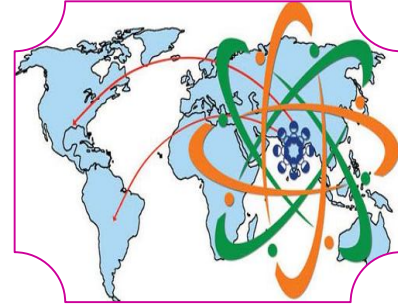




ISSUES OF INDIAN DIASPORA : A SOCIO-LEGAL PERSPECTIVE**Dr. Ram Shankar Das¹ and Dr. Mumtaz Shariff²**¹M.A.(Eng.), B.Ed., MBA, Ph.D. (Law) , Faculty & Legal Consultant.²MJMC, LLB, Ph.D. (J&MC) , Media Professional / Guest Faculty.**ABSTRACT**

The term 'diaspora' has evolved over time. Earlier it signified the migration and colonisation of the Greeks and later referred to Jews in exile who were expelled from many countries, thereby taking on both positive and negative connotations. Today, however, the term loosely describes people of one nationality or common origin living outside their home country. Non-resident Indian and Person of Indian Origin (NRI-PIO) also called Overseas Indians or Indian Diaspora, are the people of Indian birth or descent who live outside the Republic of India. As per Ministry of External Affairs report there are approximately 31.2 million Indian Diaspora residing outside India. India has the largest diaspora population in the world.

KEYWORDS: migration and colonisation , Indian Diaspora , issues of Jurisdiction and applicability of laws.

INTRODUCTION

NRIs and PIOs have started playing an active role in India. The efforts made by the Government to reach out to the Indian Diaspora has brought in to sharp focus the issues faced by them. Reforms to PIO Card Scheme, voting rights of NRIs, issues of Jurisdiction and applicability of laws, surrogacy, adoption, divorce and matrimonial disputes etc. are some important issues around legal framework for Indian Diaspora.

There is an urgent need to repeal obsolete laws and replace them with laws that address the challenges thrown up by the 21st Century. The law needs to adapt with the changing times. If it seeks to retain its efficacy. The uncertainty and opacity surrounding family laws in India have caused untold misery to NRIs, PIOs and Indian citizens alike. Therefore, new comprehensive legislations addressing new issues and challenges must be passed and implemented in an effective manner to redress the grievances of the sizeable Indian Diaspora.

Diaspora has become an important feature of Narendra Modi's foreign policy. His diasporic policy has strengthened the role and significance of Indian Diasporic community in the development of the country in addition to attracting global investment, aids and technology. For Modi, India's intellectual power beyond borders is "Brain Gain" and not "Brain Drain". This is reflected in his special outreach to Indian Communities during his visits to the foreign countries. The government has made conscious efforts to reconnect the Indians living abroad to their homeland by simplifying Visa regulations and merging the Person of Indian Origin (PIO) and Overseas Citizenship of India (OCI) Card into a single identity card to secure life-long Indian visas, avoid checks at local police stations during visits and started a ministry of Overseas Indian Affairs among many other initiatives. Modi's diaspora policies not only focus on the rich white collared professionals but also give due importance to the working class population. This is evident from the fact that he visited Indian workers camp in Abu Dhabi, establishing the Indian Community Welfare Fund (ICWF) and announced an online-platform *Madad* to assist them.

The Indian diaspora is a term which includes Indian nationals and those citizens living abroad for work or business. In the last few decades, a considerable number of professional, semi-skilled and unskilled workers, as well as, students have shifted abroad. This diaspora sums up to 25 million people and is considered the world's largest such community spread in 136 countries across the globe by the United Nations. Whatever the exact figure is, it cannot be denied that India has strong and active NRI and PIO/OCI community.

As of recent times, NRIs and PIOs have started playing an active role in India. The efforts made by successive Central Governments to reach out to the extensive Indian Diaspora has brought into sharp focus the issues faced by them.

LEGAL CHALLENGES

Considerable amount of efforts has been put into place making commercial laws favourable for NRIs. There are a plethora of investment and banking opportunities available for NRIs in India. However, the focus has only been on this area. The different aspects relating to family law have largely been ignored. Till recently, PIOs faced great difficulty in procuring visas to visit to India. There also various issues related to divorce, surrogacy, adoption, custody of children, succession, maintenance, division of property and various jurisdictional issues which are unclear or have not been legislated upon. The system is also plagued by outdated laws.

PIO CARD SCHEME

The Centre recently amended the rules of the PIO Card Scheme so that the new recipients of PIO Card Scheme so that new recipients of PIO Cards will receive cards that will be valid for the duration of their life, provided they are holders of valid passports. This lifetime validity will be applicable retrospectively to holders of PIO cards too if they possess a valid passport. Earlier, PIOs had cards which granted them a 15 year visa, which could then be extended for a term of 10 years at a time.

The Scheme for issuance of Person of Indian Origin Card (PIO Card) Amendment. Scheme, 2014 also amended the rules that required PIOs spending more than 180 days in India to register themselves with the FRRO (Foreigners Regional Registration Office). No such registration is now required irrespective of how long the PIO's stay is.

VOTING IN INDIAN ELECTION

Voting in an Indian election can be done in three ways – in person, by post and through a proxy. Under proxy voting, a registered elector can delegate his voting power to a representative. This was introduced in 2003 for elections to the Lok Sabha and Assemblies, but on a limited scale. Only a “classified service voter” – a definition that includes members of the armed forces, BSF, CRPF, CISF, General Engineering Reserve Force and Border Road Organisation – is allowed to nominate a proxy to cast vote on his behalf in his absence. A classified service voter can also by postal ballot.

