated at the time of sale.
- ✚ If possible, through the assistance of local agencies or contacts, the title of the owner who is selling the property should be verified from the local land records to establish the ownership of the vendor. This will rule out the issues relating to ownership being disputed at a later stage.
- ✚ It should be an absolute certainty that proper documents must be executed at the time of paying any initial deposit and no payment should be made unless

and until proper contracts or agreements are executed and signed by the builder, estate agent, colonizer or company selling any property.

- ✚ Before investing in any flat or property, the prospective NRI buyer must ensure that the colony, housing, flats, apartments, plots is validly created and registered under the local registration laws of the State of Punjab. Unauthorised colonies or unregistered housing projects not recognized by local laws entail penalties. Therefore care and caution must be taken to check registration.
- ✚ It must be clarified in writing that in case the property is not handed over in the stipulated time, there shall be no escalation clause in terms of building costs. Similarly, adequate caution and care should be taken not to sign any agreement or document by which consent is given to agree to escalated building costs. Agreements or documents should be signed only after consultation with Solicitors and no blank documents should be signed at all.
- ✚ In case there is any failure to hand over property in a stipulated period of time or there is any breach of promise, an NRI should not wait indefinitely. Every effort should be made to put the grievance or complaint in writing to the concerned colonizer, builder, estate agent or property developer which can serve as written proof and evidence for initiating any legal proceeding later.
- ✚ The Consumer Protection Act, 1986, an Act for better protection of the interests of consumers and for the purpose to make provisions for establishment of Consumer Courts for settlement of Consumer Disputes is a very effective remedy in Punjab against errant builder, colonizers and property developers.

Consumer Courts exist in every District in Punjab and complaints can be made in simple language with a very small amount of fee payable as Court fee. The complaints can be followed up in person and the procedure of hearing is simple. Trial is expeditious and quick. It serves as a very effective remedy. Hence, it is strongly advised that in case of any deficiency in service or restrictive trade practice suffered by an NRI at the hands of any such errant builder, colonizer or estate agent, the provisions of the Consumer Protection Act, 1986 applicable throughout India should be invoked at the earliest possible. This is a easy, friendly and quick method for getting relief.

#### **(6) CONCLUSIONS AND SUGGESTIONS:**

As a common conclusion to all the above problems, some general suggestions can be mooted which can be a panacea to the NRI for the ills which ail him for his property and other problems. Though, no solution is universal but for the betterment of the properties of the NRI, these possible remedies can improve and make the situation better. These suggestions can be summarized in the following headings:

#### ***PUBLICITY OF EXISTENCE OF PUNJAB STATE COMMISSION FOR NRIs***

- At the outset it may be most useful to publicize the existence of the Punjab State Commission for NRIs constituted by *the Government of Punjab under The Punjab State Commission for Non Resident Indian Act, 2011*. This Punjab NRI Commission upon issuance of directions to the Administration, Police and local authorities can be the Nodal Body for entertaining NRI complaints online and in person from NRIs. They can forward these complaints to the respective departments to which



they pertain to and suggest redressal to NRIs as to what remedy to adopt for resolving the problem. If the issue can be resolved by seeking a response from the Government machinery internally, the matter can be concluded or the NRI can be guided to approach the appropriate Judicial Court for seeking necessary relief as per law.

### **AMENDMENT OF NRI COMMISSION ACT**

● The Government of Punjab enacted the Punjab State Commission for Non resident Indians Act, 2011 (Punjab NRI Act) as an Act to provide for the constitution of a Commission for NRIs with a view to protecting and safeguarding the interests of NRIs in the State of Punjab and to recommend remedial measures for their welfare. The NRI Commission is fully functional, taking up matters with efficiency and performing excellently. However, the powers of the NRI Commission are stunted as it has been created prematurely without full powers. The NRI Commission can order or conduct an enquiry or investigation on a complaint with respect to NRIs but the Punjab NRI Act stops short. It leads nowhere. The NRI Commission cannot pronounce a decision or give any judgment because the Punjab NRI Act does not contain any provision by which it is empowered to do so. Hence, the exercise is in futility as the NRI Commission has no teeth. Therefore, it is recommended that the Punjab NRI Act should be amended with the following powers to be exercised after an enquiry or an investigation is conducted by the NRI Commission and which are as follows:

- ✓ ***Where the inquiry discloses, the commission or violation of rights of any law concerning parties of a serious nature, it may recommend to the Government or authority, the initiation of proceedings or prosecution of such action as the Commission may deem fit against concerned person or persons.***

- ✓ ***Approach the Civil, Criminal or High Court concerned for such directions, orders or writs as the Court may deem necessary in the facts of the case.***
  
- ✓ ***Recommend to the Government or authority for the grant of such interim relief to the victim of the members of his/her family as the Commission may deem necessary.***

Unless and until the powers of enquiry and investigation of the NRI Commission is given the further statutory authority to take the matter to a logical end, the existence of the NRI Commission will remain an exercise in futility. Upon such empowerment, the NRI Commission will get statutory teeth to enforce their orders. Resultantly, beleaguered NRIs in distress can see their cases to a logical end only upon a legal remedy resulting from their complaint. NRI disputes will no longer remain at sea.

#### ***PUBLICITY THROUGH WEBSITE AND OTHER MEASURES***

- It is strongly advocated that in matters of landlord-tenant relationship, the existence of the special provisions for the Right to recover immediate possession of Residential and Non-Residential Buildings of NRIs should be given adequate publicity. This can be done by creating a NRIs website and/or bringing out a comprehensive booklet describing the availability of the remedy in simple and easily understandable language. The Union Territory of Chandigarh by a notification dated October 9, 2009 has made applicable the provisions of Section 13(B) of the East Punjab Rent Restriction Act to the Territory of Chandigarh whereby NRI landlords in Chandigarh can now recover immediate possession of their property. NRIs abroad should be made aware of this remedy which is unknown to a large segment of NRIs population.

- Likewise, it is further suggested that in the matter of property investment related issues, the concerned institutions like GMADA and PUDA in Punjab and other officials bodies should create investor friendly websites announcing investment schemes in Government owned properties and Government floated schemes. This website could also indicate a list of projects, colonies, development projects and other housing societies which have been registered or granted approval/ acceptance by the Government of Punjab under local laws and State enactments. This way an NRI would not invest in any unregistered or unauthorized colony, project or housing schemes.
  
- An NRI website could indicate to all unfortunate victims of unscrupulous builders or unregistered colonizers that they have a simple, efficacious, speedy, in expensive and friendly remedy of approaching a Consumer Court under the Consumer Protection Act, 1986 for any unfair or restrictive trade practice as a consumer disputes. The availability of this simple remedy in every district in the State of Punjab to NRIs needs publicity and must come within the knowledge of every NRI so that he can avail of this simple remedy which is quick, effective and does not involve heavy court fees. An NRI website would be an ideal place to publicized availability of such remedy.
  
- Similarly, the NRI Department can create a friendly website advising, guiding or suggesting to NRIs the simple, straight forward and legal tenable points on issues of Wills, Succession, Inheritance and other methods of transfer of property in accordance with law. These friendly suggestions will aid and assist NRIs in planning the succession of their moveable and immoveable properties in Punjab. Besides, tips on how to effect mutation of agricultural property and transfer of other urban/rural residential or commercial property in municipal or other records would be most helpful.

### ***CREATION OF SPECIALIST TRIBUNAL/COMMISSIONS***

- Further, it may be suggested that the State of Punjab should endeavour to create fast track NRI Courts in matters of agricultural properties, revenue affairs and land revenue disputes besides maintenance of revenue records. It may be worth while to explore the possibility of vesting the exclusive jurisdiction of settlement of disputes relating to title of land with the Civil Courts by excluding the domain of Revenue Courts from adjudicating upon such matters. This will save time, besides provide an expeditious and conclusive remedy in the settlement of disputes of civil nature.

- It may also be suggested that appropriate Legislative changes may be brought about in matters of properties of NRIs involving cases where NRI properties have been retained, forcibly occupied or grabbed by unscrupulous or unethical persons. It may be in order if the Punjab Government seriously considers enacting a State Legislation applicable throughout the Territory of Punjab to take cognizance of such issues of NRI properties and bring them under their purview of such Legislation. Such an enactment can create a special Tribunal for speedy trials of property disputes of NRIs. In this way, the unauthorized and forcible possession of a large number of NRI properties can be resolved by creating such an exclusive Tribunal/Commission. Alternatively, it can also be suggested that the Punjab State Commission for Non Resident Indians Act, 2011, could be suitably amended to vest jurisdictions and powers in it for the purposes of adjudicating such NRI property disputes also.

### ***PUBLIC PRIVATE PARTNERSHIP MODULE FOR SUPPLYING COPIES***

- In so far issues concerning obtaining copies of land revenue records, title deeds, title documents, ownership records, transfer of ownership papers etc. are concerned, the Government of Punjab should endeavour having a module of Public Private Partnership to whom the limited function of preparation and handing over

copies can be out sourced. By commercial bidding, an agency can be identified either at State or District level to handle this limited function of preparing copies of records on the basis of a regularly updated website to be prepared on the instructions of the Department of Revenue, Government of Punjab. This out sourced agency can fix rates at which copies of all individual ownership records can be supplied on payment of requisite charges either online or in person to the concerned NRI on a written request supported by his identity and his connection with the property. The Local Administration in every District in Punjab can monitor the function of such agency & restrict its function only to disseminate limited information to concerned NRI.

By no means, the above suggestions are exhaustive or conclusive. They are the beginning of a new thought process initiated by the Government of Punjab in the very useful session on Property Problems of NRIs/PIOs. However, to generate more thoughts, have more suggestions and consider other view points, these limited views have been put forth for a fruitful, interactive and participative beginning for the NRI brethren. It is a beginning without an end and a start of a new era for the NRI.



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**FIFTH REPORT**

**AMENDMENTS PROPOSED IN THE PUNJAB STATE COMMISSION FOR  
NON-RESIDENT INDIANS ACT, 2011 (PUNJAB ACT NO.33 OF 2011)**

**(1) INTRODUCTION – THE GIST OF THE IDENTIFIABLE PROBLEMS**

- ✓ Estimated 30 million NRIs who have migrated from Indian shores reside in 180 countries abroad. About 5 million originate from Punjab and are bound with family, property and business interests back home. Their problems need solutions. Conventional laws and tardy procedures leaves them disenchanting. In this backdrop, NRIs seek alternative mediums for efficacious dispute resolution. The moot question is, can such mechanisms be created without conflict or collision with the prevalent Indian civil and criminal adjudication system. Alternatively, in the existing framework of laws, the powers which can be exercised and steps which can be legitimately taken by a Grievance Redressal Commission need to be identified and put forth without transgressing into the realm of jurisdiction of the hierarchy of the structure of the existing system of civil and criminal courts which adjudicate cases and render decisions.

## **(2) THE PUNJAB STATE COMMISSION FOR NON-RESIDENT INDIANS ACT, 2011- AN ANALYSIS**

- ✓ On 8 October 2011, the Punjab Legislative Assembly passed The Punjab State Commission For Non-Resident Indians Act, 2011 (hereinafter NRI Commission Act) which upon receiving the assent of the Governor of Punjab on 21 November 2011 and upon being published in the Official Gazette of the State of Punjab, was enforced in the State of Punjab.
- ✓ It may be first important to analyse the definition of an NRI, PIO and an OCI to whom this enactment is applicable. Who is an NRI? This is the first question to answer while seeing who is an NRI, PIO or an OCI.

✓

A description of these terminologies answering frequently arising questions in this array of nomenclatures may be useful to summarise as follows:

- **NRI** : Section 2 of the Foreign Exchange Management Act 1999 (FEMA) defines a person resident in India and a person resident outside India but does not define the term NRI. However, a notification defines NRI to mean a person resident outside India who is either a citizen of India or is a person of Indian origin. Under FEMA, a person “resident” in India is one who resides in India for more than 182 days in the preceding financial year and who comes or stays in India for any purpose and a “non-resident” is merely defined as a person who is not a resident in India.

Therefore, an NRI can be summed up as an Indian citizen who is ordinarily residing outside India and holds an Indian passport.

•**PIO:** It means a foreign citizen who at any time held an Indian passport; or he/she or either of his /her parents or grandparents or great grandparents was born in and was permanently resident in India; or he/she is a spouse of a citizen of India or of a person of Indian origin. PIO card holders can visit India without visa for 15 years and will be required to register with Foreigners Registration Officer (FRO) in India when the stay exceeds 180 days continuously. PIOs enjoy parity with NRIs in respect of certain facilities but have no political rights and can apply for Indian citizenship after residing in India for a minimum of seven years.

**OCI:** A foreign national who was eligible to become a citizen of India on January 26, 1950, or was a citizen of India on or at any time after the said date or belonged to a territory that became part of India after August 15, 1947 and, his / her children and grandchildren are eligible for registration as OCIs. They enjoy multiple entry multipurpose lifelong visa for visiting India, are exempted registration with FRO/police authorities for any length of stay in India and are entitled to benefits notified under Section 7 B of the Citizenship Act. An OCI registered for 5 years and residing in India for one year can be granted Indian citizenship but will have no political rights. All benefits to which an OCI is entitled are notified from time to time.

Since the NRI Commission Act does not distinguish or differentiate between an NRI, PIO or OCI and because the definition of “Non- resident Indians” in the NRI Commission Act extends to all persons of Indian Origin, the Act is applicable to an



NRI, PIO or an OCI in terms of the definitions quoted and referred to above. Hence, all persons of Indian Origin irrespective of foreign nationality or overseas domicile would qualify to be Non-Resident Indians as define in the NRI Commission Act.

- ✓ The enacted law titled as “the Punjab State Commission for NRIs Act, 2011” is stated to be “*An Act to provide for the constitution of the Commission for NRIs in the State of Punjab with a view to protecting and safeguarding the interests of the NRIs in the State of Punjab, and to recommend remedial measures to State Government.*” It defines a “Complaint” by stating that it “*means all petitions/ communications received in State Commission for NRIs from an NRI or any other person on his behalf, in person, by post, by telegram, by fax or by any other means whatsoever, alleging, disputes or violations or abetment thereof or negligence in the prevention of such dispute or violation, by a public servant or a private person or the material on the basis of which the Punjab State Commission for NRIs takes suomotu cognizance.*” The NRI Commission Act however, does not define what is an “NRI dispute” or a “NRI violation” and empowers the NRI Commission to investigate a “*complaint*” from “*Non Resident Indians*”. Though Section 12 of the NRI Commission Act is titled “*Powers and Functions, of the Commission*”, but no functions are laid down in exercising the stipulated powers mentioned in Section 12 of the Act. Further, after an enquiry or investigation ordered by the NRI Commission is concluded, the steps to be taken thereafter and directions to be passed after the enquiry or investigation is concluded, also do not find any mention in any provision of the existing NRI Commission Act. Thus, the two most salient necessary provisions relating to the functions as also

powers to issue directions upon conclusion of enquiry or investigation are missing & are a legal lacunae which need to be statutorily rectified by amending the Act.

