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PUNJAB NRI LAWS, COMMISSIONS AND POLICIES

Compiled by
Anil Malhotra
Ranjit Malhotra



Department of NRI Affairs
Government of Punjab

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Highlights of the new Punjab NRI interactive website:

- Latest NRI News on a Flash and details of new NRI friendly laws.
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I. A. PUNJAB LAWS – A MILESTONE ACHIEVED:

*** LEGISLATIONS MADE BY PUNJAB AS THE PIONEER STATE TO ENACT EXCLUSIVE LAWS FOR NON-RESIDENT INDIANS IN STATE OF PUNJAB**

- *Punjab Compulsory Registration of Marriages Act, 2012;*
- *Punjab Compulsory Registration of Marriages Rules, 2013*
- *Punjab Travel Professionals Regulation Act, 2012;*
- *Punjab Travel Professionals Regulation Rules, 2013*
- *Punjab State Commission for NRIs Act, 2011 and Punjab State Commission for NRIs*
- *Punjab Right to Service Act, 2011 and Punjab Right to Service Commission*

B. THE WORKING OF THE STATE INFORMATION COMMISSION, PUNJAB

PUNJAB COMPULSORY REGISTRATION OF MARRIAGES ACT, 2012

-HIGHLIGHTS

It is an Act to provide for compulsory registration of marriages solemnized under any law governing the parties irrespective of their religion, caste, creed or nationality and for the matters connected or incidental thereto.

- *Every marriage between parties who are Indian nationals or NRIs or foreign nationals solemnized or performed shall be registered.*
- *Foreign nationals will mean any person who is not an Indian citizen and shall include PIOs and OCIs.*
- *To avoid any ambiguity, term NRI has been defined in the new Act to mean any person of Indian origin permanently or temporarily settled outside India.*
- *Whenever any party is an NRI, his passport and foreign address details, social security number as also relevant particulars about him shall be entered both in the marriage register as well as the marriage certificate.*
- *Any marriage solemnised outside Punjab shall also be registered in Punjab. However, if any marriage is already registered elsewhere, it shall not be registered again in Punjab.*

- ***A complete mechanism and procedure for registration has been laid down and identified with nominated Registrars of Marriages.***
- ***The marriage to be registered shall have to be solemnised in accordance with the personal law of the parties to the satisfaction of the Registrar of Marriages concerned.***
- ***Non-registration will not invalidate the marriage as such because the new law is only for registration and cannot invalidate a marriage solemnised as per Central Laws.***
- ***Memorandum of marriage duly signed by parties and the priest shall be presented within three months of marriage to Registrar of Marriages. Relaxation may be permitted by the Registrar wherever necessary.***
- ***Registrar of Marriages may also suo moto (on his own) or on notice register any marriage taking place in his jurisdiction by calling parties.***
- ***Any entry may be corrected or cancelled by Registrar of Marriages if obtained fraudulently or made in improperly within correct facts.***

- **PUNJAB COMPULSORY REGISTRATION OF MARRIAGES RULES, 2013 –HIGHLIGHTS**
- ❖ *Rules for compulsory registration of marriages in the State of Punjab notified on June 27, 2013, provide for presentation of a Memorandum in a prescribed form before the Registrar of Marriages within three months of the date of marriage. If one of the parties to the marriage is an NRI, he shall furnish additional information as prescribed under the Rules.*
- ❖ *Memorandum for registration of marriage can be presented after expiry of period of three months, six months, or one year upon payment of late fee and after obtaining written permission of District Registrar or Chief Registrar of Marriages.*
- ❖ *Any person aggrieved by an Order of Registrar of Marriages may appeal within 30 days to the District Registrar of Marriages and thereafter to the Chief Registrar of Marriages within 60 days.*
- ❖ *Every Registrar of Marriages shall maintain a Marriage Register both in English and Punjabi language recording details of marriage solemnised which can be inspected by any person interested on payment of a fee.*

- ❖ ***Registrar of Marriages may suo moto or on receipt of an application from any person correct or cancel any entry of a marriage made in erroneous form or made improperly or fraudulently after passing a speaking order upon affording reasonable opportunity to parties concerned of being heard before correction or cancellation.***
-

- **LAWS DEFINED**

The Punjab Compulsory Registration of Marriages Act, 2012 and The Punjab Travel Professionals Regulation Act, 2012, which had both been approved by the Punjab Legislative Assembly on 21 December 2012 and upon notification had come into force in 2013, are now laws in State of Punjab with separate enabling Rules for implementation. Both new laws seek a milestone to achieve. Punjab has been the first State of the country to enact a Human Smuggling Law to provide for the regulation of the profession of travel agents with a view to check and curb their illegal or fraudulent activities. Likewise, even though compulsory Registration of Marriages is now provided in most States, however, Punjab has been the first State to make marriages of Non-resident Indian and foreign nationals also compulsory in the State of Punjab. These initiatives are the product of a long exercise which will help resolving maladies plaguing the system intrinsically as a result of lack of legislations to curb

new generation problems created by a migratory regime of 30 million NRIs living in 180 nations overseas. Punjab State takes the lead to resolve these problems as the only State to make effective State legislations for this purpose.

PUNJAB COMPULSORY REGISTRATION OF MARRIAGES ACT, 2012

- **COMPULSORY MARRIAGE REGISTRATION OF NRI MARRIAGES IN PUNJAB**

The Hindu Marriage Act, 1955 (HMA) leaves it open for every State Government to enact compulsory provisions for Registration of Marriages. The Supreme Court in 2006 in *Seema vs Ashwani Kumar* issued a mandate to all States to make registration of marriage compulsory by enacting legislations. This directive led to the enactment of The Punjab Compulsory Registration of Marriages Act 2012, providing for compulsory registration of marriages solemnized under any law governing the parties irrespective of their religion, caste, creed or nationality. Any marriage solemnized in Punjab is now compulsorily registerable and even marriages solemnized outside the State of Punjab can be registered at a place where parties have their temporary residence in Punjab. However, if the marriage is already registered elsewhere, it shall not be registered again in the State of Punjab.

- **DEFINITION OF NRIs IN THE LAW**

The most prominent feature of this marriage law is the definition of a “*non resident Indian*” to mean a person of Indian origin who is either permanently or temporarily settled outside India for employment, business, vocation or any other purpose indicating a uncertain or determined period of overseas stay. Likewise, a “*foreign national*” has been defined to mean a person who is not a citizen of India and shall include *Persons of Indian Origin (PIO)* and *Overseas Citizens of India (OCI)* who are defined under the Citizenship Act, 1955 and mean foreign nationals of Indian Origin who have earlier been Indian Citizens or qualify for Indian citizenship.

- **NRI MARRIAGES IN THE LOOP**

The law provides that every marriage between parties who are Indian nationals or NRIs or foreign nationals solemnized or performed in the State of Punjab, irrespective of religion, caste, creed or nationality shall also be registered in the State of Punjab. The most significant feature would be that for every NRI or foreign national, it would be mandatory to disclose in writing his/her passport number, country of its issue, period of its validity besides permanent residential/official address of overseas abode with social security number or any such permanent

identification proof issued by his foreign country. All this information will be entered in the marriage certificate and the marriage register. Marriage would mean and include marriages solemnized or performed under Hindu Laws, Anand Marriage Act, Muslim personal law or under Indian Christian Marriage Act besides any other custom or personal law relating to marriages governing the parties.

- **REGISTRATION REGIME DEVISED**

The law with enabling Rules has notified Chief, District and Additional Registrars of Marriages or other Officers to be Registrar of Marriages for free and easy accessibility in cities, towns and tehsils. The new law notifies DC's, DRO's, Tehsildars and Naib Tehsildars for easy accessibility in cities, towns and tehsils. The Registrars so designated, shall upon scrutiny verify that the marriage between the parties has been performed in accordance with the personal law of parties to confirm their marital status and identities. A memorandum of marriage signed by the parties and their priest will be presented to the concerned Registrar within three months of marriage in the jurisdiction where the marriage was solemnised or where parties have temporary residence if they were married outside Punjab. Refusal to register shall be appealable and the Registrar may also suo moto or on notice call parties and register any marriage performed in his jurisdiction.

Any erroneous or fraudulent entry in a marriage register may be corrected or cancelled after giving opportunity of hearing to persons concerned.

- **NON- REGISTRATION NOT TO INVALIDATE MARRIAGES**

The law states that no marriage shall be deemed to be invalid solely by the reason or the fact that it was not registered. This shortcoming is attributed to codified personal marriage laws of parties in India by which performance of essential ceremonies and not registration validates a marriage between parties. Hence, a State enactment cannot undo a law made by Parliament prescribing only ceremonies for recognition of a valid marriage. Consequently, resorting to compulsory registration may have to develop more as a accepted societal norm and practice for the law to gain recognition. Ailing The fact remains that Punjab has taken the lead to register NRI Marriages which will help in curbing matrimonial frauds to ameliorate the plight of ailing "***Nowhere Holiday Wives***". Punjab would do equally well if it were to constitute Family Courts in every district in Punjab under the existing Family Courts Act, 1984, to provide speedy justice to abandoned spouses and deserted children as well. Prevention is better than cure but redressal of issues arising out of a broken or limping matrimonial relationship must be remedied too simultaneously.

**PUNJAB TRAVEL PROFESSIONALS REGULATION
ACT 2012**

AND

**PUNJAB TRAVEL PROFESSIONALS
REGULATION RULES, 2013**

-

**A LAW TO CURB ILLEGAL
IMMIGRATION FROM PUNJAB**

-
- **PUNJAB TRAVEL PROFESSIONALS
REGULATION ACT, 2012**

HIGHLIGHTS

- *The Punjab Travel Professionals Regulation Act, 2012, passed by the Punjab Vidhan Sabha on 21 December 2012 and implemented upon Notification in the Punjab Government Gazette on 20 August 2013, is as an Act to provide for the regulation of the profession of travel agents with a view to check and curb their illegal, fraudulent activities, and malpractices of the persons involved in organized human smuggling in the State of Punjab and for the matters connected therewith or incidental thereto. This law has nine noteworthy features.*
- ✓ **It defines human smuggling and travel agent and includes coaching institutes of IELTS,**

ticketing agents and general sales agents of airlines.

- ✓ **Provides for a licensing regime for travel agents. Debars persons from operating without a license under the Act.**
- ✓ **Complaint receive by Deputy Commissioner to be verified first. Gives power of search, seizure and arrest to Magistrates and Police Officials.**
- ✓ **Prescribes power of investigation by DSP to be completed within two months and to be verified by S.P. SSP to be Nodal Officer for all investigations under the Act.**
- ✓ **In addition to imposing penalties, provides award of reasonable compensation to be paid to aggrieved person by travel agent.**
- ✓ **Prescribes punishment which may be extended up to seven years depending upon the crime or offences committed under the Act.**
- ✓ **Authorises Courts to decide whether any illegally acquired property is liable to be confiscated.**
- ✓ **Provides for liability of Director, Manager, Secretary of Companies responsible for conduct of business when negligence can be attributed.**
- ✓ **Cheating shall have the same meaning as under the Indian Penal Code.**
- ***Travel agent is defined as a person in a profession that involves arranging, managing***

or conducting affairs related to sending people abroad.

- ✓ It includes consultancy for permanent emigration, obtaining education, work, travel for tourism, cultural entertainment or musical shows, medical treatment, spreading or preaching religion, participating in sport tournaments, issuing advertisements for travel, holding seminars and lectures to promote emigration, arranging matrimonial alliances for purposes of emigration, and arranging overseas travel for any purpose whatsoever except for business of recruitment governed by registration under provision of the Emigration Act, 1983

- ✓ Dishonest misrepresentation with intention to have wrongful gain for inducing, deception, cheating or allurement for above activities and cheating by personation is punishable under the Act as having same meaning as IPC. If any travel agent wants to advertise or hold seminars, he will have to notify competent authority in writing with complete details of advertisement of seminars. However, if the licence number of the travel agent is printed in the advertisement, then prior information need not be given to the competent authority.

➤ ***The words “travel agent” and “human smuggling” in the Punjab Act, find definition in the following words:***

- ✓ “Travel Agent” means a person doing the profession which involves arranging, managing or conducting affairs relating to sending persons abroad or which arise out of the affairs of persons sent to a foreign country, and shall include a range of activities covering diverse practices .
- ✓ “Human Smuggling” shall mean and include illegally exporting, sending or transporting persons out of India by receiving money from them or their parents, relatives or any other persons interested in their welfare, by inducing, alluring or deceiving or cheating.

HIGHLIGHTS OF THE EMIGRATION ACT, 1983

- **The Emigration Act, 1983 provides for checks, controls, balances by enacting a licensing regime for “recruiting agents,” for “emigration” purposes which find definition in the following words in the said Act.**
- ✓ **“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. Recruiting agents doing business of recruitment have to obtain compulsory registration under the Emigration Act, 1983.

- ✓ “Emigrate and Emigration” means 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 a employer) in any country or place outside India.

- **PUNJAB TRAVEL PROFESSIONALS
REGULATION RULES, 2013**

HIGHLIGHTS

- *Punjab Travel Professionals Regulation Rules, 2013 for regulating the trade of travel agencies or consultancies and ticketing agents were notified on August 20, 2013 and provide for a licensing regime through notified competent authorities.*
- *By notification dated September 3, 2013, District Magistrates/Additional District Magistrates of each district have been designated as the*

“Competent Authority” for issuing a licence to undertake the profession of a travel agent.

- ***Applications for licences to be accompanied by separate prescribed fees for travel agencies, coaching institutions, consultancies, ticketing agents and general sale agents depending on period of prior working. Records in electronic form and soft copies to be kept by agents.***
- ***Residence certificates, proof of age, identity, passport, PAN card, Income Tax Returns, bank statements, satisfaction of credibility and no criminal record to accompany applications. For NRI agents, social security number, permission of foreign country of operations and RBI sanction additionally to be furnished.***
- ***Applicants must not be insolvent or bankrupt, should have no involvement in crimes as per police records, should not hold office of profit, should not be barred by Agents Associations, must have adequate space or accommodation and must maintain records and fee charged by them to be furnished to State Government.***
- ***Licences to be issued for five years, renewable upon furnishing Income Tax Return and Statement of Bank Accounts. Refusal to grant or renew license appealable to Government. All***

activities of agents to be monitored under the new rules.

- ***All illegally acquired property to be confiscated upon trial of offences under the law.***
- ***All consultancy firms shall inform state Government on six monthly basis giving details of fee charged from clients. All ticketing agents shall inform Deputy Commissioner concerned on monthly basis number of tickets sold by him.***
- ***All travel agents/ consultants/ ticketing agents shall maintain record of fee charged and submit to competent authority / State Government on receipt of complaint.***

PUNJAB TRAVEL PROFESSIONALS REGULATION ACT 2012 – AN OVER VIEW

- **THE PROBLEM**

With the merchants of death running thriving rackets of human smuggling in Punjab at the cost of gullible youth trapped everyday with dollar dreams, the waiting worsens the plight of duped innocent citizens and this organized crime perpetuates horror and misery flourishing with daring impunity. Smuggled migrants are vulnerable to exploitation and their lives are often put at risk. They have suffocated in containers, perished in deserts, drowned at sea or herded as forced labour in slave camps. Smugglers of migrants conduct their activities brazenly without fear or favour with no regard for human life. Survivors tell harrowing tales of their ordeal, forced to sit in human waste, deprived of food and water, while others around them die and their bodies are dumped at sea or on road sides. The smuggling of migrants generates high net worth profits at the hands of criminals who fuel corruption and organized crime. The smuggling of migrants is a deadly business that must be combated as a matter of grave urgency and happily Punjab is the first State ready to combat it.

- **THE PROPOSED SOLUTION IN THE LAW**

The Punjab Travel Professionals Regulation Act, 2012 is described as a law to provide for the regulation of the profession of travel agents with a view to check and curb their illegal, fraudulent activities, and malpractices of the persons involved in organized human smuggling in the State of Punjab and for the matters connected therewith or incidental thereto. This new law has nine noteworthy features.

- ✓ **It defines human smuggling and travel agent and includes coaching institutes of IELTS, ticketing agents and general sales agents of airlines.**
- ✓ **Provides for a licensing regime for travel agents. Debars persons from operating without a license under the Act.**
- ✓ **Complaint receive by Deputy Commissioner to be verified first. Gives power of search, seizure and arrest to Magistrates and Police Officials.**
- ✓ **Prescribes power of investigation by DSP to be completed within two months and to be verified by S.P. SSP to be Nodal Officer for all investigations under the Act.**
- ✓ **In addition to imposing penalties, provides award of reasonable compensation to be paid to aggrieved person by travel agent.**

- ✓ **Prescribes punishment which may be extended up to seven years depending upon the crime or offences committed under the Act.**
- ✓ **Authorises Courts to decide whether any illegally acquired property is liable to be confiscated.**
- ✓ **Provides for liability of Director, Manager, Secretary of Companies responsible for conduct of business when negligence can be attributed.**
- ✓ **Cheating shall have the same meaning as under the Indian Penal Code.**

“Travel Agent” is defined as a person in a profession that involves arranging, managing or conducting affairs related to sending people abroad. It includes consultancy for permanent emigration, obtaining education, work, travel for tourism, cultural entertainment or musical shows, medical treatment, spreading or preaching religion, participating in sport tournaments, issuing advertisements for travel, holding seminars and lectures to promote emigration, arranging matrimonial alliances for purposes of emigration, and arranging overseas travel for any purpose whatsoever. Dishonest misrepresentation with intention to have wrongful gain for inducing, deception, cheating or allurements for above activities is punishable under the Bill. If any travel agent wants to advertise or hold seminars, he will have to notify the competent authority in writing giving complete details of advertisement of

seminars. It does not include recruitment agents carrying on the business of recruitment who are governed and registered under the provision of the Emigration Act, 1983

- **THE GRAVE END**

Naive youth fell prey to agents and landed up working as slave labour in ammunition dumps or fields in Iraq or end up condemned to live as illegal immigrants abroad in pitiable conditions with no hope of return if they manage to survive hazardous channels of death. Smuggling of migrants is a highly profitable business with a low risk of detection. For criminals, it is increasingly attractive to deal in human merchandise and this business of death is becoming more and more organized, in which professional international networks wantonly flourish transcending global borders and regions. India, as a nation, therefore, has a dire need to check this global menace. However, sadly, The Emigration Act, 1983, which is an Act to consolidate and amend the law relating to Emigration of citizens of India, neither defines human smuggling nor even looks at the problems connected with this deathly trade. Thus, the need for Parliament to legislate a Indian Human Smuggling law is a crying need. Piecemeal state legislations with limited ambit of application will restrict scope only to State territorial borders. A Central law is therefore, the composite solution. Initiatives of Parliament must set this ball rolling. Till then, any State legislation on the subject would be a welcome take off

point and the Government of Punjab deserves kudos for this innovative pioneer excellent effort.

- **CENTRAL LAW IN EXISTENCE**

The Emigration Act, 1983 provides for checks, controls, balances by enacting a licensing regime for “**recruiting agents**,” for “**emigration**” purposes which find definition in the following words in the said Act.

- “**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.
- “**Emigrate and Emigration**” means 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 a employer) in any country or place outside India.

The Emigration Act, 1983, creates a “**Protector of Emigrants**” for providing emigration clearance to ensure that conditions of employment of Indian citizens are not discriminatory, exploitative, unlawful, against public policy, violative of norms of human dignity &

decency, besides, do not prescribe sub-standard working or living conditions. The ambit of the Act extends to Indian citizens only and exempts control of recruiting in India for service of foreign States. Clearly, the regulatory provisions of the Central Act, provides beneficial legislation to reign in Indian recruiting agents operating in India.

- **THE PUNJAB LAW IN CONTRAST**

In contrast, the Punjab Travel Professionals Regulation Act, 2012, enacted to provide a licensing regime for travel agents with penal provisions, has similar regulatory functions to check human smuggling. The words “**travel agent**” and “**human smuggling**” in the Punjab Act, find definition in the following words:

“**Travel Agent**” means a person doing the profession which involves arranging, managing or conducting affairs relating to sending persons abroad or which arise out of the affairs of persons sent to a foreign country, and shall include a range of activities covering diverse practices .

“**Human Smuggling**” shall mean and include illegally exporting, sending or transporting persons out of India by receiving money from them or their parents, relatives or any other persons interested in their welfare, by inducing, alluring or deceiving or cheating.

It is further stated in the Punjab Act, that “**cheating**” shall have the same meaning as assigned to it in **Sections 415 and 416** of the **Indian Penal Code, 1860**. Therefore, the Punjab Travel Professionals Regulation Act, looks at the menace of human smuggling by defining it as an offence and creates a process for its regulatory enforcement by compulsory registration and imposition of punishment upon violations through a legal process prescribed in this Punjab Act.

- **CONCLUSION**

Hence, placing both the Acts i.e. the Emigration Act, 1983 and the Punjab Travel Professionals Regulation Act, 2012, side by side clearly shows that they enshrine regulatory mechanisms for recruiting agents and travel agents separately. Viewed objectively, both carry complimentary purposes in their own spheres. They are neither inconsistent or repugnant to each other. In fact, the two laws compliment each other as they provide similar objectives, aims and functions for recruiting and travel agents respectively. Punjab has enacted a law which no other State in the country has made. In fact, human smuggling is a silent issue in the Emigration Act. The authority of law vested in the State must be exercised to enforce this law. Punjab will proceed with its own initiative and lead the nation in its yeoman spirit.

CURBING FLIGHTS OF FANCY

PUNJAB TRAVEL PROFESSIONALS REGULATION RULES, 2013

Travel agencies, ticketing agents, coaching institutes of IELTS, general sales agents and immigration consultants will now be regulated under a licencing regime created under the Punjab Travel Professionals Regulation Rules, 2013. It has been made mandatory that all persons falling under the definition of “**travel agent**” must register their business with District Magistrates all over Punjab notified on 03 September 2013, as competent authorities for granting licences before 31 December, 2013. The Punjab Travel Professionals Regulation Act, 2012, a first of its kind, was enacted on 21 December 2012 to check and curb malpractices of organised illegal immigration and related fraudulent activities resulting in repeated tragic loss of human life and property.

- **EXISTING CENTRAL LEGISLATION**

The Emigration Act, 1983, a law made by Parliament, consolidated and amended the law relating to Emigration of citizens of India. It applies only to “**recruitment**” and “**recruiting agents**” for whom the registering authority is the **Protector General of Emigrants (PGE)**. Under Section 10 of the Emigration Act, 1983, no person can function as a **recruiting agent** to commence or carry on the business of recruitment unless registered with the PGE. Further, under Section 15 of the Emigration Act, 1983, all **recruiting agents** carry on the business of recruitment are required to be obtain a **permit** from the **Protector**

General of Emigrants. Hence, this Act applies only to **recruitment** and **recruiting agents**.

- **A DIFFERENT CENTRAL LAW**

The Emigration Act, 1983 (EA) is a law to consolidate and amend the law relating to emigration of citizens of India. All the recruiting agents or employers working in any place are duty bound to follow the provisions laid down under the EA, before carrying on or conducting the business of sending people outside India on the pretext of jobs or employment outside India. The recruiting agents or employers not working as per the EA are unlicensed and unauthorised. A Protector of Emigrants is appointed in every State and a Protector General of Emigrants functions at New Delhi under the EA. Both the Protector of Emigrants and the Protector General of Emigrants work under the authority of the Ministry of Overseas Indian Affairs (MOIA). The recruiting agents or employers in a State before commencement and carrying on business of recruitment or overseas employment needs to get a valid registration certificate and a permit which is issued by the Protector of Emigrants in their respective States. Without getting any such registration certificate or a valid permit, the recruiting agent or employer cannot legally conduct the business or send any person abroad. As per the website of The MOIA, www.poeonline.gov.in, where a list of registered recruiting agents registered under the EA is maintained, there are only 47 recruiting agents currently registered in the State of Punjab under the

EA. Sadly, lack of a strict law neither made nor enforced by the Government of India keeps the noose away.

- **UNDEFINED AGENTS**

The words “*travel agent*” and “*human smuggling*” are not defined under the EA or under any other law made by Parliament. There are thousands of consultants in the State of Punjab who function under the banner or name of various kinds of agents and indulge in the unethical rackets of sending persons abroad by different means and practices. Such agents deny that they conduct the business of **recruitment** or **recruiting agents** and hence claim that the provisions of the EA do not apply to them. Those working under the law are outwitted. Therefore, the illegal business of human smuggling is unchecked in Punjab and thousands of gullible youth are misled daily by unscrupulous agents who cheat them with impunity. All such unlicensed and unauthorized agents are not governed by any law and there is no check or control on them by virtue of the EA whose dragnet is evaded by them. Since such agents or consultants claim that they do not do the business of recruitment or are recruiting agents. Hence, they do not get registered under the EA or take any permit under the EA.

- **PUNJAB INITIATIVE**

The Government of Punjab is the first State in the country which has enacted the Punjab Travel

Professionals Regulation Act, 2012 to provide for the regulation of the profession of travel agents with a view to check and curb their illegal and fraudulent activities, and malpractices involved in the organized human smuggling in the State of Punjab. This law has nine noteworthy features not covered by any existing Indian law.

- ✓ **It defines human smuggling and travel agent and includes coaching institutes of IELTS, ticketing agents and general sales agents of airlines.**
- ✓ **Provides for a licensing regime for travel agents. Debars persons from operating without a license under the Act.**
- ✓ **Complaint receive by Deputy Commissioner to be verified first. Gives power of search, seizure and arrest to Magistrates and Police Officials.**
- ✓ **Prescribes power of investigation by DSP to be completed within two months and to be verified by S.P. SSP to be Nodal Officer for all investigations under the Act.**
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- ✓ **Provides for liability of Director, Manager, Secretary of Companies responsible for conduct of business when negligence can be attributed.**

- ✓ **Cheating shall have the same meaning as under the Indian Penal Code.**

Travel agent is defined as a person in a profession that involves arranging, managing or conducting affairs related to sending people abroad. It includes consultancy for permit emigration, obtaining education, work, travel for tourism, cultural entertainment or musical shows, medical treatment, spreading or preaching religion, participating in sport tournaments, issuing advertisements for travel, holding seminars and lectures to promote emigration, arranging matrimonial alliances for purposes of emigration, and arranging overseas travel for any purpose whatsoever. Dishonest misrepresentation with intention to have wrongful gain for inducing, deception, cheating or allurements for above activities is punishable under the Act. If any travel agent wants to advertise or hold seminars, he will have to notify the competent authority in writing giving complete details of advertisement of seminars.

- **JUSTIFICATION FOR NEW RULES**

The licensing regime of travel agents is a positive step of the Government of Punjab in registering travel agents who otherwise have no law to check and control them. All such consultants, travel agents and other such persons or institutions carrying on business of sending persons abroad evade the definition of **recruitment** and **recruitment agent** under the EA and hence do not take any registration or permit under the EA. Hence all such travel agents and consultants cannot be registered with the Protector General of

Emigrants under the EA. Therefore, the Punjab Travel Professionals Regulation Act, 2012 is a positive, healthy, productive and citizen oriented legislation meant for protecting the rights of the susceptible citizens of Punjab whose rights and valuable assets are protected by this well meaning law. A dire need has been fulfilled to create a separate machinery and mechanism for registering the travel agents and consultants under the Punjab Travel Professionals Regulation Act, 2012. There is no duplication or overlapping of powers with the EA and no conflict arises between the two laws which can have separate mechanisms for implementation. However, the Punjab law, a welcome move, will have jurisdictional constraints. The Parliament in its wisdom could consider enacting a Central law whose umbrella will protect and shield the entire nation from the unscrupulous activities of human smugglers. Trading in human lives for commercial gains must be obliterated.

PUNJAB STATE COMMISSION FOR NRIs ACT 2011

SALIENT FEATURES

✓ The Punjab State Commission for NRIs constituted by the Government of Punjab is the first and the only NRI Commission in the Country till date which is fully functional for the past three years and is receiving complaints in person, by post and by email as well at nricommpb@gmail.com

✓ The enacted law labelled 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 Commission has its office premises in the Punjab Mini Secretariat on the Ground Floor, Room No.6 in Sector 9, Chandigarh and is working very successfully. It receives large number of complaints in its office which are taken up by the NRI Commission which holds daily sittings. Enquiries or investigations are got conducted by NRI Commission through its directions to Government agencies and follow up reports are obtained to ensure compliance. This is a very effective means of redressal of complaints and the opportunity to parties to appear in person or through counsel has resulted in settlement of grievances of large number of NRIs and other persons.

✓ The NRI Commission has been able to resolve a large number of matrimonial, property, immigration and other related NRIs disputes in a short span of time with their regular sittings and meetings.

Punjab State Commission for NRIs can be reached at :

Punjab Civil Secretariat-2, Block ‘A’, Room No.6, Sector 9, Chandigarh. Email: nricommpb@gmail.com Tel: 0172-2741330

PUNJAB STATE COMMISSION FOR NRIs ACT 2011: AN OVER VIEW

The enacted law labelled 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 powers and the functions of the Punjab State Commission for NRIs are stipulated as follows:

“12. Powers and Functions of the Commission

- (1) The Commission shall, while investigating any matter under this Act, 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.**
- (2) The Commission shall function by holding “sittings” and “meetings” at any place within the State of Punjab.**
- (3) The Members of the Commission including the Chairperson shall function in accordance with Rules framed by State Government.**
- 14. Power of the Commission to utilize the services of certain officers and investigating agencies for conducting investigating**

The Commission may conduct enquiry or investigation into the matters falling within its authority :

- (a) either directly; or***
- (b) through an Investigating team constituted by the Commission; or***
- (c) through the Deputy Commissioner of the district concerned; or***
- (d) through the Government.”***

The Punjab State Commission for NRIs constituted by the Government of Punjab is the first NRI commission in the Country which is fully functional for the past two years and is receiving complaints in person, by post and by email as well. The Commission has its office premises in the **Punjab Mini Secretariat on the Ground Floor in Room no.6, Sector 9, Chandigarh** and is working very successfully. It receives large number of complaints in its office which are taken up by the NRI Commission which holds daily sittings. Enquiries or investigations are got conducted by NRI Commission through its directions to Government agencies and follow up reports are obtained to ensure compliance. This is a very effective means of redressal of complaints and the opportunity to parties to appear in person or through counsel has resulted in settlement of grievances of large number of NRIs and other persons. The NRI Commission has

been able to resolve a large number of matrimonial, property, immigration and other related NRIs disputes in a short span of time with their regular sittings and meetings. Upto October 31, 2014, the Punjab State Commission for NRIs received 901 cases, out of which 572 were disposed off and 329 remain pending. The disposal of cases shows the high success rate.

