

## REPORT OF THE SPECIAL TASK FORCE

\*\*\*\*\*

The Inter-Ministerial Sub-Committee during its meeting held on 3<sup>rd</sup> July, 2007 constituted a Special Task force with Shri Suresh Chandra, Addl. Government Counsel, Ministry of Law and Dr. M. Gandhi, Director, (Legal and Treaties Division), MEA, to study the problems and give their recommendations on the following:

- (i) Study will be made as to how we being the Central Government can appoint special public prosecutors, may be private agency, who can espouse the cause of those who have been suffering due to fraudulent/failed marriages;
  - (ii) Making the provisions for compulsorily registering the marriages by way of amendment, etc. or on the strength of recent Supreme Court Judgment.
  - (iii) Having bilateral agreements for service of summons in Civil Suits for execution of decree of civil courts, for the enforcement of maintenance orders etc. especially, with the countries including USA, Canada and Australia and New Zealand wherein most of the NRIs live and problem of desertion is acute.
2. With respect to (i) above, it may be noted that the Public Prosecutors are appointed under section 24 of the Criminal Procedure Code by the Central Government or the State Governments, after consultation with the High Court, for conducting in such court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government as the case may be. Comments of the Ministry of Law (Judicial Section) were also called for in this regard (Copy enclosed for ready reference). They have informed that appointments of special public prosecutors are made under Section 24(8) of the Cr.P.C. They have further sought information as to under which enactment Union of India (Ministry of Overseas Indian Affairs) have to prosecute cases relating to failed/fraudulent marriages. We understand that the subject matter pertains to State Government, therefore, the State Governments are the prosecutors. If there are offences, concerning

the enactment administered by the Central Government in those cases, special public prosecutors may be appointed by the Central Government. In that eventuality, the concerned administrative ministry forwards proposal to the Ministry of Law for appointment of public prosecutors.

3. With respect to (iii) above, we may forward the information contained under Ministry of Law (Legislative Department), New Delhi's O.M. dated 4<sup>th</sup> July, 2007 (Copy enclosed).

3.1 With respect to registration of marriages, Section 8 of the Hindu Marriage Act, 1955, enables the State Government to make registration of Hindu marriages in such state and part thereof, if necessary. The National Human Rights Commission and the National Commission for Women have made certain recommendations and proposed certain amendments in this regard. On that basis, the Legislative Department sought the views/comments of the State Governments. Now, the Legislative Department on the basis of the views received from the State Governments and the decision in Smt. Seema Vs. Sh. Ashwani[AIR 2006 SCC 1158] has been proposing a Note for the Cabinet on the Hindu Marriage (Compulsory Registration) Bill, 2007. At present the State Governments of U.P., Bihar, West Bengal, Meghalaya and Goa have been requested to provide the copy of the relevant Act/Rules relating to Compulsory Registration of Marriages prevailing in those States.

4. With respect of bilateral agreements in civil matters, a note dated 4.7.2007 from Ministry of Law (Judicial Section) is enclosed wherein it has been mentioned that there is no bilateral agreements or treaty with the aforementioned countries. However, a proposal or agreement/treaty in civil matters with Australia is under consideration. There are reciprocal arrangements with Australia and UK under Section 3 of the Maintenance Orders Enforcements Act, 1921. There have been reciprocal arrangements in place with UK and New Zealand under Section 44A, CPC regarding execution of Civil Decrees (A copy of note verbale dated 25.5.2006 from the Embassy of United States of America regarding services of process on a person in the United States is also enclosed).

5. In addition, it may also be mentioned that India has become a party to the following Conventions: (1) 1961 the Convention Abolishing the requirement of Legalisation for Foreign Public Documents (entered into force for India on 14<sup>th</sup> July, 2005; (2) 1965 Convention on the Service

Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters (acceded on 23.11.2006, will enter into force for India w.e.f. 1.8.2007); and (3) 1970 Convention on Taking of Evidence Abroad in Civil or Commercial Matters (acceded on 7.2.2007 entered into force for India w.e.f. 8.4.2007). India has already become a party to the Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Inter-country Adoption.

6. Having acceded to, 1965 Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, the servicing of summons with most of the target countries becoming a possibility now. (status of the Convention indicating number of parties to the Convention attached).

7. In view of the above, the task force recommends the following:-

1. Instead of giving emphasis on a more logistic and litigatory solution to the problem, a multipronged approach is necessary. First, there is a need for a vigorous information campaign at all levels using all the media channels and the NGOs.
2. Where there is need for litigation, the litigations relating to NRI marriages should be taken up on fast tract courts through Ministry of Law and Justice and also where necessary, by special public prosecutors.
3. Wherever there is an ongoing litigation in a foreign court the bride's case should not go un-represented. The existing funding mechanism to such cases required to be strengthened by organizing a network of NGOs and NRI legal professionals as volunteers.

-sd/-  
(Dr. M. Gandhi)  
Director, MEA

-sd/-  
(SURESH CHANDRA)  
Govt. Counsel/Legal Adviser  
(MOIA)

## **MEA's view on inclusion of the name and photograph of wife in the passport of an NRI spouse**

The passport application form provides for the declaration of the name of spouse and if declared by the applicant, the name of spouse is entered in the passport.

As regards inclusion of photographs of wife in the passport of an NRI spouse, the Ministry of External Affairs has examined this issue. Passport Officers were also consulted in this regard. First of all, the proposal of inclusion of wife's photo in the passport of an NRI husband is not compliant with the regulations of International Civil Aviation Organisation. Further, this proposal does not seem to be a practical one and would not serve the desired objective for the following reasons:

- The photo of the spouse can be included only if the person is married at the time of applying for a passport.
- If the person gets married during the ten-year validity period of the passport, the requirement cannot be complied with.
- An NRI, who marries an Indian girl, may possess foreign nationality and the Government of India cannot include his Indian spouse's photo in the foreign passport.

Sd/-

(P. M. Meena)  
Joint Secretary (Cons)