### **(3) JURISDICTIONAL ISSUES WITH THE EXISTING SYSTEM OF COURTS**

Whether it is a NRI, PIO or an OCI, their grouses revolve around family law related issues, property disputes, immigration related questions and trysts with criminal law. But then, a hierarchical system of Civil and Criminal Courts in accordance with existing jurisprudence mandates that all disputes shall be adjudicated by Courts of competent jurisdiction as per statutory laws made by Parliament and applicable throughout India. Consequently, identifying an “NRI dispute” for being heard and decided by a different realm will clearly fall foul of the system of prevalent adjudication by existing courts. A civil, matrimonial or criminal dispute in India cannot carry separate tags and are bound to one system. Therefore, vesting an NRI Commission with such supposed powers may not be agreeable. Parallel hearings which cannot achieve finality will only compound problems. The aggrieved NRI will still need to invoke the powers of a competent Court for actual relief as a NRI Commission cannot enjoy parallel statutory adjudication powers. Therefore, the only possible solution would be to empower the NRI Commission with such functions and powers as may be legally permissible without transgressing into the jurisdiction of the existing hierarchy of the prevalent system of adjudication of disputes by established courts which would amount to taking over existing judicial functions.

#### **(4) SUGGESTED AMENDMENT OF NRI COMMISSION ACT**

In this backdrop, the only possible solution would be to vest the NRI Commission with suitable functions as may be legally tenable. This would mean that the NRI Commission should be empowered and authorised to exercise stipulated functions and take further steps as may be legally permissible after completion of an enquiry or an investigation in a complaint before the NRI Commission. The Government of Punjab enacted the Punjab State Commission for Non resident Indians Act, 2011 (Punjab NRI Act) as an Act to provide for the constitution of a Commission for NRIs with a view to protecting and safeguarding the interests of NRIs in the State of Punjab and to recommend remedial measures for their welfare. The NRI Commission is fully functional, taking up matters with efficiency and performing excellently. However, the functions of the NRI Commission have not been identified. The NRI Commission can order or conduct an enquiry or investigation on a complaint with respect to NRIs but the Punjab NRI Act does not identify its functions. Further, the steps to be taken after an inquiry or investigation are not stipulated. The NRI Commission cannot proceed further because the Punjab NRI Act does not contain any provision by which it is empowered to do so. Hence, the exercise is in futility as the NRI Commission has no identified functions or steps to be taken after an inquiry or investigation is concluded. Therefore, the functions of the NRI Commission need to be clearly stipulated and it is recommended that the Punjab NRI Act should be amended with the powers to be exercised after an enquiry or an investigation is conducted by the NRI Commission and which are as follows:

- ✓ ***Where the inquiry discloses, the commission or violation of rights of any law concerning parties of a serious nature, it may recommend to the Government or authority, the initiation of proceedings or prosecution of such action as the Commission may deem fit against concerned person or persons.***
- ✓ ***Approach the Civil, Criminal or High Court concerned for such directions, orders or writs as the appropriate Court of competent jurisdiction may deem necessary in the facts of the case.***
- ✓ ***Recommend to the Government or authority concerned, the grant of such interim relief to the victim of the members of his/her family as the Commission may deem fit and necessary in any individual or particular case.***

Unless and until the functions, besides the powers of enquiry and investigation of the NRI Commission find mention in the Act, the statutory authority to take the matter to a logical end and the legal sanctity of the NRI Commission will remain questionable. Only upon such empowerment, the NRI Commission will get statutory teeth to exercise their functions and enforce their orders. Resultantly, beleaguered NRIs in distress can see their cases to a logical end only upon a legal solution resulting from their complaint. NRI disputes will no longer remain at sea and matters can see a appropriate end in accordance with the provisions of the NRI Commission Act.

## **(5) CONCLUSIONS AND SUGGESTIONS**

In view of the analysis and points raised above, it is suggested that the following provisions be appropriately added to the existing Punjab State Commission for Non-Resident Indians Act, 2011 by suitable amendments which may be carried out by the

Punjab Legislative Assembly after the matter is first examined by the Government of Punjab. The amendments proposed are in the following terms.

(i) The existing Section 12 of the present 2011 NRI Commission Act only stipulates the powers of the NRI Commission but does not contain any functions, even though Section 12 is titled *Powers and Functions of the Commission*. Therefore, it would be appropriate that Section 12 be suitably amended to add the following functions which can be performed by the NRI Commission by stating as follows. The proposed complete Section 12 ought to read in the following terms:

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## **12. Powers and Functions of the Commission -**

- (1) *The Commission shall perform all or any of the following functions namely:-*
- (a) *Examine and Review the safeguards provided by or under any law for the time being in force for the protection of rights of non-resident Indians and recommend measures for their effective implementation.*
  - (b) *Present to the Government of Punjab, annually and at such other intervals as deemed fit and necessary by the NRI Commission, reports upon the working of its suggested safeguards for providing more effective remedies to non-resident Indians.*
  - (c) *Inquire into the violation of rights of non-resident Indians and recommend initiation of administrative or legal proceedings in such cases.*
  - (d) *Examine all factors that inhibit the enjoyment of rights and duties of non-resident Indians in matters relating to matrimonial relationships, property rights, immigration issues, financial investment problems, repatriation of funds, economic frauds and any other related matters brought to the notice of the NRI Commission or acted upon suo moto by the NRI Commission.*
  - (e) *Look into the matters relating to factors which will aid and assist better and improved relationships between non-resident Indians and the Government of Punjab and recommend appropriate remedial measures for progress of such understanding.*
  - (f) *Study treaties and other laws or other international instruments besides undertaking periodical review of existing policies, programmes and other activities on*

*rights and duties of Non-Resident Indians and make suitable recommendations for their effective implementation in the best interest of the State of Punjab.*

*(g) Spread awareness and literacy among various sections of the society to promote awareness of the safeguards available for protection of rights as well as duties relating to matrimonial problems, property rights, immigration issues, besides other related matters through publications, the media, seminars, discussions and any other available means so deemed fit and desirable by the NRI Commission.*

*(h) Inquire into complaints and take suo moto notice of any complaint made to the NRI Commission and take up the issues arising out of such matters with appropriate authorities.*

*(i) Such other functions as the NRI Commission may deem necessary to take up in any other matter incidental to the above functions.*

*(2) The Commission shall, while investigating any matter under this Act in the exercise of the above functions, have all the powers of a Civil court trying a suit and, in particular, in respect of the following matters namely :-*

*(a) summoning and enforcing the attendance of any person and examining him on oath;*

*(b) requiring the discovery and production of any documents;*

*(c) receiving evidence on affidavits;*

*(d) requisitioning any public record or copy thereof from any court or office;*

*(e) issuing commissions for the examination of witnesses and documents; and*

*(f) any other matter which may be prescribed.*

*(3) The NRI Commission shall have the power to forward any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under Section 346 of the Code of Criminal Procedure, 1973 (Act 2 of 1974).*

*(4) The Commission shall function by holding "sittings" and "meetings" at any place within the State of Punjab.*

*(5) The NRI Commission shall not enquire into any matter which is pending adjudication before a Civil or a Criminal Court of competent jurisdiction.*

- (6) *The Members of the Commission including the Chairperson shall function in accordance with Rules framed under this Act.*
- 

(ii) The amended Section 12 of the present 2011 NRI Commission Act as suggested above should be followed by Section 12-A which should empower the NRI Commission to take necessary steps upon completion of an enquiry or an investigation undertaken by the NRI Commission under Section 12 of the proposed NRI Commission Act, which has been quoted above. It is suggested that Section 12 A which should be added after Section 12 should read in the following terms:

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#### **12 A Steps after Inquiry**

***The NRI Commission may take any or all of the following steps upon the completion of an enquiry under this Act, namely;***

- (i) Where the inquiry discloses, the commission or violation of rights of any law concerning parties of a serious nature, it may recommend to the Government or authority, the initiation of proceedings or prosecution of such action as the Commission may deem fit against concerned person or persons.***
- (ii) Approach the Civil, Criminal or High Court concerned for such directions, orders or writs as the appropriate Court of competent jurisdiction may deem necessary in the facts of the case.***
- (iii) Recommend to the Government or authority concerned, the grant of such interim relief to the victim of the members of his/her family as the Commission may deem fit and necessary in any individual or particular case.***
- 

It is suggested and strongly recommended that to provide appropriate authority to legitimately enquire into complaints entertained and heard by the NRI Commission, the functions of the Commission be identified in the above terms, as also the steps which the NRI Commission is authorised to take after enquiry or investigation be stipulated for an effective result to be provided in the issues raised.

Accordingly, the matter be examined by the Government of Punjab for suitable and appropriate action as deemed fit and necessary. Report submitted accordingly.

A handwritten signature in blue ink that reads "Anil Malhotra". The signature is written in a cursive style and is underlined with a single horizontal line.

Place: Chandigarh  
Date: 08.11.2012

ANIL MALHOTRA  
*Chairperson*

Task Force, Policy Procedures, Resolution and Grievances of NRIs



JULY  
2013

# Recommendations of the Punjab Governance Reforms Commission Ninth Status Report

Ninth PGRC Report on Policy Procedures, Resolution and  
Grievances of Non-Resident Indians





# **Recommendations of the Punjab Governance Reforms Commission**

**Ninth PGRC Report on Policy Procedures, Resolution and  
Grievances of Non-Resident Indians**



## **CONSTITUTION OF THE COMMISSION**

### **Chairperson**

Dr. Pramod Kumar, Director, Institute for Development and Communication, Chandigarh

### **Members**

1. Prof. Dipankar Gupta, Professor Sociology, Centre for Social Studies, Jawaharlal Nehru University, New Delhi.
2. Prof. Atul Sood, Associate Professor, Centre for Studies in Regional Development, Jawaharlal Nehru University, New Delhi.
3. Sh. Ram Naresh Gupta, IAS (Retd.), H.No. 10, Sector 8, Panchkula
4. Mr. J.R. Kundal, IAS (Retd.), H.No. 1578, Sector 69, Mohali
5. Prof. K.K. Talwar, Chairman, NTTTR, Chandigarh.

### **Ex-Officio Members (Chairpersons of Task Groups)**

1. Justice K.S. Garewal (Retd.)
2. Dr. A.A. Siddiqui, IPS (Retd.)
3. Mr. A.K. Kundra, IAS (Retd.)
4. Prof. S.K. Thorat, former Chairperson of UGC and Chairperson of ICSSR
5. Mr. Y.S. Ratra, IAS (Retd.)

### **Member Secretary**

Dr. G. Vajralingam, IAS



## **Preface**

Globalisation of economy and politics has thrown new opportunities and challenges for interaction of Diaspora with their own country of origin and also in the place of settlement. Issues ranging from domiciles' voting rights or dual citizenship to marriage alliances and material support system, the compiled report attempts to capture the wide spectrum of Diaspora interface with the place of origin in terms of legal framework practiced to regulate their communications. The short term remedial measures, for instance, relating to fake marriages mandates compulsory registration of marriages of NRIs and their dissemination to the concerned authority thereby lending transparency to the tracking system as well as prohibiting many to indulge in illegal malpractices. Similarly, the report addresses matters of property, human smuggling that require effective statutory mechanism for protecting the rights of the NRIs.

Pramod Kumar  
Chairman, PGRC

## **Perspective**

In the matter of suggesting necessary changes, reforms and bringing in appropriate legislation in the State of Punjab for resolving problems arising out of marital relationships, particularly in the NRI community, the following measures are proposed in the present report submitted hereunder:-

### **1. Mandatory Registration of Marriages in Punjab:**

As per the judgment of the Supreme Court of India in Transfer Petition (civil) 291 of 2005, Seema vs. Ashwini Kumar, by orders dated 14.02.2006 and 25.10.2007, it has been made mandatory that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective States where the marriage is solemnized. The State of Punjab, as of date, has no compulsory registration of marriages prescribed under any enactment or rules made by the State of Punjab in this regard. Moreover, the compulsory registration of NRI marriages is urgently required to ensure that brides and grooms from the State of Punjab have proof and evidence of their marriage as also to prevent matrimonial frauds being practiced commonly in the State of Punjab. To meet all these requirements, a composite Law, namely "The Punjab Compulsory Registration of Marriages Bill, 2012" is proposed to be enacted and a draft of the same is annexed with this report for consideration of the Government of Punjab.

### **2. Creation of Family Courts in Punjab:**

Section 3 of the Family Courts Act, 1984, leaves it open to the respective State Governments to provide for Family Courts. The State of Punjab essentially needs Family Courts to provide fast-track, effective, meaningful and quick relief for abandoned spouses, deserted children and for resolving other disputes arising out of a matrimonial relationship. Under Section 3, the Family Courts are required to be constituted by the State Government in consultation with the High Court. It is thus proposed that the Family Courts should be set up in every district in the State of Punjab so that all such matrimonial disputes get effective, speedy and meaningful adjudication.

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**Note: This chapter has been contributed by Task group on Policy Procedures, Resolution & Grievances of NRIs chaired by Advocate Anil Malhotra**



## SECTION 1

### THE PUNJAB COMPULSORY REGISTRATION OF MARRIAGES BILL, 2012

*A BILL to provide for compulsory registration of marriages solemnized or performed in the State of Punjab, irrespective of religion, caste, creed or nationality and for matters connected therewith or incidental thereto.*

Be it enacted by the Legislature of the State of *Punjab* in the Sixty-first year of the Republic of India as follows:-

#### Part I: PRELIMINARY

- Short title,  
extent and  
commencement
1. (1) This Act may be called the Punjab Compulsory Registration of Marriages Act, 2012.  
(2) It extends to the whole of the State of Punjab.  
(3) It shall come into force on such date, as the State Government may, by notification in the Official Gazette, appoint.
- Definitions
2. In this Act, unless there is anything repugnant to the subject or context -
- (a) “age of bridegroom and bride” shall mean the age not less than twenty-one years in the case of bridegroom and eighteen years in the case of bride on the date of marriage except for those who are governed by customary or personal law subject to the production of proof thereof;
- (b) “Chief Registrar” means the Chief Registrar of marriages appointed by the State Government under section 3;
- (c) “Marriage” means to solemnise or enter into a marriage under any personal law or in any other form or manner and includes remarriage;
- (d) “District Registrar” means the District Registrar of marriages appointed by the State Government for a district under section 4;
- (e) “Prescribed” means prescribed by rules made under this Act;
- (f) “Priest” means any person who solemnises or performs a marriage;
- (g) “Non Resident Indian” (NRI) means a person of Indian origin who is resident abroad, is holding Indian or foreign nationality and who is either permanently or temporarily settled outside India for any of the following purposes-
- (i) for or on taking up employment outside India; or

- (ii) for carrying on a business or vocation outside India; or
- (iii) for any other purpose, as would indicate his/her intention in such circumstances to stay outside the territorial limits of India for a uncertain or determined period for fulfilling or completing such purpose.
- (h) "Foreign National" means any person who is not a citizen of India and would include Persons of Indian Origin (PIO) and Overseas Citizens of India (OCI)
- (i) "Register" means a register of marriages maintained under this Act;
- (j) "Registrar" means a Registrar of marriages appointed by the State Government under section 5;
- (k) "State Government" means the Government of the State of Punjab.