Punjab State Commission for NRIs can be reached at :

Punjab Civil Secretariat-2, Block 'A', Room No.6, Sector 9, Chandigarh. Email: nricommpb@gmail.com Tel: 0172-2741330

The Punjab Right to Service Act, 2011 and Punjab Right to Service Commission

The enactment of **Punjab Right to Service Act in October, 2011** by the Government of Punjab is a significant step in the direction of providing an efficient and effective administration to the general public for delivery of service in a time bound manner. The Government has also constituted the **Punjab Right to Service Commission** to oversee the effective implementation of this legislation. The objectives of the Act are sought to be achieved by the Government by performing the following duties:-

1. Notify services that are to be covered under the Act;
2. Provide timelines for each service covered by the notification;
3. Designate officers who are responsible for delivery of each service in the given timeline;
4. Provide for two levels of appeal to the citizen in case the service is not provided in the given time, or is deficient in any manner;
5. Empower the Commission and second appellate authority to impose penalty on the defaulting officer if the service has been refused or delayed without sufficient reason;

6. Provide for compensation to the aggrieved citizen out of the amount recovered as penalty; and
7. Constitute a Commission to oversee and supervise the implementation of the Act and to act as the highest forum of revision or appeal under the Act.

As of now **149 services** are notified under this Act. Originally only 67 services were notified under Section 3 of the Right to Service Act, 2011. Till November 2014, **3,39,65,179 applicants** of State of Punjab have availed the services notified by the State Government. The other activities of the Commission are as under:-

1. The Commission is monitoring the delivery of services from the MIS reports received from all the districts of the State and with its intervention 8168 cases pending beyond time line have been disposed off.

2. The Commission took suo moto action in 312 cases under section 17(1) (b) of Punjab Right to Service Act, 2011.

3. The first Appellate Authorities and Second Appellate Authorities have disposed off 1060 and 101 Appeals respectively.

4. 22 Revisions filed by the aggrieved persons against the orders of Second Appellate Authorities have been disposed off by the Commission.

5. 60 officers/officials in 32 cases have been penalized for causing undue delay in providing the services within the notified time lines and also 2 applicants have been awarded compensation out of the amount of the penalty so imposed.

6. With the intervention of the Commission, the State Government has cleared a case involving 225 allottees of Shaheed Bhagat Singh Nagar scheme of Improvement Trust, Ludhiana by waiving of non-construction charges.

7. The Commission has made recommendations to State Government to notify 8 more services and suggested certain amendments for making the procedure simple and user friendly for obtaining services from time to time.

8. The Commission has got developed an RTSIS Service Delivery Software through NIC to closely monitor the delivery of services which has already been launched in District SAS Nagar on trial basis. When this software becomes operational the Commission will be able to monitor online status of service delivery and pendency in a particular service along with details of the designated officer, as well as the department concerned.

The Commission headed by Sh. S.C Agrawal is assisted by a team of four Commissioners and one Secretary. They stand committed to make the service delivery system more effective and the process for implementing the same more simpler and user friendly.

The full time Commission functions at the following address:

**OFFICE OF PUNJAB RIGHT TO SERVICE
COMMISSION:**

Office Address	<i>Mahatma Gandhi State Institute of Public Administration, VIP Suites, Institutional Area, Sector 26, Chandigarh – 160 019</i>
Telephone	<i>0172-2790181</i>
Fax	<i>0172-2792182</i>
E-mail	<i><u>rtspunjab@punjab.gov.in</u></i>
	<i><u>rtspunjab@gmail.com</u></i>

THE WORKING OF THE STATE INFORMATION COMMISSION, PUNJAB

UNDER THE RIGHT TO INFORMATION ACT, 2005

INTRODUCTION AND BACKGROUND

In 2005, The Government of Punjab was amongst the first States to set up the State Information Commission, Punjab (SICP) which reportedly has the highest disposal rate of complaint appeals in the country. Punjab State thus leads the nation in deciding matters of Right to Information under the RTI Act. The Right to Information Act, 2005 (RTI ACT, 2005) was enacted to provide for setting up a practical regime of Right to secure access to information under the control of public authorities to promote transparency and accountability. Section 15 of this Act requires every State Government to Constitute a State Information Commission and the State of Punjab set up its Commission in 2005 itself. The RTI Act, 2005 lays down the procedure for access to information from Public Authorities and provides for an enforcement mechanism, in case of any alleged denial of the right. Each public authority is legally bound to appoint Public Information Officer/s [PIO], which are the single point of contact for any individual Desirous of obtaining information from the concerned State department /Government organization. The concerned citizen has

to submit a request to The PIO of the concerned department, specifying the information he wants and each application must be accompanied by a fee of Rs.10/- only. The PIO is legally bound to respond to a request for information within 30 days, either allowing access to the requested documents or in case information is to be denied on any of the grounds listed in Section 8 of the Act, convey this in writing with supporting reasons. The aggrieved citizen has a right to file First Appeal to the Departmental Appellate Authority and thereafter a Second Appeal to the State Information Commission concerned. In this regard, The Central Government and State Governments have constituted Information Commissions to hear Seconds Appeals/ Complaints against their respective Public Information Officers of public authorities in their respective territorial jurisdictions.

STATE INFORMATION COMMISSION PUNJAB (SICP)

The Punjab Government had in 2005 set up Punjab State Information Commission to hear cases against the decisions of the PIO's / First Appellate Authorities if the State government departments / Public Authorities. The details may be seen at the website of the Commission www.infocommpunjab.com and its office address is as follows:

**STATE INFORMATION COMMISSION, PUNJAB
(SICP)
SCO No. 84-85, Sector 17-C, CHANDIGARH**

The State Information Commission Punjab consists of Chief Information Commissioner and 10 State Information Commissioners. Now it is headed by **Dr. S.S. Channy, IAS, (Retd.)** since 17.09.2014. At present eight other State Information Commissioners are holding the Office. Punjab State Information Commission is to ensure citizens in the State of Punjab their Right to Information from public authorities thereby fulfilling the mandate assigned in the Right to Information Act, 2005. Punjab State Information Commission exercises powers for implementation under Sections 18,19,20 and 25 of the RTI Act. Important cases are heard by Full Bench and Division Benches of the Commission. At the same time State Information Commission Punjab is itself a Public authority as defined in section 2(h) of RTI ACT 2005.

The State Information Commission Punjab has also started organizing meetings at District Level to study the impediments in the way of implementation of RTI Act and to evaluate the disposal of requests for information. The level of Public Information Officers and Assistant Public Information Officers at the level of every Public Authority is also being changed so that such officers may work more effectively to dispose of the request for information. Punjab State Information

Commissions website has also been updated and for the benefits of NRIs it has been linked with the NRI Affairs Department's website and other websites of the State Government so as to establish links with our website to NRIs website. In case they have any suggestion or complaint they can lodge it at **scic@punjabmail.gov.in** and /or they can establish contact on the following Phone numbers:-

0172-4630054 (Reception),
0172-4630058 (Deputy Registrar),
0172-4630050 (Chief Information Commissioner)
0172-4630052 (Fax).

The Commission assures flawless service to the citizens of the country.

The Commission is at present functioning in two different buildings in Sector 17. The new independent building in Sector 16 having four court rooms and sufficient space is likely to be ready in near future where all the Benches will conduct the hearings at one place. This will facilitate the Complainants and respondents. The shifting will be done very shortly as soon as the building is ready for occupation.

Since its inception in 2005, the State Information Commission, Punjab has started hearing Second Appeals/complaints from 2005 to 2013. Starting from 20 appeals in 2005, this Commission has

received 42767 appeals/complaints and disposed of a record of 40768 upto November 2014 which is highest in the country.

Undoubtedly, The SICP in the State of Punjab is the leader in the matters of disposal of appeals/complaints made to it which ensure expeditious decisions on people's Right to Information. SICP has the unique distinction of rendering exemplary services in State of Punjab in deciding and disposing of record number of appeal/complaint petitions ensuring citizens their Right of Information.

II. HISTORIC STEPS FOR NON-RESIDENT PERSONS IN STATE OF PUNJAB

A. NRI's PROPERTY RELATED PROBLEMS

I. Summary Eviction of tenants from urban properties of NRIs

- 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 ejection 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 NRI's 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 grandparents 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.

II. NRIS CAN NOW GET THEIR MULTIPLE PROPERTIES VACATED FROM TENANTS UNDER THE PUNJAB RENT ACT, 1995 (AS AMENDED BY THE PUNJAB RENT (AMENDMENT) ACT, 2013 ON APRIL 10, 2013.

- The Punjab Rent Act, 1995, (PRA) which received the assent of the President of India on March 26, 1998 and which was notified upon publication in the Punjab Government Gazette on December 10, 2012, extends to all urban areas of Punjab. It is an Act to provide for the regulation of rents, repairs and maintenance as also for eviction relating to premises in all urban areas of Punjab. The EPURRA has been repealed by Section 75 of the PRA but pending proceedings under EPURRA are saved.
- Section 24 of the PRA as amended by the **Punjab Rent (Amendment) Act 2013**, allows an **NRI** landlord to apply to the Rent Authority for recovery of immediate possession of his residential or/and non-residential premises.
- Section 24 (3) of the **Punjab Rent (Amendment) Act 2013**, is as under:

Right to recover immediate possession of premises to accrue to **NRIs**

“24 (3) Where an owner is a non-resident Indian and returns to India for permanent residence, he or she may apply to the Rent Authority for recovery of immediate possession of residential or/and non-residential premises let out by him or her on or prior to the commencement of this Act,

which are required by him for his or her own use, or for the use of any one ordinarily living with and dependent on him or her.”

Explanation: “non-resident Indian” means a person of Indian origin, who is either permanently or temporarily settled outside India, in either case –

- (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, in such circumstances, as would indicate his intention to stay outside India for an uncertain period.”***

- Previously, under the original provision of **Section 24 (2) PRA**, the right to seek recovery of immediate possession was available, ***“in respect of anyone residential and one non-residential premises each chosen by him.”*** However, under the amended provisions of **Section 24 (3) of the Punjab Rent (Amendment) Act 2013**, this restriction does not exist allowing NRIs to get their multiple residential/non-residential properties vacated from tenants.

III. INDIA, NRIs and Wills

- 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 (HSA) contains the codified law relating to intestate succession among Hindus. The Indian Succession Act, 1925 (ISA) consolidates the law applicable both to intestate and testamentary succession applicable to persons other than Hindus. 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 HSA 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 HSA :-
- Firstly, for a Hindu domiciled outside India, succession to his immovable property in India is governed by HSA 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. Movable outside India will be governed by HSA 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 HSA 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 HSA. 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 HSA 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 Punjabi must take advantage of this well codified position of Indian succession law to act well in advance in matter of succession of property in their homeland at Punjab.

IV. PUNJAB AMENDS ACTS: UNDER THE NEW PUNJAB SECURITY OF LAND TENURES (AMENDMENT) ACT, 2013, & THE PEPSU TENANCY AND AGRICULTURAL LANDS (AMENDMENT) ACT, 2013, NOW NRI'S CAN GET THEIR ANCESTRAL AGRICULTURAL PROPERTY AND PROPERTY PURCHASED BY NRIs WITHIN FIVE YEARS VACATED FROM TENANTS.

- On **October 29, 2013**, **Punjab Vidhan Sabha** unanimously passed the ***Punjab Security of Land Tenures (Amendment) Bill, 2013 and The Pepsu Tenancy and Agricultural Lands (Amendment) Bill, 2013***, with which the Non-Resident Indians (***NRIs***) have got the right to get their property vacated from tenants and caretakers in Punjab. Earlier, the Punjab Government had in 2008 enacted a law empowering the ***NRIs*** and Armed Forces personnel to get their single property vacated from tenants.
- Earlier also the Punjab government had given ***NRIs*** the liberty to get vacated a single property and now with these amendments, the ***NRIs*** can get their ancestral property and property owned by them for at least 5 years vacated from tenants. The Punjab Government had amended the ***Punjab Security of Land Tenures Act 1953***, and the ***PEPSU Tenancy and Agricultural Land Act***

1955, to give a sense of security to land owners, who were hesitant to lease out their land for a long period.

- Under the new amendments, agricultural properties which have been given by NRIs on lease or rent, will now be able to get it back without providing alternate arrangements for stay and other stringent conditions. A single ownership proof and summary proceedings for eviction before the SDM would provide an expeditious remedy to NRIs. The tenants would not enjoy immunity from eviction under the ***Punjab Security of Land Tenures Act 1953, and the PEPSU Tenancy and Agricultural Land Act 1955.***
- Section 9 B of the ***Punjab Security of Land Tenures (Amendment) Act, 2013*** now reads in the following terms:

“9-B : One Time Concession – The concession given under Sections 9 and 9-A to the land owner, who is a Non-Resident Indian, shall be available only in respect of his ancestral property and the property, which has been purchased by him atleast five years before from the date he files the ejectment application.”

- **Section 7-B of The Pepsu Tenancy and Agricultural Lands (Amendment) Act, 2013** now reads in the following terms:

“7-B : One Time Concession – The concession given under Sections 7 and 7-A to the land owner, who is a Non-Resident Indian, shall be available only in respect of his ancestral property and the property, which has been purchased by him atleast five years before from the date he files the ejectment application.”

V. PUNJAB MAKES 10% RESERVATION FOR NRIs IN ALLOCATION OF RESIDENTIAL AND INDUSTRIAL PLOTS

- With a view to accelerate the pace of growth of industry in the State of Punjab and to provide quick availability of land to **NRI** entrepreneurs in various industrial focal points as well as allotment of semi developed lands under “**Off-the-Shelf**” Scheme in Focal Points, Growth Centres, Industrial Areas, Industrial Estates etc., by any agency of the Government, 10 percent plots shall be reserved for allotment under the General Scheme to Non-Resident Indians and Export Oriented Units.
- **Punjab Urban Planning and Development Authority (PUDA)** has by a policy decision issued a mandate that in all future schemes to be floated

for General Public by PUDA and all other authorities in the State of Punjab, ten percent of the plots/houses to be allotted through draw of lots be reserved for those ***NRIs*** whose origin is from the State of Punjab and who are presently citizen of any other country subject to payment in foreign exchange and proof of foreign citizenship.

B. HINDU MARRIAGES (PUNJAB) REGISTRATION (FIRST AMENDMENT) RULES, 2013 GIVING POWER OF REGISTRATION OF MARRIAGES TO DCs, DISTRICT REVENUE OFFICERS, TEHSILDARS AND NAIB TEHSILDARS.

Rule 4 of *The Hindu Marriages (Punjab) Registration Rules, 1960* has been substituted by *an amendment notified on January 4, 2013*, whereby *The District Revenue Officer, Tehsildar and in his absence the Naib Tehsildar* will be The Registrar for the area of their respective jurisdiction for registering marriages.

C. NRI COURT TO BE SET UP AT JALANDHAR

D. SIMPLIFIED PROCESS FOR STAMPING/EMBOSSING OF POWER OF ATTORNEYS AT DIVISIONAL HEADQUARTERS & DISTRICT LEVELS

- By Notification dated *January 10, 2013* amending the *Indian Stamp Rules, 1925*, the Government of Punjab has notified the following as authorised persons for stamping/embossing power of

attorneys by delegating the same at Divisional Headquarters and District levels in the State of Punjab for easy facilitation of **NRIs**:

- in Chandigarh, the Superintendent or an Assistant Incharge of the Stamping work in the office of the **Financial Commissioner Revenue Punjab**;
- At Divisional Headquarters, the Superintendent or an official Incharge of the Stamping work in the office of **the Divisional Commissioner concerned**; and
- At District level, the Superintendent or an official Incharge of the Stamping work in the office of the **Deputy Commissioner concerned**;

E. PUNJAB GOVERNMENT PUTS CHECK ON REGISTRATION OF UNWANTED FIRS AGAINST NRIs BY MAKING IT MANDATORY FOR SHOs TO FIRST GET APPROVAL FROM THE CONCERNED DSP.

By an Office Order of the Department of Home Affairs and Justice, dated **April 29, 2013**, the Government of Punjab has circulated a decision that in matters of registration of criminal cases against non-resident Indians in the State of Punjab, prior approval of concerned **DSP or officer of higher rank** will be necessary. This is to ensure that a thorough and proper enquiry or investigation has been done before any

matter is converted into an **FIR against a non-resident Indian** in the State of Punjab.

F. NRIs CAN NOW AVAIL SECURITY FROM PESCO FOR THEMSELVES AND FOR THEIR PROPERTIES IN PUNJAB

Meeting the long pending demands of NRIs for their personal security while on visit to Punjab and their properties, **Punjab Government Undertaking i.e. PESCO** would supply professionally trained ex-servicemen guards with or without weapons and also provide security to **NRI** properties in Punjab. **Punjab Ex-Servicemen Corporation (PESCO)** can be contacted at the following details and address:

SCO No.89-90, Sector 34-A, Chandigarh – 160 022

Phones: 0172-4615702, 2621059

Fax: 0172-2660629, 2607900, 2624535

Email: pesco34chd@yahoo.com

Website : www.punjabexservicemen.org

G. NRI's CAN NOW EASILY GET MOBILE SIM CARD WHILE ON VISIT TO INDIA

Punjab Chief Minister Sardar Parkash Singh Badal sought intervention of Union Telecom Minister Mr. Kapil Sibal to put in place a mechanism to issue local SIM cards to NRIs on the basis of their passports. As

communicated to **Hon'ble Chief Minister on September 3, 2013**, Government of India has now allowed issue of SIM cards to NRIs with foreign passports as per following mode of proof to be furnished:

"In case of foreign tourists visiting India, the copy of Passport with valid Visa stamp shall be treated as proof of identity. For proof of address, the address of local reference which may also be the tour operator shall be taken. In case, there is no local reference, the address of stay (hotel etc.) shall be taken"

H. NRP PRIVILEGE CARDS ISSUED TO NRIs IN PUNJAB

255 Non-Resident Privilege (NRP) Cards alongwith discount booklets have been issued to **NRIs** in Punjab to enable them to avail discounts in commercial establishments, institutions and other designated places in State of Punjab. This **facility is available online at www.nripunjab.gov.in**

I. NRI JOURNALISTS GIVEN ACCREDIATION FROM GOVERNMENT OF PUNJAB

In order to enable members of **NRI media from overseas newspapers and Punjabi channels** belonging to Punjab to reconnect with their homeland

and to equate them with their fellow journalists, Government of Punjab has decided to give them official accreditation. **40 overseas media** organisations have been accredited accordingly.

J. SKILL DEVELOPMENT RELATED SCHEME FOR REHABILITATION OF WIDOWS LAUNCHED

In collaboration with **Lord Raj Loomba running Loomba Foundation**, the **Government of Punjab** signed an MOU for **50: 50 contribution** of **Rs.2 Crores** for providing livelihood and rehabilitating widows by supplying them sewing machines. This scheme stands finalised. **Loomba Foundation** had deposited **Rs.50 lacs** and the share of the Government of Punjab of **Rs.50 lacs** stands issued to **D.C, Ludhiana** for implementation of the Scheme resulting in its beneficial utility and use.

III. NRI WING OF PUNJAB POLICE:

First State in the country to offer this dedicated service of Police Wing in the State of Punjab for NRIs exclusively.

Log on to www.nripunjabpolice.com or connect to

24x7 Punjab Police Helpline, Dial 91-172-2298543 (for NRIs)

Email: nri.pbpolice@gmail.com or Call 0172-2260042/43

Address : Punjab Police NRI Wing, Phase VII, S.A.S Nagar (Mohali)

- ♣ *NRI Wing of Punjab Police* has been constituted with a separate Charter, powers, dedicated manpower and resources. The office of the new NRI Wing at Phase VII, Mohali is in a new and modern building with all latest technological facilities and was inaugurated by *Sardar Sukhbir Singh Badal, Deputy C.M Punjab* on August 22, 2013. Punjab is the first State in the country to offer such a facility exclusively for NRIs.
- ♣ All NRI matters requiring police investigation are handled by the NRI Wing through NRI Police Stations.
- ♣ The NRI Wing is headed by an IGP rank Officer assisted by five AIG and eight DSP rank Officers

dedicated to the NRI Wing assisted by an independent NRI Police force of 450 police personnel of various ranks.

- ♣ There are a total of 15 NRI Police Stations in Punjab. NRI Police Stations have jurisdiction over entire Punjab State.**
- ♣ IGP NRI is empowered to transfer any investigation or enquiry to NRI Wing directly on the request of the NRI.**
- ♣ NRI Wing Police Officers Dealing with NRI Affairs:**

The Wing is headed by IGP NRI & Women Wing under the direct supervision of DGP, Punjab and is being assisted by a team of 5-AIGs, 6-DSPs, & 15 SHO NRI and about 450 Police personnel of various ranks. And the contact No. of officers/SHO posted in NRI & Women Wing is as under:-

Name of officer's & Rank	Contact No. and Email ID
Gurpreet Kaur Deo, IPS IGP, NRI, SAS Nagar	0172-2260040 nri.pbpolice@gmail.com
Sh. Kanwalpal Singh, PPS AIG, Admn, SAS Nagar	99150-12700 readeraignri@gmail.com
Sh. Charanjit Kumar, PPS AIG-I Jalandhar	97794-64002 nriaig.jal@gmail.com
Sh. Tulsi Ram, PPS AIG-II Jalandhar	98760-20204 cmdt80@gmail.com

Sh. Dhruvan Nimbale, IPS AIG Amritsar	97811-30105 adcprtraffcamritsar@gmail.com
Sh. Jaspreet Singh, PPS AIG Patiala	98151-81838 36papbgh@gmail.com
Sh. Jagdeep Singh, PPS DSP/Inv.SAS Nagar	98153-84567 nri.pbpolice@gmail.com
Smt. Deepinder Kaur, PPS DSP/Hqr. SAS Nagar	98765-16861 nri.pbpolice@gmail.com
Vacant DSP/Amritsar	dspnriamritsarbpolice@gmail.com
Sh Devinder Singh, PPS DSP/Bathinda	85588-90407 nriwingbti@gmail.com
Sh. Harinder Singh, PPS DSP/Jalandhar	99888-99600 dspnrrijalandharzone@gmail.com
Sh. Rattan Singh, PPS DSP/Ludhiana	98724-00300 dspnrildh2@gmail.com
Sh. Kanwalpal Singh, PPS DSP/Moga	98789-00239 dspnrimoga@gmail.com
Sh. Devinder Singh, PPS DSP/Patiala	85588-90407 dspnriptl@gmail.com
Insp. Kamaljit Singh SHO, PS, NRI ASR	99152-37231 psnriamritsar@gmail.com
Insp. Sanjeev Kumar SHO, PS, NRI, BTI	98784-21444 psnribti@gmail.com
Insp. Rajbir Singh SHO, PS, NRI, FZR	78372-10023 psnrifzr@gmail.com
Insp. Amrit Sarup SHO, PS, NRI GSP	98765-00257 psnrigsp@gmail.com
Insp. Satnam Singh SHO, PS, NRI HPR	99153-35500 psnrhoshiarpur@gmail.com
Insp. Dalbir Singh	98159-55823

SHO, PS, NRI JALL	ps.nri.jal.punjab@gmail.com
Insp. Rupinderjit Singh SHO, PS, NRI JALL ®	99149-21800 psnrijalr@gmail.com
Insp. Mohan Singh SHO, PS, NRI KPT	98786-71074 psnrikpt@gmail.com
S.I Gurpreet Singh SHO, PS, NRI LDH	99881-50000 psnrldh@gmail.com
Insp. Rashpal Singh SHO, PS, NRI LDH ®	82830-01243 psnrijagraon@yahoo.com
S.I Naveen Kumar SHO, PS, NRI MOGA	98552-55044 psnrimoga1919@yahoo.com
S.I Kulwant Singh SHO, PS, NRI, PTL	98555-76111 psnriptl@gmail.com
Insp. Sanjeevan Guru SHO, PS, NRI SAS N	98142-81532 psnrimohali@gmail.com
Insp. Sahbaz Singh SHO, PS, NRI S.B.S. N	97793-55002 psnrinsr@gmail.com
Insp. Gurpreet Singh SHO PS, NRI SANGRUR	98157-00462 psnrisgr@gmail.com

- ♣ The NRI Wing is the nodal authority at the State Level for monitoring inquires/investigations involving NRIs and Women. The Wing is receiving complaints on website www.nripunjabpolice.com and email nri.pbpolice@gmail.com to enable NRIs to communicate with the Wing from abroad. NRIs are also able to contact senior officers of the NRI Wing at Telephone Nos. 0172-2260042, 2260043. The NRI and Women Wing have also been integrated with the 181 Punjab Police Helpline launched by Punjab Police on 22.08.2013. NRIs can contact 181

Helpline from abroad on 0091-172-2298543. Nodal officers of the rank of Inspector and above are attending to the complaints of the NRIs at the NRI Wing Headquarters and liaison with District/Units for redressing NRIs regarding the status of their cases through a dedicated case ID number.

- ♣ The NRI & Women Wing is also compiling data pertaining to complaints of abandoned brides deserted by NRIs.
- ♣ During the last three years, detail of complaints received from NRIs in the NRI Wing is given below:-

Year	2012	2013	2014
(upto 15 Dec. 2014)			
Total Complaints Received	1196	3852	7992

- ♣ The details of cases registered in NRI Police Stations in State with effect from 2011 is as follows:-

Year	2011	2012	2013	2014
(upto 15 Dec. 2014)				
Cases Registered	40	84	163	173

- ♣ 62 NRI related cases have also been registered in other non NRI Police Station. In 38 cases, transfer of investigation from non NRI Police Stations to NRI Police Stations have been made on orders of IGP

NRI & Women Wing. where NRI alleges inaction or injustice.

- ♣ All the complaints of year 2012 and 2013 have been disposed off. The average time taken for the disposal of complaints has been significantly reduced from 45 days to 14 days. In the year 2014 (up to 15 Dec.) out of 7992 complaints received in NRI Wing, 6842 cases have been disposed off which is a disposal rate of 85.61% while efforts are being made for disposal of balance 1150 complaints in time bound manner.
- ♣ A number of N.R.I's have in writing expressed their gratitude to the NRI Wing for solving their long pending issues. In 2013, in 274 (163+111 = 274 NRI Police Stations & Distt. Police Stations) cases, criminal cases were registered while 779 cases matter was stated to be of a civil nature in which police intervention is not made out.
- ♣ The breakup of complaints received in NRI Wing during the year 2014 is as follows:-
Canada-1123, UK-763, USA-744, Australia-282 and Italy-219.

There is 109% increase in no of complaints received in NRI Wing in 2014 as compared to 2013. 235 criminal cases were registered and LOC have been issued against the accused so that they can be arrested 75 Proclaimed Offenders have been arrested in different cases and 101 accused have been declared as Proclaimed Offenders in the year

2014. The pictures of the NRI Proclaimed Offenders are being uploaded on the NRI website.

- ♣ 2455 Complaints were received in the NRI Wing related to property disputes in which 64 cases have registered and during investigation victim party got benefits to the tune of Rs. 100 Crore. In 422 cases, the parties mutually compromised.
- ♣ 73 cases have been registered on the complaints relating to matrimonial disputes. Out of these, 41 cases are where NRI bride-grooms abandoned the girl after marriage. 15 cases were registered against those who married NRI girl for the purpose of obtaining permanent residence only and abandoned the girl after obtaining the permanent residence in foreign century. Through counseling using 'Alternative Dispute Redressal Mechanism' compromise was reached between the parties in 89 cases whereby complaints in such cases were given alimony amounting to a cumulative Rs. 11.50 crore by the in laws.

IV LEGAL AWARENESS OF INDIAN LAWS REGARDING MARRIAGE, DIVORCE, MAINTENANCE & CUSTODY OF CHILDREN

At present there is no uniform marriage law or uniform Civil Code existing in India. The registration of marriages in India is optional, but, the Supreme Court of India has directed Central and State Governments to enact legislation making it compulsory to register all marriages. India has a plural system of laws. However, the Constitution of India, the Indian Penal Code, the Civil Procedure Code, the Criminal Procedure Code are important Central Legislations applicable uniformly throughout the territory of India.

I. Rights of NRI Spouses

General Rights available to all citizens including NRI Spouses

- Right to equality and equal protection of the laws (Article 14 of the Constitution of India)
- Right to Life (under Article 21 of the Constitution of India)
- Right to have one's own nationality or citizenship
- Right to have an independent domicile.
- Right to own or possess property independently or jointly.
- Right to travel subject to visa and other restrictions for foreign nationals.
- Right to enforce proper foreign decrees as per the Civil Procedure Code.

Women's Specific Rights under Indian Laws

- Rights against physical or sexual or economic exploitation
- Rights to seek compensation against matrimonial desertion.
- Rights of mother to keep children below 5 years of age.
- Rights to seek return of matrimonial presents and streedhan.
- Rights against demand and furnishing of or giving of dowry.
- Rights against matrimonial cruelty, bodily harassment, torture, etc.
- Rights against marital or domestic violence.

Matrimonial Rights of NRI Spouses

Grounds for Divorce

When One spouse

- Enters into sexual relationship or adultery with another person
- Deserts for more than two years
- Inflicts physical or mental cruelty on the wife
- Coverts to another religion
- Has leprosy which cannot be treated
- Has become incurably of unsound mind
- Has venereal disease in a communicable form
- Has not been heard of as being alive for a period of seven years
- Has renounced the world and become a saint

- Husband has been convicted for committing rape and bestiality.
- Repudiation of child marriage by wife before attaining the age of 18 years.

Divorce by Mutual Consent

- No grounds are required if divorce is sought jointly by mutual consent.
- The husband and wife should be living separately for the preceding one year before giving a joint petition for divorce by mutual consent.
- Both spouses agree that they have not been able to live together.
- The Court will issue a notice for renewal of the petition after six months but not later than eighteen months from the date of the presentation of the petition.
- If the petition is not withdrawn, the Court will pass a decree of divorce on the renewal of the petition on the second date after the waiting period of 6 to 18 months.

Judicial Separation

- Either spouse can also petition to the court for judicial separation on the same grounds which entitles him or her to divorce.
- Divorce puts an end to the marriage, while judicial separation does not
- The husband and wife are merely staying apart; and if ever they want to come together, they can resume cohabitation as husband and wife

- However, if there is no resumption of cohabitation after one year or more of judicial separation, either party can seek a decree of divorce from the Court.

Right to seek restitution of conjugal rights

- If either spouse without reasonable excuse withdraws from the society of the other, without any valid reason and does not fulfil his or her, marital obligations, the aggrieved spouse can be ordered by the court to resume marital cohabitation.
- However, if there is no restitution of conjugal rights for a period of one year or more after passing of a court decree for resumption of cohabitation, either party can petition the court for dissolution of marriage by seeking divorce.

II. Legal Rights of Women

Every women has the right to live her married life with dignity and freedom, care and support from her spouse, without abuse or violence (emotional, mental or physical), neglect, fear or humiliation of any kind.

Domestic Violence

The following acts on the part of the husband constitute domestic violence and are illegal in most countries and against which the local police of every country can be approached for protection and help:

- Physical abuse
- Mental and emotional abuse
- Verbal and social abuse
- Sexual abuse
- Economic abuse

Instances of Physical abuse

- Hair pulling, limb twisting, slapping violently, punishing, cutting, stabbing, confinement to a room
- Usage of weapons and firearms
- Repeatedly forcing abortions and miscarriages.