## **Part II: REGISTRATION ESTABLISHMENT**

Appointment of  
Chief Registrar

**3.** (1) The State Government shall, by notification in the Official Gazette, appoint a Chief Registrar for the whole of the State.

(2) The Chief Registrar may, in consultation with the State Government, also appoint such other officers with such designations as he thinks fit for the purpose of discharging, such of his functions, as he may from time to time, authorize them to discharge.

(3) The Chief Registrar shall be the Chief Executive Authority in the State for carrying into execution the provisions of this Act and the rules made thereunder subject to the directions, if any, given by the State Government.

(4) The Chief Registrar shall take steps, by issuing suitable instructions or otherwise, to co-ordinate, unify and supervise the work of registration in the State for securing an efficient system of registration and shall prepare and submit to the State Government, in such manner and at such intervals, as may be prescribed, a report on the working of this Act in the State.

Appointment  
Of District  
Registrar

**4.** The State Government shall appoint a District Registrar for each revenue district and such number of Additional District Registrars, as it thinks fit, who shall, subject to the general control and direction of the District Registrar, discharge such of his functions as the District Registrar may from time to time authorize them to discharge.

Appointment  
Of Registrar

**5.** (1) The State Government shall appoint a Registrar for each local area comprising the area within the jurisdiction of a tehsil or sub-tehsil or a combination of any two or more of them for carrying into execution in such areas the provisions of this Act:

Provided that the State Government may appoint, in the case of any municipal corporation, municipality or for any other local authority or for a

group of villages or other territories in the State, any officer or employee thereof, to be a Registrar under the provisions of this Act.

(2) The Registrar may also *suo motu*, or on notice, without fee or reward, enter and register any marriage which takes place in his jurisdiction in the register maintained under this Act, after calling the parties concerned and ascertaining the facts which require such marriage to be registered.

(3) Every Registrar shall have an office in the local area of his jurisdiction for which he is so appointed.

(4) Every Registrar shall attend his office for the purpose of registering marriages on such days and at such public hours as the Chief Registrar may direct and shall cause to be placed in a conspicuous place on or near the outer door of the office of the Registrar, a board bearing, in the local language, his name and the designation of the word "Registrar" for the local area for which he so is appointed, and the public days and hours of his attendance.

### **Part III: REGISTRATION OF MARRIAGES**

Every marriage  
to be registered

6. After the date of commencement of this Act, every marriage between Indian nationals, Non-resident Indians or foreign nationals, solemnized or performed in the State of Punjab, irrespective of religion, caste, creed or nationality, shall be registered in the manner, as provided in section 7.

Provided, that in case of any marriage, where either or both the parties are Non-resident Indians or foreign nationals, it shall be mandatory for such parties to disclose and mention in writing, his/her passport number, its country of issue and its period of validity, besides his/her permanent residential/official address in the country of current overseas abode and his/her valid, present social security number or any such similar other identification proof officially issued by the country of foreign abode, which information shall be entered in the certificate of marriage as also in the register of marriages.

Memorandum  
of marriages

7. (1) The parties to a marriage shall prepare and sign a memorandum, in such form, as may be prescribed and deliver or send by registered post, the said memorandum in duplicate to the Registrar of the area concerned in which the marriage was solemnised or performed, or at the ordinary place of residence of the bride/her parents or of the bridegroom/his parents, within a period of ninety days from the date of solemnisation or performance of marriage.

(2) The memorandum shall be accompanied by such fee in the form of court fee stamps or in any other prescribed mode of deposit of fee and shall be attested by such person, as may be prescribed.

(3) Where the Registrar, before whom the memorandum is presented under sub-section (1), on scrutiny of the documents submitted with the

memorandum or, on other facts noticed or brought to his notice, is satisfied or has reason to believe that-

- (a) the marriage between the parties is not solemnised or performed in accordance with the personal or other law applicable to the parties; or
- (b) the identity of the parties or the witnesses or the persons testifying the identity of the parties and the solemnisation or performance of the marriage is not established beyond reasonable doubt; or
- (c) the documents tendered before him do not prove the marital status of the parties,

he may, after hearing the parties and recording the reasons in writing, refuse to register any such marriage and may-

- (i) call upon the parties to produce such further information or documents as deemed necessary, for establishing the identity of the parties and the witnesses or correctness of the information or documents presented to him or for any other reason specified in writing; or
- (ii) if deemed necessary, also refer the papers to the local police station within whose jurisdiction the parties reside, for verification and confirmation.

(4) Where on scrutiny of documents presented to him or on further verification as provided in sub-section (3), the Registrar concerned is satisfied that there is no objection to register the marriage, he shall register the same within the period as may be prescribed and issue a certificate of marriage in the prescribed form. If in the opinion of the Registrar, the marriage is not fit for registration, he shall pass an order of refusal in writing after recording the reasons therefor and send the duplicate copy thereof to the District Registrar.

(5) Such parties to a marriage who were married prior to the date of commencement of this Act, may also get their marriage registered if they are residents of the State of Punjab at the time of registration of the marriage, subject to the terms and conditions as mentioned in subsections (2), (3) and (4) above.

(6) Such parties to a marriage who have married outside the State of Punjab, but are residents of the State of Punjab, may also get their marriage registered in the State of Punjab as per provisions of sub-section (1), subject to the terms and conditions as mentioned in sub-sections (2), (3) and (4) above.

(7) If the marriage is already registered outside the State of Punjab, it shall not be registered again in the State of Punjab.

Appeal

**8.** (1) Any person aggrieved by the order of the Registrar refusing to register the marriage under sub-section (4) of section 7 may, within a period of ninety days from the date of receipt of such order, appeal to the District Registrar in such manner and accompanied by such fees, as may be prescribed.

(2) The District Registrar, after giving an opportunity of being heard to the party concerned, shall pass an order confirming the order of the Registrar or after recording the reasons in writing, direct the Registrar concerned to register the marriage or shall pass such order as he may deem fit.

Second Appeal

**9.** (1) Any person aggrieved by the order of the District Registrar refusing to register the marriage under section 8 may, within a period of ninety days from the date of receipt of such order, appeal to the Chief Registrar in such manner and accompanied by such fees, as may be prescribed.

(2) The Chief Registrar, after giving an opportunity of being heard to the party concerned, shall pass an order confirming the order of the District Registrar or Registrar concerned or after recording the reasons in writing, direct the District Registrar or Registrar concerned, as the case may be, to register the marriage or shall pass such order as he may deem fit.

Register

**10.** (1) The Registrar shall maintain a register of marriages solemnized or performed in the State of Punjab in such form and manner as may be prescribed. On receipt of the memorandum of marriage under section 7, the Registrar shall make a record of the same in the register.

(2) On registration of the marriage, the Registrar shall issue a certificate of marriage to the parties in such form as may be prescribed.

Memorandum of marriage submitted after ninety days

**11.** (1) A memorandum accompanied by such fee along with such fine as may be prescribed regarding any particular marriage, may be submitted to the Registrar after the expiry of the period specified under sub-section (1) of section 7 and the Registrar shall proceed accordingly after following the due procedure enumerated in section 7.

(2) Nothing in sub-section (1) shall affect the liability or responsibility of any person who has willfully omitted or neglected to deliver or send the memorandum within the period specified in sub-section (1) of section 7 to any penalty that may be imposed under section 16 of this Act.

(3) Any marriage of which delayed information is given to the Registrar after the period specified in sub-section (1) of section 7 but within one year of its solemnization or performance, shall be registered only with the written permission of the District Registrar and on payment of such fee along with such fine as may be prescribed and on production of a self attested affidavit justifying and explaining the cause of delay.

(4) Any marriage of which delayed information is given to the Registrar after one year of its solemnization shall be registered only with the written permission of the Chief Registrar and on payment of such fee along with such fine as may be prescribed and on production of a self-attested affidavit justifying and explaining the cause of delay.

(5) Nothing contained in sub-sections (1), (2), (3) and (4) shall affect the liability of any person under the provisions of section 16.

Register to be open for public inspection

**12.** (1) The register maintained under this Act shall at all reasonable times, be open to inspection and certified extracts therefrom shall, on application, be given by the Registrar on payment of such fee as may be prescribed.

(2) All extracts given under sub-section (1) shall be certified by the Registrar or any other officer authorised by the State Government to give such extracts as provided in section 76 of the Indian Evidence Act, 1872 (1 of 1872) and shall be admissible in evidence for the purpose of proving the marriage to which it relates.

Non-registration not to invalidate marriage

**13.** No marriage in the State of Punjab shall be deemed to be invalid solely by reason of the fact that it was not registered under this Act or that the memorandum was not delivered or sent to the Registrar or that such memorandum was defective, irregular or incorrect.

#### **Part IV: MAINTENANCE OF REGISTERS AND RECORDS**

Maintenance of register

**14.** (1) Every Registrar shall keep a register of marriages for the concerned area or any part thereof in relation to which he exercises jurisdiction in such form and manner as may be prescribed.

(2) The Chief Registrar shall cause to be printed and supplied a sufficient number of register books for making entries of marriage according to such form as may, from time to time, be prescribed; and a copy of such form in the local language shall be pasted at some conspicuous place or near the outer door of the office of Registrar.

Correction or cancellation of entry in register

**15.** If it is found to the satisfaction of the Registrar, on complaint or *suo moto*, that any entry of a marriage in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the condition on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign and attest such entry made in the margin and add the date of correction or cancellation.

#### **Part V: PENALTIES**

Penalty

**16.** Any person who-

- (a) willfully omits or fails to deliver or send memorandum as required by section 7, shall be punishable with fine which may extend to five hundred rupees; or

- (b) (i) makes any statement in such memorandum which is false in material particulars, and which he knows or has reason to believe to be false ; or
- (ii) secretly destroys or dishonestly or fraudulently alters the marriage register or any part thereof, shall be punishable with fine which may extend to one thousand rupees or imprisonment for one year or both.

#### **Part VI: MISCELLANEOUS**

**17.** The Chief Registrar, District Registrars, Additional District Registrars, Registrars and other officers or officials appointed under this Act, while acting or purporting to act in pursuance of any of the provisions of this Act, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Act 45 of 1860).

**18.** No suit, prosecution or other legal proceedings shall be instituted against any person for anything which is done in good faith or intended to be done under this Act.

**19.** (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the manner and interval at which the report of working of this Act is to be submitted under subsection (4) of section 3;
- (b) the details and particulars of the parties to be mentioned and disclosed in writing under proviso to Section 6 in an application for registration of marriage;
- (c) the fee of the memorandum and the person who shall attest the same under sub-section (2) of section 7;
- (d) the period within which the marriage is to be registered under sub-section (4) of section 7;
- (e) the contents to be mentioned in the certificate of marriage to be issued under section 7(4) in terms of the requirements prescribed in section 6;
- (f) the manner and fee for filing an appeal under sub-section (1) of section 8;
- (g) the manner and fee for filing of second appeal under sub-section (1) of section 9;
- (h) the form and manner in which register is to be maintained under sub-section (1) of section 10 to

incorporate all necessary particulars under sections 6 and 7;

- (i) the form in which certificate of marriage shall be issued under sub-section (2) of section 10;
- (j) the fee and fine to be paid under sub- section (1) of section 11;
- (k) the fee for obtaining certified copy under subsection (1) of section 12;
- (l) the form and manner in which register of marriages is to be maintained and forms for making entries of marriage under section 14;
- (m) the conditions and circumstances in which entries of marriage shall be corrected or cancelled under section 15;
- (n) any other matter which is to be or may be prescribed under this Act.

(3) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the House of the State Legislature, while it is in session.

Provisions not to be derogatory to certain laws

**20.** The provisions of this Act shall be in addition to and not in derogation of the provisions of the Special Marriage Act, 1954 (43 of 1954), the Indian Christian Marriage Act, 1872 (15 of 1872), the Parsi Marriage and Divorce Act, 1936 (3 of 1936) and the Foreign Marriage Act, 1969 (33 of 1969).



## SECTION II

### **Curb Unregistered Recruiting Agents**

#### **Background**

In the absence of any law made by Parliament to define the offence of Human Smuggling and illegal trafficking of human beings, unscrupulous agents and unregistered agencies indulge in the unauthorised business of sending gullible residents of Punjab abroad by wrong means upon extracting huge sums of money. This rampant practice goes unchecked. Unfortunate victims of this thriving illegal business are duped and often pay with their lives. Over the years, despite various tragic events where gullible citizens of Punjab have either gone missing or cannot return to India due to having no valid travel documents, media reports regularly indicate that more and more innocent persons are still trapped frequently. It is in this context that the present report seeks to make recommendations for ending malpractices of such unauthorized agents.

#### **Law on Subject**

As of date, there is no independent law on the subject made by Punjab, but the Punjab Prevention of Human Smuggling Bill, 2010, passed by the Punjab Vidhan Sabha in its sitting held on 01.10.2010 is to be reintroduced in the Punjab Vidhan Sabha after incorporating amendments suggested by the Government of India. The Emigration Act, 1983 (hereinafter 1983 Act) is an Act to consolidate and amend the law relating to emigration of citizens of India. This is the only legislation on the subject made by Parliament. All the recruiting agents/employers working in any place are duty bound to follow the provisions laid down under the 1983 Act, before carrying on/conducting the business of sending people outside India on the pretext of jobs or employment outside India. The unregistered recruiting agents/employers not working as per the 1983 Act are unlicensed and unauthorised. A Protector of Emigrants at Chandigarh exercises jurisdiction in the States of Punjab, Haryana

and Union Territory of Chandigarh overseen by a Protector General of Emigrants functioning at New Delhi under the 1983 Act to ensure the compliance of the provisions of the 1983 Act.

### **Procurement of Permit**

Both, the Protector of Emigrants at Chandigarh and the Protector General of Emigrants work under the authority of the Ministry of Overseas Indian Affairs, Government of India. The recruiting agents/employers in Punjab, before commencement and carrying on business of recruitment/overseas employment, need to get a valid registration certificate and a permit which is issued by the Protector General of Emigrants. Without getting any such registration certificate or a valid permit, the recruiting agent/employer cannot legally conduct this business or send any person abroad. As per the website of the Ministry of Overseas Indian Affairs, [www.poeonline.gov.in](http://www.poeonline.gov.in), where a list of registered recruiting agents registered under the Emigration Act, 1983 is maintained, as on 13.06.2012, there are only 47 recruiting agents currently registered in Punjab under the Emigration Act, 1983.

### **State of Affairs**

Reports in the media indicate that various unauthorised persons and huge number of unregistered agencies function in the State of Punjab without any registration or compliance of the provisions of the Emigration Act, 1983. A large number of mishaps, i.e. the Malta Boat tragedy, incidents of human trafficking in Iraq, detention of illegal immigrants in Europe and tragic deaths elsewhere on account of human smuggling from Punjab, indicate that this illegal business flourishes unchecked. The unregistered agencies are stated to be working unauthorisedly without registration under the Emigration Act, 1983. These activities are likely to affect the prospective NRIs and thereby discredit the Government of Punjab in its failure to protect the mandate handed out by the Legislature under the provisions of the Emigration Act, 1983.

### **The Emigration Act, 1983**

It may be necessary to highlight the provisions of the Emigration Act, 1983 which provides for safeguards, checks and controls to be enforced by the Protector of Emigrants as well as the Protector General of Emigrants. The Emigration Act, 1983, is an Act that was enacted to consolidate and amend the law relating to emigration of citizens of India. Sections 2 (f), (g), (k), (l), (m) and Section 2 (o) of the 1983 Act define various words stipulated in the 1983 Act and Sections 3, 9, 10, 13, 15, 16, 24, 36 and 37 lay down mandatory provisions for governing the working of recruiting agents/employers who send people abroad. These statutory provisions are reproduced as hereunder for a better understanding of the subject of this report:

### **UNODC Report**

Based on data, a copy of a report on a Study on Punjab and Haryana of smuggling of Migrants from India to Europe and in particular to UK, was conducted by the United Nations Office on Drug and Crime (UNODC) in 2009 and a copy of this report was prepared by Mr. K.C Saha, IAS, Former Consultant UNODC and released in Chandigarh in March 2010. This report is a composite study on the magnitude of irregular migration from Punjab and Haryana and highlights various factors. It indicates that every year more than 20,000 youths from Punjab attempt irregular migration which is spreading to Haryana & neighbouring States and the menace is multiplying every year. The report also quotes that large number of residents of Punjab faced deportation from different countries for not travelling on valid documents during the last five years. However, despite the release of this report and its free availability in Punjab, no tangible steps have been taken to check illegal migration and the provisions of the Emigration Act, 1983 are not being implemented effectively. No

information or data is available publicly to establish whether any effective steps have been taken by the State of Punjab or any policy decision has been drawn up by the State of Punjab to look into the said report and take steps to curb the menace of illegal human smuggling which primarily ails Punjab.

### **Issue Redress**

A large number of unregistered recruiting agents/employers have proliferated in recent times and may be functioning with impunity in Punjab, without obtaining any registration under Section 10 or any permit under Section 16 of the Emigration Act, 1983, by issuing newspaper advertisements or using other means to unethically recruit innocent persons for employment abroad. Apparently, most of these individuals or firms operate under the guise of a consultancy to attract innocent victims through websites, advertisements or other luring messages. Such recruiting agents are invariably unregistered and unlicensed. Most of the victims do not even know that such unauthorised agencies need to be licensed and authorised under the Emigration Act, 1983. Therefore, in larger public interest and public welfare, this menace must be checked and stopped in the State.

### **Suggestions**

It may be thus just and appropriate that Punjab furnishes the updated list of registered recruiting agents/employers in Punjab as per the Ministry of Overseas Indian Affairs records, who have current valid registration and are authorised for conducting overseas employment. These details so furnished should be made available to the Deputy Commissioners and Senior Superintendent of Police in all the Districts in the State of Punjab for purposes of cross checking and verification by them.

## **Fact Finding**

The list of registered recruiting agents/employers with valid permits under Sections 10 and 16 of the 1983 Act being made available, the administrative/police authorities in the State should conduct fact finding exercises to verify, check and authenticate particulars of all recruiting/manpower agents/overseas employment agencies in all the districts in the State of Punjab, to ascertain such unlicensed and unauthorised agents/employers who are contravening the provisions of the 1983 Act. If the District and Police authorities of Punjab make their independent list of all recruiting agents/overseas manpower agencies who are working in the State, upon matching the list given by the Protector General of Emigrants, all unregistered/unauthorised agents/employers can be identified.

Once this fact finding exercise authenticates the unauthorised agents/ employers, the District/Police authorities in Punjab can shut down /close the premises of all such unauthorised agents/employers who do not comply with the provisions of Sections 10 and 16, of the 1983 Act. The respective Deputy Commissioners/ Senior Superintendents of Police in Punjab, in the concerned districts can *suo-moto* or upon the instructions of the Protector General of Emigrants ensure that no unlicensed or unauthorised agent/employer be allowed to operate in their respective jurisdictions/territories in Punjab. In this way, members of public at large will be greatly benefited and will be prevented from being cheated or misled by unregistered agents/employers who are not authorised under Sections 10 and 16 of the 1983 Act. If the mandatory disclosure under Sections 3 and 4 of the 1983 Act, which requires all registered agents/employers to prominently display at their place of business their registration certificates /permits and mention the same on all correspondence which authorises/empower them to conduct business of overseas employment, is not complied

with, the respective Deputy Commissioners/ Senior Superintendents of Police in Punjab, in the concerned districts can take action by closing down all such unregistered offices of unregistered agents. It should also be ensured that even all media advertisements should compulsorily display the license number and registration details of all such registered agencies/institutions/individuals working in Punjab.

Till such time Punjab Prevention of Human Smuggling Bill, 2010, is enacted or enforced to check the problem of illegal immigration, human smuggling and sending of persons overseas in contravention of the provisions of the 1983 Act, it may be in the interest of justice, public welfare and benefit of citizens at large in Punjab, that the above exercise be conducted forthwith. It will be greatly beneficial to possibly avoid further innocent and gullible victims of illegal immigration to be cheated at the hands of unregistered agents/employers in the State of Punjab who do not comply with the provisions of the 1983 Act.

### **High Court Orders**

In the civil writ petition no. 7698 of 2012, Justice (Retd.) Amar Dutt vs. The Union of India and others, at the Punjab and Haryana High Court, at Chandigarh, on 30.05.2012, where the above issues have also been raised in the said Public Interest Litigation, the following directions were issued by the said Court:

*"In view of the above, we deem it appropriate to direct respondent no. 3 to send the list of registered recruiting agencies/employers who are entitled to operate in the areas of Punjab, Haryana and U.T. Chandigarh by e-mail or by any other method expeditiously preferably within two weeks. The respective States and the U.T. Chandigarh, i.e. Respondent Nos. 5 to 8 shall highlight the list in Electronic and Print Media so that the general public may come to*

*know about the registered agents. Respondent Nos. 5 to 8 shall also undertake suitable operation through respective Deputy Commissioner/SSP to close down the unauthorised recruiting agents/employers who are operating under the name of emigrant agency.*

*Let a status report be filed within four weeks with a copy in advance to learned counsel for the petitioner.*

*Respondent Nos. 5 to 8 would also be authorised to scrutinize the advertisement which are being issued by the so called emigrant consultancy and check their antecedents. If they are found wanted then suitable action may also be initiated against them.”*

It may be pertinent to point out that in pursuance and compliance with the said directions of the High Court, by an advertisement appearing in The Tribune, dated 20.07.2012, a list of 47 registered recruiting agents with valid, reinstated or renewed Registration Certificates, as on 13.06.2012, as per records of the Ministry of Overseas Indian Affairs, already stands circulated. A copy of this advertisement dated 20.07.2012, is appended as **Annexure A** with this report.

## **RECOMMENDATIONS**

- It is therefore recommended that in line with the above action, the respective Deputy Commissioners/ Senior Superintendents of Police in the concerned districts in Punjab may not permit any unlicensed/ unregistered recruiting agent to conduct any activity related to recruitment as defined in Section 2(m) of the Emigration Act,

1983. It is further recommended that after ascertaining full facts, if it is found that any such business of recruitment is being conducted by any unregistered agent, the respective district authorities may take appropriate action in accordance with law. All advertisements in the Print and Electronic Media should be scrutinised regularly to check and screen recruiting agents functioning as consultancies. It should be made mandatory that the registration details of all registered agents be displayed prominently at offices and on all other material utilised for the purpose. Violations must be reported to the Protector General of Emigrants for follow-up action as per the 1983 Act.

- It is strongly recommended that the Punjab Prevention of Human Smuggling Bill, 2010, which was passed by the Punjab Vidhan Sabha in its sitting held on 01.10.2010, and in which amendments suggested by the Ministry of Overseas Indian Affairs have to be incorporated, should be taken up on priority and reintroduced in the next session of the Punjab Vidhan Sabha for necessary approval of the State Legislature. Punjab being the first State in the country to introduce this Law after defining Human Smuggling, should not slow down or delay its endeavours in promulgating this beneficial Law.
- It is also recommended for the feasibility of using the media i.e. print, audio, visual and electronic for educating the masses about the pitfalls which await them while trying to emigrate from the country on account of dubious means offered by unauthorised agents as also to patronise only registered agents/employers holding certificates/permits under the Emigration Act, 1983.



- The advisability of taking concrete steps through Punjab Government resources to educate the masses for channelized employment is recommended, about prospects abroad which are offered by countries allowing for such immigration.
- It is recommended that the Government of Punjab consider the possibility of making available to all the demands sent by various countries for skilled and un-skilled labour and regulate their recruitment through official Overseas Employment Bureaus/Cells so as to disable the middleman from making un-warranted profits at the time of recruitment of persons in response to overseas employment demands.
- Utilising the services of the Punjab State Legal Services authorities to sensitise members of Public about the pitfalls of human smuggling through training of para-legal volunteers, holding of legal aid camps, conducting of workshops and seminars at District levels as also through any other appropriate means so deemed fit and desirable.



**GOVERNMENT OF INDIA**  
**MINISTRY OF OVERSEAS INDIAN AFFAIRS**  
**STATEWIDE LIST OF RECRUITING AGENTS WITH**  
**VALID, REINSTATED OR RENEWED RCs**  
 Please Read State/UT Code State Code:  
 Total Number of RAs in Punjab=47  
 (R-Renewed, S-Suspended, V-Valid, C-Cancelled,  
 E-Expired, T-Reinstated)  
 Status as on 2012-06-13

Nation

Sr No	Registration No Firm Name and Address	Date of Registration	Valid upto	City	Status
1.	B-0022/PUN/PER/1000+/5/5607/2001 Adarash Enterprises Opp Civil Hospital, Sidhwan Bet, Teh Jagraon, Distt Ludhiana	2001.08.24	2016.11.23	Ludhiana	R
2.	0260/PUN/COM/300/5/8100/2007 AGAS CONSULTANTS PVT. LTD. 115, Second Floor, Super Plaza Market, Cooper Road	2008.10.16	2013.10.15	Amritsar	V
3.	3544/PUN/COM/1000+/1000 PLUS/2AND/3/4/5864/2002 AIRWINGS SERVICES PVT. LTD. Model Town Road, Near SkyLark Hotel, Jalandhar	2002.05.08	2013.02.07	Jalandhar	T
4.	B-0451/PUN/B/PER/300/5/8491/2009 AMAN OVERSEAS SHOP NO 8, Civil Lines, Opp. SBI Cable Old Mahipur Adda, Hoshiarpur.	2009.07.06	2014.07.05	Hoshiarpur	V
5.	3128/PUN/PER/1000PLUS/5165/98 ASIATIC POWER SERVICES New Tehsil Road, Hoshiarpur	1999.03.03	2013.02.28	Hoshiarpur	V
6.	B-0979/PUN/PER/1000+/5/7909/2005 B.S. OVERSEAS PLACEMENT D-33/A, Industrial Area, Phase-I, Mohali	2006.03.03	2016.03.02	Mohali	R
	B-0484, Chandigarh/Part/300/5/8455/2009 Bal Gill Consultants Shop No 63, City Centre, Amritsar, Punjab	2009.11.16	2014.11.15	Amritsar	V
	3617/PUN/PER/1000/2AND/3/4/5874/2002 BITTU INTERNATIONAL MADHAV TOWER COURT ROAD HOSHIARPUR	2002.10.07	2013.07.06	Hoshiarpur	V
	B-0873/CHD/PER/1000+/5/8775/2011 CWC Immigration Solutions SCO-26, Crystal Plaza, Chhoti Baradari Part-I, Gurgaon Road.	2012.04.24	2016.09.19	Jalandhar	V
0.	4511/PUN/PER/300/4/1/46881/2004 D.S. ENTERPRISES BABA NAND SINGH MARKET KACHA MALAK ROAD OPP COLD STORE JAGRAON	2005.09.14	2014.01.13	Ludhiana	V
11.	3709/PUN/PER/1000/2AND/1/4/6082/2002 DUB TRAVEL SERVICE Railway Road Nakodar	2002.11.21	2013.05.25	Jalandhar	V
12.	B-0092/PUN/PER/1000+/5/6349/2003 Ess Kay Travel Advisor Court Road	2004.02.25	2017.02.24	Hoshiarpur	R
13.	B-0073/PUN/PART/1000+/5/6300/2003 Gill International Recruiting Agency 7-9, 1st Floor, Nanakna Sahib Complex Nr. Main Bus Stand, Jawahar Nagar	2007.09.11	2017.03.10	Ludhiana	R
14.	B-0515/PUN/PER/1000+/6/12/8586/2009 Global Manpower Services Schzad Market Main Pakhowal Road, PO Dolo Kalan	2010.04.12	2016.09.04	Ludhiana	V
15.	3590/PUN/PER/300/3/5857/2002 GULF LINES OPP GREEN PARK COURT ROAD HOSHIARPUR	2002.08.16	2013.08.15	Hoshiarpur	V
16.	B-0197/PUN/PER/1000+/3/6224/2003 I.B.M. Tours & Travels 25-26, Modern Market, Nehru Garden Road	2003.09.25	2014.08.24	Jalandhar	V
17.	3696/PUN/PER/1000/3/5963/2002 J.S. International Dehlon Road, Near JK Dharankanda, Sahnewal, Distt. Ludhiana.	2003.01.31	2014.01.30	Sahnewal	V
18.	B0434/PUN/8456/2009 KRISHNA MANPOWER SERVICES PVT LTD Old Jain Model School Bldg. Nihal Singh Wala Road, Bagha Purana	2009.05.28	2014.05.27	Purana	V
19.	B-0841/PUN/PER/1000+/5/7346/2005 M.P. Enterprises, Octrol Post No. 1, Nagal-Chandigarh Road, Nagal Dam	1006.09.08	2016.09.07	Distt Ropar	R
20.	B-0911/PUN/PER/1000/4-3/4/8192/2008 Mahbhak Overseas, 30, Modern Market, Nehru Garden Road	2008.06.05	2013.03.04	Jalandhar	V