Instances of Mental/emotional abuse

- Blackmailing, coercion, threat, pressure
- Accusing the woman of loose morals
- Humiliating, both in public and private
- Breaking household goods, killing family pets
- Threatening to hit or harm children & close relatives.

Instances of sexual abuse

- Forcing intercourse or other sexual acts without consent
- Physically assaulting sexual parts
- Treating partner like a sexual object
- Demanding forms of unnatural sex
- Threatening violence or punishing for non-compliance with sexual demands

Instances of verbal/social abuse

- Abusing and derogatory name calling
- Maligning in front of peers and friends
- Insulting in front of others
- Abusing her parents, friends & family
- Enforcing isolation, physical confinement, restricting familial contacts, controlling movement: generally treating badly

Instances of economic abuse

- Controlling all family income and limiting access to finances
- Forcing not to take up employment
- Forcing financial dependency
- Not providing sufficient funds for household expenditure
- Accusing of misuse or misappropriation of finances

III. Maintenance Rights of Women / Custody of Children

Statutory provisions for seeking maintenance and other relief

- Section 24 of Hindu Marriage Act, 1955 provides as interim relief to either spouse in need, a monthly sum decided by the court to be paid during the pendency of a matrimonial petition besides litigation expenses of proceedings.
- Section 25 Hindu Marriage Act, 1955 provides for permanent alimony and maintenance to be paid to either spouse in need during his or her life time.
- Section 125 of Code of Criminal Procedure (Cr PC) makes it mandatory for a person to maintain his wife and children failing which penal provisions entail.
- There is no bar in seeking maintenance under Section 125 Cr PC even if maintenance has been sought under Section 24 of the Hindu Marriage Act.
- Section 18 to 28 of the Hindu Adoptions and Maintenance Act, 1956 provide for maintenance to

a Hindu wife, widow, children and aged parents separately.

- Right of residence in shared household under Section 17 of the Protection of Women from Domestic Violence Act, 2005.
- Monetary reliefs under Section 20 of the Protection of Women from Domestic Violence Act, 2005.

Maintenance during the proceedings of the divorce case

- The women has the right to claim ad-interim maintenance even during the proceedings of the divorce case
- Maintenance is usually decided depending upon the income and status of the husband and he has to provide maintenance accordingly
- The women can also claim maintenance from the ancestral property of the husband through his right in such property
- If the husband does not obey the court's order, his property can be attached.

IV. Right to Custody of children

- Under Section 6 of the Hindu Minority and Guardianship Act, 1956 (HMGA) the natural Guardian of a minor shall be his father and after him the mother. The custody of a minor less than 5 years of age shall ordinarily be with the mother.
- Non Hindus can initiate proceeding under the Guardians and Wards Act, 1890 (GWA) for being appointed as guardians since HMGA is applicable only to Hindus Likewise, non-Hindus cannot adopt

under the Hindu Adoptions and Maintenance Act, 1956 but can be appointed as Guardians under the GWA.

- Under Article 32 or under Article 226 of the Constitution of India, any person can invoke the jurisdiction of the Supreme Court of India or of any High Court within India directly for the issuance of a writ of habeas corpus if it is alleged that a child / children of a parent have been removed illegally from the lawful custody of the other parent either in violation of a foreign court custody order or in violation of the parental rights of the aggrieved parent. However, India is not a signatory to the Hague Convention on Civil Aspects of International Child Abduction and there is no mechanical return of children to foreign countries on the basis of foreign court orders and matters are decided on merits in India.

Custody of Children During and after Divorce Proceedings

- Till 5 years of age children stay with the mother.
- The court hearing the divorce petition is competent to pass orders regarding the custody of children under Section 26 of the Hindu Marriage Act, 1955.
- The universal principle that the welfare of the child shall be the paramount consideration in the best interest of the child is uniformly accepted by all Courts.

V. Other Relevant laws in Matrimonial Matters

A) Dowry Prohibition Act

Definition of Dowry:

Section 2 of the Dowry Prohibition Act, 1961 defines dowry as any property or valuable security given or agreed to be given either directly or indirectly:-

- a. by one party to a marriage to the other party to the marriage or
- b. by the parent of either party to a marriage or by any other person to either party to the marriage or to any other person.

Such transaction should take place during or before or in connection with the marriage of the said party. Dowry does not include dower or *Mehr* in the people to whom Shariat Law applies.

Penalty

The punishment for the offence of dowry will be imprisonment for five years. However, the court, for adequate and special reasons to be recorded in the judgment, may reduce the sentence to a period of less than five years.

No contract for dowry

Any agreement for giving or taking of dowry is not enforceable.

Concept of Streedhan

- Any property or gift given to a Hindu woman before, at the time of marriage or later is her property
- May be gifted by anyone, even in-laws, friends

- She alone has the right to gift, will or dispose of her property as she desires
- No one else has a right on it
- Anyone who has a woman's streedhan in her/his custody should return it to the actual owner within a stipulated time period
- If the trustee disposes of her property without her willingness, the offender will be punished with imprisonment and fine
- If the woman dies without willing away her property, it goes to her sons/daughters and husband

List of Gifts

A list should be made of the gifts given during or just after marriage. There has to be two lists: one for the man/another for the woman. The man's list has to contain the gifts to him by either party. The woman's list has to contain the gifts given to her by either party. Spouses and witnesses should sign it. Both parties should retain a copy of the list.

B) Indian Penal Code

B i) Section 304 – B–IPC – Dowry deaths

A Woman's death is called "dowry death" when

- a woman dies of burn of bodily injury or in abnormal circumstances within 7 years of marriage and
- it is shown that just before her death she was being harassed by her husband or any of his relatives for dowry.

- In case of such a death, husband or the relative will be presumed to have caused the death of that woman
- **Punishment**
- the accused will be punished with life imprisonment or at least 7 years imprisonment
- it is also offence if anyone tries to destroy evidence
- postmortem has to be conducted in cases of death

B ii) Section 498 A of IPC – Cruelty.

Husband or relatives of a husband of a woman subjecting her to cruelty will be punished with imprisonment for a terms extending to three yeas and shall also be liable to fine.

‘Cruelty’ means any willful conduct driving the woman to commit suicide or to cause grave injury or danger to life, limb or health of the women;

Harassment of the woman with a view to coercing her or any other person to meet any unlawful demand.

B iii) Section 405 and 406 of IPC – Criminal Breach of Trust

In matters of entrustment and dominion of matrimonial property of a woman in respect of her streedhan or her belongings or gifts given in marriage, if the same are misappropriated or dishonestly disposed of in violation of a woman’s rights, it is punishable for criminal breach of trust with imprisonment upto three years or with fine or with both.

C) The Protection of Women from Domestic Violence Act, 2005

With effect from October 26, 2006, the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family are protected under the Domestic Violence Act, 2005.

According to Section 3 of the said Act, domestic violence includes an act, omission, commission or conduct if it:

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

The offence of domestic violence may also result in the accused being charged under Section 498 A of the Indian Penal Code or the Dowry Prohibition Act, 1961.

Section 12 of the Domestic Violence Act prescribes the procedure for obtaining relief of Right to reside in a shared household, protection orders, residence orders,

monetary reliefs, custody orders and compensation orders. There are also provisions in this Act to obtain interim and ex parte orders from the Magistrate in domestic violence matters.

VI. IMPORTANT FEATURES FOR NECESSARY COMPLIANCE

Before solemnizing a marriage with a NRI, Foreigner or Overseas Citizen and migrating abroad, the following essential features must be complied with.

a. VERIFICATION OF ANTECEDENTS AND DOCUMENTS

- Marital status: whether single, divorced, separated must be confirmed.
- Employment details: qualification and post, salary, address of office, employers and their credentials must be verified.
- Immigration status, type of visa, eligibility to take spouse to the other country
- Financial status (to be verified with the employer) must be done.
- Properties said to be owned, residential address should be confirmed.
- Family background should be checked.

b. CHECK THE FOLLOWING DOCUMENTS RELATING TO THE SPOUSE

- Visa, passport
- Voter or alien registration card
- Social security number

- Tax returns for the preceding 3 years
- Bank account papers
- Property papers

c. CONTACT THE FOLLOWING FOR CONFIRMATION OF INFORMATION

- Indian embassy in the foreign country through counselor section
- Employer of the person
- Local Indian associations and networks of Indian citizens
- Friends and relatives in that country

d. GOLDEN RULES FOR STRICT OBSERVANCE

It is extremely necessary to be as vigilant as possible in matrimonial proposals. Hence, the following guidelines must be adhered to strictly:

- Do not take any decision in haste and do not get pressurized to do so for any reason whatsoever even if time at hand is very short.
- Do not finalize matters over long distance, on phone or through e-mails.
- Do not blindly trust any bureau, agent, tout or a middleman.
- Do not ever agree to forge papers or enter into any fake transactions for any reason or on any pretext and do not make wrong statements for visas.
- Do not fall for any schemes to be able to migrate to another country, or promises for green card through marriage for immigration purposes.

- Do not finalize matters in secrecy. Circulating the proposal amongst the near and dear ones, friends and close relatives could help you in getting vital information which may not be able to available otherwise normally.
- Do not agree to having only a registered marriage or to getting the marriage solemnized in a far off place and insist on a ceremonial marriage as well.
- Do not agree to the marriage taking place in the foreign country.
- Do not file any false case against the spouse for harassment purposes.
- Do not use dowry laws and law on cruelty i.e. section 498A of IPC as a weapon to harass, intimidate or threaten the spouse or his family.

e. INSIST ON THE FOLLOWING:

- Registration of the marriage along with the ceremonial marriage both must be done. Registration certificate should be carried at all times.
- Doing all the paperwork for issue of visa and other required formalities at your end and must keep all the original papers with yourself.
- Affidavit from the spouse stating present marital status must be taken.
- Insist on an insurance cover before arriving in the new overseas residence.

- Insist on a health insurance cover before arriving in the new overseas residence in the foreign country.
- Maintain regular and meaningful communication between the two persons to be married and their families.
- Make sure that the two persons to be married meet personally and interact freely and frankly in a comfortable atmosphere to make up their minds as many times as they feel necessary.
- Rely on your gut feeling/your instincts and communicate amongst yourselves, if you sense anything is wrong or amiss. Always keep communication amongst yourselves easy and open. Do not be embarrassed to ask awkward questions.
- Particularly, do not part with your passport. Keep at least one photocopy of the passport of your spouse in the foreign country.
- Publicize the marriage and have a religious social marriage ceremony.
- Insist on registration of the marriage with complete details of the spouse.



PROFESSIONAL PROFILE OF ANIL MALHOTRA

PROFESSIONAL PROFILE OF ANIL MALHOTRA

*Anil Malhotra is a practising Advocate in India since September 1983 at the Punjab and Haryana High Court at Chandigarh. He appears as Counsel in the Supreme Court of India at New Delhi and before other Courts, Commissions, Boards and Tribunals. He holds Bachelor of Science and Bachelor of Laws (Professional) degrees from the Punjab University, Chandigarh, India. He attained an LLM degree from SOAS, University of London, London in November

1985. He studied comparative family law at the London School of Economics. He has taught civil procedural laws and matrimonial remedies for six years from 1986 to 1992 as a part-time lecturer at the Faculty of Laws, Panjab University, Chandigarh, India. Lectures at National Judicial Academy, Bhopal and Chandigarh Judicial Academy, Chandigarh.

For over 28 years he has had extensive exposure in handling civil, matrimonial, criminal and overseas litigation on behalf of non-resident Indians residing abroad. He represents a large number of overseas clients in Indian courts and regularly opines on matters of Indian law in cases arising in related matters in foreign jurisdictions. He has conducted a vast variety of matters in Indian Courts pertaining to interpretation and application of foreign Court Orders regarding divorce decrees, child abduction, custody, maintenance, adoption and property related issues of non resident Indians. He interacts extensively with a worldwide Indian population settled overseas in advising them regularly on all issues of civil, matrimonial and criminal law. He is a member of Lawasia, International Law Association, International Bar Association, Commonwealth Lawyers Association and Indian Society of International Law besides being Country Representative (Family Law) Lawasia. His law firm, Malhotra & Malhotra Associates are empanelled Lawyers for several key embassies and High Commissions at New Delhi for advisory, opinion and other legal work.

Has contributed significantly to issues of Inter-Country Adoptions, Inter-Parental Child Removal and Surrogacy by convening seminars, discussions and debates at the India International Centre, New Delhi and other law faculties in association with Law Commission of India and Mr Soli Sorabjee, Senior Advocate. Has to his credit a number of Amicus and Joint Expert appointments by Courts in India and abroad. On January 29, 2007 was elected as Fellow of The International Academy of Matrimonial Lawyers, London.

Has co-authored book titled “Acting for Non-resident Indian Clients” (London 2005) published by Jordan Publishing Limited, Bristol, UK. Have authored two booklets on “An Overview of Legal Issues” for the Punjab Government (2008) and (2013). Has authored book titled “India, NRIs and the Law” published by Universal Law Publishing Company Private Limited, New Delhi in 2009. Has co-authored book titled “Indians, NRIs and the Law” published by Universal Law Publishing Company Private Limited, New Delhi released in November 2011. Has co-authored book titled “Surrogacy in India – A Law in the making” published by Universal Law Publishing Company Private Limited, New Delhi released in May 2013. Has also authored book titled “International Indians and the Law” published by Universal Law Publishing Co. Pvt. Ltd., New Delhi (2014)

Has written regular newspaper articles on family law and NRIs issues with about 200 articles to his credit. In

May 2010, the Executive Council of the International Law Association, London has nominated him as a Member of the International Family Law Committee of the International Law Association.

He is the Indian family law Correspondent for the International Family Law journal published by Jordan Publishing Limited, Bristol. As an author he has to his credit substantial published work in international legal journals. He is the Indian representative for Reunite Child Abduction Agency.

He can be reached at anilmalhotra1960@gmail.com



PROFESSIONAL PROFILE: RANJIT MALHOTRA

Ranjit Malhotra, qualified as a lawyer in India in the year 1990 and was the first Indian lawyer to be awarded the prestigious Felix Scholarship to read for the LLM degree at the School of Oriental and African Studies, University of London. He attained his Degree with merit in 1993, specialising in immigration laws and South Asian family laws. He is an India-based lawyer handling substantial international work. He is a member of the International Bar Association and has been until recently the Regional Representative for India of the Migration and Nationality Law Committee of the IBA. He is presently the Newsletter Editor of the Family Law Section of the IBA and the former Co-Chair of the

Family Law and Family Law Rights Section of Lawasia. He is also a nominated life member of the Indian Society of International Law, Immigration Law Practitioners Association, London, American Immigration Lawyers Association, Washington, Reunite Child Abduction Agency in London, Indian Council of Arbitration at New Delhi, Lawasia at Australia, Fellow of the International Academy of Matrimonial Lawyers, Commonwealth Lawyers Association at London and International Law Association at London. He is also enrolled with The International Association of Youth and Family Judges and Magistrates.

In October 2007, he was nominated by the British High Commission, New Delhi, India to attend the Wilton Park Conference titled “WP 890 Migration Towards a Comprehensive Approach”, held in Spain from 8-10 October 2007. He had attended another Wilton Park conference as a special invitee on migration issues in the UK in December 2008.

He frequently travels abroad to present papers at international legal conferences. Mr. Ranjit Malhotra has travelled extensively in the UK, USA, Canada, Europe, South Africa, Australia and the Far East in connection with professional assignments as also to attend conferences. He was the only India speaker at the first AILA Global Immigration Summit held in New York in September 2002 and the second Summit in New York in October 2004. He also presented papers at the Global Immigration Conferences jointly organised by AILA, IBA and ILPA held in London in November 2007, November

2009 and September 2011. Previously, he has made presentations at AILA Annual conferences held in New Orleans in 2003, Salt Lake City in 2005 and Vancouver in 2008. He was awarded the AILA Berger memorial scholarship to make a presentation at the AILA Annual Conference held in San Diego, California in June 2011. Most recently, he presented a paper on Surrogacy in India at the 6th World Congress on Family Law and Children's Rights held at Sydney, Australia from 17-20 March 2013.

He has substantial published work in different major jurisdictions to his credit. He is one of the principal authors in the book titled "Acting for Non-resident Indian Clients," (2005) published by Jordan Publishing Limited at Bristol in U.K. The book carries a foreword by the late Lord Slynn of Hadley, Senior Judge of the erstwhile House of Lords in London, U.K. He is also the co author of book titled "Indians, NRIs and the Law" (2011) published by Universal Publishing Company Limited, New Delhi. He has participated in a large number of international conferences and presented papers published in various publications.

Mr. Ranjit Malhotra, specialising in areas of private international law is a managing partner in his firm Malhotra & Malhotra Associates. The firm has a broad-based practice with a reputation for offering a full range of quality personalised legal services. The firm handles legal work for several Fortune 500 companies. He also extensively advises foreign lawyers in the area of private international law, while acting on behalf of the

non-resident Indian community, besides rendering expert testimony in foreign litigation, involving Indian laws. He has also commissioned a large number of expert reports on the legal position of surrogacy in India, in applications for grant of parental orders instituted in the High Court of London.

Mr. Ranjit Malhotra has also been extensively handling inbound and outbound corporate immigration work for software companies, banks, consulting companies, multinationals etc. including lodging business and settlement applications at Embassies and Consulates throughout India. He has rich experience of consular representation.

His firm, Malhotra & Malhotra Associates, is on the panel of lawyers for seven major Embassies in New Delhi, including the Australian High Commission, British High Commission, Canadian High Commission and New Zealand High Commission, German Embassy, Austrian Embassy, Embassy of Spain at New Delhi, the office of the Canadian Consul General at Chandigarh and the office of the Consul General of the American Embassy at Mumbai.

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Exclusive website for NRIs launched. Visit the new NRI Website at www.nripunjab.gov.in

The screenshot shows the homepage of the NRI Affairs Department, Government of Punjab. At the top, there is a search bar and the NRI logo. Below the navigation menu, a large banner image depicts the Golden Temple at night. The main content area is titled "Know Your Punjab" and features a grid of 20 icons representing various aspects of Punjab, such as History, State Profile, Districts Profile, Achievements, Progressive Punjab, About Punjab, Departments, Challenges Profile, State Level Functions, Tourist Attractions, Festival Calendar, Fairs and Mela, Forts and Palaces, Art and Craft, Dance & Music, Museums, Regional Architecture, Anthropological Destinations, Important Contacts, and Useful Links. A "Helpline +91 172-6672301" is prominently displayed. Below this, there are buttons for "Apply Online NRP Privilege Card", "Online Grievances", "Chat", and "Webinar". At the bottom, there are three smaller images: "PUNJAB Tourism", "Mera Pind Mera Shehar", and "NRI Sammelan".

Non Resident Punjabi Sammelan
10-11 January 2014



PROMISE TO PERFORMANCE



Compiled By
Anil Malhotra
Ranjit Malhotra

**NEW PUNJAB
NRI LAWS,
COMMISSIONS
AND POLICIES**

Non Resident Punjabi Sammelan 10-11 January 2014

PROMISE TO PERFORMANCE
NEW PUNJAB NRI LAWS,
COMMISSIONS AND POLICIES

Compiled by

Anil Malhotra

Ranjit Malhotra

Malhotra & Malhotra Associates

Advisors, NRI Affairs

Government of Punjab

Department of NRI Affairs

Government of Punjab

Mini Secretariat, Sector 9,

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www.nripunjab.gov.in

INTRODUCTION

EXCLUSIVE WEBSITE FOR NRIs www.nripunjab.gov.in

The Government of Punjab is honoured by your august presence and welcomes you back to your beloved homeland. *“Promise to Performance – New Punjab NRI Laws, Commissions and Polices”* is before you as a commitment fulfilled to Punjabi NRI brethren at the Non-Resident Punjabi Sammelan held last year from 4th and 5th January 2013 to put forth legislations enacted by Punjab as the pioneer State to make exclusive laws for NRIs. You can now log on to www.nripunjab.gov.in and on a click see following details:

- Latest NRI News on a Flash and details of new NRI friendly laws.
- How can you contribute towards development of your Village/Town
- Online Redressal Module for User Grievances
- Online Application facility for Non-Resident Privilege Card (NRP)
- Dedicated details about NRI Punjab Police Wing, Punjab NRI Commission, Government of Punjab and Right to Information.

- Dedicated Webnair Facility at fixed and designated times.
- Major descriptive titles : Home, About Us, Know your Punjab, NRI Connect, Mera Pind, Historic Steps, Media and Contact Us
- Right to Service, Right to Information and latest news heads
- Details on how to get copies of your Fard/Land Mutation records
- Informative facilities in Punjab at a Glance – A click away
- Know your Punjab inputs under 16 Tabulated Headings
- Details of Punjab Tourism
- Facility for Subscription to Newsletter

Enactment of Laws announced at the Non-Resident Punjabi Sammelan 2013 have fructified in the shape of Act and Rules which have been notified by the Government of Punjab besides constitution of Commissions for other services provided by the Government of Punjab. The major achievements have been in the field of Registration of Marriages in Punjab and curbing of the menace of Human Smuggling. This booklet contains the details of the Punjab Compulsory Registration of Marriage Act, 2012 and the Punjab Compulsory Registration of Marriage Rules, 2013 in friendly and understandable simple language with bullet highlight points. Features of the Punjab

Prevention of Human Smuggling Act, 2012 and The Punjab Prevent of Human Smuggling Rules, 2013, providing for compulsory registration of all travel / ticketing agents and consultants, other than recruitment agents registered under the Emigration Act, 1983, have been set down with salient highlights. Punjab is the first State of the nation to enact this unique law and frame rules under it.

The achievements of the Punjab State Commission for NRIs, formed under the Punjab State Commission for NRIs Act, 2011, since its inception have been highlighted. Punjab is the first State in the Country to have enacted this exclusive State law and being the only individual State to have a dedicated NRI Commission for your grievances exclusively. Shortly, the District of Jalandhar will have dedicated NRI Courts at Magisterial and Appellate levels for NRI matters.

Under the Right to Information Act, 2005, the State Information Commission, Punjab has been working since 2005. Punjab is amongst the first States in the country to set up this Commission. Statistics enclose show that this Commission providing Right of Information to the residents of Punjab have the maximum disposal of appeals thereby conclusively settling the right of people to information. Punjab State thus leads the nation in deciding matters of Right to Information under this Act.

Likewise, the Punjab Right to Service Act, 2011 and the Punjab Right to Service Commission functioning in Punjab since 2011 makes Punjab proud. Punjab is the first State which has not only brought this law but has also constituted a fully functional statutory commission called the Punjab Right to Service Commission which has provided 149 different services to 154,59,703 applicants under this Act.

The dedicated new NRI Wing of the Punjab Police is a major achievement in having an exclusive NRI Affairs Wing of the Punjab Police for the speedy disposal and friendly handling of complaints of NRIs. A dedicated NRI Wing of the Punjab Police headed by an IGP rank officer functions as the Central Nodal Authority to oversee a State network of dedicated NRI Police stations and exclusive police personnel.

For the property related problems of NRIs, amendments have been made in existing laws dealing with rural properties for fast track eviction of tenants. For urban properties, the Punjab Rent Act provides facilities to NRIs for getting vacated multiple properties. Under the new Punjab Security of Land Tenures (Amendment) Act, 2013 and The Pepsu Tenancy and Agricultural Lands (Amendment) Act, 2013, now NRIs can get their ancestral agricultural property and properties purchased by NRIs within five years vacated from tenants.

The booklet highlights other major policy decisions to facilitate and help NRIs in their day to day issues and problems. Three major schemes of the Government have been highlighted for NRIs to invest and contribute for their homeland to improve the conditions in areas and territories of their choice.

This short description of the treatise tells you that the Government of Punjab is dedicated and devoted to your welfare. All promises made have been fulfilled. The endeavour will be to invite you to be a part of your homeland with open arms. Every effort will be made to make NRI friendly laws and policies.

This booklet has been compiled for the Government of Punjab by Malhotra & Malhotra Associates, International Lawyers, Chandigarh, Advisors, NRI Affairs, Department of NRI Affairs, Government of Punjab, Chandigarh.

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Log on to www.nripunjabpolice.com

or connect to 24x7 Punjab Police Helpline,
Dial 91-172-2298543 (for NRIs)

Email: nri.pbpolice@gmail.com

or Call 0172-2260042/43

Address : Punjab Police NRI Wing,
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**I. A. NEW PUNJAB LAWS – A MILESTONE
ACHIEVED:**

**♣ LEGISLATIONS MADE BY PUNJAB AS THE
PIONEER STATE TO ENACT EXCLUSIVE LAWS FOR
NON-RESIDENT INDIANS IN STATE OF PUNJAB**

- ***Punjab Compulsory Registration of Marriages Act, 2012;***
- ***Punjab Compulsory Registration of Marriages Rules, 2013***
- ***Punjab Prevention of Human Smuggling Act, 2012;***
- ***Punjab Prevention of Human Smuggling Rules, 2013***
- ***Punjab State Commission for NRIs Act, 2011 and Punjab State Commission for NRIs***
- ***Punjab Right to Service Act, 2011 and Punjab Right to Service Commission***

**B. THE WORKING OF THE STATE INFORMATION
COMMISSION, PUNJAB**

**• PUNJAB COMPULSORY REGISTRATION OF
MARRIAGES ACT, 2012**

-HIGHLIGHTS

It is an Act to provide for compulsory registration of marriages solemnized under any law governing the parties irrespective of their religion, caste, creed or nationality and for the matters connected or incidental thereto.

- *Every marriage between parties who are Indian nationals or NRIs or foreign nationals solemnized or performed shall be registered.*
- *Foreign nationals will mean any person who is not an Indian citizen and shall include PIOs and OCIs.*
- *To avoid any ambiguity , term NRI has been defined in the new Act to mean any person of Indian origin permanently or temporarily settled outside India.*
- *Whenever any party is an NRI, his passport and foreign address details, social security number as also relevant particulars about him shall be entered both in the marriage register as well as the marriage certificate.*
- *Any marriage solemnised outside Punjab shall also be registered in Punjab. However, if any marriage is already registered*

elsewhere, it shall not be registered again in Punjab.

- *A complete mechanism and procedure for registration has been laid down and identified with nominated Registrars of Marriages.*
- *The marriage to be registered shall have to be solemnised in accordance with the personal law of the parties to the satisfaction of the Registrar of Marriages concerned.*
- *Non-registration will not invalidate the marriage as such because the new law is only for registration and cannot invalidate a marriage solemnised as per Central Laws.*
- *Memorandum of marriage duly signed by parties and the priest shall be presented within three months of marriage to Registrar of Marriages. Relaxation may be permitted by the Registrar wherever necessary.*
- *Registrar of Marriages may also suo moto (on his own) or on notice register any marriage taking place in his jurisdiction by calling parties.*
- *Any entry may be corrected or cancelled by Registrar of Marriages if obtained fraudulently or made in improperly within correct facts.*

- **PUNJAB COMPULSORY REGISTRATION OF MARRIAGES RULES, 2013 –HIGHLIGHTS**

- ❖ *Rules for compulsory registration of marriages in the State of Punjab notified on June 27, 2013, provide for presentation of a Memorandum in a prescribed form before the Registrar of Marriages within three months of the date of marriage. If one of the parties to the marriage is an NRI, he shall furnish additional information as prescribed under the Rules.*
- ❖ *Memorandum for registration of marriage can be presented after expiry of period of three months, six months, or one year upon payment of late fee and after obtaining written permission of District Registrar or Chief Registrar of Marriages.*
- ❖ *Any person aggrieved by an Order of Registrar of Marriages may appeal within 30 days to the District Registrar of Marriages and thereafter to the Chief Registrar of Marriages within 60 days.*
- ❖ *Every Registrar of Marriages shall maintain a Marriage Register both in English and Punjabi language recording details of marriage solemnised which can be inspected by any person interested on payment of a fee.*

- ❖ ***Registrar of Marriages may suo moto or on receipt of an application from any person correct or cancel any entry of a marriage made in erroneous form or made improperly or fraudulently after passing a speaking order upon affording reasonable opportunity to parties concerned of being heard before correction or cancellation.***

- **NEW LAWS DEFINED**

The Punjab Compulsory Registration of Marriages Act, 2012 and The Punjab Prevention of Human Smuggling Act, 2012, which had both been approved by the Punjab Legislative Assembly on 21 December 2012 and upon notification had come into force in 2013, are now laws in State of Punjab with separate enabling Rules for implementation. Both new laws seek a milestone to achieve. Punjab has been the first State of the country to enact a Human Smuggling Law to provide for the regulation of the profession of travel agents with a view to check and curb their illegal or fraudulent activities. Likewise, even though compulsory Registration of Marriages is now provided in most States, however, Punjab has been the first State to make marriages of Non-resident Indian and foreign nationals also compulsory in the State of Punjab. These initiatives are the product of a long exercise which will help resolving maladies plaguing the system intrinsically as a result of lack of legislations to curb

new generation problems created by a migratory regime of 30 million NRIs living in 180 nations overseas. Punjab State takes the lead to resolve these problems as the only State to make effective State legislations for this purpose.

PUNJAB COMPULSORY REGISTRATION OF MARRIAGES ACT, 2012

- **COMPULSORY MARRIAGE REGISTRATION OF NRI MARRIAGES IN PUNJAB**

The Hindu Marriage Act, 1955 (HMA) leaves it open for every State Government to enact compulsory provisions for Registration of Marriages. The Supreme Court in 2006 in *Seema vs Ashwani Kumar* issued a mandate to all States to make registration of marriage compulsory by enacting legislations. This directive led to the enactment of The Punjab Compulsory Registration of Marriages Act 2012, providing for compulsory registration of marriages solemnized under any law governing the parties irrespective of their religion, caste, creed or nationality. Any marriage solemnized in Punjab is now compulsorily registerable and even marriages solemnized outside the State of Punjab can be registered at a place where parties have their temporary residence in Punjab. However, if the marriage is already registered elsewhere, it shall not be registered again in the State of Punjab.

- **DEFINITION OF NRIs IN THE NEW LAW**

The most prominent feature of the new marriage law is the definition of a “*non resident Indian*” to mean a person of Indian origin who is either permanently or temporarily settled outside India for employment, business, vocation or any other purpose indicating a uncertain or determined period of overseas stay. Likewise, a “*foreign national*” has been defined to mean a person who is not a citizen of India and shall include *Persons of Indian Origin (PIO)* and *Overseas Citizens of India (OCI)* who are defined under the Citizenship Act, 1955 and mean foreign nationals of Indian Origin who have earlier been Indian Citizens or qualify for Indian citizenship.

- **NRI MARRIAGES IN THE LOOP**

The law in the making provides that every marriage between parties who are Indian nationals or NRIs or foreign nationals solemnized or performed in the State of Punjab, irrespective of religion, caste, creed or nationality shall also be registered in the State of Punjab. The most significant feature would be that for every NRI or foreign national, it would be mandatory to disclose in writing his/her passport number, country of its issue, period of its validity besides permanent residential/official address of overseas abode with social security number or any such permanent identification proof issued by his foreign country. All this information will be entered in the marriage certificate

and the marriage register. Marriage would mean and include marriages solemnized or performed under Hindu Laws, Anand Marriage Act, Muslim personal law or under Indian Christian Marriage Act besides any other custom or personal law relating to marriages governing the parties.

- **REGISTRATION REGIME DEVISED**

The new law with enabling Rules has notified Chief, District and Additional Registrars of Marriages or other Officers to be Registrar of Marriages for free and easy accessibility in cities, towns and tehsils. The new law notifies DC's, DRO's, Tehsildars and Naib Tehsildars for easy accessibility in cities, towns and tehsils. The Registrars so designated, shall upon scrutiny verify that the marriage between the parties has been performed in accordance with the personal law of parties to confirm their marital status and identities. A memorandum of marriage signed by the parties and their priest will be presented to the concerned Registrar within three months of marriage in the jurisdiction where the marriage was solemnised or where parties have temporary residence if they were married outside Punjab. Refusal to register shall be appealable and the Registrar may also suo moto or on notice call parties and register any marriage performed in his jurisdiction. Any erroneous or fraudulent entry in a marriage register may be corrected or cancelled after giving opportunity of hearing to persons concerned.

- **NON- REGISTRATION NOT TO INVALIDATE MARRIAGES**

The new law states that no marriage shall be deemed to be invalid solely by the reason or the fact that it was not registered. This shortcoming is attributed to codified personal marriage laws of parties in India by which performance of essential ceremonies and not registration validates a marriage between parties. Hence, a State enactment cannot undo a law made by Parliament prescribing only ceremonies for recognition of a valid marriage. Consequently, resorting to compulsory registration may have to develop more as an accepted societal norm and practice for the law to gain recognition. Ailing The fact remains that Punjab has taken the lead to register NRI Marriages which will help in curbing matrimonial frauds to ameliorate the plight of ailing "***Nowhere Holiday Wives***". Punjab would do equally well if it were to constitute Family Courts in every district in Punjab under the existing Family Courts Act, 1984, to provide speedy justice to abandoned spouses and deserted children as well. Prevention is better than cure but redressal of issues arising out of a broken or limping matrimonial relationship must be remedied too simultaneously.

**PUNJAB PREVENTION OF HUMAN SMUGGLING
ACT 2012**

AND

**PUNJAB PREVENTION OF HUMAN SMUGGLING
RULES, 2013**

-

**A LAW TO CURB ILLEGAL
IMMIGRATION FROM PUNJAB**

• **PUNJAB PREVENTION OF HUMAN
SMUGGLING ACT, 2012**

HIGHLIGHTS

- *The Punjab Prevention of Human Smuggling Act, 2012, passed by the Punjab Vidhan Sabha on 21 December 2012 and implemented upon Notification in the Punjab Government Gazette on 20 August 2013, is as an Act to provide for the regulation of the profession of travel agents with a view to check and curb their illegal, fraudulent activities, and malpractices of the persons involved in organized human smuggling in the State of Punjab and for the matters connected therewith or incidental thereto. This law has nine noteworthy features.*
- ✓ **It defines human smuggling and travel agent.**
- ✓ **Provides for a licensing regime for travel agents. Debars persons from operating without a license under the Act.**

- ✓ **Gives power of search, seizure and arrest to Magistrates and Police Officials.**
- ✓ **Prescribes power of investigation by DSP to be completed within two months and to be verified by S.P. SSP to be Nodal Officer for all investigations under the Act.**
- ✓ **In addition to imposing penalties, provides award of reasonable compensation to be paid to aggrieved person by travel agent.**
- ✓ **Identifies defined variable punishment for offences under the Act.**
- ✓ **Authorises Courts to decide whether any illegally acquired property is liable to be confiscated.**
- ✓ **Provides for liability of Director, Manager, Secretary of Companies responsible for conduct of business when negligence can be attributed.**
- ✓ **Cheating shall have the same meaning as under the Indian Penal Code.**
- ***Travel agent is defined as a person in a profession that involves arranging, managing or conducting affairs related to sending people abroad.***
- ✓ **It includes consultancy for permanent emigration, obtaining education, work, travel for tourism, cultural entertainment or musical shows, medical treatment, spreading or preaching religion, participating in sport tournaments, issuing advertisements for travel, holding seminars and lectures to promote emigration, arranging matrimonial alliances for purposes of emigration, and arranging overseas travel for any purpose whatsoever except for business of recruitment**

governed by registration under provision of the Emigration Act, 1983

- ✓ Dishonest misrepresentation with intention to have wrongful gain for inducing, deception, cheating or allurement for above activities and cheating by personation is punishable under the Act as having same meaning as IPC. If any travel agent wants to advertise or hold seminars, he will have to notify competent authority in writing with complete details of advertisement of seminars.
- ***The words “travel agent” and “human smuggling” in the Punjab Act, find definition in the following words:***
- ✓ “Travel Agent” means a person doing the profession which involves arranging, managing or conducting affairs relating to sending persons abroad or which arise out of the affairs of persons sent to a foreign country, and shall include a range of activities covering diverse practices .
- ✓ “Human Smuggling” shall mean and include illegally exporting, sending or transporting persons out of India by receiving money from them or their parents, relatives or any other persons interested in their welfare, by inducing, alluring or deceiving or cheating.

HIGHLIGHTS OF THE EMIGRATION ACT, 1983

- **The Emigration Act, 1983 provides for checks, controls, balances by enacting a licensing regime for “recruiting agents,” for “emigration”**

purposes which find definition in the following words in the said Act.

- ✓ **“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. Recruiting agents doing business of recruitment have to obtain compulsory registration under the Emigration Act, 1983.**
- ✓ **“Emigrate and Emigration” means 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 a employer) in any country or place outside India.**

• PUNJAB PREVENTION OF HUMAN SMUGGLING RULES, 2013 HIGHLIGHTS

- ***Punjab Prevention of Human Smuggling Rules, 2013 for regulating the trade of travel agencies or consultancies and ticketing agents were notified on August 20, 2013 and provide for a licensing regime through notified competent authorities.***

- ***By notification dated September 3, 2013, District Magistrates/Additional District Magistrates of each district have been designated as the “Competent Authority” for issuing a licence to undertake the profession of a travel agent.***
- ***Applications for licences to be accompanied by fee of Rupees one lac for agents in existence for more than years, Rs.25,000 for less than five years and Rs.25,000 for ticketing agents. Records in electronic form and soft copies to be kept by agents.***
- ***Residence certificates, proof of age, identity, passport, PAN card, Income Tax Returns, bank statements, satisfaction of credibility and no criminal record to accompany applications. For NRI agents, social security number, permission of foreign country of operations and RBI sanction additionally to be furnished.***
- ***Applicants must not be insolvent or bankrupt, should have no involvement in crimes as per police records, should not hold office of profit, should not be barred by Agents Associations, must have adequate space or accommodation and must maintain records and fee charged by them to be furnished to State Government.***
- ***Licences to be issued for five years, renewable upon furnishing Income Tax Return and Statement of Bank Accounts. Refusal to grant or renew license appealable to Government. All activities of agents to be monitored under the new rules.***
- ***All illegally acquired property to be confiscated upon trial of offences under the law***

PUNJAB PREVENTION OF HUMAN SMUGGLING ACT 2012 – AN OVER VIEW

• THE PROBLEM

With the merchants of death running thriving rackets of human smuggling in Punjab at the cost of gullible youth trapped everyday with dollar dreams, the waiting worsens the plight of duped innocent citizens and this organized crime perpetuates horror and misery flourishing with daring impunity. Smuggled migrants are vulnerable to exploitation and their lives are often put at risk. They have suffocated in containers, perished in deserts, drowned at sea or herded as forced labour in slave camps. Smugglers of migrants conduct their activities brazenly without fear or favour with no regard for human life. Survivors tell harrowing tales of their ordeal, forced to sit in human waste, deprived of food and water, while others around them die and their bodies are dumped at sea or on road sides. The smuggling of migrants generates high net worth profits at the hands of criminals who fuel corruption and organized crime. The smuggling of migrants is a deadly business that must be combated as a matter of grave urgency and happily Punjab is the first State ready to combat it.

• THE PROPOSED SOLUTION IN THE NEW LAW

The Punjab Prevention of Human Smuggling Act, 2012 is described as a law to provide for the regulation of the profession of travel agents with a view to check and

curb their illegal, fraudulent activities, and malpractices of the persons involved in organized human smuggling in the State of Punjab and for the matters connected therewith or incidental thereto. This new law has nine noteworthy features.

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- ✓ **Cheating shall have the same meaning as under the Indian Penal Code.**

“Travel Agent” is defined as a person in a profession that involves arranging, managing or conducting affairs related to sending people abroad. It includes consultancy for permanent emigration, obtaining education, work, travel for tourism, cultural entertainment or musical shows, medical treatment,

spreading or preaching religion, participating in sport tournaments, issuing advertisements for travel, holding seminars and lectures to promote emigration, arranging matrimonial alliances for purposes of emigration, and arranging overseas travel for any purpose whatsoever. Dishonest misrepresentation with intention to have wrongful gain for inducing, deception, cheating or allurements for above activities is punishable under the Bill. If any travel agent wants to advertise or hold seminars, he will have to notify the competent authority in writing giving complete details of advertisement of seminars. It does not include recruitment agents carrying on the business of recruitment who are governed and registered under the provision of the Emigration Act, 1983

• **THE GRAVE END**

Naive youth fell prey to agents and landed up working as slave labour in ammunition dumps or fields in Iraq or end up condemned to live as illegal immigrants abroad in pitiable conditions with no hope of return if they manage to survive hazardous channels of death. Smuggling of migrants is a highly profitable business with a low risk of detection. For criminals, it is increasingly attractive to deal in human merchandise and this business of death is becoming more and more organized, in which professional international networks wantonly flourish transcending global borders and regions. India, as a nation, therefore, has a dire need to check this global menace. However, sadly, The Emigration Act, 1983, which is an Act to consolidate and amend the law relating to Emigration of citizens of India, neither defines human smuggling nor even looks at the problems connected with this deathly trade. Thus, the need for Parliament to legislate a Indian

Human Smuggling law is a crying need. Piecemeal state legislations with limited ambit of application will restrict scope only to State territorial borders. A Central law is therefore, the composite solution. Initiatives of Parliament must set this ball rolling. Till then, any State legislation on the subject would be a welcome take off point and the Government of Punjab deserves kudos for this innovative pioneer excellent effort.

- **CENTRAL LAW IN EXISTENCE**

The Emigration Act, 1983 provides for checks, controls, balances by enacting a licensing regime for “**recruiting agents**,” for “**emigration**” purposes which find definition in the following words in the said Act.

- “**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.
- “**Emigrate and Emigration**” means 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 a employer) in any country or place outside India.

The Emigration Act, 1983, creates a “**Protector of Emigrants**” for providing emigration clearance to ensure that conditions of employment of Indian citizens

are not discriminatory, exploitative, unlawful, against public policy, violative of norms of human dignity & decency, besides, do not prescribe sub-standard working or living conditions. The ambit of the Act extends to Indian citizens only and exempts control of recruiting in India for service of foreign States. Clearly, the regulatory provisions of the Central Act, provides beneficial legislation to reign in Indian recruiting agents operating in India.

- **NEW PUNJAB LAW IN CONTRAST**

In contrast, the Punjab Prevention of Human Smuggling Act, 2012, enacted to provide a licensing regime for travel agents with penal provisions, has similar regulatory functions to check human smuggling. The words “**travel agent**” and “**human smuggling**” in the Punjab Act, find definition in the following words:

“**Travel Agent**” means a person doing the profession which involves arranging, managing or conducting affairs relating to sending persons abroad or which arise out of the affairs of persons sent to a foreign country, and shall include a range of activities covering diverse practices .

“**Human Smuggling**” shall mean and include illegally exporting, sending or transporting persons out of India by receiving money from them or their parents, relatives or any other persons interested in their welfare, by inducing, alluring or deceiving or cheating.

It is further stated in the Punjab Act, that “**cheating**” shall have the same meaning as assigned to it in **Sections 415 and 416** of the **Indian Penal Code**,

1860. Therefore, the Punjab Human Smuggling Act, looks at the menace of human smuggling by defining it as an offence and creates a process for its regulatory enforcement by compulsory registration and imposition of punishment upon violations through a legal process prescribed in the Punjab Act.

- **CONCLUSION**

Hence, placing both the Acts i.e. the Emigration Act, 1983 and the Punjab Prevention of Human Smuggling Act, 2012, side by side clearly shows that they enshrine regulatory mechanisms for recruiting agents and travel agents separately. Viewed objectively, both carry complimentary purposes in their own spheres. They are neither inconsistent or repugnant to each other. In fact, the two laws compliment each other as they provide similar objectives, aims and functions for recruiting and travel agents respectively. Punjab has enacted a law which no other State in the country has made. In fact, human smuggling is a silent issue in the Emigration Act. The authority of law vested in the State must be exercised to enforce this law. Punjab will proceed with its own initiative and lead the nation in its yeoman spirit.

CURBING FLIGHTS OF FANCY

NEW PUNJAB PREVENTION OF HUMAN SMUGGLING RULES, 2013

Travel agencies, ticketing agents and immigration consultants will now be regulated under a licencing regime created under the Punjab Prevention of Human Smuggling Rules, 2013. It has been made mandatory that all persons falling under the definition of “**travel agent**” must register their business with District Magistrates all over Punjab notified on 03 September 2013, as competent authorities for granting licences before 31 December, 2013. The Punjab Prevention of Human Smuggling Act, 2012, a first of its kind, was enacted on 21 December 2012 to check and curb malpractices of organised illegal immigration and related fraudulent activities resulting in repeated tragic loss of human life and property.

- **EXISTING CENTRAL LEGISLATION**

The Emigration Act, 1983, a law made by Parliament, consolidated and amended the law relating to Emigration of citizens of India. It applies only to “**recruitment**” and “**recruiting agents**” for whom the registering authority is the **Protector General of Emigrants (PGE)**. Under Section 10 of the Emigration Act, 1983, no person can function as a **recruiting agent** to commence or carry on the business of recruitment unless registered with the PGE. Further, under Section 15 of the Emigration Act, 1983, all **recruiting agents** carry on the business of recruitment are required to be obtain a **permit** from the **Protector**

General of Emigrants. Hence, this Act applies only to **recruitment** and **recruiting agents**.

- **A DIFFERENT CENTRAL LAW**

The Emigration Act, 1983 (EA) is a law to consolidate and amend the law relating to emigration of citizens of India. All the recruiting agents or employers working in any place are duty bound to follow the provisions laid down under the EA, before carrying on or conducting the business of sending people outside India on the pretext of jobs or employment outside India. The recruiting agents or employers not working as per the EA are unlicensed and unauthorised. A Protector of Emigrants is appointed in every State and a Protector General of Emigrants functions at New Delhi under the EA. Both the Protector of Emigrants and the Protector General of Emigrants work under the authority of the Ministry of Overseas Indian Affairs (MOIA). The recruiting agents or employers in a State before commencement and carrying on business of recruitment or overseas employment needs to get a valid registration certificate and a permit which is issued by the Protector of Emigrants in their respective States. Without getting any such registration certificate or a valid permit, the recruiting agent or employer cannot legally conduct the business or send any person abroad. As per the website of The MOIA, www.poeonline.gov.in, where a list of registered recruiting agents registered under the EA is maintained, there are only 47 recruiting agents currently registered in the State of Punjab under the

EA. Sadly, lack of a strict law neither made nor enforced by the Government of India keeps the noose away.

- **UNDEFINED AGENTS**

The words “**travel agent**” and “**human smuggling**” are not defined under the EA or under any other law made by Parliament. There are thousands of consultants in the State of Punjab who function under the banner or name of various kinds of agents and indulge in the unethical rackets of sending persons abroad by different means and practices. Such agents deny that they conduct the business of **recruitment** or **recruiting agents** and hence claim that the provisions of the EA do not apply to them. Those working under the law are outwitted Therefore, the illegal business of human smuggling is unchecked in Punjab and thousands of gullible youth are misled daily by unscrupulous agents who cheat them with impunity. All such unlicensed and unauthorized agents are not governed by any law and there is no check or control on them by virtue of the EA whose dragnet is evaded by them. Since such agents or consultants claim that they do not do the business of recruitment or are recruiting agents. Hence, they do not get registered under the EA or take any permit under the EA.

- **NEW INITIATIVE**

The Government of Punjab is the first State in the country which has enacted the Punjab Prevention of

Human Smuggling Act, 2012 to provide for the regulation of the profession of travel agents with a view to check and curb their illegal and fraudulent activities, and malpractices involved in the organized human smuggling in the State of Punjab. This law has nine noteworthy features not covered by any existing Indian law.

- ✓ **It defines human smuggling and travel agent.**
- ✓ **Provides for a licensing regime for travel agents. Debars persons from operating without a license under the Act.**
- ✓ **Gives power of search, seizure and arrest to Magistrates and Police Officials.**
- ✓ **Prescribes power of investigation by DSP to be completed within two months and to be verified by S.P. SSP to be Nodal Officer for all investigations under the Act.**
- ✓ **In addition to imposing penalties, provides award of reasonable compensation to be paid to aggrieved person by travel agent.**
- ✓ **Identifies defined variable punishment for offences under the Act.**
- ✓ **Authorises Courts to decide whether any illegally acquired property is liable to be confiscated.**
- ✓ **Provides for liability of Director, Manager, Secretary of Companies responsible for conduct of business when negligence can be attributed.**
- ✓ **Cheating shall have the same meaning as under the Indian Penal Code.**

Travel agent is defined as a person in a profession that involves arranging, managing or conducting affairs

related to sending people abroad. It includes consultancy for permit emigration, obtaining education, work, travel for tourism, cultural entertainment or musical shows, medical treatment, spreading or preaching religion, participating in sport tournaments, issuing advertisements for travel, holding seminars and lectures to promote emigration, arranging matrimonial alliances for purposes of emigration, and arranging overseas travel for any purpose whatsoever. Dishonest misrepresentation with intention to have wrongful gain for inducing, deception, cheating or allurements for above activities is punishable under the Act. If any travel agent wants to advertise or hold seminars, he will have to notify the competent authority in writing giving complete details of advertisement of seminars.

• **JUSTIFICATION FOR NEW RULES**

The licensing regime of travel agents is a positive step of the Government of Punjab in registering travel agents who otherwise have no law to check and control them. All such consultants, travel agents and other such persons or institutions carrying on business of sending persons abroad evade the definition of ***recruitment*** and ***recruitment agent*** under the EA and hence do not take any registration or permit under the EA. Hence all such travel agents and consultants cannot be registered with the Protector General of Emigrants under the EA. Therefore, the Punjab Prevention of Human Smuggling Act, 2012 is a positive, healthy, productive and citizen oriented legislation meant for protecting the rights of the susceptible citizens of Punjab whose rights and valuable assets are protected by this well meaning law. A dire need has been fulfilled to create a separate machinery and mechanism for registering the travel

agents and consultants under the Punjab Prevention of Human Smuggling Act, 2012. There is no duplication or overlapping of powers with the EA and no conflict arises between the two laws which can have separate mechanisms for implementation. However, the Punjab law, a welcome move, will have jurisdictional constraints. The Parliament in its wisdom could consider enacting a Central law whose umbrella will protect and shield the entire nation from the unscrupulous activities of human smugglers. Trading in human lives for commercial gains must be obliterated.

PUNJAB STATE COMMISSION FOR NRIs ACT 2011

SALIENT FEATURES

- ✓ The Punjab State Commission for NRIs constituted by the Government of Punjab is the first NRI commission in the Country which is fully functional for the past two years and is receiving complaints in person, by post and by email as well at nricommpb@gmail.com
- ✓ The enacted law labelled 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 two Member Commission has its office premises in the Punjab Mini Secretariat on the Ground Floor, Room No.6 in Sector 9, Chandigarh and is working very successfully. It receives large number of complaints in its office which are taken up by the NRI Commission which holds daily sittings. Enquiries or investigations are got conducted by NRI Commission through its directions to Government agencies and follow up reports are obtained to ensure compliance. This is a very effective means of redressal of complaints and the opportunity to parties to appear in person or through counsel has resulted in settlement of grievances of large number of NRIs and other persons.
- ✓ The NRI Commission headed by The Chairman, Mr. Justice (Retd.) Arvind Kumar has been able to resolve a large number of matrimonial, property, immigration and other related NRIs disputes in a short span of time with their regular sittings and meetings.

Punjab State Commission for NRIs can be reached at :

Punjab Civil Secretariat-2, Block 'A', Room No.6, Sector 9, Chandigarh. Email: nricommpb@gmail.com Tel: 0172-2741330

**PUNJAB STATE COMMISSION FOR NRIs ACT
2011: AN OVER VIEW**

The enacted law labelled 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 powers and the functions of the Punjab State Commission for NRIs are stipulated as follows:

"12. Powers and Functions of the Commission

- (1) *The Commission shall, while investigating any matter under this Act, 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.*
- (2) *The Commission shall function by holding "sittings" and "meetings" at any place within the State of Punjab.*

(3) The Members of the Commission including the Chairperson shall function in accordance with Rules framed by State Government.

14. Power of the Commission to utilize the services of certain officers and investigating agencies for conducting investigating

The Commission may conduct enquiry or investigation into the matters falling within its authority :

- (a) either directly; or**
- (b) through an Investigating team constituted by the Commission; or**
- (c) through the Deputy Commissioner of the district concerned; or**
- (d) through the Government.”**

The Punjab State Commission for NRIs constituted by the Government of Punjab is the first NRI commission in the Country which is fully functional for the past two years and is receiving complaints in person, by post and by email as well. The two Member Commission headed by **The Chairman Mr. Justice (Retd.) Arvind Kumar** has its office premises in the **Punjab Mini Secretariat on the ground floor in**

Room no.6 at Sector 9, Chandigarh and is working very successfully. It receives large number of complaints in its office which are taken up by the NRI Commission which holds daily sittings. Enquiries or investigations are got conducted by NRI Commission through its directions to Government agencies and follow up reports are obtained to ensure compliance. This is a very effective means of redressal of complaints and the opportunity to parties to appear in person or through counsel has resulted in settlement of grievances of large number of NRIs and other persons. The NRI Commission has been able to resolve a large number of matrimonial, property, immigration and other related NRIs disputes in a short span of time with their regular sittings and meetings. In its first Annual Report covering the period from 29 November 2011 to 31 March 2013, it is reported that the NRI Commission received 443 complaints in the very first year and that the Commission successfully resolved 225 complaints whilst 218 cases are still pending resolution.

Punjab State Commission for NRIs can be reached at :

Punjab Civil Secretariat-2, Block 'A', Room No.6, Sector 9, Chandigarh. Email: nricommpb@gmail.com Tel: 0172-2741330

The Punjab Right to Service Act,2011 and Punjab Right to Service Commission

Punjab is the first State which has not only brought Punjab Right to Service Act, 2011 but also constituted a statutory Commission, called the Punjab Right to Service Commission as the highest forum of appeal under the **Punjab Right to Service Act, 2011** as also to take measures to get the provisions of this Act implemented at the grass root level through regular monitoring and supervision. The Commission is also vested with the duty to suggest changes in systems and procedures to make service delivery faster and more efficient. The Act seeks to achieve its objectives by authorizing the Government of Punjab for the performance of the following functions and duties:

1. Notify services that are to be covered under the Act;
2. Provide timelines for each service covered by the notification;
3. Designate officers who are responsible for delivery of each service in the given timeline;
4. Provide for two levels of appeal to the citizen in case the service is not provided in the given time, or is deficient in any manner;

5. Empower the second appellate authority to impose penalty on the defaulting officer if the service has been refused or delayed without sufficient reason;
6. Provide for compensation to the aggrieved citizen out of the amount recovered as penalty ; and
7. Constitute a commission to oversee and supervise the implementation of the Act and to act as the highest forum of revision or appeal under the Act.

Originally **67 services** were notified under Section 3 of the said Act and as of now **149 services** have been brought under the ambit of this Act. The Commission started receiving regular information on receipt and disposal of services from August 2011 .**Up to November 30, 2013 as many as 1,54,59,703 applicants** have availed the services under the provisions of this Act. **738 appeals** have been filed before the 1st Appellate Authorities and **10 appeals** before the 2nd Appellate Authorities. **14 Revision Petitions** have been filed with the Commission under the Punjab Right to Service Act, 2011.

On its part, the Commission has also taken up, on priority, the task of disseminating awareness about salient features of this Act to the public. For this purpose, apart from distributing literature, Members of the Commission have visited various districts in the

field and have held discussions with different target groups.

The Commission stands committed to make recommendations to the Government of Punjab to further streamline and strengthen the public service delivery mechanism by expanding the canvas of services under the purview of this Act and by developing the infrastructure capable of meeting the requisite provisions. The Punjab Right to Service Commission constituted on October 20, 2011 is headed by Sh. S.C. Aggarwal, Chief Commissioner, who is assisted by 4 Commissioners and a Secretary to The Commission. The full time Commission functions at the following address:

<i>Office of Punjab Right to Service Commission:</i>	
<i>Office Address</i>	<i>Mahatma Gandhi State Institute of Public Administration, VIP Suites, Institutional Area, Sector 26, Chandigarh - 160 019</i>
<i>Telephone</i>	<i>0172-2790181</i>
<i>Fax</i>	<i>0172-2792182</i>
<i>E-mail</i>	<i>rtspunjab@punjab.gov.in</i>
	<i>rtspunjab@gmail.com</i>

THE WORKING OF THE STATE
INFORMATION COMMISSION, PUNJAB

UNDER THE RIGHT TO INFORMATION ACT, 2005

In 2005, The Government of Punjab was amongst the first States to set up the State Information Commission, Punjab (SICP) which reportedly has the highest disposal rate of complaint appeals in the country. Punjab State thus leads the nation in deciding matters of Right to Information under the RTI Act. The Right to Information Act, 2005 (RTI ACT, 2005) was enacted to provide for setting up a practical regime of Right to secure access to information under the control of public authorities to promote transparency and accountability. Section 15 of this Act requires every State Government to Constitute a State Information Commission and the State of Punjab set up its Commission in 2005 itself.

The RTI Act, 2005 lays down the procedure for access to information from Public Authorities and provides for an enforcement mechanism, in case of any alleged denial of the right. Each public authority is legally bound to appoint Public Information Officer/s [PIO], which are the single point of contact for any individual desirous of obtaining information from the concerned State department /Government organization. The concerned citizen has to submit a request to The PIO

of the concerned department, specifying the information he wants and each application must be accompanied by a fee of Rs. 10/- only. The PIO is legally bound to respond to a request for information within 30 days, either allowing access to the requested documents or in case information is to be denied on any of the grounds listed in Section 8 of the Act, convey this in writing with supporting reasons. The aggrieved citizen has a right to file Appeal to the Departmental Appellate Authority and thereafter a second Appeal to the State Information Commission concerned. In this regard, The Central Government and State Governments have constituted Information Commissions to hear Appeals / Complaints against their respective public authorities in their respective territorial jurisdictions.

**STATE INFORMATION COMMISSION PUNJAB
(SICP)**

The Punjab Government had in 2005 set up Punjab State Information Commission to hear cases against the decisions of the PIO's / First Appellate Authorities of the State government departments / Public Authorities. The details may be seen at the website of the Commission www.infocommpunjab.com and its office address is as follows:

***STATE INFORMATION COMMISSION, PUNJAB (SICP)
SCO No. 84-85, Sector 17-C, CHANDIGARH***

The SICP is constituted under the able Chairmanship of **The Chief Information Commissioner Sh. R.I. Singh, IAS, (Retd.)** along with nine other State Information Commissioners. Punjab State Information Commission is to ensure citizens in the State of Punjab their Right to Information from public authorities thereby fulfilling the mandate assigned in the Right to Information Act, 2005. Punjab State Information Commission exercises powers for implementation under **Sections 18,19,20 and 25 of the RTI Act**. At the same time State Information Commission Punjab is itself a Public authority as defined in section 2(h) of RTI ACT 2005.

Since its inception, the State Information Commission, Punjab has heard Appeals from 2005 to 2013. Starting **from 20 appeals in 2005**, this Commission has disposed of a record of **5413 appeals in 2012** which is highest in the country.

Undoubtedly, The SICP in the State of Punjab is the leader in the matters of disposal of appeals made to it which ensure expeditious decisions on people's Right to Information. SICP has the unique distinction of rendering exemplary services in State of Punjab in deciding and disposing of record number of appeal petitions ensuring citizens their Right of Information.

II. HISTORIC STEPS FOR NON-RESIDENT PERSONS IN STATE OF PUNJAB

A. NRI's PROPERTY RELATED PROBLEMS

I. Summary Eviction of tenants from urban properties of NRIs

- 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 NRI's 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 grandparents 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.

II. ***NRI'S CAN NOW GET THEIR MULTIPLE PROPERTIES VACATED FROM TENANTS UNDER THE PUNJAB RENT ACT, 1995 (AS AMENDED BY THE PUNJAB RENT (AMENDMENT) ACT, 2013 ON APRIL 10, 2013.***

- The Punjab Rent Act, 1995, (PRA) which received the assent of the President of India on March 26, 1998 and which was notified upon publication in the Punjab Government Gazette on December 10, 2012, extends to all urban areas of Punjab. It is an Act to provide for the

regulation of rents, repairs and maintenance as also for eviction relating to premises in all urban areas of Punjab. The EPURRA has been repealed by Section 75 of the PRA but pending proceedings under EPURRA are saved.

- Section 24 of the PRA as amended by the **Punjab Rent (Amendment) Act 2013**, allows an **NRI** landlord to apply to the Rent Authority for recovery of immediate possession of his residential or/and non-residential premises.
- Section 24 (3) of the **Punjab Rent (Amendment) Act 2013**, is as under:

Right to recover immediate possession of premises to accrue to **NRIs**

“24 (3) Where an owner is a non-resident Indian and returns to India for permanent residence, he or she may apply to the Rent Authority for recovery of immediate possession of residential or/and non-residential premises let out by him or her on or prior to the commencement of this Act, which are required by him for his or her own

use, or for the use of any one ordinarily living with and dependent on him or her.”

Explanation: “non-resident Indian” means a person of Indian origin, who is either permanently or temporarily settled outside India, in either case –

- (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, in such circumstances, as would indicate his intention to stay outside India for an uncertain period.”***

- Previously, under the original provision of **Section 24 (2) PRA**, the right to seek recovery of immediate possession was available, ***“in respect of anyone residential and one non-residential premises each chosen by him.”*** However, under the amended provisions of **Section 24 (3) of the Punjab Rent (Amendment) Act 2013**, this restriction does not exist allowing NRIs to get their multiple residential/non-residential properties vacated from tenants.