THE TRIBUNE, CHANDIGARH, FRIDAY, JULY 20, 2012

Sr No	Registration No Firm Name of Address	Date of Registration	Valid upto	City	Status
21.	B-0939/PUN/PER/1000+/4-3/4/6972/2005 Munna Enterprises, Mohall Kaulsar Khotran Road, Phagwara, Kapurthala.	2005.09.01	2015.06.30	Phagwara	V
22.	4714/PUN/PER/300/5/7202/2005 New H.S. International, 1st Floor Building Punjab Himachal Transport, Near Speedways Tyre, G.T. Road, Transport Nagar.	2006.06.07	2016.06.06	Ludhiana	R
23.	B-0466/PUN/COM/300/5/8467/2009 Ohm Forex Services Ltd., D-178, Industrial Area, Phase B-B, Mohali, Punjab.	2009.09.14	2014.09.13	Mohali	V
24.	B-0829/PUN/PER/1000+/5/4879/97 P.C. Enterprises, Court Road, Hoshiarpur.	1997.12.19	2016.09.18	Hoshiarpur	R
25.	0202/CHAND/PER/300/5/8145/2008 P.L. International, Plot No. 36-37, Lamba Pind Chowk, Back side Chara Mandi Near New Born Church.	2008.06.24	2013.06.23	Jalandhar	V
26.	4851/PUN/COM/300/5/7880/2006 Paras Manpower Services Pvt. Ltd., B-16/463, Court Road, Hoshiarpur.	2006.09.19	2012.07.31	Hoshiarpur	R
27.	B-0287/PUN/PER/300/5/8279/2008 Parkash Travels, Doaba Market, Opp. Bus Stand, Gate No. 3.	2008.12.22	2013.12.21	Jalandhar	V
28.	2684/PUN/PER/300/3/4439/95 Paul Travels, Shop No. 11, 1st Floor, ES-9, Civil Lines, Model Town Road.	1995.09.29	2012.09.28	Jalandhar	V
29.	00284/PUN/PER/1000/3/4439/95 Paul Travels, Shop No. 11, 1st Floor, ES-9, Civil Lines.	0000.00.00	2028.09.20	Model Town Road	V
30.	B-0113/PUN/PER/1000+/4-3/4/6804/2004 Puran Overseas Employment Bureau Chamber-1, Main Road, Sunder Nagar, Nakodar, Distt. Jalandhar	2005.04.05	2020.01.04	Nakodar	R
31.	B-0121/PUN/PER/1000+/5/6401/2003 Rajdeep Enterprises Ground Floor, Dashmesh Nagar, Dargana Road	2004.04.23	2016.10.22	Hoshiarpur	R
32.	B-0072/PUN/PER/1000+/5/6403/2003 Ravindra Job Track Front Portion, Govt. College Road, Ward-18, Pate Da Bagh Wali Gali.	2004.03.16	2017.03.15	Distt. Hoshiarpur	R
33.	B-0881/PUN/PER/1000+/5/6287/2003 Rayat Foreign Travels V8, PO Samandra, Chak Guru Rd. Teh. Garhshankar.	2003.12.05	2016.12.04	Hoshiarpur	R
34.	274/PUN/PER/1000/3/129/84 ROZGAAR INTERNATIONAL 10-A, DILKUSHA MARKET, JALANDHAR.	1984.05.25	2013.05.24	Jalandhar	V
35.	B-0036/PUN/PER/1000+/5/7569/2008 S.R. Overseas Services R.D. Complex, Jaha Chowk to Rly Phatak Road, Tanda, Distt. Hoshiarpur.	2007.03.01	2016.11.30	Tanda	R
36.	B-0134/PUN/PER/1000+/5/6352/2003 Satyam Enterprises Hoshiarpur Road, Opp. Punjab & Sind Bank, Rama Mandi.	2004.01.23	2017.01.22	Jalandhar Cantt.	R
37.	4139/PUN/PER/300/3/6459/2003 SHADI RAM JAGANNATH 60, DANA MANDI, GROUND FLOOR.	2004.07.26	2012.07.25	Phillaur	V
38.	B-0804/DEL/PER/1000+/5/7524/2008 Shivam Exports R-7, 2nd Floor, Ravi Manzil, Dikusha Market.	2008.06.17	2016.05.16	Jalandhar	R
39.	B-0097/PUN/PER/1000+/5/7627/2006 Shri Nimbark Travels Swam Raj Building, Chandigarh-Zirakpur Road, Zirakpur.	2007.08.10	2017.05.09	Mohali Distt.	R
40.	B-0055/PUN/PER/1000+/5/5651/2001 Soni Placement Services 42, 1st Floor, Railway Road, Nangal Dam Distt. Ropar.	2001.10.10	2017.04.09	Ropar	R
41.	B-312/PUN/PART/300/5/8160/2008 SOOD ENTERPRISES B-1358/1, GROUND FLOOR, SHAHI MOHALL, CIVIL LINES, LUDHIANA	2008.04.24	2013.04.23	Punjab	V
42.	B-0777/PUN/PER/1000+/5/7210/2005 Sukhdov Enterprises VPO Gardhiwala, Near Tanda Road, Teh Dasuya, Distt. Hoshiarpur	2006.06.07	2016.03.06	Hoshiarpur	R
43.	B-0026/PUN/PER/1000+/5/4190/1994 Sunny Travels 16, Guru Amardass Market, Near Bank of India, Garha	1994.12.31	2016.12.30	Jalandhar	R
44.	B-0046/PUN/PER/1000+/5/6457/2003 T.S. Enterprises. Office-2, Batra Market, Didar Singh Dairy, Mohalla Makhdumpur.	2004.04.01	2017.03.31	Jalandhar	R
45.	3881/PUN/PER/300/3/6247/2003 VAISHIT MANPOWER CONSULTANTS 1ST FLOOR, NEAR YAMAHA MOTOR CYCLE AGENCY OPP MAKKAR HOSPITAL, G. T. ROAD, MUKERIAN	2003.10.15	2012.06.30	Hoshiarpur	R
46.	002633/PUN/PER/300/2-3/4/4386/95 WALIA TRAVEL ADVISER Court Road, Shop No. 8 & 9, Nawanshahr, Distt.	0000.00.00	2018.04.20	Jalandhar	V
47.	00884/PUN/PER/1000/3/1053/84 WELCOME TRAVEL SERVICE OPP EMPLOYMENT EXCHANGE, SATNAMPURA, PHAGWARA	1984.12.01	2013.11.30	Phagwara	V

## SECTION III

### Irregular Migrants to Punjab

#### Background

Travel of residents from Punjab across international boundaries in violation of established laws has acquired grave dimensions and irregular migration to Europe, Canada, U.S.A, Australia, New Zealand and other parts of the world has assumed alarming proportions. Unscrupulous, unregistered and unethical agents exploit aspirant migrants to use illegal methods often using forged travel documents or dangerous modes of travel. As of now, there is no law to check the offence of human smuggling used by these merchants of death. As per a report of *The United Nations Office on Drugs and Crime (UNODC)* on “*Smuggling of Migrants from India to Europe and in particular to UK: A Study on Punjab and Haryana, 2009*”, over one lac illegal immigrants from India have been caught by foreign police authorities and are behind bars in foreign jurisdictions. The report quotes that according to statistics sourced from the Ministry of External Affairs, over one lac residents of six districts of Punjab i.e. Jalandhar, Nawanshahar, Gurdaspur, Amritsar, Hoshiarpur and Kapurthala, faced deportation from different countries for not travelling on valid travel documents during the last five years. The report also states that every year more than 20,000 youths from Punjab attempt irregular migration which is now spreading to the neighbouring States of Haryana etc. Despite over two years and six months having elapsed since the release of the UNODC report, there seems to have been no reported progress or action taken in securing the release of these Indian citizens languishing in jails abroad who have no travel documents, financial or legal aid or resources to return to India. Most of these Indian nationals in jails or detention centres abroad on account of irregular migration are from Punjab.

## **Dimensions of Irregular Migration**

The Mandate of the United Nations Office on Drugs and Crime (UNODC) stipulates that as the guardian of the United Nations Convention against Transnational Organized Crime and its supplementary protocols, the primary goal of UNODC with respect to combating the smuggling of migrants is to promote global adherence to the Migrant Smuggling Protocol and to assist States in their efforts to effectively implement it. As per the UNODC Brochure, the Migrant Smuggling Protocol aims:

- *To prevent and combat the smuggling of migrants.*
- *To protect the rights of smuggled migrants.*
- *To promote cooperation between States.*

*However, information currently available is too scattered and too incomplete to be able to show accurately the numbers of people smuggled each year and the routes and methods used by those who smuggle them. The evidence available reveals the following trends and patterns:*

- *Criminals are increasingly providing smuggling services to irregular migrants to help them evade national border controls, migration regulations and visa requirements. Most irregular migrants resort to using the services of profit seeking smugglers. As border controls have improved, migrants have been deterred from attempting to cross borders illegally on their own and have been diverted into the hands of smugglers.*

- *Since smuggling of migrants is a highly profitable business with a low risk of detection, the crime is becoming increasingly attractive to criminals. Smugglers of migrants are becoming more and more organised, establishing professional network and transcend borders and regions.”*

Hence, the aforementioned report of the UNODC, that is a focused study on the States of Punjab and Haryana, is a serious, deliberated and well researched document prepared by a well reputed organisation of credibility which has expertise, knowledge and reliable information on the subject of human smuggling and trafficking of illegal immigrants. Furthermore, on the basis of the individual and independent interactions of the author of this report with various international immigration specialist organisations, foreign officials, diplomats, key immigration researchers and Government functionaries, it transpires that the State of Punjab is a major contributory to the large number of irregular migrants to foreign countries and therefore, a focused, pin pointed besides independent action plan should be drawn up in Punjab exclusively to find possible ways, means and modes to bring back to Punjab such residents of Punjab who are in jails/detention centres abroad on account of irregular/illegal migration offences only. Hence, the present report.

#### **Law on matter**

The Passports Act, 1967 (hereinafter referred to as the Act) applicable in India and meant to provide for the issue of passports and travel documents to Indian citizens, interalia other purposes defines the words “*Passport*” and “*Travel Document*” in Sections 2 and 3 of the Act. Section 4 of this Act reads as hereunder:

**“4. Classes of passports and travel documents.** – (1) *The following classes of passports may be issued under this Act, namely:-*

- (a) *Ordinary passport;*
  - (b) *Official passport;*
  - (c) *Diplomatic passport.*
- (2) *The following classes of travel documents may be issued under this Act, namely:-*
- (a) *emergency certificate authorising a person to enter India*
  - (b) *certificate of identity for the purpose of establishing the identity of a person;*
  - (c) *such other certificate or document as may be prescribed.*
- (3) *The Central Government shall, in consonance with the usage and practice followed by it in this behalf, prescribe the classes of persons to whom the classes of passports and travel documents referred to respectively in sub-section (1) and sub-section (2) may be issued under this Act.”*

**Section 24 (2) (b) of the Act further reads and prescribes as under:-**

**“24. Power to make rules. – (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.**

(2) *In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-*

- (a) *The appointment, jurisdiction, control and functions of passport authorities;*
- (b) *The classes of persons to whom passports and travel documents referred to respectively in sub-section (1) and sub-section (2) of section 4 may be issued.”*

In exercise of the powers conferred by section 24 of the Act, Passports Rules, 1980 have been made by the Central Government. Rules 3 and 4 prescribing Passport Authorities and persons to whom passports and travel documents may be issued are as hereunder:-

**“3.Passport Authorities.** – (1) *In addition to the Central Government, the officers specified in column (2) of Schedule I shall, subject in the provisions of sub-rule (2), be the passport authorities for all purposes of the Act and these Rules.*

(2) *An officer referred to in column (2) of Schedule 1 shall, for the purpose of issue of a passport or travel document, exercise jurisdiction in respect of applications for such issue made by persons ordinarily residing in the territories specified in the corresponding entries in column 3 of the said Schedule:*

*Provided that in exceptional and urgent cases the said officer may entertain an application for the issue of a passport or travel document from a person ordinarily residing in any other territory in India and may issue a passport or travel document to such person for a period not exceeding twelve months and transfer the application to the passport authority having jurisdiction in the territory wherein such person ordinarily resides:*

*Provided further that no such transfer of application for passport under the preceding proviso shall be made if the applicant has migrated from the territory where he was originally resident with the intention of setting down in the territory within the jurisdiction of the passport authority which issued the passport under the preceding proviso.*

**4. Classes of persons to whom the different classes of passports and travel documents may be issued.** – (1) *The classes of persons to whom the classes of*

*passports or travel documents referred to respectively in sub-section (1) and sub-section (2) of section 4 may be issued, shall be as specified respectively in Part I or Part II, as the case may be, of Schedule II.”*

**The relevant extract at serial number 27 of Schedule I of Rule 3 of the Passport Rules is reproduced as hereunder:-**

**“Schedule I**

(See Rule 3)

<i>Sl. No.</i>	<i>Passport Authorities</i>	<i>Jurisdiction</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
27.	<i>Consular Officer or Consular Agents in the Indian Mission or Posts outside India.</i>	<i>The area within the consular jurisdiction of the Indian Mission or Posts concerned.”</i>

***Likewise the relevant extract of Part II of Schedule II which is prescribed under Rule 4 of the Passport Rules is as hereunder:-***

**“Schedule II**

(See Rule 4)

*Part II*

**TRAVEL DOCUMENTS**

<i>Classes of Travel Documents</i>	<i>Classes of persons to whom issuable</i>
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(1)	(2)
1. <i>Emergency Certificate</i>	<p data-bbox="715 277 1295 546"><i>(i) Citizen of India abroad who have been refused passport, or whose passports have been impounded or revoked, or who have to be repatriated to India.</i></p> <p data-bbox="715 591 1295 936"><i>(ii) Persons who have produced prima facie evidence of Indian citizenship but the evidence is considered insufficient to justify the issue of a passport without further verification.</i></p> <p data-bbox="715 981 1295 1406"><i>(iii) Citizens of India abroad whose passports have been lost, stolen or damaged, and to whom new passports cannot be issued without verification of their passport particulars by reference to the offices of issue.</i></p> <p data-bbox="715 1451 1295 1637"><i>(iv) Persons of Indian origin abroad when allowed to come to India for settling down here.”</i></p>

8. A joint reading of Sections 3, 4 and 24 of the Act as also Rules 3 and 4 read with the respective Schedules quoted above amply clarify that emergency certificates authorising an Indian citizen to enter India can be issued in exceptional and urgent cases for a period not exceeding 12 months. These provisions also provide that after doing so, the applications of

such cases can be transferred to the concerned Indian Passport Authority having jurisdiction in the territory where such person who has been issued emergency certificates ordinarily resides. Under Rule 12, an emergency certificate so issued shall continue in force for a period of six months from the date of its issue. Under Schedule II, Part II to Rule 4, an emergency certificate can be issued to any person, who is prima facie an Indian citizen and whose current Indian Passport is not available. Before doing so, the antecedents, parental family, permanent residence and all other details of parentage of such Indian citizens from the States of Punjab can be established with the assistance of the respective Deputy Commissioners and Senior Superintendents of Police in all the Districts of Punjab in their respective territories. Under serial number 27 of Schedule I to Rule 3, quoted above, the competent authority to issue a travel document to all such Indians citizens abroad would be the Consular office of the Indian Embassy/High Commission abroad in such foreign jurisdiction.

9. That The Protection of Human Rights Act, 1993 (hereinafter Human Rights Act) defines "*human rights*" in Section 2 (d) as follows;

*"(d) human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by Courts in India."*

Likewise, International Covenants in Section 2 (f) is defined as follows;

*"(f) International Covenants means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16<sup>th</sup> December 1966."*

Article 6 (1) of the International Covenant on Civil and Political Rights, 1966 is quoted hereunder for ready reference;

*“Article 6(1) – Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”*

It may also be relevant to quote Articles 3 and 5 of the Universal Declaration of Human Rights, 1948, which provide for the Protection of Life and Human Rights of Human beings in the following words;

*“Article 3 – Every one has the right to life, liberty and security of person.”*

*“Article 5 – No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*

It may also be added that a Constitution Bench of the Apex Court in **Satwant Singh Sawhney Vs. A.P.O New Delhi AIR 1967 SC 1836**, has held that deprivation of passports amounts to infringement of right to personal liberty under Article 21 of the Constitution. In terms of law laid down by the Apex Court in **Satwant Singh Sawhney v. APO, New Delhi, AIR 1967 SC 1836**, it has been held that deprivation of passports amounts to infringement of right to personal liberty under Article 21 of the Constitution and right to travel abroad includes the right to return to India. Consequently, it can be concluded for the present case that all such Indian citizens from Punjab detained abroad in jails with no resources or aid are entitled to return to India under emergency travel documents under Section 4 (2) of The Passports Act, 1967 read with Rules 3 and 4 of The Passport Rules, 1980.

## **Law Applicability For Return Of Irregular Migrants From Punjab In Jails/Detention Centres**

Indian citizens from Punjab having been arrested and detained in foreign jurisdictions on being detected and caught have no resources, documents, financial or legal aid and can't contact their well wishers and families in India. The respective Consular offices of the Indian Embassies/High Commissions abroad can come to the aid and rescue of such illegal Indian immigrants to aid and assist in their return home. The International Covenants quoted above clearly establish that such Indian citizens have a right to secure their liberty, respect and dignity. Article 21 of the Constitution also secures such right to life and personal liberty to them. No tangible steps have been taken by the Government of India to secure their release for return to India despite the matter having been publicized in the media well over two years ago. International instruments, covenants and Indian legislation besides basic human rights warrant's their release and return to India. The aforementioned provisions of the Passports Act and Rules made thereunder clearly establish that all such Indian Detenues abroad can be permitted to return on emergency travel documents upon verification of their antecedents by the Government of Punjab since majority of such persons are residents of Punjab. That it may be submitted that an exercise has been conducted by the Government of India to review lists of black listed non-resident Indians who could not return to India on account of alleged offences said to have been committed by them. Such an exercise is also possible in the case of illegal immigrants detained abroad who wish to return to India being Indian citizens. The Government of India can seek information regarding such detained Indian nationals from the respective Embassies/High Commissions in India where such persons have immigrated illegally. Upon such list being obtained from the foreign embassies/high Commissions in India, the Government of India can be asked to verify the antecedents and particulars of such Indian citizens who belong to the States of Punjab and

Haryana. Thereafter, the Consular Section of the Indian Embassies/High Commissions abroad in such foreign jurisdictions can grant them emergency travel documents to enable their return to India. These emergency certificates can be issued under the provisions of the Passport Act and Rules quoted above. In this way, the entire exercise can be conducted in the larger interest of Protection of human life and personal liberty guaranteed under Articles 14, 19 and 21 of the Constitution besides the International instruments quoted above. This exercise is a possible method for resolution of this burning problem.

### **Solutions for seeking return of Illegal Migrants**

A five step suggestion is put forth as hereunder to propose possible means of bringing back illegal Indian immigrants who are languishing in jails abroad. The five steps are enumerated in detail are as hereunder:

- 1.** Since there is no authentic, confirmed and exact data country wise where such illegal Indian immigrants are suffering in detention in jails abroad, the first possible step suggested would be to ascertain the foreign countries, the numbers and identities of the Indian Nationals who are languishing in jails in these countries abroad. It is therefore suggested that The Ministry of External Affairs, New Delhi, (MEA) ought to be directed to use diplomatic channels to write to the Embassies/High Commissions in New Delhi of countries namely, USA, Canada, Australia, England, Germany, Italy, Greece, Spain, France, Belgium, Austria, New Zealand, Netherlands, Hong Kong, Dubai, Kuwait and other parts of UAE patronized by Indians for immigration.
- 2.** All persons originating from the State of Punjab can be put in separate lists. Thereafter, MEA can send these respective lists of residents of the State of Punjab to the State of Punjab who can be given these names and other details by MEA, to

verify, ascertain and establish through administrative and police authorities the antecedents as made known above. Once, the network of State authorities in Punjab conclusively establish and authenticate the respective identities of these nationals from Punjab, the confirmed details of every individual can be verified back to MEA.

3. After a country wise data of Indian nationals languishing in jails abroad is authentically established and compiled upon confirmation from the State of Punjab, MEA and MOIA (Ministry of Overseas Indian Affairs, New Delhi) can prepare a foreign country wise list where these Indian Nationals from Punjab are in detention in jails abroad. Thereafter, MEA/MOIA can write individually to the Indian Ambassadors/Indian High Commissioners in these respective foreign countries enclosing the list of Indian Nationals from Punjab in jail/detention centres in their respective foreign jurisdictions where the diplomatic Indian Missions are located and situated. The respective Indian Consulates/Embassies/High Commissions abroad can be directed by the MEA and MOIA to establish contact with local foreign authorities in their respective jurisdictions to start a dialogue with them for processing return of Indian nationals from Punjab who are illegal immigrants or who have completed their sentence abroad & who have no means or resources to return to India on their own. Local foreign authorities can liaise for setting up return channels by contacting the individual family members/well wishers in Punjab.
4. Thereafter the Consular Sections of the Indian High Commissions/Embassies in the respective foreign countries where Indian Nationals from Punjab are languishing in jails on account of illegal immigration, can first confirm the presence of the said Indian nationals from Punjab in jails/detention centres through the competent

authorities in their respective foreign jurisdictions. The Indian Consular Sections abroad through their networks in the respective foreign jurisdictions can then establish direct contact with jailed Indian Nationals in the respective foreign countries where they are in detention and provide them aid and assistance to return to India by meeting them physically in foreign jails. Under the Passports Act, 1967 read with the Passports Rules, 1980, emergency travel documents can be issued to Indian citizens abroad by Consular Officers/Agents in the Indian Mission abroad within their Consular jurisdiction and all Indian citizens whose passports have been impounded, revoked, lost, stolen or damaged and who have to be repatriated are entitled to be given emergency return certificates. All persons producing prima facie proof of Indian citizenship are entitled to new passports & are also covered for grant of emergency travel documents to enable them to return to India. Their relatives/families in Punjab can also be contacted for providing assistance, aid or any other resources required for them.

5. With the aid and assistance of MOIA, which is the nodal Ministry responsible for welfare of Indians abroad, the Indian Community Welfare Fund can be utilized in helping all such Indian illegal immigrants languishing in jails abroad. These funds controlled by the Diaspora Services Division of the Ministry of Overseas Indian Affairs, New Delhi, can be diverted to the respective Indian High Commissions/Embassies/Consulates abroad and where Indian Nationals in jails abroad in the respective jurisdictions need them.

The Indian Community Welfare Fund meant for providing emergency services on a means testing basis are meant to provide for air passage to stranded Indians abroad, to

provide boarding and lodging overseas as also for emergency medical care and initial legal assistance wherever required. Accordingly, the funds monitored by the Indian High Commission/Embassy/Consulate abroad can be effectively utilized for securing the safe return of illegal Indian immigrants whose identity has been authentically established.

### **Alternate Suggestion**

Besides the above suggested formula, another possible suggestion can be mooted. Once, exact numbers and identities of Indian nationals in a foreign country are known or established, the Ministry of Home Affairs, Government of India on the recommendation of MEA, can enter into bilateral agreements on Security Co-operation and on Transfer of Sentenced Persons. These pacts on Security Co-operation can develop bilateral frameworks by which Indian nationals languishing in jails abroad can also return to India and further to the State of Punjab.

### **Conclusion**

Wherever necessary, illegal immigrants upon return to India and particularly Punjab can be made to serve their remaining sentence if they have been convicted of violation of laws of such foreign countries. However, if they have completed their sentences in the respective foreign jurisdictions, they can return to India upon such bilateral agreements being executed between India and other individual foreign countries reporting high numbers of illegal Indian immigrants. This alternative suggestion is also an effective resolution for the problem moreso, for State of Punjab which has high immigration numbers.



## Section IV

### Property Related Issues -The Punjab Model

#### Background

Real life instances dealing with property matters are common to NRIs & PIOs. For example foreign based second or third generation descendant of an NRI seeking transfer of title of family property willed to him in rural or urban Punjab or an aging NRI battling to recover possession of urban property in urban Punjab wrested away by unscrupulous elements or NRI owner sitting abroad seeking remedies to locate share in rural agricultural property to claim ownership on the basis of inheritance. When NRIs desire to recover their properties, they find them in forceful or illegal occupation of their trusted childhood guardians or overstaying tenants who have designs to grab the property. Agreements are dishonoured, trust is violated and faith is destroyed. Commercial real estate property of NRIs is grabbed with impunity. The NRI has neither the patience nor the time to fight a protracted legal battle in an Indian law court which may last a life time, if fought, waged and litigated till the Apex Court. Legal processes are cumbersome, tedious, technical and move at a snail's pace.

Basically NRIs are at a great disadvantage leaving them disillusioned and disappointed. No existing legislation comes to their rescue or aid. NRIs invest huge sums of money in real estate, flats, or immovable property in Punjab. At the time of taking possession of their asset in their homeland, the vulnerable NRI discovers that either the land or the flat does not exist or that he has been duped into buying property that does not exist. Unscrupulous, unethical and unprofessional brokers, builders or real estate agents who had made these deals with the NRIs and promised

the moon have either disappeared, are untraceable or brazenly deny having made any commitment. Where should the NRI seek advice and how does he pursue the case. Questions are myriad but the solutions and answers lie submerged in a complicated web of long winded procedures that on initiation proceed endlessly and very slowly.

Broadly, Property Related Problems can be divided under four heads as follows:

- (A) Issues relating to Landlord-Tenant Relationships in Punjab and Chandigarh.**
- (B) Issues relating to Succession, Wills and Inheritance - INDIA, NRIs and Wills.**
- (C) Revenue Records and Agricultural Land Disputes**
- (D) Property Investment Related Issues in Punjab.**

The following paragraphs discuss the above mentioned concerns and how they are handled and attempted to be resolved in the framework of the existing laws that prevail in Punjab and Chandigarh in the matters of Tenancy and Agricultural Property Related Issues that are governed by State Legislations. Inheritance, Wills and Succession are subject to Central Laws. In so far, problems related to Succession, Wills and Inheritance, as also propositions arising out of Property Investment Related Issues, the same are governed by Central Legislations (except where there are separate State Laws), the problems and solutions are by and large common throughout India. Hence, wherever there is a Central Legislation enacted by Indian Parliament, the Indian Law will have universal application throughout India. To that extent, the issues and Laws arising for Succession and Property Investment Related Issues may be common for the entire Indian Jurisdiction and applicable in all States of India.

#### **(A) Issues relating to Landlord-Tenant Relationships in Punjab and Chandigarh**

In 2001, the Government of Punjab decided that the existing Rent Legislation viz. East Punjab Urban Rent Restriction Act, 1949, should be amended to provide relief to NRIs to enable them to recover possession of a residential or scheduled building and/or one non residential building for their own use. By a notification dated October 9, 2009, the Central Government has extended to the Union Territory of Chandigarh the benefit of the said amendment and hence as of now, NRI Landlords are entitled to the benefit of immediate recovery of immediate possession of their properties in accordance with this Law as per details below.

**Summary Eviction of tenants from properties of NRIs in Punjab and Chandigarh:**

- The East Punjab Urban Rent Restriction Act, 1949 (EPURRA), that extends to all urban areas in Punjab as also the Union Territory of Chandigarh, is an Act to restrict the increase of rents of certain premises and to provide for eviction of tenants there from. Other than prescribing a normal process for eviction of tenants, it also provides a summary procedure for recovering immediate possession of residential or scheduled buildings to certain specified landlords. By an amendment in 2001, the Act also created a special class of NRI landlords reposing in them a special right to recover immediate possession from tenants occupying their premises by a special summary procedure.
- Under Section 13-B of the EPURRA, once in a lifetime, possession can be given to a NRI landlord to get one building vacated in a summary manner. A NRI landlord is accordingly required to prove that he is an NRI, he has returned to Punjab permanently or temporarily, the requirement of the accommodation by him or his dependent is genuine and that he is the owner of the property for the last five years before the institution of the ejectment proceedings.

➤ By a 2005 landmark judgment titled Baldev Singh Bajwa Vs Monish Saini, the Supreme Court has given far reaching positive dimensions both to the definition of an NRI landlord and to the concept of 'his return' to Punjab in the context of the NRIs right to recover possession of his property under the summary procedure under section 13-B of the EPURRA. It does not distinguish between a Non Resident Indian, Person of Indian Origin or an Overseas Citizen of India.

➤ To be an NRI, it is sufficient that a person of Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account of his employment or for any other purpose which would indicate his intention to stay outside India for an uncertain period.

➤ A person to be an NRI should be of Indian Origin. Since "Indian Origin" is not defined in the EPURRA, any person whose parents, grandparents or great grand parents were born in India and permanently resided in India would be an NRI. It is not necessary that the NRI should be a citizen of India. It is immaterial that the NRI holds a foreign passport or has shifted to a foreign country.