III. PUNJAB AMENDS ACTS: UNDER THE NEW PUNJAB SECURITY OF LAND TENURES (AMENDMENT) ACT, 2013, & THE PEPSU TENANCY AND AGRICULTURAL LANDS (AMENDMENT) ACT, 2013, NOW NRIS CAN GET THEIR ANCESTRAL AGRICULTURAL PROPERTY AND PROPERTY PURCHASED BY NRIS WITHIN FIVE YEARS VACATED FROM TENANTS.

- On **October 29, 2013**, **Punjab Vidhan Sabha** unanimously passed the ***Punjab Security of Land Tenures (Amendment) Bill, 2013 and The Pepsu Tenancy and Agricultural Lands (Amendment) Bill, 2013***, with which the Non-Resident Indians (***NRIs***) have got the right to get their property vacated from tenants and caretakers in Punjab. Earlier, the Punjab Government had in 2008 enacted a law empowering the ***NRIs*** and Armed Forces personnel to get their single property vacated from tenants.

- Earlier also the Punjab government had given ***NRIs*** the liberty to get vacated a single property and now with these amendments, the ***NRIs*** can get their ancestral property and property owned by them for at least 5 years vacated from tenants. The Punjab Government had amended the ***Punjab Security of Land Tenures Act 1953***, and the ***PEPSU Tenancy***

and Agricultural Land Act 1955, to give a sense of security to land owners, who were hesitant to lease out their land for a long period.

- Under the new amendments, agricultural properties which have been given by NRIs on lease or rent, will now be able to get it back without providing alternate arrangements for stay and other stringent conditions. A single ownership proof and summary proceedings for eviction before the SDM would provide an expeditious remedy to NRIs. The tenants would not enjoy immunity from eviction under the ***Punjab Security of Land Tenures Act 1953, and the PEPSU Tenancy and Agricultural Land Act 1955***.

- Section 9 B of the ***Punjab Security of Land Tenures (Amendment) Act, 2013*** now reads in the following terms:

“9-B : One Time Concession – The concession given under Sections 9 and 9-A to the land owner, who is a Non-Resident Indian, shall be available only in respect of his ancestral property and the

property, which has been purchased by him atleast five years before from the date he files the ejectment application.”

- **Section 7-B of The Pepsu Tenancy and Agricultural Lands (Amendment) Act, 2013** now reads in the following terms:

“7-B : One Time Concession – The concession given under Sections 7 and 7-A to the land owner, who is a Non-Resident Indian, shall be available only in respect of his ancestral property and the property, which has been purchased by him atleast five years before from the date he files the ejectment application.”

IV. PUNJAB MAKES 10% RESERVATION FOR NRIs IN ALLOCATION OF RESIDENTIAL AND INDUSTRIAL PLOTS

- With a view to accelerate the pace of growth of industry in the State of Punjab and to provide quick availability of land to **NRI** entrepreneurs in various industrial focal points as well as allotment of semi

developed lands under “**Off-the-Shelf**” Scheme in Focal Points, Growth Centres, Industrial Areas, Industrial Estates etc., by any agency of the Government, 10 percent plots shall be reserved for allotment under the General Scheme to Non-Resident Indians and Export Oriented Units.

- **Punjab Urban Planning and Development Authority (PUDA)** has by a policy decision issued a mandate that in all future schemes to be floated for General Public by PUDA and all other authorities in the State of Punjab, ten percent of the plots/houses to be allotted through draw of lots be reserved for those **NRIs** whose origin is from the State of Punjab and who are presently citizen of any other country subject to payment in foreign exchange and proof of foreign citizenship.

B. HINDU MARRIAGES (PUNJAB) REGISTRATION (FIRST AMENDMENT) RULES, 2013 GIVING POWER OF REGISTRATION OF MARRIAGES TO DCs, DISTRICT REVENUE OFFICERS, TEHSILDARS AND NAIB TEHSILDARS.

Rule 4 of **The Hindu Marriages (Punjab) Registration Rules, 1960** has been substituted by **an amendment notified on January 4, 2013**, whereby **The District**

Revenue Officer, Tehsildar and in his absence the Naib Tehsildar will be The Registrar for the area of their respective jurisdiction for registering marriages.

C. NRI COURTS TO BE SET UP AT JALANDHAR

The Registrar General of the Punjab and Haryana High Court, Chandigarh, by a communication dated **November 21, 2013** has stated that the High Court has decided to establish one **NRI Court at Magisterial level and one at Appellate level** to function initially at Jalandhar only.

D. SIMPLIFIED PROCESS FOR STAMPING/EMBOSSING OF POWER OF ATTORNEYS AT DIVISIONAL HEADQUARTERS & DISTRICT LEVELS

- By Notification dated **January 10, 2013** amending the **Indian Stamp Rules, 1925**, the Government of Punjab has notified the following as authorised persons for stamping/embossing power of

attorneys by delegating the same at Divisional Headquarters and District levels in the State of Punjab for easy facilitation of **NRIs**:

- in Chandigarh, the Superintendent or an Assistant Incharge of the Stamping work in the office of the **Financial Commissioner Revenue Punjab**;

- At Divisional Headquarters, the Superintendent or an official Incharge of the Stamping work in the office of **the Divisional Commissioner concerned**; and

- At District level, the Superintendent or an official Incharge of the Stamping work in the office of the **Deputy Commissioner concerned**;

E. PUNJAB GOVERNMENT PUTS CHECK ON REGISTRATION OF UNWANTED FIRS AGAINST NRIs BY MAKING IT MANDATORY FOR SHOs TO FIRST GET APPROVAL FROM THE CONCERNED DSP.

By an Office Order of the Department of Home Affairs and Justice, dated **April 29, 2013**, the Government of Punjab has circulated a decision that in matters of registration of criminal cases against non-resident Indians in the State of Punjab, prior approval of concerned **DSP or officer of higher rank** will be necessary. This is to ensure that a thorough and proper enquiry or investigation has been done before any matter is converted into an **FIR against a non-resident Indian** in the State of Punjab.

F. NRIs CAN NOW AVAIL SECURITY FROM PESCO FOR THEMSELVES AND FOR THEIR PROPERTIES IN PUNJAB

Meeting the long pending demands of NRIs for their personal security while on visit to Punjab and their properties, **Punjab Government Undertaking i.e. PESCO** would supply professionally trained ex-servicemen guards with or without weapons and also

provide security to **NRI** properties in Punjab. **Punjab Ex-Servicemen Corporation (PESCO)** can be contacted at the following details and address:

SCO No.89-90, Sector 34-A, Chandigarh – 160 022

Phones: 0172-4615702, 2621059

Fax: 0172-2660629, 2607900, 2624535

Email: pesco34chd@yahoo.com

Website : www.punjabexservicemen.org

G. NRI's CAN NOW EASILY GET MOBILE SIM CARD WHILE ON VISIT TO INDIA

Punjab Chief Minister Sardar Parkash Singh Badal sought intervention of Union Telecom Minister Mr. Kapil Sibal to put in place a mechanism to issue local SIM cards to NRIs on the basis of their passports. As communicated to **Hon'ble Chief Minister on September 3, 2013**, Government of India has now allowed issue of SIM cards to NRIs with foreign passports as per following mode of proof to be furnished:

"In case of foreign tourists visiting India, the copy of Passport with valid Visa stamp shall be treated as proof of identity. For proof of address, the address of local reference which may also be the tour operator shall be taken. In case, there is no local reference, the address of stay (hotel etc.) shall be taken"

H. NRP PRIVILEGE CARDS ISSUED TO NRIs IN PUNJAB

255 Non-Resident Privilege (NRP) Cards alongwith discount booklets have been issued to ***NRIs*** in Punjab to enable them to avail discounts in commercial establishments, institutions and other designated places in State of Punjab. This **facility is available online at www.nripunjab.gov.in**

I. NRI JOURNALISTS GIVEN ACCREDIATION FROM GOVERNMENT OF PUNJAB

In order to enable members of ***NRI media from overseas newspapers and Punjabi channels*** belonging to Punjab to reconnect with their homeland and to equate them with their fellow journalists,

Government of Punjab has decided to give them official accreditation. ***40 overseas media*** organisations have been accredited accordingly.

J. SKILL DEVELOPMENT RELATED SCHEME FOR REHABILITATION OF WIDOWS LAUNCHED

In collaboration with ***Lord Raj Loomba running Loomba Foundation***, the ***Government of Punjab*** signed an MOU for ***50: 50 contribution*** of ***Rs.2 Crores*** for providing livelihood and rehabilitating widows by supplying them sewing machines. This scheme stands finalised. ***Loomba Foundation*** had deposited ***Rs.50 lacs*** and the share of the Government of Punjab of ***Rs.50 lacs*** stands issued to ***D.C, Ludhiana*** for implementation of the Scheme resulting in its beneficial utility and use.

III. NEW NRI WING OF PUNJAB POLICE:

First State in the country to offer this dedicated service of Police Wing in the State of Punjab for NRIs exclusively.

Log on to www.nripunjabpolice.com

or connect to

24x7 Punjab Police Helpline, Dial 91-172-2298543 (for NRIs)

Email: nri.pbpolice@gmail.com or Call 0172-2260042/43

Address : Punjab Police NRI Wing, Phase VII, S.A.S Nagar (Mohali)

- ♣ **A new NRI Wing of Punjab Police has been constituted with a separate Charter, powers, dedicated manpower and resources. The office of the new NRI Wing at Phase VII, Mohali is in a new and modern building with all latest technological facilities and was**

inaugurated by Sardar Sukhbir Singh Badal, Deputy C.M Punjab on August 22, 2013. Punjab is the first State in the country to offer such a facility exclusively for NRIs.

- ♣ **Henceforth all NRI matters requiring police investigation shall be handled by the NRI Wing through NRI Police Stations.**
- ♣ **The NRI Wing is headed by an IGP rank Officer assisted by a DIG, three AIG and four DSP rank Officers dedicated to the NRI Wing. There is an independent NRI Police force of 300 police personnel.**
- ♣ **There are a total of 11 NRI Police Stations in the State. AIG Jalandhar and DSPs NRI Jalandhar, Ludhiana and Moga supervise the functioning of these NRI Police Stations.**
- ♣ **11 NRI Police Stations have jurisdiction over entire Punjab State.**

♣ IGP NRI is empowered to transfer any investigation or enquiry to NRI Wing directly on the request of the NRI.

♣ **NRI Wing Police Officers Dealing with NRI Affairs:**

Designation of Officers	Contact No.
<i>IGP/NRI & Women Wing Phase-VII, S.A.S. Nagar.</i>	<i>0172-22600040</i>
<i>DIG/NRI & Women Wing Phase-VII, S.A.S. Nagar.</i>	<i>0172-22600041</i>
<i>AIG/ Investigation/NRI & Women Wing Phase-VII, S.A.S. Nagar.</i>	<i>0172-22600042-43</i>
<i>AIG/Admn, NRI & Women Wing</i>	<i>Mob No 9779464002</i>
<i>AIG/Crime, NRI & Women Wing</i>	<i>0172-22600042-43</i>
<i>DSP NRI Ludhiana</i>	<i>Contact No 09878900239</i>

<i>(NRI PS Ldh,Ldh (R), SBS Nagar & Moga</i>	
<i>DSP/NRI Jalandhar (NRI PS Jall, HPR, KPT & ASR)</i>	<i>Contact No 09878722332</i>
<i>DSP/NRI & Women Wing</i>	<i>Contact No 01722260042-43</i>
<i>DSP, NRI & Women Wing</i>	<i>Contact No 09780016147</i>
<i>NODAL Officer-1</i>	<i>98765-17145</i>
<i>NODAL Officer-2</i>	<i>98786-71074</i>
<i>NODAL Officer-3</i>	<i>98766-02778</i>
<i>NODAL Officer-4</i>	<i>98764-00003</i>

*** DETAILS OF 11 NRI POLICE STATIONS IN PUNJAB STATE**

Name of Police Station	SHOs Contact Numbers & E-Mail Addresses	Jurisdictions
NRI PS SAS Nagar	98142-81532	SAS Nagar & Patiala District
NRI PS Ludhiana	98157-00462 0161-2663888 psnrildh@gmail.com	Commissioner ate Ludhiana, Fatehgarh Sahib, Barnala & Sangrur Districts and Khanna Police District.
NRI PS Jalandhar	98159-55823 0181-2214115 cpojal.police@punjab.gov.in	Commissioner ate Jalandhar.
NRI PS Amritsar	0183-2210161 097811-38900 psnriamritsar@gmail.com	Commissioner ate Amritsar & Tarn Taran Districts and Amritsar Rural Police District.
NRI PS Moga	78372-10023 01636-235015 psnrimoga1919@yahoo.com	Moga, Bathinda, Mansa, Shri Mukatsar Sahib, Fazilka, Faridkot & Firozpur Districts

NRI PS Jalandhar (R)	97793-55002	Jalandhar Rural Police District.
NRI PS Ludhiana (R)	98158-00639 01624-223258 psnrjagraon@yahoo.com	Ludiana Rural Police District.
NRI PS SBS Nagar	85588-90313 01823-224489 psnrinsr@gmail.com	SBS Nagar & Rupnagar Districts.
NRI PS Kapurthala	98767-00643 01822-220513 psnrikpt@gmail.com	Kapurthala District.
NRI PS Hoshiarpur	98140-63447 01882-243609 psnrhoshiarpur@gmail.com	Hoshiarpur District.
NRI PS Gurdaspur	94171-96557	Gurdaspur & Pathankot districts and Batala Police District.

IV. NRI PLANS AND SCHEMES

A. NRI GOVERNMENT OF PUNJAB RURAL INFRASTRUCTURE DEVELOPMENT FUND (PLAN SCHEME NRI -1)

i. OBJECTIVE

There are number of **NRIs** /**NRI** NGOs who are keen to contribute to the Development of their native areas for improving the living conditions. With a view to provide an enabling and facilitating platform for such contribution to the development of their villages and rural/urban areas by the **NRIs**, Government of Punjab (GoP) in the Department of **NRIs** Affairs has floated a Plan Scheme **NRI** -1 which allows 75% matching grants by the GoP and 25% by the **NRI**/NGO for all rural/urban Development programs which are initiated by **NRI**/NGOs. The scheme was announced with a view to ensure full participation of the **NRIs** and **NRI**/NGOs into the rural/urban infrastructure developmental activities which would also ensure the desired ownership of the public property by the rural/urban and subsequent maintenance of the infrastructure created with local initiative.

ii. SCOPE

The Plan Scheme **NRI**-1 shall be source of funding open to all rural/urban area in the state of Punjab, provided they meet the eligibility conditions set for any project or class of projects from time to time. Since the scheme has been formulated with a view to provide overall benefit of the general masses and overall community development of the area. Government has decided that such projects will not be restricted to hospitals, libraries, drinking water, sewerage, disposal, public latrines, street lights, sports stadium but other areas affecting the people of all walks of life can also be considered. A suggestion list of projects is given hereunder.

iii. PROCEDURE FOR RELEASE OF FUNDS

The Punjab NRI Committee for Development (PUNRICD) headed by the Chief Secretary will decide the quantum of Government's share. At least 25% contribution will be from the **NRIs**/NGO under this Scheme. After the PUNRICD approves the projects, it will be executed and completed under the strict supervision of the concerned **NRI**/NGO. The procedure

of expenditure on the project by the NRI/NGO and the State Government will be as under:-

- a. First the NGO/NRI will spend 15% of the total cost of the project out of their own funds;
- b. Then apply to Deputy Commissioner for release of the 50% share out of the total cost of the project as Government funds and after its utilization. On receipt of report from the DC the State shall release 50% of the State share.
- c. The NGO/NRI will spend next 10% of the total cost of the project out of their own funds.
- d. Then the NGO/NRI will apply to the Deputy Commissioner for release the remaining 25% share out of the Government funds. On receipt of report from the DC the State shall release 50% of the State share.

The Deputy Commissioner and the DINRICD would make efforts to complete the projects as soon as possible at least within a year from the date of release of funds. It will be the responsibility of the concerned Deputy Commissioner to send the completion report of the project to the PUNRICD. The interest accrued from

the amount deposited in the banks shall be the part of the income of the project.

The concerned **NRI/NGOs** will submit the details of accounts of expenditure to the DINRICD after getting it audited from the Chartered Accountant from the panel.

iv. SUGGESTIVE LIST OF PROJECTS

• Water Management Services Covering The Entire Water Cycle

- Water Supply including Overhead Tank
- Public Wells & Hand pumps
- Sewerage Including Sanitation
- Sewage Treatment
- Disposal, Village Ponds
- Storm Water & Drainage Infrastructure
- Public Toilets
- Rain Water Harvesting

• Village Infrastructure Projects

- Construction of 'pucca' Streets
- Construction of Village Internal Roads
- Construction of School Building
- Construction of Dispensary/ Hospital Building
- Construction of Veterinary Facilities

- Establishment of Street Lights
- Construction of Sports Stadium
- Construction of Common Utility Infrastructure Like
 - ✓ Dharamshala
 - ✓ Janjghar
 - ✓ Shamshan Ghat
 - ✓ Panchayat Ghar

- **Village Renewable Energy Infrastructure**

- Bio-Mass Plants, Gobar-Gas Plants
- Solar-Lantern, Solar- Streetlight for Common Places
- Solar water Pumps for Common Usage
- Solar Generator for School's Computer Lab

- **Provision of Education & Health Care Infrastructure**

- School Essentials Infrastructure Like Black Board, Desks & Chairs, Water Cooler, Fans etc.
- School Library
- School Labs for Physics, Chemistry, Agriculture etc.
- Computers Lab for ICT Education
 - ✓ Personal Computers, UPS, Printers
 - ✓ Internet Connection
 - ✓ System Software

- ✓ Content for Teaching Like Encarta, Britannica, Courseware etc.
- Infrastructure for Introducing Teaching of Vocational Subjects

- **Establishment of Citizen Services Centers with Broadband connectivity for providing Government and other Services**



- **Creating Common Infrastructure for Running Special Programs Like**

- Controlling Female Feticide for Improving Sex Ratio
- Vocational Training Center for Women
- Adult Literacy Programmes
- Drug & Alcohol De-Addiction Centers
- Old Age Home
- Physically & Mentally Challenged

- Blind School
- School For Deaf & Dumb
- Vocational Center for Handicapped
- AIDS Control

• **Provision of Infrastructure for Specialized Job Oriented Training Courses for Village Folk**

- Textile & Garment Manufacturing
- Agriculture Related Skill Sets
- Agro / Food Processing
- Dairy Products Related
- Construction Industry Related
- Driving & Auto Technician
- Electrical Repair
- Refrigeration Mechanic
- BPO / Call Center
- Electronics & Consumer Goods Repair
- Telephone / Mobile Troubleshooting
- Computer Related Skills Like Data Entry, PC Repair & Maintenance etc.

B. NRI'S CONTRIBUTION POLICY OF DEPARTMENT OF RURAL DEVELOPMENT AND PANCHAYATS, GOVERNMENT OF PUNJAB.

For details please see www.nripunjab.gov.in

C. GOVERNMENT OF PUNJAB, DEPARTMENT OF HEALTH –SCHEMES FOR HEALTH SECTOR DEVELOPMENT

Government of Punjab, Department of health warmly welcomes all Non-Resident Indian to their roots in Punjab by contributing in the health sector.

Very often, our **NRI** friends ask us, 'how can we contribute to the healthcare system in our home state? How can we help the poor and needy patients in Punjab's hospitals? For those with philanthropy on their mind, we offer the following suggestions:

You could contribute to the operations of Punjab's highly appreciated Emergency Response Service network of Dial-108 ambulances.

Donate Rs 12.42 Lac towards the cost of running one ERS ambulances for one year. We will be happy to

record your generous contribution on the sides of the ambulances.

You could contribute to the comprehensive strengthening and refurbishing of any of our hospitals across the state as follows:

- District Hospital: Rs.8 crores
- Sub- Divisional Hospital: Rs. 4 crores
- Community Health Center: Rs. 2 crores
- Saras in the District & Sub-Divisions: Rs 1 crore

This money will be utilized for filling gaps in the hospital named by you. This Includes equipment, material, doctor's salaries. hiring staff, Improvements to the building and hospital, surroundings and patients services over a period of time We will record your generous contribution by placing a prominent plaque at the main entrance to the hospital and recognition at national day celebrations.

Smaller but for us, not insignificant, will be your donations toward Individual Items/ services like;

Providing patient - amenities inside hospital. (Articles like electrical fittings, water coolers, items furniture, furnishings, heaters, air-conditioners). Minimum contribution: Rs. 25000.

- Providing for the landscaping and beautification of the exterior space around the hospital: Minimum contribution : Rs. 5 lakh for one year for a district and sub-divisional hospital and Rs. 3 lakh for one year for a Community Health Centre. This will include plantation, landscaping, maintenance, gardener's and cleaner's salary. We will be happy to record your contribution with a sign-board in the lawn. It would be good if the contribution can be offered in terms of three years, to provide continuity.

- Providing for the purchase, installation and maintenance of bio-medical equipment : Minimum contribution : Rs. 1 lakh. For details like equipment costs, we can discuss the matter with you on a date of your choice.

- You may have cherished wishes like wanting to contribute towards the comfort and welfare of specific categories of patients, eg, delivering mothers, new-born babies, young children, elderly patients, cancer patients, thalassemia patients and so on. Some of our **NRI** brothers and sisters are very keen to make life easier for those who have suffered the death of a relative, for which they may like to equip and

strengthen the mortuary services in a hospital. Again, such thoughts are welcome, but require discussion so that we can give practical shape to your wishes.

- ***All contributions are welcome, along with your suggestions for the practical Improvement of healthcare services. The Government of Punjab is open to discussing your contribution, the way in which you would like it to be acknowledged and utilized, and how we can reach out to more friends like yourself.***



PROFESSIONAL PROFILE OF ANIL MALHOTRA

*Anil Malhotra is a practising Advocate in India since September 1983 at the Punjab and Haryana High Court at Chandigarh. He appears as Counsel in the Supreme Court of India at New Delhi and before other Courts, Commissions, Boards and Tribunals. He holds Bachelor of Science and Bachelor of Laws (Professional) degrees from the Punjab University, Chandigarh, India. He attained an LLM degree from SOAS, University of London, London in November 1985. He studied comparative family law at the London School of Economics. He has taught civil procedural laws and matrimonial remedies for six years from 1986

to 1992 as a part-time lecturer at the Faculty of Laws, Panjab University, Chandigarh, India.

For over 28 years he has had extensive exposure in handling civil, matrimonial, criminal and overseas litigation on behalf of non-resident Indians residing abroad. He represents a large number of overseas clients in Indian courts and regularly opines on matters of Indian law in cases arising in related matters in foreign jurisdictions. He has conducted a vast variety of matters in Indian Courts pertaining to interpretation and application of foreign Court Orders regarding divorce decrees, child abduction, custody, maintenance, adoption and property related issues of non resident Indians. He interacts extensively with a worldwide Indian population settled overseas in advising them regularly on all issues of civil, matrimonial and criminal law. He is a member of Lawasia, International Law Association, International Bar Association, Commonwealth Lawyers Association and Indian Society of International Law besides being Country Representative (Family Law) Lawasia. His law firm, Malhotra & Malhotra Associates are empanelled Lawyers for several key embassies and High Commissions at New Delhi for advisory, opinion and other legal work.

Has contributed significantly to issues of Inter-Country Adoptions, Inter-Parental Child Removal and Surrogacy by convening seminars, discussions and debates at the India International Centre, New Delhi and other law faculties in association with Law Commission of India and Mr Soli Sorabjee, Senior Advocate. Has to his credit a number of Amicus and Joint Expert appointments by Courts in India and abroad. On January 29, 2007 was elected as Fellow of The International Academy of Matrimonial Lawyers, London.

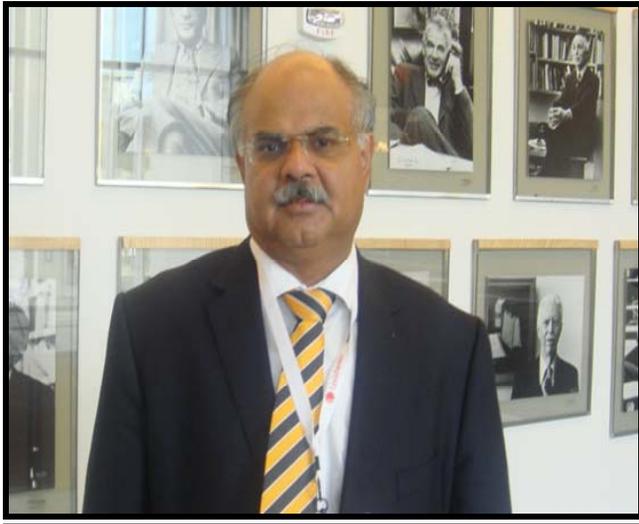
Has co-authored book titled “Acting for Non-resident Indian Clients” (London 2005) published by Jordan Publishing Limited, Bristol, UK. Have authored two booklets on “An Overview of Legal Issues” for the Punjab Government (2008) and (2013). Has authored book titled “India, NRIs and the Law” published by Universal Law Publishing Company Private Limited, New Delhi in 2009. Has co-authored book titled “Indians, NRIs and the Law” published by Universal Law Publishing Company Private Limited, New Delhi released in November 2011. Has co-authored book titled “Surrogacy in India – A Law in the making” published by Universal Law Publishing Company Private Limited, New Delhi released in May 2013.

Has written regular newspaper articles on family law and NRIs issues with about 200 articles to his credit. In May 2010, the Executive Council of the International Law Association, London has nominated him as a Member of the International Family Law Committee of the International Law Association.

He is the Indian family law Correspondent for the International Family Law journal published by Jordan Publishing Limited, Bristol. As an author he has to his credit substantial published work in international legal journals. He is the Indian representative for Reunite Child Abduction Agency.

He is a Member of the Punjab Governance Reforms Commission and heads the Task Force on Policy, Procedures and NRI Reforms for which he has submitted five Reports to the Government of Punjab.

He can be reached at anilmalhotra1960@gmail.com



PROFESSIONAL PROFILE: RANJIT MALHOTRA

Ranjit Malhotra, qualified as a lawyer in India in the year 1990 and was the first Indian lawyer to be awarded the prestigious Felix Scholarship to read for the LLM degree at the School of Oriental and African Studies, University of London. He attained his Degree with merit in 1993, specialising in immigration laws and South Asian family laws. He is an India-based lawyer handling substantial international work. He is a member of the International Bar Association and has been until recently the Regional Representative for India of the Migration and Nationality Law Committee of the IBA. He is presently the Newsletter Editor of the Family Law Section of the IBA and the former Co-Chair of the

Family Law and Family Law Rights Section of Lawasia. He is also a nominated life member of the Indian Society of International Law, Immigration Law Practitioners Association, London, American Immigration Lawyers Association, Washington, Reunite Child Abduction Agency in London, Indian Council of Arbitration at New Delhi, Lawasia at Australia, Fellow of the International Academy of Matrimonial Lawyers, Commonwealth Lawyers Association at London and International Law Association at London. He is also enrolled with The International Association of Youth and Family Judges and Magistrates.

In October 2007, he was nominated by the British High Commission, New Delhi, India to attend the Wilton Park Conference titled “WP 890 Migration Towards a Comprehensive Approach”, held in Spain from 8-10 October 2007. He had attended another Wilton Park conference as a special invitee on migration issues in the UK in December 2008.

He frequently travels abroad to present papers at international legal conferences. Mr. Ranjit Malhotra has travelled extensively in the UK, USA, Canada, Europe, South Africa, Australia and the Far East in connection with professional assignments as also to attend conferences. He was the only India speaker at the first AILA Global Immigration Summit held in New York in September 2002 and the second Summit in New York in October 2004. He also presented papers at the Global Immigration Conferences jointly organised by AILA, IBA and ILPA held in London in November 2007,

November 2009 and September 2011. Previously, he has made presentations at AILA Annual conferences held in New Orleans in 2003, Salt Lake City in 2005 and Vancouver in 2008. He was awarded the AILA Berger memorial scholarship to make a presentation at the AILA Annual Conference held in San Diego, California in June 2011. Most recently, he presented a paper on Surrogacy in India at the 6th World Congress on Family Law and Children's Rights held at Sydney, Australia from 17-20 March 2013.

He has substantial published work in different major jurisdictions to his credit. He is one of the principal authors in the book titled "Acting for Non-resident Indian Clients," (2005) published by Jordan Publishing Limited at Bristol in U.K. The book carries a foreword by the late Lord Slynn of Hadley, Senior Judge of the erstwhile House of Lords in London, U.K. He is also the co author of book titled "Indians, NRIs and the Law" (2011) published by Universal Publishing Company Limited, New Delhi. He has participated in a large number of international conferences and presented papers published in various publications.

Mr. Ranjit Malhotra, specialising in areas of private international law is a managing partner in his firm Malhotra & Malhotra Associates. The firm has a broad-based practice with a reputation for offering a full range of quality personalised legal services. The firm handles legal work for several Fortune 500 companies. He also extensively advises foreign lawyers in the area of private international law, while acting on behalf of the

non-resident Indian community, besides rendering expert testimony in foreign litigation, involving Indian laws. He has also commissioned a large number of expert reports on the legal position of surrogacy in India, in applications for grant of parental orders instituted in the High Court of London.

Mr. Ranjit Malhotra has also been extensively handling inbound and outbound corporate immigration work for software companies, banks, consulting companies, multinationals etc. including lodging business and settlement applications at Embassies and Consulates throughout India. He has rich experience of consular representation.

His firm, Malhotra & Malhotra Associates, is on the panel of lawyers for seven major Embassies in New Delhi, including the Australian High Commission, British High Commission, Canadian High Commission and New Zealand High Commission, German Embassy, Austrian Embassy, Embassy of Spain at New Delhi, the office of the Canadian Consul General at Chandigarh and the office of the Consul General of the American Embassy at Mumbai.

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**Non
Resident
Punjabi
Sammelan**
3-5 January, 2013

An Overview of LEGAL ISSUES

by
Anil Malhotra
Ranjit Malhotra



Department of NRI Affairs
Government of Punjab
Mini Secretariat, Sector 9,
Chandigarh







Parvasi Punjabi Divas
3 to 5 January, 2013

An Overview
Of
Legal Issues

By

Anil Malhotra

Ranjit Malhotra

Government of Punjab, Chandigarh.
This booklet has been compiled by
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This booklet has been compiled by Malhotra & Malhotra Associates

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Introduction

The Government of Punjab is making a fresh beginning in organizing the Punjabi NRI Sammelan on January 3 to 5, 2013 at Chandigarh and Jalandhar respectively. The State proposes to give an overview of the State, the Government's vision, Current Social and Economic Issues, Investment Opportunities and its Business Plans. Our Fellow Indians from Punjab who have migrated to foreign countries abroad have brought laurels to their home land, have excelled in every walk of life and have contributed generously to the upliftment and betterment of their Home State. It is the endeavour of the Government of Punjab to bond their brethren with their homeland – the pious soil of their beloved State from where they migrated.

In this brief booklet, an effort has been made to focus and look at Economic, Social, Commercial and Business Issues. The problems of NRIs have also been looked at with a perspective of seeking practical solutions for their resolution. It will be the endeavour of the Government of Punjab to take effective steps in safe-guarding the interests of its overseas residents and provide means for protecting their properties, assets, land interests besides other ancillary issues. The Government values and welcomes its original inhabitants to make investments in their homeland with all possible vigour and financial strength.

This booklet contains useful information from all perspectives which will help non-resident Indians to familiarize themselves with the legal issues involved. The booklet is intended to serve as a guide and does not purport to be a legal document. While every possible care has been taken to provide all possible accurate information, in case of any variation or difference, official sources may be confirmed and the official authorities may be contacted for any update or change. This booklet has been compiled for Government of Punjab by Malhotra & Malhotra Associates, International Lawyers

(anilmalhotra1960@gmail.com, malhotraranjitindia@rediffmail.com)

CHAPTER – 1

NRIs / PIOs / OCIs – A COMPARATIVE PERSPECTIVE

- The Constitution of India does not allow holding Indian Citizenship and Citizenship of a foreign country simultaneously. Therefore, by amending the Constitution, a new category of citizenship i.e. Overseas Citizen of India (OCI) was created as a compromise to dual citizenship.
- Both Article 9 of the Constitution of India and Section 9 of the Indian Citizenship Act categorically prohibit dual citizenship and holding of two nationalities simultaneously of two different countries. Section 7 B of the Constitution specifically prohibits political and other rights to OCIs who have only multiple entry life-long visa facility for visiting India for any purpose any time.
- Registration of Person of Indian Origin (PIO) Card holders started under the Ministry of Home Affairs Scheme of August 19, 2002, whereas the OCI Scheme became operational from December 2, 2005. What is then the difference between an NRI, a PIO and an OCI. A description of the terminologies answering frequently arising questions in these 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 grand parents or great grand parents 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 grand children are eligible for registration as OCIs. They enjoy multiple entry multipurpose life long 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 have no political rights.

- NRIs / PIOs are permitted to open bank accounts in India out of funds remitted from abroad, foreign exchange brought in from abroad or out of funds legitimately due to them in India. These accounts can be opened with banks authorized by the Reserve Bank of India and there are three types of non-resident accounts:
 - Non-Resident (External) Rupee Accounts (NRE Accounts)
 - Ordinary Non-Resident Account (NRO Accounts)
 - Foreign Currency Non-Resident (Bank) Accounts (FCNR (B) Accounts)

The Comparative Perspective of an NRI, a PIO and an OCI looks like follows:

	NRI	PIO	PIO Card Holder	OCI
Who?	An Indian citizen who is ordinarily residing outside India with Indian Passport	A person who or whose ancestors was an Indian national and who is presently holding another country's citizenship/nationality i.e. he/she is holding foreign passport	A person registered as PIO Card Holder under MHA's scheme vide Notification Number 26011/4/98-F.I dated 19.08.2002	A person registered as Overseas Citizen of India (OCI) under section 7A of the Citizenship Act, 1955
Who is eligible?			Any person who at any time held an Indian Passport; or either of his parents or grand parents was born in or was permanently resident in India as defined in Government of India Act, 1935, provided neither was at any time a citizen of Afghanistan, Bhutan, China, Nepal, Pakistan and Sri Lanka	A foreign national, who was eligible to become a citizen of India on 26.01.1950 or was a citizen of India on or at anytime after 26.01.1950 and his/her children and grand children, provided his/her country of citizenship allows dual citizenship. However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI.
How can one get status?			Eligible persons to apply in the prescribed form alongwith enclosures. Form available on MHA's website: www.mha.nic.in	Eligible persons to apply online/download application form from MHA's website: www.mha.nic.in
Fees?			Rs. 15,000/- or equivalent in local currency for adults. For the children upto the age of 18 years, the fee is Rs. 7500/- or equivalent in local currency	US \$ 275 or equivalent in local currency. In case of PIO card holders, it is US \$ 25 or equivalent in local currency
Which nationals are eligible			PIOs of all countries except Afghanistan, Bangladesh, Bhutan, China, Nepal, Pakistan and Sri Lanka	PIOs of all countries except Pakistan and Bangladesh provided the country of nationality allows dual citizenship in some form or other
What benefits does one get?	All benefits as available to Indian citizen subject to notifications issued by the Government from time to time		Shall not require a separate visa to visit India. Will be exempt from the requirements of registration if his/her stay on any single visit in India does not exceed 180 days. Parity with NRIs in respect of all facilities in the economic, financial and educational fields except in matters relating to the acquisition of agricultural/ plantation properties	A multiple entry multi-purpose life long visa for visiting India. Exemption from registration with local police authority for any length of stay in India. Parity with NRIs in economic, financial and educational fields except in relation to acquisition of agricultural or plantation properties. No parity shall be allowed in the sphere of political rights
Need for visa to visit India?	No	Yes and of specific type depending on his/her purpose of visit	Can visit India without visa for 15 years from the date of issue of PIO card	Can visit India without visa lifelong

CHAPTER – 2

POLICY ON FDI/NRI INVESTMENT

- Foreign Direct Investment (FDI) upto 100% is allowed under the automatic route in all activities except those which require the approval of the Government. FDI policy is notified through press notes issued by the Department of Industrial Policy and Promotion, and are available at the website (www.dipp.gov.in). Reserve Bank of India (RBI) under Foreign Exchange Management Act (FEMA) also notifies FDI policy available on RBI website (www.rbi.org.in).
- FEMA replaced FERA w.e.f. June 1, 2000. The replacement was a great relief for NRIs as FERA was unduly stringent in its criminal provisions. FEMA is a civil law and proactive in its outlook compared to FERA. The thrust of FEMA is to manage the foreign exchange resources rather than to control them as was done previously under FERA. FEMA has catered to the changed economic scenario by promoting FDI/ NRI investment.

PROCEDURE FOR FDI/NRI INVESTMENT

PROCEDURE UNDER AUTOMATIC ROUTE

- FDI in sector/activities to the extent permitted under automatic route does not require any prior approval either by Government of India or RBI. The investors are only required to notify the Regional office concerned of RBI within 30 days of

receipt of inward remittances and file the required documents with that office within 30 days of issue of shares to foreign investors.

PROCEDURE UNDER GOVERNMENT APPROVAL

- FDI in activities not covered under the automatic route requires prior Government approval and are considered by the Foreign Investment Promotion Board (FIPB). Approvals of composite proposals involving foreign investment/foreign technical collaboration are also granted on the recommendations of the FIPB.
- Such applications for FDI cases, except Non-Resident Indian (NRI) investments and 100% Export Oriented Units (EOUs), should be submitted to the FIPB Unit, Department of Economic Affairs (DEA), Ministry of Finance.
- Applications for NRI and 100% EOU cases should be presented to Secretariat for Industrial Assistance (SIA) in Department of Industrial Policy and Promotion.
- Applications can also be submitted with Indian Missions abroad who forward them to the Department of Economic Affairs for further processing.
- Applications can be made in Form FC-IL which can be downloaded from www.dipp.gov.in. Plain paper applications carrying all relevant details are also accepted. No fee is payable.

GENERAL PERMISSION OF RBI UNDER FEMA

- Indian companies having foreign investment approval through FIPB route do not require any further clearance from RBI for receiving inward remittance and issue of shares to the foreign investors. The companies are required to notify the concerned regional office of the RBI of receipt of inward remittances within 30 days of such receipt and within 30 days of issue of shares to the foreign investors or NRIs.

GENERAL PERMISSION TO NRIs/PIOs

- The Reserve Bank has granted general permission to NRIs/PIOs for undertaking direct investment in Indian Companies under the automatic route, purchase of shares under Portfolio Investment Schemes, investment in companies and proprietorship/partnership concerns on non-repatriation basis and for remittances of current income. NRIs/PIOs do not have to seek specific permission for approved activities under these schemes.
- The Reserve Bank of India has now further simplified financial transactions by NRIs/PIOs by granting general permission to:
 1. Resident individuals, partnership/proprietorship concerns to avail of interest bearing rupee loans from NRIs/PIOs out of funds remitted by them from abroad or out of funds held in their bank accounts in India, on non-repatriation basis, subject to certain conditions; one of them being that the rate of interest on such loans should not exceed Bank Rate plus two percentage points.

2. NRIs/PIOs to transfer by way of gift shares held by them in Indian companies and to transfer by way of gift immovable property held by them in India subject to compliance with other applicable rules/regulations including the provisions of Foreign Contribution Regulation Act, 1976 by the charitable trust/organisation concerned.
3. All domestic public/private sector mutual funds for issue of units to NRIs/PIOs on both repatriation and non repatriation basis.
4. NRIs/PIOs to place deposits with Indian firms, on non-repatriation basis and with Indian companies on non-repatriation basis out of domestic sources.
5. NRIs/PIOs for sale of shares acquired under direct investment Schemes on stock exchanges in India.
6. NRIs/PIOs for transfer of shares, by way of sale under private arrangement to another NRI or to a resident.
7. RBI permission is not required for drawal of foreign exchange for purchase of trade marks or franchise in India.
8. NRIs/PIOs may remit the sale proceeds of immovable property without the lock in period of 10 years subject to a maximum of 1 million USD per calendar year.

NRIs/PIOs have been granted general permission to invest in Government Securities and Treasury Bills.

Taking into account the facilities that are already available, and the above new measures, NRIs/PIOs will not have to seek specific permission of Reserve Bank for a whole variety of approved financial/investment transactions. This should considerably reduce paper work and time taken for undertaking such transactions.

DIRECT INVESTMENT OPPORTUNITIES

NRIs can invest in India as under:

1. Investment under Automatic Route with repatriation benefits
2. Investment with Government approval
3. Other investments with repatriation benefits
4. Investments upto 100% equity without repatriation benefits
5. Other investments by NRIs without repatriation benefits.

1. AUTOMATIC ROUTE OF RBI WITH REPATRIATION BENEFITS

NRIs can invest in shares/convertible debentures of Indian companies under the

Automatic Route without obtaining Government or RBI permission except for a few sectors where FIPB permission is necessary, or where the investment can be made only upto a certain percentage of paid up capital.

For full details of the Automatic Route, investors may see website of Department of Industrial Policy & Promotion.

2. INVESTMENT WITH GOVERNMENT APPROVAL

Investment not eligible under the Automatic Route, are considered by the Foreign Investment Promotion Board (FIPB), a high Powered inter-ministerial body under the chairmanship of Secretary, Department of Economic Affairs, subject to sectoral limits/norms. These investments also enjoy full repatriation benefits.

3. OTHER INVESTMENTS WITH REPATRIATION BENEFITS

- | | | |
|----|--|-------------------------------|
| 1. | Investment in units of domestic mutual funds | NRIs are permitted to invest |
| 2. | Investment in bonds issued by public undertakings | in the securities with |
| 3. | Purchase of Shares of Public sector enterprises being disinvested by GOI. | repatriation sector benefits. |
| 4. | Investment in government dated securities (other than bearer securities) or Treasury Bills | |

**4. INVESTMENTS UPTO 100% EQUITY WITHOUT REPATRIATION
BENEFITS**

<p>1. Capital contribution to any proprietary or partnership concern</p>	<p>NRIs can invest by way of capital contribution in any proprietary or partnership concern in India provided the firm or the proprietary concern is not engaged in any agricultural plantation activities or real estate business or print media on non-repatriation basis subject to certain conditions.</p>
<p>2. New issues of shares / debentures of Indian companies</p>	<p>NRIs have been granted general permission to subscribe to the shares/ convertible debentures of an Indian company on non repatriation basis, and to an Indian company to issue shares or convertible debentures by way of new/rights/bonus to NRIs on non repatriation basis provided that the investee company is not engaged in agricultural plantation activities or real estate business (excluding real estate development i.e. development of property or construction of houses) or chit fund or is not a Nidhi Company.</p>

5. OTHER INVESTMENTS BY NRIs WITHOUT REPATRIATION BENEFITS

(i) Investment in Non-Convertible Debentures

(ii) Money Market Mutual Funds

(iii) Deposits with Companies

(iv) Commercial Papers

CHAPTER – 3

LEGAL AWARENESS OF INDIAN LAWS REGARDING

MARRIAGE, DIVORCE, MAINTENANCE & CUSTODY OF CHILDREN

At present there is no uniform marriage law or uniform Civil Code existing in India. The registration of marriages in India, is optional, but, the Supreme Court of India has directed Central and State Governments to enact legislation making it compulsory to register all marriages. India has a plural system of laws. However, the Constitution of India, the Indian Penal Code, the Civil Procedure Code, the Criminal Procedure Code are important Central Legislations applicable uniformly throughout the territory of India.

I. Rights of NRI Spouses

General Rights available to all citizens including NRI Spouses

- Right to equality and equal protection of the laws (Article 14 of the Constitution of India)
- Right to Life (under Article 21 of the Constitution of India)

- Right to have one's own nationality or citizenship
- Right to have an independent domicile.
- Right to own or possess property independently or jointly.
- Right to travel subject to visa and other restrictions for foreign nationals.
- Right to enforce proper foreign decrees as per the Civil Procedure Code.

Women's Specific Rights under Indian Laws

- Rights against physical or sexual or economic exploitation
- Rights to seek compensation against matrimonial desertion.
- Rights of mother to keep children below 5 years of age.
- Rights to seek return of matrimonial presents and streedhan.
- Rights against demand and furnishing of or giving of dowry.
- Rights against matrimonial cruelty, bodily harassment, torture, etc.
- Rights against marital or domestic violence.

Matrimonial Rights of NRI Spouses

Grounds for Divorce

When One spouse

- Enters into sexual relationship or adultery with another person
- Deserts for more than two years
- Inflicts physical or mental cruelty on the wife
- Converts to another religion
- Has leprosy which cannot be treated
- Has become incurably of unsound mind
- Has venereal disease in a communicable form
- Has not been heard of as being alive for a period of seven years
- Has renounced the world and become a saint
- Husband has been convicted for committing rape and bestiality.
- Repudiation of child marriage by wife before attaining the age of 18 years.

Divorce by Mutual Consent

- No grounds are required if divorce is sought jointly by mutual consent.
- The husband and wife should be living separately for the preceding one year before giving a joint petition for divorce by mutual consent.
- Both spouses agree that they have not been able to live together.
- The Court will issue a notice for renewal of the petition after six months but not later than eighteen months from the date of the presentation of the petition.
- If the petition is not withdrawn, the Court will pass a decree of divorce on the renewal of the petition on the second date after the waiting period of 6 to 18 months.

Judicial Separation

- Either spouse can also petition to the court for judicial separation on the same grounds which entitles him or her to divorce.
- Divorce puts an end to the marriage, while judicial separation does not
- The husband and wife are merely staying apart; and if ever they want to come together, they can resume cohabitation as husband and wife

- However, if there is no resumption of cohabitation after one year or more of judicial separation, either party can seek a decree of divorce from the Court.

Right to seek restitution of conjugal rights

- If either spouse without reasonable excuse withdraws from the society of the other, without any valid reason and does not fulfil his or her, marital obligations, the aggrieved spouse can be ordered by the court to resume marital cohabitation.
- However, if there is no restitution of conjugal rights for a period of one year or more after passing of a court decree for resumption of cohabitation, either party can petition the court for dissolution of marriage by seeking divorce.

II. Legal Rights of Women

Every women has the right to live her married life with dignity and freedom, care and support from her spouse, without abuse or violence (emotional, mental or physical), neglect, fear or humiliation of any kind.

Domestic Violence

The following acts on the part of the husband constitute domestic violence and are illegal in most countries and against which the local police of every country can be approached for protection and help:

- Physical abuse

- Mental and emotional abuse
- Verbal and social abuse
- Sexual abuse
- Economic abuse

Instances of Physical abuse

- Hair pulling, limb twisting, slapping violently, punishing, cutting, stabbing, confinement to a room
- Usage of weapons and firearms
- Repeatedly forcing abortions and miscarriages.

Instances of Mental/emotional abuse

- Blackmailing, coercion, threat, pressure
- Accusing the woman of loose morals
- Humiliating, both in public and private
- Breaking household goods, killing family pets
- Threatening to hit or harm children & close relatives.

Instances of sexual abuse

- Forcing intercourse or other sexual acts without consent
- Physically assaulting sexual parts
- Treating partner like a sexual object
- Demanding forms of unnatural sex
- Threatening violence or punishing for non-compliance with sexual demands

Instances of verbal/social abuse

- Abusing and derogatory name calling
- Maligning in front of peers and friends
- Insulting in front of others
- Abusing her parents, friends & family
- Enforcing isolation, physical confinement, restricting familial contacts, controlling movement: generally treating badly

Instances of economic abuse

- Controlling all family income and limiting access to finances

- Forcing not to take up employment
- Forcing financial dependency
- Not providing sufficient funds for household expenditure
- Accusing of misuse or misappropriation of finances

III. Maintenance Rights of Women / Custody of Children

Statutory provisions for seeking maintenance

- Section 24 of Hindu Marriage Act, 1955 provides as interim relief to either spouse in need, a monthly sum decided by the court to be paid during the pendency of a matrimonial petition besides litigation expenses of proceedings.
- Section 25 Hindu Marriage Act, 1955 provides for permanent alimony and maintenance to be paid to either spouse in need during his or her life time.
- Section 125 of Code of Criminal Procedure (Cr PC) makes it mandatory for a person to maintain his wife and children failing which penal provisions entail.
- There is no bar in seeking maintenance under Section 125 Cr PC even if maintenance has been sought under Section 24 of the Hindu Marriage Act.
- Section 18 to 28 of the Hindu Adoptions and Maintenance Act, 1956 provide for maintenance to a Hindu wife, widow, children and aged parents separately.

Maintenance during the proceedings of the divorce case

- The women has the right to claim ad-interim maintenance even during the proceedings of the divorce case
- Maintenance is usually decided depending upon the income and status of the husband and he has to provide maintenance accordingly
- The women can also claim maintenance from the ancestral property of the husband through his right in such property
- If the husband does not obey the court's order, his property can be attached.

IV. Right to Custody of children

- Under Section 6 of the Hindu Minority and Guardianship Act, 1956 (HMGA) the natural Guardian of a minor shall be his father and after him the mother. The custody of a minor less than 5 years of age shall ordinarily be with the mother.
- Non Hindus can initiate proceeding under the Guardians and Wards Act, 1890 (GWA) for being appointed as guardians since HMGA is applicable only to Hindus Likewise, non-Hindus cannot adopt under the Hindu Adoptions and Maintenance Act, 1956 but can be appointed as Guardians under the GWA.
- Under Article 32 or under Article 226 of the Constitution of India, any person can invoke the jurisdiction of the Supreme Court of India or of any High Court

within India directly for the issuance of a writ of habeas corpus if it is alleged that a child / children of a parent have been removed illegally from the lawful custody of the other parent either in violation of a foreign court custody order or in violation of the parental rights of the aggrieved parent. However, India is not a signatory to the Hague Convention on Civil Aspects of International Child Abduction and there is no mechanical return of children to foreign countries on the basis of foreign court orders and matters are decided on merits in India.

Custody of Children During and after Divorce Proceedings

- Till 5 years of age children stay with the mother.
- The court hearing the divorce petition is competent to pass orders regarding the custody of children under Section 26 of the Hindu Marriage Act, 1955.
- The universal principle that the welfare of the child shall be the paramount consideration in the best interest of the child is uniformly accepted by all Courts.

V. Other Relevant laws in Matrimonial Matters

A) Dowry Prohibition Act

Definition of Dowry:

Section 2 of the Dowry Prohibition Act, 1961 defines dowry as any property or valuable

security given or agreed to be given either directly or indirectly:-

- a. by one party to a marriage to the other party to the marriage or
- b. by the parent of either party to a marriage or by any other person to either party to the marriage or to any other person.

Such transaction should take place during or before or in connection with the marriage of the said party. Dowry does not include dower or *Mehr* in the people to whom Shariat Law applies.

Penalty

The punishment for the offence of dowry will be imprisonment for five years. However, the court, for adequate and special reasons to be recorded in the judgment, may reduce the sentence to a period of less than five years.

No contract for dowry

Any agreement for giving or taking of dowry is not enforceable.

Concept of Streedhan

- Any property or gift given to a Hindu woman before, at the time of marriage or later is her property

- May be gifted by anyone, even in-laws, friends
- She alone has the right to gift, will or dispose of her property as she desires
- No one else has a right on it
- Anyone who has a woman's streedhan in her/his custody should return it to the actual owner within a stipulated time period
- If the trustee disposes of her property without her willingness, the offender will be punished with imprisonment and fine
- If the woman dies without willing away her property, it goes to her sons/daughters and husband

List of Gifts

A list should be made of the gifts given during or just after marriage. There has to be two lists: one for the man/another for the woman. The man's list has to contain the gifts to him by either party. The woman's list has to contain the gifts given to her by either party. Spouses and witnesses should sign it. Both parties should retain a copy of the list.

B) Indian Penal Code

B i) Section 304 – B–IPC – Dowry deaths

A Woman's death is called "dowry death" when

- a woman dies of burn or bodily injury or in abnormal circumstances

- within 7 years of marriage and
- it is shown that just before her death she was being harassed by her husband or any of his relatives for dowry.

In case of such a death, husband or the relative will be presumed to have caused the death of that woman

Punishment

- the accused will be punished with life imprisonment or at least 7 years imprisonment
- it is also offence if anyone tries to destroy evidence
- postmortem has to be conducted in cases of death

B ii) Section 498 A of IPC – Cruelty.

Husband or relatives of a husband of a woman subjecting her to cruelty will be punished with imprisonment for a terms extending to three yeas and shall also be liable to fine.

‘Cruelty’ means any willful conduct driving the woman to commit suicide or to cause grave injury or danger to life, limb or health of the women;

Harassment of the woman with a view to coercing her or any other person to meet any unlawful demand.

B iii) Section 405 and 406 of IPC – Criminal Breach of Trust

In matters of entrustment and dominion of matrimonial property of a woman in respect of her streedhan or her belongings or gifts given in marriage, if the same are misappropriated or dishonestly disposed of in violation of a woman's rights, it is punishable for criminal breach of trust with imprisonment upto three years or with fine or with both.

C) The Protection of Women from Domestic Violence Act, 2005

With effect from October 26, 2006, the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family are protected under the Domestic Violence Act, 2005.

According to Section 3 of the said Act, domestic violence includes an act, omission, commission or conduct if it:

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

The offence of domestic violence may also result in the accused being charged under Section 498 A of the Indian Penal Code or the Dowry Prohibition Act, 1961.

VI. NRI Matrimonial Disputes: Some Important Judgments

Recent judgments and pronouncements in NRI family and matrimonial matters

1. In Jagraj Singh v/s Birpal Kaur, the Supreme Court upheld the order of the High Court summoning the NRI husband for attempting reconciliation in pending divorce proceedings in India by issuance ofailable warrants to be served on him through the Ministry of External Affairs, GOI and the Indian Consulate in Italy.
2. In Sondur Rajini v/s Sondur Gopal, the Bombay High Court held that irrespective of any foreign nationality acquired by spouses of Indian origin whose marriage was solemnised under the HMA in India, they would retain Indian domicile & Indian courts retained jurisdiction for granting matrimonial relief.
3. In Anubha v/s Vikas Aggarwal, decided by the Delhi High Court, it was directed that an abandoned Indian wife of an NRI husband in the US should be paid maintenance in US dollars and the erring husband should be served summons for appearance through the MEA and the Indian High Commission.

4. In Navin Chander Advani v/s Leena Advani, the Bombay High Court held that in respect of parties who were Indian citizens and had married in USA according to Hindu rights, the courts in India had jurisdiction to decide their matrimonial disputes.
5. In Harmeeta Singh v/s Rajat Taneja, the Delhi High Court held that in respect of husband and wife of Indian origin whose marriage was solemnised in India, the decree of divorce by courts in America is not recognised and the Courts in India will have jurisdiction over the matrimonial dispute.
6. In Vinaya Nair v/s Corporation of Kochi, it has been held by the Kerala High Court that marriages solemnised under HMA must be registered under HMA and not SMA since there is no condition under the HMA that a Hindu must be necessarily domiciled in India and because HMA has extra-territorial operation outside India.
7. In Mandy Jane Collins v/s James Michael, the Bombay High Court at Goa, in a matrimonial dispute declined to interfere in a Habeas Corpus writ for child custody & left it open to parties to pursue their civil remedy for appropriate proceedings.
8. In Ranbir Singh v/s Satinder Kaur Mann, the Punjab and Haryana High Court declining to interfere in a Habeas Corpus petition by the NRI father for the

custody of his children held that an ex-parte judgment given by a foreign Malaysian Court is inconclusive & cannot be enforced and that the matter can be agitated in custody proceedings in appropriate forum for custody proceedings.

9. In Ramakrishna v/s Priya, the Madras High Court declining to interfere in a habeas corpus petition held that interim orders passed by courts in USA directing the mother to hand over custody to NRI father cannot be enforced and custody issue be decided by the family Court in India by adjudging the welfare of the child.
10. In Rakesh Kumar v/s Ashima Kumar, the Punjab and Haryana High Court declined to grant an injunction against the NRI wife from continuing with her divorce petition in USA since foreign Court yet to pass an order of objections of husband resident in India and foreign Court cannot be treated as a subordinate civil Court in India.
11. In Paul Mohinder Gahun v/s Sellina Gahun, the Delhi High Court held that where the wife, husband and minor child who were all Canadian citizens and since the wife stealthily came to India, her petition for guardianship of her minor child under the GWA was not maintainable in India since the minor was ordinarily not resident in India and Delhi Court had no jurisdiction to decide the petition.
12. In Lekha v/s P. Anil Kumar, the Supreme Court reversing the decision of the High Court permitting the NRI father to take his child to the Gulf held that the High Court had committed grave error in deciding grant of custody without

ascertaining the wishes of the minor and permitted contact to both parents in India.

13. In Y Narasimha Rao v/s Y. Venkatalakshmi, where parties were married in India under the HMA and the husband obtained a divorce decree in USA on the ground that the marriage had irretrievably broken down, the Supreme Court held that such US divorce decree was not enforceable in India since it was not in accordance with the HMA and Section 13 of the CPC dealing with foreign judgments.
14. In Neerja Saraph v/s Jayant Saraph, where the NRI husband sought annulment in USA of the marriage solemnised under HMA in India and the wife in a suit for damages obtained an ex-parte decree in India for Rs 22 lacs, the Supreme Court held that no marriage between an NRI and an Indian woman in India be annulled by a foreign Court while suitable alimony be paid to the wife and decree is granted by Indian courts should be made executable in foreign countries.
15. In Veena Kalia v/s Jatinder Kalia, where the NRI husband got divorce in Canada on irretrievable break down grounds, the Delhi High Court held that even though the wife had not contested the proceeding in Canada, such divorce decree in Canada was a nullity & the wife's petition for divorce in India was maintainable.
16. In Vikas Agarwal v/s Anubha, where simultaneous matrimonial proceedings were pending between spouses in USA and India, the Supreme Court upheld the order of the Delhi High Court striking off the defence of the NRI husband and declining his contention that the Indian Court had no jurisdiction in the matter.

It may be added that the above judgments are based on the facts and circumstances of each individual case. Though the law laid down by the Supreme Court of India is binding on all High Courts in India, the law laid down by respective High Courts are binding within the respective States and can be cited for persuasive value before different High Courts in other jurisdictions. It is therefore advisable to seek legal assistance and professional opinion before arriving at any conclusion in this regard.

CHAPTER – 4

NRI's PROPERTY RELATED PROBLEMS

I. Summary Eviction of tenants from properties of NRIs

- 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 ejection 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 NRI's 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.

II. INDIA, NRIs and Wills

- 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 (HSA) contains the codified law relating to intestate succession among Hindus. The Indian Succession Act, 1925 (ISA) consolidates the law applicable both to intestate and testamentary succession applicable to persons other than Hindus. 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 HSA 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 HSA :-
- Firstly, for a Hindu domiciled outside India, succession to his immovable property in India is governed by HSA 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 HSA 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 HSA 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 HSA. 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 HSA 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 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.

III. Land Revenue Disputes and Maintenance of Revenue Records

- 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, "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 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. A copy of this Notification is appended herewith.

GOVERNMENT OF PUNJAB
DEPARTMENT OF REVENUE AND REHABILITATION
(AGRARIAN REFORMS BRANCH)

Notification

The 16th November, 2006

No. S.O. 49/P.A.16/1887/S. 105/2006.—In exercise of the powers conferred by section 105 of the Punjab Tenancy Act, 1887 (Punjab Act No. 16 of 1887), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to confer the powers of the Assistant Collector Ist Grade upon officers as given under column No. 2 of the Table, to decide the suits of Non-Resident Indians under subsection (3) of section 77 of the said Act in respect of the areas as given under column No. 3 of the Table, namely :—

TABLE

Serial No.	Designation of the Officer	Area for disposal of Cases
1	2	3
1	District Revenue Officer, Jalandhar	Jalandhar, Amritsar, Kapurthala, Ludhiana and Tarn Taran.
2	District Revenue Officer, Hoshiarpur	Hoshiarpur, Gurdaspur.
3	District Revenue Officer, Moga	Moga, Mukatsar, Faridkot, Bhatinda, Mansa, Sangrur and Ferozepur.
4	District Revenue Officer, Nawanshahar	Nawan Shahar, Ropar, Patiala, Fatehgarh Sahib and S.A.S. Nagar.

K. K. BHATNAGAR,

Financial Commissioner, Revenue and
Secretary to Government of Punjab,
Department of Revenue and Rehabilitation.

CHAPTER – 5

NRIs IMMIGRATION RELATED QUESTIONS

I. Emigration Act: A Need for Change

- India is the seventh largest country in the world with a population of 1095 million Indians which accounts for 16.7% of the world population. There are 28 million passport holders in India. There are about 50,000 households with an annual income of more than Rs.10 million and the number is expected to go up to 1,40,000 households by the year 2010. Between 2003-04, the number of people who have made a million dollars grew in India by 14%- faster than US and UK. These statistics based on a study by the World Tourism Organization says it all.
- 25 million non resident Indians live in 110 countries abroad and an estimate of 400,000 persons are emigrating from India every year. The lure of foreign jobs is so strong that many of the aspiring emigrants who do not have close family ties or work permits adopt illegal means to go abroad. High population growth and increasing local unemployment rates with the urge to improve economic status and the lure of Euros fuels tendencies of illegal immigration. In September 1996 more than 170 Indian youths mostly from Punjab attempting illegal immigration drowned off the Greek Coast. Some of the survivors told that they had paid upto Rs. 4 lakhs for getting jobs abroad mostly by taking loans.