➤ Return to India cannot be read as return to India permanently with an intention to settle in India permanently. There is no requirement that the NRI has to permanently settle in India on his return or he has returned to India with an intention to permanently settle in India. Hence, "*return to India*" may not be of permanent nature as the premises may be required for the use of any dependent ordinarily living with the NRI. All that is required under Section 13-B is that a NRI should return to India to claim the premises.

**(B) Issues relating to Succession, Wills and Inheritance - INDIA, NRIs and Wills:** As far as Succession, Inheritance and Wills is concerned, the Hindu Succession Act, 1956 and the

Indian Succession Act, 1925 being Central Legislations are applicable throughout the Territory of India. The Indian Succession Act, 1925 is an Act to consolidate the Law applicable to testamentary succession for Hindus and the Hindu Succession Act, 1956 is an Act to amend and codify the Law relating to intestate succession among Hindus. Hence, in respect of the matter of Wills i.e. testamentary succession, all NRIs with moveable and immoveable property in India shall be governed by the Indian Succession Act, 1925.

- Indian Diaspora has problems on the home front that need intercontinental solutions. In this perspective, the disposition of property of an NRI living in a foreign domicile, when such property is located partly in India and partly situated abroad, often poses questions like:
  - Must an NRI make a Will or leave his property to natural succession?
  - Should the NRI make a joint, composite or common Will of his assets and properties in India and abroad?
  - If so, should such a Will be registered and where? Need a person be appointed to execute the Will in different jurisdictions?
  - Would it be better if there are different Wills for separate properties in India and abroad?
  - Should such different Wills be registered individually in separate jurisdictions?  
How should inheritance rights of beneficiaries of NRIs be safeguarded in India and abroad?
  - Which Indian or Foreign law would apply to assets and properties of NRIs in different countries some of which are in India and remaining outside India?

- Two distinct Indian legislations exist. The Hindu Succession Act, 1956 (HAS) contains the codified law relating to intestate succession among Hindus i.e. when there is no Will. The Indian Succession Act, 1925 (ISA) consolidates the law applicable to persons other than Hindus for intestate succession and testamentary succession for all persons in India including Hindus. Hence, all NRIs (whether Hindus or non Hindus) can make Wills governed by the provisions of the Indian Succession Act, 1925. To begin with, for an NRI, it is advisable to execute a written Will, get it witnessed and registered to avoid any intricate problems of succession and inheritance. With the abundance of problems of NRI properties in India, natural succession in the absence of a will may pose problems from third party claimants. An NRI ought to Will his property by choice to his natural heirs or others and thus eliminate speculation or bogus claims from claimants and pave a smooth succession. Thus, what ought to follow naturally must be better confirmed by a Will also.
- The HAS/ISA unlike the Hindu Marriage Act does not have extra territorial application. In the wisdom of the Legislature, there are well-defined principles of International law, which regulate succession to the movable and immovable properties of a Hindu NRI domiciled outside the territory of India. Thus, on the basis of International comity, the following three principles can be deduced regarding the application of HAS/ISA:-
  - ❖ ***Firstly, for a Hindu domiciled outside India, succession to his immovable property in India is governed by HAS/ISA whereas succession to his movable property shall be governed by the law of the country of his foreign domicile.***

❖ *Secondly, where a Hindu is domiciled in India, succession to his immovable property outside India shall be governed by the law of the country where the property is situated. Movables outside India will be governed by HAS/ISA or by the local law of the foreign country in which the movable property is situated.*

❖ *Thirdly, in respect of a Hindu domiciled outside India, succession to his movable and immovable property outside India shall not be governed by HAS/ISA but by law of foreign domicile of the Hindu.*

- In the event of there being no Will, natural succession among the category of heirs as per the order of succession will flow as per the HAS. Then, speculation, outsider claims, disputes among heirs and third party rights are rife.
- In the light of non-application of HAS/ISA outside India, it is strongly recommended that NRIs of Hindu origin having immovable assets in different countries should execute a joint composite Will pertaining to all their immovable properties located in different jurisdictions. For NRIs, execution of separate Wills for separate immovable properties in different countries is not advisable. It is also recommended that the NRI must register the Will separately in every jurisdiction even though it is optional in India to do so. It may be mentioned that the registration in a particular country may hold good in respect of properties of the NRIs in that jurisdiction. Accordingly, separate rules of registration of different countries ought to be complied with as per rules of the foreign domicile of the NRI in respect of adhering to foreign laws.
- It is also advisable that the NRI should specifically appoint an executor to execute the Will in the particular jurisdiction where the property is situated. This assists the

beneficiaries and simplifies the division of assets as per the Will. A written Will of an NRI duly witnessed and registered in respect of Indian properties identifies the claimants and legal heirs. Its multiple registration assures the seal of finality. The message for the NRI therefore is, to act well in advance and simplify the task of the beneficiaries who are to inherit their properties.

- Thereafter, the law of the jurisdiction, where the property is situated will govern the process of succession on the basis of rights established under the Will. The global Indian must take advantage of this well codified position of Indian succession law. This is to ensure that there is no uncertainty and ambiguity.

### **(C) Revenue Records and Agricultural Land Disputes - Punjab's Existing Problem**

The landed agricultural properties left by forefathers, ancestors and well wishers always creates the innate desire in the Punjabi NRI to visit his homeland and stake his ownership claim to his land he loves. Sometimes, the landed property in the hands of relatives, tenants, family members or employees is difficult to recover, creating a plethora of unforeseen problems which can take a long time to resolve in the Revenue Courts. The State of Punjab has made some special endeavours to expedite the process of settling such disputes by simplified procedures and fast track resolution of such cases in this regard, summarised points are enumerated as under:

- Superseding its earlier orders under which existing Courts of Tehsildars and Naib-Tehsildars were designated as fast-track Courts for NRI's, the Department of Revenue and Rehabilitation in directives issued from time to time has declared that fast-track Courts would be set-up at Jalandhar, Hoshiarpur, Moga and Nawanshahr to which neighbouring districts would be attached.



- The District Revenue Officer heads a fast-track Court and has the powers to decide on the correction of “Khasra girdwari”, partition, contested and un-contested mutations, registered and un-registered wills, “lambardari”, demarcation, rent suit, and ejection under the Punjab Land Revenue Act. They also hear “chowkidari” cases. The Additional Deputy Commissioner or the Divisional Commissioner decide appeals against the orders of the fast-track revenue Courts thereby expediting the appeal decision making process.
- The Government of Punjab by Notification dated November 16, 2006, has also appointed District Revenue Officers at four District Headquarters to decide Suits under the Punjab Tenancy Act, 1887, for Non-Resident Indians by conferring powers of Assistant Collector 1st Grade upon them.
- The Government of Punjab is fast moving into the era of computerization in the matter of recording of revenue records. Farad Kendras enable applicants to obtain copies of Jamabandis and Khasra Girdwari on email requests.

**(D) Property Investment Related Issues in Punjab**

Investing in real estate, urban property, flats or apartments with builders, colonizers, estate agents and building companies can sometimes be a nightmare for NRIs. Colourful brochures, fancy promises, pictures of properties and attractive installment plans are used as inducement measures to extract huge sums of money from innocent NRIs who walk into such traps. At times, flats, houses, or apartments are not constructed as per the schedule and escalated costs are demanded failing which money already paid is forfeited. There are also times when the same property is sold to multiple owners and the unfortunate NRI has to face insurmountable problems. It is in this context that the following safeguards and

remedies can be advocated which are applicable uniformly throughout the Territory of India in all States & Union Territories.

- ✚ Before any investment in any property, flat or apartment is made in Punjab, unless and until a physical verification is done through a reliable source or agency to conclusively establish the title or ownership of the builder, colonizer, company or estate agent, no money should be invested blindly without checking
- ✚ Every step should be taken by an NRI to ask, confirm and verify whether the person, builder, colonizer or company possesses a valid license, permission or sanction as per local laws to build a colony, set of apartments or the prescribed number of flats which are advertised or propagated at the time of sale.
- ✚ If possible, through the assistance of local agencies or contacts, the title of the owner who is selling the property should be verified from the local land records to establish the ownership of the vendor. This will rule out the issues relating to ownership being disputed at a later stage.
- ✚ It should be an absolute certainty that proper documents must be executed at the time of paying any initial deposit and no payment should be made unless and until proper contracts or agreements are executed and signed by the builder, estate agent, coloniser or company selling any property.
- ✚ Before investing in any flat or property, the prospective NRI buyer must ensure that the colony, housing, flats, apartments, plots is validly created and registered under the local registration laws of the State of Punjab. Unauthorised colonies or unregistered housing projects not recognised by local laws entail penalties. Therefore care and caution must be taken to check registration.

- ✚ It must be clarified in writing that in case the property is not handed over in the stipulated time, there shall be no escalation clause in terms of building costs. Similarly, adequate caution and care should be taken not to sign any agreement or document by which consent is given to agree to escalated building costs. Agreements or documents should be signed only after consultation with Solicitors and no blank documents should be signed at all.
- ✚ In case there is any failure to hand over property in a stipulated period of time or there is any breach of promise, an NRI should not wait indefinitely. Every effort should be made to put the grievance or complaint in writing to the concerned coloniser, builder, estate agent or property developer which can serve as written proof and evidence for initiating any legal proceeding later.
- ✚ The Consumer Protection Act, 1986, an Act for better protection of the interests of consumers and for the purpose to make provisions for establishment of Consumer Courts for settlement of Consumer Disputes is a very effective remedy in Punjab against errant builder, colonizers and property developers. Consumer Courts exist in every District in Punjab and complaints can be made in simple language with a very small amount of fee payable as Court fee. The complaints can be followed up in person and the procedure of hearing is simple. Trial is expeditious and quick. Hence, it is strongly advised that in case of any deficiency in service or restrictive trade practice suffered by an NRI at the hands of any such errant builder, coloniser or estate agent, the provisions of the Consumer Protection Act, 1986 applicable throughout India should be invoked at the earliest possible.

#### **PUBLICITY FOR NRIs VIA PUNJAB STATE COMMISSION**

- At the outset it may be most useful to publicize the existence of the Punjab State Commission for NRIs constituted by *the Government of Punjab under The Punjab State Commission for Non Resident Indian Act, 2011*. This Punjab NRI Commission upon issuance of directions to the Administration, Police and local authorities can be the Nodal Body for entertaining NRI complaints online and in person from NRIs. They can forward these complaints to the respective departments to which they pertain to and suggest redressal to NRIs as to what remedy to adopt for resolving the problem. If the issue can be resolved by seeking a response from the Government machinery internally, the matter can be concluded or the NRI can be guided to approach the appropriate Judicial Court for seeking necessary relief as per law.

#### **PUBLICITY THROUGH WEBSITE AND IT STEPS**

- It is strongly advocated that in matters of landlord-tenant relationship, the existence of the special provisions for the Right to recover immediate possession of Residential and Non-Residential Buildings of NRIs should be given adequate publicity. This can be done by creating a NRIs website and/or bringing out a comprehensive booklet describing the availability of the remedy in simple and easily understandable language. The Union Territory of Chandigarh by a notification dated October 9, 2009 has made applicable the provisions of Section 13(B) of the East Punjab Rent Restriction Act to the Territory of Chandigarh whereby NRI landlords in Chandigarh can now recover immediate possession of their property. NRIs abroad should be made aware of this remedy which is unknown to a large segment of NRIs population.

- Likewise, it is further suggested that in the matter of property investment related issues, the concerned institutions like GMADA and PUDA in Punjab and other officials bodies should create investor friendly websites announcing investment schemes in Government owned properties and Government floated schemes. This website could also indicate a list of projects, colonies, development projects and other housing societies which have been registered or granted approval/ acceptance by the Government of Punjab under local laws and State enactments. This way an NRI would not invest in any unregistered or unauthorized colony, project or housing schemes.
- An NRI website could indicate to all unfortunate victims of unscrupulous builders or unregistered colonizers that they have a simple, efficacious, speedy, in expensive and friendly remedy of approaching a Consumer Court under the Consumer Protection Act, 1986 for any unfair or restrictive trade practice as a consumer disputes. The availability of this simple remedy in every district in the State of Punjab to NRIs needs publicity and must come within the knowledge of every NRI so that he can avail of this simple remedy which is quick, effective and does not involve heavy court fees. An NRI website would be an ideal place to publicized availability of such remedy.
- Similarly, the NRI Department can create a friendly website advising, guiding or suggesting to NRIs the simple, straight forward and legal tenable points on issues of Wills, Succession, Inheritance and other methods of transfer of property in accordance with law. These friendly suggestions will aid and assist NRIs in planning the succession of their moveable and immoveable properties in Punjab. Besides, tips on how to effect mutation of agricultural property and transfer of other urban/rural residential or commercial property in municipal or other records would be most helpful.

## **AMENDMENT OF NRI COMMISSION ACT**

● The Government of Punjab enacted the Punjab State Commission for Non resident Indians Act, 2011 (Punjab NRI Act) as an Act to provide for the constitution of a Commission for NRIs with a view to protecting and safeguarding the interests of NRIs in the State of Punjab and to recommend remedial measures for their welfare. The NRI Commission is fully functional, taking up matters with efficiency and performing excellently. However, the powers of the NRI Commission are stunted as it has been created prematurely without full powers. The NRI Commission can order or conduct an enquiry or investigation on a complaint with respect to NRIs but the Punjab NRI Act stops short. It leads nowhere. The NRI Commission cannot pronounce a decision or give any judgment because the Punjab NRI Act does not contain any provision by which it is empowered to do so. Hence, the exercise is in futility as the NRI Commission has no teeth. Therefore, it is recommended that the Punjab NRI Act should be amended with the following powers to be exercised after an enquiry or an investigation is conducted by the NRI Commission and that are as follows:

- ✓ ***Where the inquiry discloses, the commission or violation of rights of any law concerning parties of a serious nature, it may recommend to the Government or authority, the initiation of proceedings or prosecution of such action as the Commission may deem fit against concerned person or persons.***
  
- ✓ ***Approach the Civil, Criminal or High Court concerned for such directions, orders or writs as the Court may deem necessary in the facts of the case.***

- ✓ ***Recommend to the Government or authority for the grant of such interim relief to the victim of the members of his/her family as the Commission may deem necessary.***

Unless and until the powers of enquiry and investigation of the NRI Commission is given the further statutory authority to take the matter to a logical end, the existence of the NRI Commission will remain an exercise in futility. Upon such empowerment, the NRI Commission will get statutory teeth to enforce their orders. Resultantly, beleaguered NRIs in distress can see their cases to a logical end only upon a legal remedy resulting from their complaint. NRI disputes will no longer remain at sea.