- Unscrupulous agents take huge sums of money to promote this illegal traffic of human beings. The modus operandi of such activities is that after leaving India such illegal travellers intentionally lose or destroy their travel documents to prevent verification of real identity and nationality status. On foreign land political asylum or refugee status is claimed. Alternatively, fake/forged travel documents are used to establish rights of residence. The Emigration Act 1983, does not provide legal and deterrent steps to curb, deter or penalize unrecognized agents who create, promote, fuel and sponsor this illegal traffic.
- It seems the Emigration Act, 1983 (EA), which repealed the earlier 1922 Act, has now outlived its utility with the purposes it sought to achieve 24 years ago. As a law made by Parliament, with rules enacted by the Central Government, the state governments have virtually no role to play in its implementation. Unfortunately, if a unscrupulous local recruiting agent commits a crime or perpetuates a fraud, neither the State Government nor the local police can take any action to protect the interest of the emigrant even within the limited parameters of the Act and the Rules framed there under. Limited penal action taken under the offence of cheating under the Indian Penal Code neither leads to conviction nor deters such offenders.
- Seizure of fake passports, forged certificates, false seals, fraudulent visas and tampered documents are often produced to help this flourishing unlawful business. Further, a continuing scenario of emigrants suffering in foreign lands

has now frequently started appearing in the media. However, the failure or inefficiency of public authorities in tracing these deceitful rackets is contributed by a large extent to the lack of any appropriate legislation to curb or deal with such crimes. It is in this regard that the following amendments can be suggested in the EA which may possibly empower the police and authorities to remedy such evils. Therefore, provisions of law can be added in the EA to incorporate the following:-

- Appointment of Overseas Migrant Workers Welfare Officers in Indian Embassies abroad.
- Prior permission from the State Governments for advertisements involving recruitment of Emigrants within the State.
- Prior sanction from the Protectorate of Emigrants before departure by an Emigrant to ensure proper travel documents and employment contracts.
- A provision for Non-Resident Indian Welfare Offices to keep a check.
- Appointment of Counselors or Coordinators for Non-Resident Indians.
- Power to State Governments to implement provisions of the Act.

- Stringent Offences and Penalties for violating the Act.
- All monetary transactions mandatorily to be made only by bank drafts.
- Onus of burden of proof in case of fraud or deception on the accused.
- Power to conduct search and seizure with Local Specified Authorities.

II. India: A Work Permit Regime – The Need of the Hour

- A fast moving economic hub, high profile software opportunities, IT Parks, private equity and IPO's, a property boom, Foreign Direct Investment, a global center for medicare, developing trade and opportunity, avenues for professionals created by globalisation, the return of the NRI to his roots and homeland with funds for investment in India: this seems to be the predicted future forecast for India in the forthcoming era. Opportunities are booming with reverse migration on the way.
- The Government of India has taken great care in suitably updating or modifying and introducing rules and regulations with regard to Foreign Equity Investment into India. However, for business immigration into India, a consolidated work permit regime in India in the present economic scenario is the need of the hour. Also, provisions need to be made forthwith for medical tourism, electronic

visas, fast track processing of visas for blue chip workers and corporate personnel, besides taking measures to cope up with the trends of reverse migration.

- The business visa regulations in India are scattered in different enactments and the guidelines framed by the Reserve Bank of India from time to time. The massive recent liberalisation of the Indian economy in the last decade has promoted innumerable joint venture investments that involve the movement of manpower, machinery, technology besides mind boggling sums of money.
- The provisions of Foreign Exchange Management Act, 1999 mandate that without prior permission of the Reserve Bank of India, no foreign national or a person resident outside India, shall engage in any employment or practice in any profession or carry on any occupation, trade or business in India. However, the Reserve Bank of India under its guidelines has granted general permission to Indian firms and companies to engage the services of foreign nationals (including non-resident persons of Indian nationality/origin) on short-term assignments subject to a large number of conditions
- There is now definitely a clear case for framing a new set of consolidated rules focusing exclusively on business immigration into India. The present immigration requirements are certainly not conducive to the substantial foreign direct investment that is presently taking place in India. The 1948 Orders must be

replaced by a work permit regime. Indian Government could also explore the possibility of having a limit on the number of work permit visas, like the H-1B cap imposed by the US Government.

- The boom in the Indian technology industry has precipitated the return of the non-resident Indians to their motherland, as they are finding the same opportunities and working conditions on the home soil.
- Likewise, foreign personnel of blue chip companies are coming in large numbers to India to set up and manage offices on behalf of their parent foreign companies. Hence, this scenario, all the more warrants the introduction of a work permit scheme. Bangalore alone has reportedly 3,00,000 software professionals.
- Additionally, on account of changing economic conditions and a world without borders, we need to keep pace with the times in the arena of immigration law. Over and above, we also need to think of fast track processing of visas which of course can entail a charge for premium processing, electronic visas which would be very beneficial for the software industry.
- We also need a useful website with public information about immigration and visa matters. As of now, there is no Indian website that of the Government or that of a private agency offering comprehensive consolidated information on

immigration rules, and guidelines followed by the Ministry of Home Affairs are not published or made available to the public readily. A great deal of running around is required at times, to get hold of the relevant information.

- Faced with restrictions on the movement of people in the services industry, the fastest growing sector in Indian economy, it is time India had a work permit regime in place, which could also be a potential revenue spinner.

BRIEF PROFESSIONAL PROFILE OF ANIL MALHOTRA

***Anil Malhotra is a practising Advocate in India since September 1983 at the Punjab and Haryana High Court at Chandigarh. He appears as Counsel in the Supreme Court of India at New Delhi and before other Courts, Commissions, Boards and Tribunals. He holds Bachelor of Science and Bachelor of Laws (Professional) degrees from the Punjab University, Chandigarh, India. He attained an LLM degree from SOAS, University of London, London in November 1985. He studied comparative family law at the London School of Economics. He has taught civil procedural laws and matrimonial remedies for six years as a part-time lecturer at the Faculty of Laws, Panjab University, Chandigarh, India. For over 27 years he has had extensive exposure in handling civil, matrimonial, criminal and overseas litigation on behalf of non-resident Indians residing abroad. He represents a large number of overseas clients in Indian courts and regularly opines on matters of Indian law in cases arising in related matters in foreign jurisdictions. He has conducted a vast variety of matters in Indian Courts pertaining to interpretation and application of foreign Court Orders regarding divorce decrees, child abduction, custody, maintenance, adoption and property related issues of non resident Indians. He interacts extensively with a worldwide Indian population settled overseas in advising them regularly on all issues of civil, matrimonial and criminal law. He is a member of Lawasia, International Law Association, International Bar Association, Commonwealth Lawyers Association and Indian Society of International Law besides being Country Representative (Family Law) Lawasia. His law firm, Malhotra & Malhotra Associates are empanelled Lawyers for several key embassies and High Commissions at New Delhi for advisory, opinion and other legal work.**

Have contributed significantly to issues of Inter-Country Adoptions, Inter-Parental Child Removal and Surrogacy by convening seminars, discussions and debates at the India International Centre, New Delhi and other law faculties in association with Law Commission of India and Mr Soli Sorabjee, Senior Advocate. Have to his credit Amicus and Joint Expert appointments by Courts in India and abroad.

Have co-authored book titled “Acting for Non-resident Indian Clients” (London 2005) published by Jordan Publishing Limited, Bristol, UK. Have authored booklet on “An Overview of Legal Issues” for the Punjab Government (2008).

Have authored book titled “India, NRIs and the Law” published by Universal Law Publishing Company Private Limited, New Delhi in 2009.

Have co-authored book titled “Indians, NRIs and the Law” published by Universal Law Publishing Company Private Limited, New Delhi released in November 2011.

Have written regular newspaper articles on family law and allied issues with about 100 articles to his credit.

On January 29, 2007 was elected as Fellow of The International Academy of Matrimonial Lawyers, London.

In May 2010, the Executive Council of the International Law Association, London has nominated him as a Member of the International Family Law Committee of the International Law Association.

He is the Indian family law Correspondent for the International Family Law journal published by Jordan Publishing Limited, Bristol. As an author he has to his credit substantial published work in international legal journals. He is the Indian representative for Reunite Child Abduction Agency.

Was invited to speak at Wilton Park conference on “Migration: Towards a Comprehensive Approach” at San Lorenzo de El Escorial, Madrid, Spain in October 2007.

He was invited by the International Law Association as a Speaker to the 73rd Biennial Conference to be held at Rio De Janeiro, Brazil to speak in the session on Rights of Children on August 18, 2008, where he made a presentation titled “India, Inter Country Parental Child Removal and the Law.”

From December 4 to 6, 2008, he was invited to speak at and attend Wilton Park Conference – “The Future of Migration” held at Wiston House, West Sussex, UK.

Was invited to speak on “Inter-Parental Child Removal Issues at the 11th Annual Family Law Conference at Cape Town, South Africa on March 12-13, 2009 and at the 16th Commonwealth Law Conference 2009 at Hong Kong on April 5-9, 2009.

Was also invited to speak on “Surrogacy Issues and Inter-Parental Child Abduction in India” at the Lawasia “Children and Law Conference” in Singapore on May 21-23, 2009. He was the only legal practitioner amongst Judges who had been invited to speak at the International Family Justice Judicial Conference for the Common Law & Commonwealth Jurisdictions held at Windsor, UK from August 4-7, 2009.

Was invited by the Government of India to make a special presentation on Property Problems of Non-Resident Indians at a special seminar held at New Delhi on January 7, 2010.

Was invited to speak on “Indian Civil Aspects of International Child Abduction Bill 2007 and the Indian Perspective on International Child Abduction” at the Conference on International Child Abduction, Relocation and Forced Marriage held from June 30 to July 2 at the London Metropolitan University, London.

Was invited as a Panelist in the 74th Biennial Conference of the International Law Association to be held in the Hague, Netherlands from August 15 to 19, 2010 to speak in the

session on “Out of Concern for the Child : Transnational Co-operation in Cases of Child Protection, Maintenance and Abduction.”

Participated in the 17th Commonwealth Law Conference held from 5-9 February 2011 at Hyderabad by making interventions in sessions on Honour Crimes, Forced Marriages and Inter-Country Parental Child Removal issues prevailing in India.

Invited to present a paper on Surrogacy Titled “All Aboard for The Fertility Express” at the 14th Annual Family Law Conference 2011, Capetown, South Africa, organised By Miller Du Toit Cloete Inc And The University Of The Western Cape On 17 And 18 March 2011.

Appointed as Member of the Punjab Governance Reforms Commission and Chairperson of Task Force on Policy Procedures, Resolution and Grievances of NRIs by the Government of Punjab on 13 June 2012.

Invited to make a Case Presentation on successful return of irregular migrants from Iraq at the National Consultation Workshop on facilitating safe and legal migration and preventing irregular migration on 6-7 September 2012 at Hotel Claridges, New Delhi

PROFESSIONAL PROFILE: RANJIT MALHOTRA

Ranjit Malhotra, qualified as a lawyer in India in the year 1990 and was the first Indian lawyer to be awarded the prestigious Felix Scholarship to read for the LLM degree at the School of Oriental and African Studies, University of London. He attained his Degree with merit in 1993, specialising in immigration laws and South Asian family laws. He is an India-based lawyer handling substantial international work. He is a member of the International Bar Association and has been until recently the Regional Representative for India of the Migration and Nationality Law Committee of the IBA. He is presently the Newsletter Editor of the Family Law Section of the IBA and the Co-Chair of the Family Law and Family Law Rights Section of Lawasia. He is also a nominated life member of the Indian Society of International Law, Immigration Law Practitioners Association, London, American Immigration Lawyers Association, Washington, Reunite Child Abduction Agency in London, Indian Council of Arbitration at New Delhi, the Inter Pacific Bar Association at Tokyo, Lawasia at Australia, Fellow of the International Academy of Matrimonial Lawyers, Commonwealth Lawyers Association at London and International Law Association at London. He is also enrolled with The International Association of Youth and Family Judges and Magistrates.

He frequently travels abroad to present papers at international legal conferences. Mr. Ranjit Malhotra has travelled extensively in the UK, USA, Canada, Europe, South Africa, Australia and the Far East in connection with professional assignments as also to attend conferences. He was the only India speaker at the first AILA Global Immigration Summit held in New York in September 2002 and the second Summit in New York in October 2004. He also presented papers at the Global Immigration Conferences jointly organised by AILA, IBA and ILPA held in London in November 2007, November 2009 and September 2011. Previously, he has made presentations at AILA Annual conferences held in New Orleans in 2003, Salt Lake City in 2005 and Vancouver in 2008. Recently he was awarded the AILA Berger memorial scholarship to make a presentation at the AILA Annual Conference held in San Diego, California in June 2011.

In October 2007, he was nominated by the British High Commission, New Delhi, India to attend the Wilton Park Conference titled “WP 890 Migration Towards a Comprehensive Approach”, held in Spain from 8-10 October 2007. He had attended another Wilton Park conference as a special invitee on migration issues in the UK in December 2008.

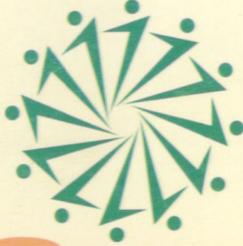
He has substantial published work in different major jurisdictions to his credit. He is one of the principal authors in the recently published book titled “Acting for Non-resident Indian Clients,” by Jordan Publishing Limited at Bristol in U.K. The book carries a foreword by the late Lord Slynn of Hadley, Senior Judge of the erstwhile House of Lords in London, U.K.

Mr. Ranjit Malhotra, specialising in areas of private international law is a managing partner in his firm Malhotra & Malhotra Associates. The firm has a broad-based practice with a reputation for offering a full range of quality personalised legal services. The firm handles legal work for several Fortune 500 companies. He also extensively advises foreign lawyers in the area of private international law, while acting on behalf of the non-resident Indian community, besides rendering expert testimony in foreign litigation, involving Indian laws.

Mr. Ranjit Malhotra has also been extensively handling inbound and outbound corporate immigration work for software companies, banks, consulting companies, multinationals etc. including lodging business and settlement applications at Embassies and Consulates throughout India. He has rich experience of consular representation.

His firm, Malhotra & Malhotra Associates, is on the panel of lawyers for seven major Embassies in New Delhi, including the Australian High Commission, Canadian High Commission, British High Commission and New Zealand High Commission, German Embassy, Austrian Embassy, at New Delhi, and the office of the Canadian Consul General at Chandigarh.

Mr. Malhotra is also the Honorary Consular Correspondent for the Italian Embassy, New Delhi for the State of Punjab and Chandigarh, since December 2007. He can be contacted at malhotraranjitindia@rediffmail.com



2008 **PUNJABI**
NRI
Sammelan
ਪੰਜਾਬੀ ਐਨ. ਆਰ. ਆਈ. ਸੰਮੇਲਨ

**An Overview
of
Legal Issues**

January 5, 2008

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Punjabi NRI Sammelan

January 5, 2008

A

Guidance Booklet

Government of Punjab, Chandigarh

This booklet has been compiled by

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Introduction

The Government of Punjab is making a fresh beginning in organizing the first Pravasi Punjabi Divas on January 5 and 6, 2008 at Chandigarh and Jalandhar respectively. The State proposes to give an overview of the State, the Government's vision, Current Social and Economic Issues, Investment Opportunities and its Business Plans. Our Fellow Indians from Punjab who have migrated to foreign countries abroad have brought laurels to their home land, have excelled in every walk of life and have contributed generously to the upliftment and betterment of their Home State. It is the endeavour of the Government of Punjab to bond their brethren with their home land – the pious soil of their beloved State from where they migrated.

In this brief booklet an effort has been made to focus and look at Economic, Social, Commercial and Business Issues. The problems of NRI brothers and sisters have also been looked at with a perspective of seeking practical solutions for their resolution. It will be the endeavour of the Government of Punjab to take effective steps in safe guarding the interests of its overseas residents and provide means for protecting their properties, assets, land interests besides other ancillary issues.

The Government of Punjab values and welcomes its original inhabitants to invest in their home land with all possible vigor and financial strength. This booklet contains useful information from all perspectives which will help non-resident Indians to familiarize themselves with the issues which connect with their home land.

The guidance booklet is intended to serve as a guide and does not purport to be a legal document. While every possible care has been taken to provide all possible accurate information, in case of any variation or difference, official sources may be confirmed and the official authorities may be contacted for any update or change. This booklet has been compiled for Government of Punjab by Malhotra & Malhotra Associates, International Lawyers (email: anilmalhotra1960@gmail.com, malhotraranjitindia@rediffmail.com)

CHAPTER – 1

NRIs / PIOs / OCIs – FREQUENTLY ASKED QUESTIONS

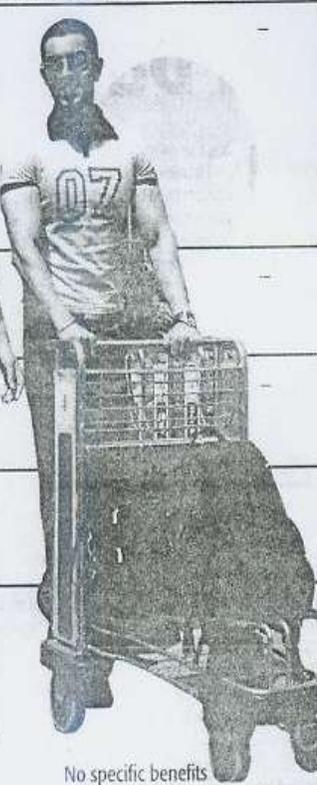
- The Constitution of India does not allow holding Indian Citizenship and Citizenship of a foreign country simultaneously. Therefore, by amending the Constitution, a new category of citizenship i.e. Overseas Citizen of India (OCI) was created as a compromise to dual citizenship.
- Both Article 9 of the Constitution of India and Section 9 of the Indian Citizenship Act categorically prohibit dual citizenship and holding of two nationalities simultaneously of two different countries. Section 7 B of the Constitution specifically prohibits political and other rights to OCIs who have only multiple entry life-long visa facility for visiting India for any purpose any time.
- Registration of Person of Indian Origin (PIO) Card holders started under the Ministry of Home Affairs Scheme of August 19, 2002, whereas the OCI Scheme became operational from December 2, 2005. What is then the difference between an NRI, a PIO and an OCI. A description of the terminologies answering frequently arising questions in these 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 grand parents or great grand parents 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 grand children are eligible for registration as OCIs. They enjoy

multiple entry multipurpose life long 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 have no political rights.

➤ NRIs / PIOs are permitted to open bank accounts in India out of funds remitted from abroad, foreign exchange brought in from abroad or out of funds legitimately due to them in India. These accounts can be opened with banks authorized by the Reserve Bank of India and there are three types of non-resident accounts:

- Non-Resident (External) Rupee Accounts (NRE Accounts)
- Ordinary Non-Resident Account (NRO Accounts)
- Foreign Currency Non-Resident (Bank) Accounts (FCNR (B) Accounts)

The Comparative Perspective of an NRI, a PIO and an OCI looks like follows:

	NRI	PIO	PIO Card Holder	OCI
Who ?	An Indian citizen who is ordinarily residing outside India with Indian Passport	A person who or whose ancestors was an Indian national and who is presently holding another country's citizenship/ nationality i.e. he/she is holding foreign passport	A person registered as PIO Card Holder under MHA's scheme vide Notification No. 26011/4/98-F.I dated 19.08.2002	A person registered as Overseas Citizen of India (OCI) under section 7A of the Citizenship Act, 1955
Who is eligible?			Any person who at any time held an Indian Passport; or either of his parents or grand parents was born in or was permanently resident in India as defined in Government of India Act, 1935, provided neither was at any time a citizen of Afghanistan, Bhutan, China, Nepal, Pakistan and Sri Lanka	A foreign national, who was eligible to become citizen of India on 26.01.1950 or was a citizen of India on or at anytime after 26.01.1950 and his/her children and grand children, provided his/her country of citizenship allows dual citizenship. However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI.
How can one get status ?			Eligible persons to apply in the prescribed form alongwith enclosures. Form available on MHA's website: www.mha.nic.in	Eligible persons to apply online/down load application form from MHA's website: www.mha.nic.in
Fees?			Rs. 15,000/- or equivalent in local currency for adults. For the children upto the age of 18 years, the fee is Rs. 7500/- or equivalent in local currency	US \$ 275 or equivalent in local currency. In case of PIO card holders, it is US \$ 25 or equivalent in local currency
Which nationals are eligible?			PIOs of all countries except Afghanistan, Bangladesh, Bhutan, China, Nepal, Pakistan and Sri Lanka	PIOs of all countries except Pakistan and Bangladesh provided the country of nationality allows dual citizenship in some form or other
What benefits does one get?	All benefits as available to Indian citizen subject to notifications issued by the Govt from time to time	No specific benefits	Shall not require a separate visa to visit India. Will be exempt from the requirements of registration if his/her stay on any single visit in India does not exceed 180 days Parity with NRIs in respect of all facilities in the economic, financial and educational fields except in matters relating to the acquisition of agricultural/ plantation properties	A multiple entry multi-purpose life long visa for visiting India Exemption from registration with local police authority for any length of stay in India Parity with NRIs in economic, financial and educational fields except in relation to acquisition of agricultural or plantation properties. No parity shall be allowed in the sphere of political rights
Need for visa to visit India?	No	Yes and of specific type depending on his/her purpose of visit.	Can visit India without visa for 15 years from the date of issue of PIO card	Can visit India without visa lifelong

CHAPTER – 2

POLICY ON FDI/NRI INVESTMENT

- Foreign Direct Investment (FDI) upto 100% is allowed under the automatic route in all activities except those which require the approval of the Government. FDI policy is notified through press notes issued by the Department of Industrial Policy and Promotion, and are available at the website (www.dipp.gov.in). Reserve Bank of India (RBI) under Foreign Exchange Management Act (FEMA) also notifies FDI policy available on RBI website (www.rbi.org.in).
- FEMA replaced FERA w.e.f. June 1, 2000. The replacement was a great relief for NRIs as FERA was unduly stringent in its criminal provisions. FEMA is a civil law and proactive in its outlook compared to FERA. The thrust of FEMA is to manage the foreign exchange resources rather than to control them as was done previously under FERA. FEMA has catered to the changed economic scenario by promoting FDI/ NRI investment.

PROCEDURES FOR FDI/NRI INVESTMENT

PROCEDURES UNDER AUTOMATIC ROUTE

- FDI in sector/activities to the extent permitted under automatic route does not require any prior approval either by Government of India or RBI. The investors are only required to notify the Regional office concerned of RBI within 30 days of receipt of inward remittances and file the required documents with that office within 30 days of issue of shares to foreign investors.

PROCEDURE UNDER GOVERNMENT APPROVAL

- FDI in activities not covered under the automatic route requires prior Government approval and are considered by the Foreign Investment Promotion Board (FIPB). Approvals of composite proposals involving foreign investment/foreign technical collaboration are also granted on the recommendations of the FIPB.
- Such applications for FDI cases, except Non-Resident Indian (NRI) investments and 100% Export Oriented Units (EOUs), should be submitted to the FIPB Unit, Department of Economic Affairs (DEA), Ministry of Finance.
- Applications for NRI and 100% EOU cases should be presented to Secretariat for Industrial Assistance (SIA) in Department of Industrial Policy and Promotion.

- Applications can also be submitted with Indian Missions abroad who forward them to the Department of Economic Affairs for further processing.
- Applications can be made in Form FC-IL which can be downloaded from www.dipp.gov.in. Plain paper applications carrying all relevant details are also accepted. No fee is payable.

GENERAL PERMISSION OF RBI UNDER FEMA

- Indian companies having foreign investment approval through FIPB route do not require any further clearance from RBI for receiving inward remittance and issue of shares to the foreign investors. The companies are required to notify the concerned regional office of the RBI of receipt of inward remittances within 30 days of such receipt and within 30 days of issue of shares to the foreign investors or NRIs.

GENERAL PERMISSION TO NRIs/PIOs

- The Reserve Bank has granted general permission to NRIs/PIOs for undertaking direct investment in Indian Companies under the automatic route, purchase of shares under Portfolio Investment Schemes, investment in companies and proprietorship/partnership concerns on non-repatriation basis and for remittances of current income. NRIs/PIOs do not have to seek specific permission for approved activities under these schemes.
- The Reserve Bank of India has now further simplified financial transactions by NRIs/PIOs by granting general permission to:
 1. Resident individuals, partnership/proprietorship concerns to avail of interest bearing rupee loans from NRIs/PIOs out of funds remitted by them from abroad or out of funds held in their bank accounts in India, on non-repatriation basis, subject to certain conditions; one of them being that the rate of interest on such loans should not exceed Bank Rate plus two percentage points.
 2. NRIs/PIOs to transfer by way of gift shares held by them in Indian companies and to transfer by way of gift immovable property held by them in India subject to compliance with other applicable rules/regulations including the provisions of Foreign Contribution Regulation Act, 1976 by the charitable trust/organisation concerned.
 3. All domestic public/private sector mutual funds for issue of units to NRIs/PIOs on both repatriation and non repatriation basis.
 4. NRIs/PIOs to place deposits with Indian firms, on non-repatriation basis and with Indian companies on non-repatriation basis out of domestic sources.
 5. NRIs/PIOs for sale of shares acquired under direct investment Schemes on stock exchanges in India.

6. NRIs/PIOs for transfer of shares, by way of sale under private arrangement to another NRI or to a resident.
7. RBI permission is not required for drawal of foreign exchange for purchase of trade marks or franchise in India.
8. NRIs/PIOs may remit the sale proceeds of immovable property without the lock in period of 10 years subject to a maximum of 1 million USD per calendar year.

NRIs/PIOs have been granted general permission to invest in Government Securities and Treasury Bills.

Taking into account the facilities that are already available, and the above new measures, NRIs/PIOs will not have to seek specific permission of Reserve Bank for a whole variety of approved financial/investment transactions. This should considerably reduce paper work and time taken for undertaking such transactions.

DIRECT INVESTMENT OPPORTUNITIES

NRIs can invest in India as under:

1. Investment under Automatic Route with repatriation benefits
2. Investment with Government approval
3. Other investments with repatriation benefits
4. Investments upto 100% equity without repatriation benefits
5. Other investments by NRIs without repatriation benefits.

1. AUTOMATIC ROUTE OF RBI WITH REPATRIATION BENEFITS

NRIs can invest in shares/convertible debentures of Indian companies under the Automatic Route without obtaining Government or RBI permission except for a few sectors where FIPB permission is necessary, or where the investment can be made only upto a certain percentage of paid up capital.

For full details of the Automatic Route, investors may see website of Department of Industrial Policy & Promotion.

2. INVESTMENT WITH GOVERNMENT APPROVAL

Investment not eligible under the Automatic Route, are considered by the Foreign Investment Promotion Board (FIPB), a high Powered inter-ministerial body under the chairmanship of Secretary, Department of Economic Affairs, subject to sectoral limits/norms. These investments also enjoy full repatriation benefits.

3. OTHER INVESTMENTS WITH REPATRIATION BENEFITS

1.	Investment in units of domestic mutual funds	NRIs are permitted to invest in the securities with repatriation benefits.
2.	Investment in bonds issued by public sector undertakings	
3.	Purchase of Shares of Public sector enterprises being disinvested by GOI.	
4.	Investment in government dated securities (other than bearer securities) or Treasury Bills	

4. INVESTMENTS UPTO 100% EQUITY WITHOUT REPATRIATION BENEFITS

1.	Capital contribution to any proprietary or partnership concern	NRIs can invest by way of capital contribution in any proprietary or partnership concern in India provided the firm or the proprietary concern is not engaged in any agricultural/plantation activities or real estate business or print media on non-repatriation basis subject to certain conditions.
2.	New issues of shares /debentures of Indian companies	NRIs have been granted general permission to subscribe to the shares/ convertible debentures of an Indian company on non-repatriation basis, and to an Indian company to issue shares or convertible debentures by way of new/rights/bonus to NRIs on non-repatriation basis provided that the investee company is not engaged in agricultural /plantation activities or real estate business (excluding real estate development i.e. development of property or construction of houses) or chit fund or is not a Nidhi Company.

5. OTHER INVESTMENTS BY NRIs WITHOUT REPATRIATION BENEFITS

- (i) Investment in Non-Convertible Debentures
- (ii) Money Market Mutual Funds
- (iii) Deposits with Companies
- (iv) Commercial Papers

CHAPTER – 3

LEGAL AWARENESS OF INDIAN LAWS REGARDING MARRIAGE, DIVORCE, MAINTENANCE & CUSTODY OF CHILDREN

At present there is no uniform marriage law or uniform Civil Code existing in India. Ceremonial marriage is compulsory and registration of marriages is optional. However, the Supreme Court of India has directed Central and State Governments to enact legislation making it compulsory to register all marriages. But, marriages can be solemnized exclusively by registration by any person in India under the Special Marriage Act, 1954. India has a plural system of laws. There are four major communities, i.e. Hindus, Muslims, Christians and Parsis having their own personal laws governing marriages and ancillary matters. However, the Constitution of India, the Indian Penal Code, the Civil Procedure Code, the Criminal Procedure Code are important Central Legislations applicable uniformly throughout the territory of India.

I. Rights of NRI Spouses

General Rights of NRI Spouses

- Right to equality and equal protection of the laws (Article 14 of the Constitution of India)
- Right to Life (under Article 21 of the Constitution of India)
- Right to have one's own nationality or citizenship.
- Right to have an independent domicile.
- Right to own or possess property independently or jointly.
- Right to travel subject to visa and other restrictions for foreign nationals.
- Right to enforce proper foreign decrees as per the Civil Procedure Code.

Women's Specific Rights under Indian Laws

- Rights against physical or sexual or economic exploitation
- Rights to seek compensation against matrimonial desertion.
- Rights of mother to keep children below 5 years of age.
- Rights to seek return of matrimonial presents and streedhan.

- Rights against demand and furnishing of or giving of dowry.
- Rights against matrimonial cruelty, bodily harassment, torture, etc.
- Rights against marital or domestic violence.

Matrimonial Rights of NRI Hindu Spouses

Grounds for Divorce

When One spouse

- Enters into sexual relationship or adultery with another person
- Deserts for more than two years
- Inflicts physical or mental cruelty on the wife
- Converts to another religion
- Has leprosy which cannot be treated
- Has become incurably of unsound mind
- Has venereal disease in a communicable form
- Has not been heard of as being alive for a period of seven years
- Has renounced the world and become a saint
- Husband has been convicted for committing rape and bestiality.
- Repudiation of child marriage by wife before attaining the age of 18 years.

Divorce by Mutual Consent

- No grounds are required if divorce is sought jointly by mutual consent.
- The husband and wife should be living separately for the preceding one year before giving a joint petition for divorce by mutual consent.
- Both spouses agree that they have not been able to live together.
- The Court will issue a notice for renewal of the petition after six months but not later than eighteen months from the date of the presentation of the petition.
- If the petition is not withdrawn, the Court will pass a decree of divorce on the renewal of the petition on the second date after the waiting period of 6 to 18 months.

Judicial Separation

- Either spouse can also petition to the court for judicial separation on the same grounds which entitles him or her to divorce.
- Divorce puts an end to the marriage, while judicial separation does not

- The husband and wife are merely staying apart; and if ever they want to come together, they can resume cohabitation as husband and wife
- However, if there is no resumption of cohabitation after one year or more of judicial separation, either party can seek a decree of divorce from the Court.

Right to seek restitution of conjugal rights

- If either spouse without reasonable excuse withdraws from the society of the other, without any valid reason and does not fulfil his or her, marital obligations, the aggrieved spouse can be ordered by the court to resume marital cohabitation.
- However, if there is no restitution of conjugal rights for a period of one year or more after passing of a court decree for resumption of cohabitation, either party can petition the court for dissolution of marriage by seeking divorce.

II. Legal Rights of Women

Every women has the right to live her married life with dignity and freedom, care and support from her spouse, without abuse or violence (emotional, mental or physical), neglect, fear or humiliation of any kind.

Domestic Violence

The following acts on the part of the husband constitute domestic violence and are illegal in most countries and against which the local police of every country can be approached for protection and help:

- Physical abuse
- Mental and emotional abuse
- Verbal and social abuse
- Sexual abuse
- Economic abuse

Instances of Physical abuse

- Hair pulling, limb twisting, slapping violently, punishing, cutting, stabbing, confinement to a room
- Usage of weapons and firearms
- Repeatedly forcing abortions and miscarriages.

Instances of Mental/emotional abuse

- Blackmailing, coercion, threat, pressure
- Accusing the woman of loose morals
- Humiliating, both in public and private
- Breaking household goods, killing family pets
- Threatening to hit or harm children & close relatives.

Instances of sexual abuse

- Forcing intercourse or other sexual acts without consent
- Physically assaulting sexual parts
- Treating partner like a sexual object
- Demanding forms of unnatural sex
- Threatening violence or punishing for non-compliance with sexual demands

Instances of verbal/social abuse

- Abusing and derogatory name calling
- Maligning in front of peers and friends
- Insulting in front of others
- Abusing her parents, friends & family
- Enforcing isolation, physical confinement, restricting familial contacts, controlling movement: generally treating badly.

Instances of economic abuse

- Controlling all family income and limiting access to finances
- Forcing not to take up employment
- Forcing financial dependency
- Not providing sufficient funds for household expenditure
- Accusing of misuse or misappropriation of finances

III. Maintenance Rights of Women / Custody of Children

Statutory provisions for seeking maintenance

- Section 24 of Hindu Marriage Act, 1955 provides as interim relief to either spouse in need, a monthly sum decided by the court to be paid during the pendency of a matrimonial petition besides litigation expenses of proceedings.
- Section 25 Hindu Marriage Act, 1955 provides for permanent alimony and maintenance to be paid to either spouse in need during his or her life time.
- Section 125 of Code of Criminal Procedure (Cr PC) makes it mandatory for a person to maintain his wife and children failing which penal provisions entail.
- There is no bar in seeking maintenance under Section 125 Cr PC even if maintenance has been sought under Section 24 of the Hindu Marriage Act.
- Section 18 to 28 of the Hindu Adoptions and Maintenance Act, 1956 provide for maintenance to a Hindu wife, widow, children and aged parents separately.

Maintenance during the proceedings of the divorce case

- The women has the right to claim ad-interim maintenance even during the proceedings of the divorce case
- Maintenance is usually decided depending upon the income and status of the husband and he has to provide maintenance accordingly
- The women can also claim maintenance from the ancestral property of the husband through his right in such property
- If the husband does not obey the court's order, his property can be attached.

Matrimonial Rights of Sikh, Buddhist and Jain Couples

Matrimonial rights of Sikh, Buddhist and Jain couples are same as that of Hindus in view of the definition of Hindus under Hindu Marriages Act, 1955 wherein the definition Hindu includes Sikh, Buddhist and Jain religions.

IV. Right to Custody of children

- Under Section 6 of the Hindu Minority and Guardianship Act, 1956 (HMGA) the natural Guardian of a minor shall be his father and after him the mother. The custody of a minor less than 5 years of age shall ordinarily be with the mother.
- Non Hindus can initiate proceeding under the Guardians and Wards Act, 1890 (GWA) for being appointed as guardians since HMGA is applicable only to Hindus Likewise, non-Hindus cannot adopt under the Hindu Adoptions and Maintenance Act, 1956 but can be appointed as Guardians under the GWA.
- Under Article 32 or under Article 226 of the Constitution of India, any person can invoke the jurisdiction of the Supreme Court of India or of any High Court within

India directly for the issuance of a writ of habeas corpus if it is alleged that a child / children of a parent have been removed illegally from the lawful custody of the other parent either in violation of a foreign court custody order or in violation of the parental rights of the aggrieved parent. However, India is not a signatory to the Hague Convention on Civil Aspects of International Child Abduction and there is no mechanical return of children to foreign countries on the basis of foreign court orders and matters are decided on merits in India.

Custody of Children During and after Divorce Proceedings

- Till 5 years of age children stay with the mother.
- The court hearing the divorce petition is competent to pass orders regarding the custody of children under Section 26 of the Hindu Marriage Act, 1955.
- The universal principle that the welfare of the child shall be the paramount consideration in the best interest of the child is uniformly accepted by all Courts.

V. Other Relevant laws in Matrimonial Matters

A) Dowry Prohibition Act

Definition of Dowry:

Section 2 of the Dowry Prohibition Act, 1961 defines dowry as any property or valuable security given or agreed to be given either directly or indirectly:-

- a. by one party to a marriage to the other party to the marriage or
- b. by the parent of either party to a marriage or by any other person to either party to the marriage or to any other person.

Such transaction should take place during or before or in connection with the marriage of the said party. Dowry does not include dower or *Mehr* in the people to whom Shariat Law applies.

Penalty

The punishment for the offence of dowry will be imprisonment for five years. However, the court, for adequate and special reasons to be recorded in the judgment, may reduce the sentence to a period of less than five years.

No contract for dowry

Any agreement for giving or taking of dowry is not enforceable.

Concept of Streedhan

- Any property or gift given to a Hindu woman before, at the time of marriage or later is her property

- May be gifted by anyone, even in-laws, friends
- She alone has the right to gift, will or dispose of her property as she desires
- No one else has a right on it
- Anyone who has a woman's streedhan in her/his custody should return it to the actual owner within a stipulated time period
- If the trustee disposes of her property without her willingness, the offender will be punished with imprisonment and fine
- If the woman dies without willing away her property, it goes to her sons/daughters and husband

List of Gifts

A list should be made of the gifts given during or just after marriage. There has to be two lists: one for the man/another for the woman. The man's list has to contain the gifts to him by either party. The woman's list has to contain the gifts given to her by either party. Spouses and witnesses should sign it. Both parties should retain a copy of the list.

B) Indian Penal Code

B i) Section 304 – B–IPC – Dowry deaths

A Woman's death is called "dowry death" when

- a woman dies of burn of bodily injury or in abnormal circumstances
- within 7 years of marriage and
- it is shown that just before her death she was being harassed by her husband or any of his relatives for dowry.

In case of such a death, husband or the relative will be presumed to have caused the death of that woman

Punishment

- the accused will be punished with life imprisonment or at least 7 years imprisonment
- it is also offence if anyone tries to destroy evidence
- postmortem has to be conducted in cases of death

B ii) Section 498 A of IPC – Cruelty.

Husband or relatives of a husband of a woman subjecting her to cruelty will be punished with imprisonment for a terms extending to three yeas and shall also be liable to fine.

'Cruelty' means any willful conduct driving the woman to commit suicide or to cause grave injury or danger to life, limb or health of the women;

Harassment of the woman with a view to coercing her or any other person to meet any unlawful demand.

B iii) Section 405 and 406 of IPC – Criminal Breach of Trust

In matters of entrustment and dominion of matrimonial property of a woman in respect of her streedhan or her belongings or gifts given in marriage, if the same are misappropriated or dishonestly disposed of in violation of a woman's rights, it is punishable for criminal breach of trust with imprisonment upto three years or with fine or with both.

C) The Protection of Women from Domestic Violence Act, 2005

With effect from October 26, 2006, the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family are protected under the Domestic Violence Act, 2005.

According to Section 3 of the said Act, domestic violence includes an act, omission, commission or conduct if it:

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

The offence of domestic violence may also result in the accused being charged under Section 498 A of the Indian Penal Code or the Dowry Prohibition Act, 1961.

VI. NRI Matrimonial Disputes: Some Important Judgments

Recent judgments and pronouncements in NRI family and matrimonial matters

1. In Jagraj Singh v/s Birpal Kaur, the Supreme Court upheld the order of the High Court summoning the NRI husband for attempting reconciliation in pending divorce proceedings in India by issuance of bailable warrants to be served on him through the Ministry of External Affairs, GOI and the Indian Consulate in Italy.
2. In Sondur Rajini v/s Sondur Gopal, the Bombay High Court held that irrespective of any foreign nationality acquired by spouses of Indian origin whose marriage was solemnised under the HMA in India, they would retain Indian domicile & Indian courts retained jurisdiction for granting matrimonial relief.
3. In Anubha v/s Vikas Aggarwal, decided by the Delhi High Court, it was directed that an abandoned Indian wife of an NRI husband in the US should be paid maintenance in US dollars and the erring husband should be served summons for appearance through the MEA and the Indian High Commission.
4. In Navin Chander Advani v/s Leena Advani, the Bombay High Court held that in respect of parties who were Indian citizens and had married in USA according to Hindu rights, the courts in India had jurisdiction to decide their matrimonial disputes.
5. In Harmeeta Singh v/s Rajat Taneja, the Delhi High Court held that in respect of husband and wife of Indian origin whose marriage was solemnised in India, the decree of divorce by courts in America is not recognised and the Courts in India will have jurisdiction over the matrimonial dispute.
6. In Vinaya Nair v/s Corporation of Kochi, it has been held by the Kerala High Court that marriages solemnised under HMA must be registered under HMA and not SMA since there is no condition under the HMA that a Hindu must be necessarily domiciled in India and because HMA has extra-territorial operation outside India.
7. In Mandy Jane Collins v/s James Michael, the Bombay High Court at Goa, in a matrimonial dispute declined to interfere in a Habeas Corpus writ for child custody & left it open to parties to pursue their civil remedy for appropriate proceedings.
8. In Ranbir Singh v/s Satinder Kaur Mann, the Punjab and Haryana High Court declining to interfere in a Habeas Corpus petition by the NRI father for the custody of his children held that an ex-parte judgment given by a foreign Malaysian Court is inconclusive & cannot be enforced and that the matter can be agitated in custody proceedings in appropriate forum for custody proceedings.
9. In Ramakrishna v/s Priya, the Madras High Court declining to interfere in a habeas corpus petition held that interim orders passed by courts in USA directing the mother to hand over custody to NRI father cannot be enforced and custody issue be decided by the family Court in India by adjudging the welfare of the child.
10. In Rakesh Kumar v/s Ashima Kumar, the Punjab and Haryana High Court declined to grant an injunction against the NRI wife from continuing with her divorce

petition in USA since foreign Court yet to pass an order of objections of husband resident in India and foreign Court cannot be treated as a subordinate civil Court in India.

11. In Paul Mohinder Gahun v/s Sellina Gahun, the Delhi High Court held that where the wife, husband and minor child who were all Canadian citizens and since the wife stealthily came to India, her petition for guardianship of her minor child under the GWA was not maintainable in India since the minor was ordinarily not resident in India and Delhi Court had no jurisdiction to decide the petition.

12. In Lekha v/s P. Anil Kumar, the Supreme Court reversing the decision of the High Court permitting the NRI father to take his child to the Gulf held that the High Court had committed grave error in deciding grant of custody without ascertaining the wishes of the minor and permitted contact to both parents in India.

13. In Y Narasimha Rao v/s Y. Venkatalakshmi, where parties were married in India under the HMA and the husband obtained a divorce decree in USA on the ground that the marriage had irretrievably broken down, the Supreme Court held that such US divorce decree was not enforceable in India since it was not in accordance with the HMA and Section 13 of the CPC dealing with foreign judgments.

14. In Neerja Saraph v/s Jayant Saraph, where the NRI husband sought annulment in USA of the marriage solemnised under HMA in India and the wife in a suit for damages obtained an ex-parte decree in India for Rs 22 lacs, the Supreme Court held that no marriage between an NRI and an Indian woman in India be annulled by a foreign Court while suitable alimony be paid to the wife and decree is granted by Indian courts should be made executable in foreign countries.

15. In Veena Kalia v/s Jatinder Kalia, where the NRI husband got divorce in Canada on irretrievable break down grounds, the Delhi High Court held that even though the wife had not contested the proceeding in Canada, such divorce decree in Canada was a nullity & the wife's petition for divorce in India was maintainable.

16. In Vikas Agarwal v/s Anubha, where simultaneous matrimonial proceedings were pending between spouses in USA and India, the Supreme Court upheld the order of the Delhi High Court striking off the defence of the NRI husband and declining his contention that the Indian Court had no jurisdiction in the matter.

It may be added that the above judgments are based on the facts and circumstances of each individual case. Though the law laid down by the Supreme Court of India is binding on all High Courts in India, the law laid down by respective High Courts are binding within the respective States and can be cited for persuasive value before different High Courts in other jurisdictions. It is therefore advisable to seek legal assistance and professional opinion before arriving at any conclusion in this regard.

CHAPTER – 4

NRI's PROPERTY RELATED PROBLEMS

I. Summary Eviction of an NRIs rented properties

- 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 ejection 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 NRI's 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.

II. INDIA, NRIs and Wills

- 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 (HSA) contains the codified law relating to intestate succession among Hindus. The Indian Succession Act, 1925 (ISA) consolidates the law applicable both to intestate and testamentary succession applicable to persons other than Hindus. 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 HSA 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 HSA :-
- Firstly, for a Hindu domiciled outside India, succession to his immovable property in India is governed by HSA 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 HSA 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 HSA 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 HSA. 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 HSA 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.

III. Land Revenue Disputes and Maintenance of Revenue Records

- 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.

CHAPTER – 5

NRIs IMMIGRATION RELATED QUESTIONS

I. Emigration Act: A Need for Change

- India is the seventh largest country in the world with a population of 1095 million Indians which accounts for 16.7% of the world population. There are 28 million passport holders in India. There are about 50,000 households with an annual income of more than Rs.10 million and the number is expected to go up to 1,40,000 households by the year 2010. Between 2003-04, the number of people who have made a million dollars grew in India by 14%- faster than US and UK. These statistics based on a study by the World Tourism Organization says it all.
- 25 million non resident Indians live in 110 countries abroad and an estimate of 400,000 persons are emigrating from India every year. The lure of foreign jobs is so strong that many of the aspiring emigrants who do not have close family ties or work permits adopt illegal means to go abroad. High population growth and increasing local unemployment rates with the urge to improve economic status and the lure of Euros fuels tendencies of illegal immigration. In September 1996 more than 170 Indian youths mostly from Punjab attempting illegal immigration drowned off the Greek Coast. Some of the survivors told that they had paid upto Rs. 4 lakhs for getting jobs abroad mostly by taking loans.
- Unscrupulous agents take huge sums of money to promote this illegal traffic of human beings. The modus operandi of such activities is that after leaving India such illegal travellers intentionally lose or destroy their travel documents to prevent verification of real identity and nationality status. On foreign land political asylum or refugee status is claimed. Alternatively, fake/forged travel documents are used to establish rights of residence. The Emigration Act 1983, does not provide legal and deterrent steps to curb, deter or penalize unrecognized agents who create, promote, fuel and sponsor this illegal traffic.
- It seems the Emigration Act, 1983 (EA), which repealed the earlier 1922 Act, has now outlived its utility with the purposes it sought to achieve 24 years ago. As a law made by Parliament, with rules enacted by the Central Government, the state governments have virtually no role to play in its implementation. Unfortunately, if a unscrupulous local recruiting agent commits a crime or perpetuates a fraud, neither the State Government nor the local police can take any action to protect the interest of the emigrant even within the limited parameters of the Act and the Rules framed there under. Limited penal action taken under the offence of cheating under the Indian Penal Code neither leads to conviction nor deters such offenders.
- Seizure of fake passports, forged certificates, false seals, fraudulent visas and tampered documents are often produced to help this flourishing unlawful business. Further, a continuing scenario of emigrants suffering in foreign lands

has now frequently started appearing in the media. However, the failure or inefficiency of public authorities in tracing these deceitful rackets is contributed by a large extent to the lack of any appropriate legislation to curb or deal with such crimes. It is in this regard that the following amendments can be suggested in the EA which may possibly empower the police and authorities to remedy such evils. Therefore, provisions of law can be added in the EA to incorporate the following:-

- Appointment of Overseas Migrant Workers Welfare Officers in Indian Embassies abroad.
- Prior permission from the State Governments for advertisements involving recruitment of Emigrants within the State.
- Prior sanction from the Protectorate of Emigrants before departure by an Emigrant to ensure proper travel documents and employment contracts.
- A provision for Non-Resident Indian Welfare Offices to keep a check.
- Appointment of Counselors or Coordinators for Non-Resident Indians.
- Power to State Governments to implement provisions of the Act.
- Stringent Offences and Penalties for violating the Act.
- All monetary transactions mandatorily to be made only by bank drafts.
- Onus of burden of proof in case of fraud or deception on the accused.
- Power to conduct search and seizure with Local Specified Authorities.

II. India: A Work Permit Regime – The Need of the Hour

- A fast moving economic hub, high profile software opportunities, IT Parks, private equity and IPO's, a property boom, Foreign Direct Investment, a global center for medicare, developing trade and opportunity, avenues for professionals created by globalisation, the return of the NRI to his roots and homeland with funds for investment in India: this seems to be the predicted future forecast for India in the forthcoming era. Opportunities are booming with reverse migration on the way.
- The Government of India has taken great care in suitably updating or modifying and introducing rules and regulations with regard to Foreign Equity Investment into India. However, for business immigration into India, a consolidated work permit regime in India in the present economic scenario is the need of the hour. Also, provisions need to be made forthwith for medical tourism, electronic visas, fast track processing of visas for blue chip workers and corporate personnel, besides taking measures to cope up with the trends of reverse migration.
- The business visa regulations in India are scattered in different enactments and the guidelines framed by the Reserve Bank of India from time to time. The massive recent liberalisation of the Indian economy in the last decade has promoted innumerable joint venture investments that involve the movement of manpower, machinery, technology besides mind boggling sums of money.
- The provisions of Foreign Exchange Management Act, 1999 mandate that without prior permission of the Reserve Bank of India, no foreign national or a person resident outside India, shall engage in any employment or practice in any profession or carry on any occupation, trade or business in India. However, the Reserve Bank of India under its guidelines has granted general permission to Indian firms and companies to engage the services of foreign nationals (including non-resident persons of Indian nationality/origin) on short-term assignments subject to a large number of conditions
- There is now definitely a clear case for framing a new set of consolidated rules focusing exclusively on business immigration into India. The present immigration requirements are certainly not conducive to the substantial foreign direct investment that is presently taking place in India. The 1948 Orders must be replaced by a work permit regime. Indian Government could also explore the possibility of having a limit on the number of work permit visas, like the H-1B cap imposed by the US Government.
- The boom in the Indian technology industry has precipitated the return of the non-resident Indians to their motherland, as they are finding the same opportunities and working conditions on the home soil.
- Likewise, foreign personnel of blue chip companies are coming in large numbers to India to set up and manage offices on behalf of their parent foreign companies. Hence, this scenario, all the more warrants the introduction of a work permit scheme. Bangalore alone has reportedly 3,00,000 software professionals.

- Additionally, on account of changing economic conditions and a world without borders, we need to keep pace with the times in the arena of immigration law. Over and above, we also need to think of fast track processing of visas which of course can entail a charge for premium processing, electronic visas which would be very beneficial for the software industry.
- We also need a useful website with public information about immigration and visa matters. As of now, there is no Indian website that of the Government or that of a private agency offering comprehensive consolidated information on immigration rules, and guidelines followed by the Ministry of Home Affairs are not publicised or made available to the public readily. A great deal of running around is required at times, to get hold of the relevant information.
- Faced with restrictions on the movement of people in the services industry, the fastest growing sector in Indian economy, it is time India had a work permit regime in place, which could also be a potential revenue spinner.

New Punjab Laws A Milestone Achieved

Anil Malhotra

The Punjab Compulsory Registration of Marriages Act, 2012 and The Punjab Prevention of Human Smuggling Act, 2012, which have both been recently approved by the Punjab Legislative Assembly on 21 December 2012 have become laws in State of Punjab. Both new laws seek a milestone to achieve. Punjab will be first State of the country to enact a Human Smuggling Law to provide for the regulation of the profession of travel agents with a view to check and curb their illegal or fraudulent activities. Likewise, even though compulsory Registration of Marriages is now provided in most States, however, Punjab will be first State to make marriages of Non-resident Indian and foreign nationals also compulsory in the State of Punjab. These initiatives are the product of a long exercise which will help resolving maladies plaguing the system intrinsically as a result of lack of legislations to curb new generation problems created by a migratory regime of 30 million NRIs living in 180 nations overseas.

The Hindu Marriage Act, 1955 (HMA) leaves it open for every State Government to enact compulsory provisions for Registration of Marriages. The Supreme Court in 2006 in *Seema vs Ashwani Kumar* issued a mandate to all States to make registration of marriage compulsory by enacting legislations. This directive led to the enactment of The Punjab Compulsory Registration of Mar-

riages Act 2012, providing for compulsory registration of marriages solemnized under any law governing the parties irrespective of their religion, caste, creed or nationality. Any marriage solemnized in Punjab is



CM Mr Parkash Singh Badal released a book on New laws related to NRIs by brothers Anil Malhotra and Ranjith Malhotra

now compulsorily registerable and even marriages solemnized outside the State of Punjab can be registered at a place where parties have their temporary residence in Punjab. However, if the marriage is already registered elsewhere, it shall not be registered again in the State of Punjab.

Definition of NRIs in the new Law

The most prominent feature of the new marriage law is the definition of a “non resident Indian” to

mean a person of Indian origin who is either permanently or temporarily settled outside India for employment, business, vocation or any other purpose indicating a uncertain or determined period of overseas stay. Likewise, a “foreign national” has been defined to mean a person who is not a citizen of India and shall include Persons of Indian Origin (PIO) and Overseas Citizens of India (OCI) who are defined under the Citizenship Act, 1955 and mean foreign nationals of Indian Origin

who have earlier been Indian Citizens or qualify for Indian citizenship.
NRI Marriages in the Loop

The law in the making provides that every marriage between parties who are Indian nationals or NRIs or foreign nationals solemnized or performed in the State of Punjab, irrespective of religion, caste, creed or nationality shall also be registered in the State of Punjab. The most significant feature would be that for every NRI or foreign national, it would be mandatory to disclose in writing his/her passport number, country of

Punjab Compulsory Registration of Marriages Act-highlights

It is an Act to provide for compulsory registration of marriages solemnized under any law governing the parties irrespective of their religion, caste, creed or nationality and for the matters connected or incidental thereto.

- Every marriage between parties who are Indian nationals or NRIs or foreign nationals solemnized or performed shall be registered.
- Foreign nationals will mean any person who is not an Indian citizen and shall include PIOs and OCIs.
- To avoid any ambiguity, term NRI has been defined in the new Act.
- Whenever any party is an NRI, his passport and foreign address details as also relevant particulars about him shall be entered both in the marriage register as well as the marriage certificate.
- Any marriage solemnised outside Punjab shall also be registered in Punjab. However, if any marriage is already registered elsewhere, it shall not be registered again in Punjab.
- A complete mechanism and procedure for registration has been laid down and identified with nominated Registrars of Marriages.
- The marriage to be registered shall have to be solemnised in accordance with the personal law of the parties to the satisfaction of the Registrar of Marriages concerned.
- Non-registration will not invalidate the marriage as such because the new law is only for registration and cannot invalidate a marriage solemnised as per Central Laws.

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its issue, period of its validity besides permanent residential/official address of overseas abode with social security number or any such permanent identification proof issued by his foreign country. All this information will be entered in the marriage certificate and the marriage register. Marriage would mean and include marriages solemnized or performed under Hindu Laws, Anand Marriage Act, Muslim personal law or under Indian Christian Marriage Act besides any other custom or personal law relating to marriages governing the parties.

Registration Regime Devised

The new law will notify Chief, District and Additional Registrars of Marriages or other Officers to be Registrar of Marriages for free and easy accessibility in cities, towns and tehsils. The Registrars so designated, shall upon scrutiny verify that the marriage between the parties has been performed in accordance with the personal law of parties to confirm their marital status and identities. A memorandum of marriage signed by the parties and their priest will be presented to the concerned Reg-

istrar within three months of marriage in the jurisdiction where the marriage was solemnised or where parties have temporary residence if they were married outside Punjab. Refusal to register shall be appealable and the Registrar may also suo moto or on notice call parties and register any marriage performed in his jurisdiction. Any erroneous or fraudulent entry in a marriage register may be corrected or cancelled after giving opportunity of hearing to persons concerned.

Non- Registration not to Invalidate Marriages

The new law states that no marriage shall be deemed to be invalid solely by the reason or the fact that it was not registered. This shortcoming is attributed to codified personal marriage laws of parties in India by which performance of essential ceremonies and not registration validates a marriage between parties. Hence, a State enactment cannot undo a law made by Parliament prescribing only ceremonies for recognition of a valid marriage. Consequently, resorting to compulsory registration

Punjab Human Smuggling Act – a Law to Curb illegal immigration

The Problem

With the merchants of death running thriving rackets of human smuggling in Punjab at the cost of gullible youth trapped everyday with dollar dreams, the waiting worsens the plight of duped innocent citizens and this organized crime perpetuates horror and misery flourishing with daring impunity. Smuggled migrants are vulnerable to exploitation and their lives are often put at risk. They have suffocated in containers, perished in deserts, drowned at sea or herded as forced labour in slave camps. Smugglers of migrants conduct their activities brazenly without fear or favour with no regard for human life. Survivors tell harrowing tales of their ordeal, forced to sit in human waste, deprived of food and water, while others around them die and their bodies are dumped at sea or on road sides. The smuggling of migrants generates high net worth profits at the hands of criminals who fuel corruption and organized crime. The smuggling of migrants is a deadly business that must be combated as a matter of grave urgency and happily Punjab is the first State ready to combat it.

The Proposed Solution in the new Law

The Punjab Prevention of Human Smuggling Act, 2012 is described as a law to provide for the regulation of the profession of travel agents with a view to check and curb their illegal, fraudulent activities, and malpractices of the persons involved in organized human smuggling in the State of Punjab and for the matters connected therewith or incidental thereto. This new law has nine noteworthy features.

- For the first time, it defines “human smuggling” and “travel agent”.
- Provides for a licensing regime for agents
- Allows grant of compensation to aggrieved person from travel agent.
- Gives power of search, seizure and arrest.
- Authorises Judicial Courts for trials under the Act.
- Identifies defined variable punishment for offences under the Act.
- Provides for liability of Director, Manager, Secretary of Companies responsible for conduct of their business when negligence can be attributed.
- Authorises Courts to decide whether any illegally acquired property is liable to be confiscated.

may have to develop more as a accepted societal norm and practice for the law to gain recognition. The fact remains that Punjab has taken the lead to register NRI Marriages which will help in curbing matrimonial frauds to ameliorate the plight of ailing “Nowhere Holiday Wives”. Punjab would do equally well if it were to constitute Family Courts in every district in Punjab under the existing Family Courts Act, 1984, to provide speedy justice to abandoned spouses and deserted children as well. Prevention is better than cure but redressal of issues arising out of a broken or limping matrimonial relationship must be remedied too simultaneously.

Salient Features of the New Punjab Act

Punjab Prevention of Human Smuggling Act, 2012

- The Punjab Prevention of Human Smuggling Act, 2012, passed by the Punjab Vidhan Sabha on 21 December 2012 is as an Act to provide for the regulation of the profession of travel agents with a view to check and curb their illegal, fraudulent activities, and malpractices of the persons involved in organized human smuggling in the State of Punjab and for the matters connected therewith or incidental thereto. This law has nine noteworthy features.
- For the first time, it defines “human smuggling” and “travel agent”.
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- Gives power of search, seizure and arrest.
- Authorises Judicial Courts for tri-

- Cheating shall have the same meaning as under the Indian Penal Code.

“Travel Agent” is defined as a person in a profession that involves arranging, managing or conducting affairs related to sending people abroad. It includes consultancy for permanent emigration, obtaining education, work, travel for tourism, cultural entertainment or musical shows, medical treatment, spreading or preaching religion, participating in sport tournaments, issuing advertisements for travel, holding seminars and lectures to promote emigration, arranging matrimonial alliances for purposes of emigration, and arranging overseas travel for any purpose whatsoever. Dishonest misrepresentation with intention to have wrongful gain for inducing, deception, cheating or allurements for above activities is punishable under the Bill. If any travel agent wants to advertise or hold seminars, he will have to notify the competent authority in writing giving complete details of advertisement of seminars.

The Grave end

Naive youth fell prey to agents and landed up working as slave labour in ammunition dumps or fields in Iraq or end up condemned to live as illegal immigrants abroad in pitiable conditions with no hope of return if they manage to survive hazardous channels of death. Smuggling of migrants is a highly profitable business with a low risk of detection. For criminals, it is increasingly attractive to deal in human merchandise and this business of death is becoming more and more organized, in which professional international networks wantonly flourish transcending global borders and regions. India, as a nation, therefore, has a dire need to check this global menace. However, sadly, The Emigration Act, 1983, which is an Act to consolidate and amend the law relating to Emigration of citizens of India, neither defines human smuggling nor even looks at the problems connected with this deathly trade. Thus, the need for Parliament to legislate a Indian Human Smuggling law is a crying need. Piecemeal state legislations with limited ambit of application will restrict scope only to State territorial borders. A Central law is therefore, the composite solution. Initiatives of Parliament must set this ball rolling. Till then, any State legislation on the subject would be a welcome take off point and the Government of Punjab deserves kudos for this innovative pioneer excellent effort.

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- Identifies defined variable punishment for offences under the Act.
- Provides for liability of Director, Manager, Secretary of Companies responsible for conduct of their business when negligence can be attributed.
- Authorises Courts to decide whether any illegally acquired property is liable to be confiscated.
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- Dishonest misrepresentation with intention to have wrongful gain for inducing, deception, cheating or allurements for above activities is punishable under the Act. If any travel agent wants to advertise or hold seminars, he will have to notify the competent authority in writing giving complete details of advertisement of seminars.
- The words “travel agent” and “human smuggling” in the Punjab Act, find definition in the following words:
- “Travel Agent” means a person doing the profession which involves arranging, managing or conducting affairs relating to sending persons abroad or which arise out of the affairs of persons sent to a foreign country, and shall include a range of activities covering diverse practices .
- “Human Smuggling” shall mean and include illegally exporting, sending or transporting persons out of India by receiving money from them or their parents, relatives or any other persons interested in their welfare, by inducing, alluring or deceiving or cheating.