#### **SPECIALIST TRIBUNAL/COMMISSIONS**

- Further, it may be suggested that the State of Punjab should endeavour to create fast track NRI Courts in matters of agricultural properties, revenue affairs and land revenue disputes besides maintenance of revenue records. It may be worth while to explore the possibility of vesting the exclusive jurisdiction of settlement of disputes relating to title of land with the Civil Courts by excluding the domain of Revenue Courts from adjudicating upon such matters. This will save time, besides provide an expeditious and conclusive remedy in the settlement of disputes of civil nature.

- It may also be suggested that appropriate Legislative changes may be brought about in matters of properties of NRIs involving cases where NRI properties have been retained, forcibly occupied or grabbed by unscrupulous or unethical persons. It may be in order if the Punjab Government seriously considers enacting a State Legislation applicable throughout the Territory of Punjab to take cognizance of such issues of NRI properties and bring them under them purview of such Legislation. Such an enactment can create a special Tribunal

for speedy trials of property disputes of NRIs. In this way, the unauthorized and forcible possession of a large number of NRI properties can be resolved by creating such an exclusive Tribunal/Commission. Alternatively, it can also be suggested that the Punjab State Commission for Non Resident Indians Act, 2011, could be suitably amended to vest jurisdictions and powers in it for the purposes of adjudicating such NRI property disputes also.

#### **PUBLIC PRIVATE PARTNERSHIP**

In so far issues concerning obtaining copies of land revenue records, title deeds, title documents, ownership records, transfer of ownership papers etc. are concerned, the Government of Punjab should endeavour having a module of Public Private Partnership to whom the limited function of preparation and handing over copies can be out sourced. By commercial bidding, an agency can be identified either at State or District level to handle this limited function of preparing copies of records on the basis of a regularly updated website to be prepared on the instructions of the Department of Revenue, Government of Punjab. This out sourced agency can fix rates at which copies of all individual ownership records can be supplied on payment of requisite charges either online or in person to the concerned NRI on a written request supported by his identity and his connection with the property. The Local Administration in every District in Punjab can monitor the function of such agency & restrict its function only to disseminate limited information to concerned NRI.



## Section V

### **Proposed Amendments in Punjab State Commission for NRI Act, 2011 (Punjab Act No.33 of 2011)**

#### **Background**

Estimated 30 million NRIs who have migrated from Indian shores reside abroad in 180 countries. About 5 million originate from Punjab and are bound with family, property and business interests back home. NRIs seek alternative mediums for efficacious dispute resolution. However, can mechanisms be created without conflict or collision with the prevalent Indian civil and criminal adjudication system? Alternatively, in the existing framework of laws, the powers which can be exercised and steps which can be legitimately taken by a Grievance Redressal Commission need to be identified and put forth without transgressing into the realm of jurisdiction of the hierarchy of the structure of the existing system of civil and criminal courts which adjudicate cases and render decisions.

#### **PUNJAB STATE COMMISSION FOR NRI ACT, 2011**

On 8 October 2011, the Punjab Legislative Assembly passed The Punjab State Commission For Non-Resident Indians Act, 2011 (hereinafter NRI Commission Act) which upon receiving the assent of the Governor of Punjab on 21 November 2011 and upon being published in the Official Gazette of the State of Punjab, was enforced in the State of Punjab.

It may be first important to analyse the definition of an NRI, PIO and an OCI to whom this enactment is applicable. A description of these terminologies answering FAQs in this array of nomenclatures may be useful to summarise as follows:

- **Definition of Non Resident Indian (NRI)**

Section 2 of the Foreign Exchange Management Act 1999 (FEMA) defines a person resident in India and a person resident outside India but does not define the term NRI. However, a notification defines NRI to mean a person resident outside India who is either a citizen of India or is a person of Indian origin. Under FEMA, a person “resident” in India is one who resides in India for more than 182 days in the preceding financial year and who comes or stays in India for any purpose and a “non-resident” is merely defined as a person who is not a resident in India. Therefore, an NRI can be summed up as an Indian citizen who is ordinarily residing outside India and holds an Indian passport.

- **Definition of Person of Indian Origin(PIO)**

It means a foreign citizen who at any time held an Indian passport; or he/she or either of his /her parents or grandparents or great grandparents was born in and was permanently resident in India; or he/she is a spouse of a citizen of India or of a person of Indian origin. PIO card holders can visit India without visa for 15 years and will be required to register with Foreigner Registration Officer (FRO) in India when the stay exceeds 180 days continuously. PIOs enjoy parity with NRIs in respect of certain facilities but have no political rights and can apply for Indian citizenship after residing in India for a minimum of seven years.

- **Definition of Overseas Citizen of India (OCI)**

A foreign national who was eligible to become a citizen of India on January 26, 1950, or was a citizen of India on or at any time after the said date or belonged to a territory that became part of India after August 15, 1947 and, his / her children and grandchildren are eligible for registration as OCIs. They enjoy multiple entry multipurpose lifelong visa for visiting India, are exempted registration with FRO/police authorities for any length of stay in India and are entitled to benefits notified under Section 7 B of the Citizenship Act. An OCI registered for 5

years and residing in India for one year can be granted Indian citizenship but will have no political rights. All benefits to which an OCI is entitled are notified from time to time.

Since the NRI Commission Act does not distinguish or differentiate between an NRI, PIO or OCI and because the definition of “Non- resident Indians” in the NRI Commission Act extends to all persons of Indian Origin, the Act is applicable to an NRI, PIO or an OCI in terms of the definitions quoted and referred to above. Hence, all persons of Indian Origin irrespective of foreign nationality or overseas domicile would qualify to be Non-Resident Indians as define in the NRI Commission Act.

The enacted law titled as “the Punjab State Commission for NRIs Act, 2011” is stated to be *“An Act to provide for the constitution of the Commission for NRIs in the State of Punjab with a view to protecting and safeguarding the interests of the NRIs in the State of Punjab, and to recommend remedial measures to State Government.”* It defines a “Complaint” by stating that it *“means all petitions/ communications received in State Commission for NRIs from an NRI or any other person on his behalf, in person, by post, by telegram, by fax or by any other means whatsoever, alleging, disputes or violations or abetment thereof or negligence in the prevention of such dispute or violation, by a public servant or a private person or the material on the basis of which the Punjab State Commission for NRIs takes Suo Motu cognizance.”* The NRI Commission Act however, does not define what is an “NRI dispute” or a “NRI violation” and empowers the NRI Commission to investigate a “*complaint*” from “*Non Resident Indians*”. Though Section 12 of the NRI Commission Act is titled “*Powers and Functions, of the Commission*”, but no functions are laid down in exercising the stipulated powers mentioned in Section 12 of the Act. Further, after an enquiry or investigation ordered by the NRI Commission is concluded, the steps to be taken thereafter and directions to be passed after the enquiry or investigation is concluded, also do not find any

mention in any provision of the existing NRI Commission Act. Thus, the two salient provisions relating to the functions as also powers to issue directions upon conclusion of enquiry or investigation are missing - a legal lacunae that needs to be statutorily rectified by amending the Act.

### **JURISDICTIONAL ISSUES WITHIN INDIAN COURTS**

Whether it is a NRI, PIO or an OCI, their grousers revolve around family law related issues, property disputes, immigration related questions and trysts with criminal law. But then, a hierarchical system of Civil and Criminal Courts in accordance with existing jurisprudence mandates that all disputes shall be adjudicated by Courts of competent jurisdiction as per statutory laws made by Parliament and applicable throughout India. Consequently, identifying an “NRI dispute” for being heard and decided by a different realm will clearly fall foul of the system of prevalent adjudication by existing courts. A civil, matrimonial or criminal dispute in India cannot carry separate tags and are bound to one system. Therefore, vesting an NRI Commission with such supposed powers may not be agreeable. Parallel hearings which cannot achieve finality will only compound problems. The aggrieved NRI will still need to invoke the powers of a competent Court for actual relief as a NRI Commission cannot enjoy parallel statutory adjudication powers. Therefore, the only possible solution would be to empower the NRI Commission with such functions and powers as may be legally permissible without transgressing into the jurisdiction of the existing hierarchy of the prevalent system of adjudication of disputes by established courts which would amount to taking over existing judicial functions.

### **SUGGESTED AMENDMENT OF NRI COMMISSION ACT**

In this backdrop, the only possible solution would be to empower the NRI Commission with suitable functions as may be legally tenable. This would mean that the NRI Commission should be empowered and authorised to exercise stipulated functions and take further steps as may be legally permissible after completion of an enquiry or an investigation in a complaint before the NRI Commission. The Government of Punjab enacted the Punjab State Commission for Non resident Indians Act, 2011 (Punjab NRI Act) as an Act to provide for the constitution of a Commission for NRIs with a view to protecting and safeguarding the interests of NRIs in the State of Punjab and to recommend remedial measures for their welfare. The NRI Commission is fully functional, taking up matters with efficiency and performing excellently. However, the functions of the NRI Commission have not been identified. The NRI Commission can order or conduct an enquiry or investigation on a complaint with respect to NRIs but the Punjab NRI Act does not identify its functions. Further, the steps to be taken after an inquiry or investigation are not stipulated. The NRI Commission cannot proceed further because the Punjab NRI Act does not contain any provision by which it is empowered to do so. Hence, the exercise is in futility as the NRI Commission has no identified functions or steps to be taken after an inquiry or investigation is concluded.

Therefore, the functions of the NRI Commission need to be clearly stipulated and it is recommended that the Punjab NRI Act should be amended with the powers to be exercised after an enquiry or an investigation is conducted by the NRI Commission and that are as follows:

- ✓ ***Where the inquiry discloses, the commission or violation of rights of any law concerning parties of a serious nature, it may recommend to the Government or***

*authority, the initiation of proceedings or prosecution of such action as the Commission may deem fit against concerned person or persons.*

- ✓ *Approach the Civil, Criminal or High Court concerned for such directions, orders or writs as the appropriate Court of competent jurisdiction may deem necessary in the facts of the case.*
  
- ✓ *Recommend to the Government or authority concerned, the grant of such interim relief to the victim of the members of his/her family as the Commission may deem fit and necessary in any individual or particular case.*

Unless the functions, besides powers of enquiry and investigation of the NRI Commission find mention in the Act, for the statutory authority to take the matter to a logical end and the legal sanctity of the NRI Commission will remain questionable.

## **CONCLUSION AND SUGGESTIONS**

It is suggested that the following provisions be appropriately added to the existing Punjab State Commission for Non-Resident Indians Act, 2011 by suitable amendments which may be carried out by the Punjab Legislative Assembly after the matter is first examined by the Government of Punjab. The amendments proposed are in the following terms.

- (i) The existing Section 12 of the present 2011 NRI Commission Act only stipulates the powers of the NRI Commission but does not contain any functions, even though Section 12 is titled *Powers and Functions of the Commission*. Therefore, it would be appropriate that Section 12 be suitably amended to add the

following functions which can be performed by the NRI Commission by stating as follows.

The proposed complete Section 12 ought to read in the following terms:

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**12. Powers and Functions of the Commission -**

*(1) The Commission shall perform all or any of the following functions namely:-*

*(a) Examine and Review the safeguards provided by or under any law for the time being in force for the protection of rights of non-resident Indians and recommend measures for their effective implementation.*

*(b) Present to the Government of Punjab, annually and at such other intervals as deemed fit and necessary by the NRI Commission, reports upon the working of its suggested safeguards for providing more effective remedies to non-resident Indians.*

*(c) Inquire into the violation of rights of non-resident Indians and recommend initiation of administrative or legal proceedings in such cases.*

*(d) Examine all factors that inhibit the enjoyment of rights and duties of non-resident Indians in matters relating to matrimonial relationships, property rights, immigration issues, financial investment problems, repatriation of funds, economic frauds and any other related matters brought to the notice of the NRI Commission or acted upon suo moto by the NRI Commission.*

*(e) Look into the matters relating to factors which will aid and assist better and improved relationships between non-resident Indians and the Government of Punjab and recommend appropriate remedial measures for progress of such understanding.*

*(f) Study treaties and other laws or other international instruments besides undertaking periodical review of existing policies, programmes and other activities on rights and duties of Non-Resident Indians and make suitable recommendations for their effective implementation in the best interest of the State of Punjab.*

*(g) Spread awareness and literacy among various sections of the society to promote awareness of the safeguards available for protection of rights as well as duties relating to matrimonial problems, property rights, immigration issues, besides other related matters through publications, the media, seminars, discussions and any other available means so deemed fit and desirable by the NRI Commission.*

*(h) Inquire into complaints and take suo moto notice of any complaint made to the NRI Commission and take up the issues arising out of such matters with appropriate authorities.*

(i) *Such other functions as the NRI Commission may deem necessary to take up in any other matter incidental to the above functions.*

(2) *The Commission shall, while investigating any matter under this Act in the exercise of the above functions, have all the powers of a Civil court trying a suit and, in particular, in respect of the following matters namely :-*

(a) *summoning and enforcing the attendance of any person and examining him on oath;*

(b) *requiring the discovery and production of any documents;*

(c) *receiving evidence on affidavits;*

(d) *requisitioning any public record or copy thereof from any court or office;*

(e) *issuing commissions for the examination of witnesses and documents; and*

(f) *any other matter which may be prescribed.*

(3) *The NRI Commission shall have the power to forward any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under Section 346 of the Code of Criminal Procedure, 1973 (Act 2 of 1974).*

(4) *The Commission shall function by holding "sittings" and "meetings" at any place within the State of Punjab.*

(5) *The NRI Commission shall not enquire into any matter which is pending adjudication before a Civil or a Criminal Court of competent jurisdiction.*

(6) *The Members of the Commission including the Chairperson shall function in accordance with Rules framed under this Act.*

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(ii) The amended Section 12 of the present 2011 NRI Commission Act as suggested above should be followed by Section 12-A which should empower the NRI Commission to take necessary steps upon completion of an enquiry or an investigation undertaken by the NRI Commission under Section 12 of the proposed NRI Commission Act, which has been quoted above. It is suggested that Section 12 A which should be added after Section 12 should read in the following terms:

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## **12 A STEPS AFTER INQUIRY**



***The NRI Commission may take any or all of the following steps upon the completion of an enquiry under this Act, namely;***

***(i) Where the inquiry discloses, the commission or violation of rights of any law concerning parties of a serious nature, it may recommend to the Government or authority, the initiation of proceedings or prosecution of such action as the Commission may deem fit against concerned person or persons.***

***(ii) Approach the Civil, Criminal or High Court concerned for such directions, orders or writs as the appropriate Court of competent jurisdiction may deem necessary in the facts of the case.***

***(iii) Recommend to the Government or authority concerned, the grant of such interim relief to the victim of the members of his/her family as the Commission may deem fit and necessary in any individual or particular case.***

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