The Election Commission decided to look for options to enable NRIs to vote from overseas after it received several requests, including from former Rajya Sabha MP and industrialist Naveen Jindal and the Ministry of Overseas Affairs, while three writ petition were filed by NRIs in the Supreme Court in 2013 and 2014. A 12-member committee was set up in 2014 to study mainly three options – voting by post, voting at an Indian mission abroad and online voting.

The committee ruled out online polling as this could compromise “secrecy of voting”. It also ruled out the proposal to vote at Indian missions abroad as they do not have the resources to organise polling. In 2015, the panel finally recommended that NRIs be given the “additional alternative options of e-postal ballot and proxy voting”, apart from casting their vote in person. E-postal ballot is a ballot paper that is sent to voter electronically and returned to the returning officer by post. The Law Ministry accepted the recommendation on proxy voting and the Cabinet passed the proposal to amend the Section 60 of Representation of the People Act 1951 in August, 2018. Prior to the said amendment Overseas Indians

could exercise their right to electoral franchise provided they were registered in their constituency and physically present there on the day of polling.

This amendment has raised concern among experts and law makers. Many political leaders felt that the provisions are liable to be misused. Permitting a proxy to cast a vote on behalf of an NRI has raised questions regarding the secrecy of the ballot. The amendment would violate the secrecy of the voter's choice.

The law maker of Odisha, Kailash Singh Deo has raised concern over the implementation of the proposal such as influence over voting and monitoring. He also called for a mechanism to ensure that the NRI's choice to vote is in line with that of the proxy.

JURISDICTION AND APPLICABILITY OF LAWS

The applicability of foreign laws, the validity of judgements given abroad and the verdicts of Indian courts requiring clarification, are issues that warrant the interest of the authorities. There is no clarity on law of which nation under which set of circumstances will govern NRIs. Often, there is a clash between conflicting laws of different jurisdictions. Indian laws on a variety of subjects like custom, marriage, divorce, spousal maintenance, domestic and inter-country adoptions, child abduction, surrogacy, child rights, matrimonial settlements, nationality and citizenship do not stipulate conditions where foreign law may be applicable/considered or how the Indian Courts must reconcile with a judgement of a Court in another country.

Added to this confusing mix is private international law. But again, Indian law is unclear on whether domestic law or private international law is applicable in case of conflict between the two. This creates great difficulties for NRIs engaged in sensitive and traumatic family disputes.

Lengthy judicial proceedings in India which can go on for years also act as a deterrent for persons seeking to redress their grievances.

SURROGACY

India is a popular destination for NRIs seeking to have a child through surrogacy, as medical costs here are much lesser than other countries. The lack of a law governing surrogacy makes it easy for persons with dubious intentions to have a child here. At the same time, the lack of a stringent system makes it difficult for persons who genuinely want a child to navigate the system. A plethora of well-publicized cases have shown how much emotional trauma, suffering and confusion this opaque can cause. Also, the rights of the child, surrogate and the parents go unprotected. In such circumstances, any intermediary can take advantage of the situation and exploit the person concerned, especially the surrogates, who tend to be from poorer background.

In 2005, the ICMR (Indian Council of Medical Research) framed guidelines for ART (Assisted Reproductive Technologies) Clinics. However, there is no legal mechanism to enforce them or monitor compliance by clinics.

Adoption

The Central Adoption Resources Agency (CARA) in India has put guidelines in place which oversee some aspects of intercountry adoptions. However, there is a lack of clarity on adoption procedures. India has ratified the convention of 29th May, 1993 on protection of children and cooperation in respect of inter-country adoption. However, no laws have been passed on the subjects, even though India is a popular destination for persons seeking to adopt.

The Law Commission in its 153rd Report on 'Inter-country Adoption' prepared draft of a Bill on Inter-country Adoption.

However, despite this, there is a lack of clarity on adoption procedures.

DIVORCE AND MATRIMONIAL DISPUTES

Most of the jurisdiction allow 'irretrievable break down of marriage' as a ground for divorce. Indian law, however, doesn't explicitly recognize this as a valid ground for divorce. Multiple conflicting judgements of Courts in India have created confusion over whether divorce can be granted on that ground. Indian Courts, in principle, do not recognise foreign matrimonial judgements dissolving marriage by such breakdown. This uncertainty creates difficulties for returning NRIs. Sometimes, foreign courts pass ex-parte decrees granting divorce even in the cases of marriages which were solemnized in India and as per Indian law. The spouse who wasn't present at the proceedings is at an inherent disadvantage in such cases. Even if such cases were brought to Indian Courts, the Courts here do not have free reign to interfere with the judgement of a foreign court.

In some cases involving marital disputes, the NRI/PIO husband may resort to cancelling of sponsorship of his spouse. In such an event, the spouse has no option but to return to India. Therefore, such cancellation must not be permitted without giving the spouse an opportunity to contest the cancellation.

There is absence of uniform civil laws in India as different religions adhere to different personal laws. Inter-religious marriages are much more difficult to deal with.

Further, legal complications get amplified when a marriage takes place a foreign country and its legal system get involved. Such cases involve laws of two different countries and also private international law. Any conflict of laws between differing jurisdictions will have to be addressed and cleared by the Courts. Also, the extent of applicability of laws and choosing laws of which country are applicable is also a major issue lacking clarity.

Indian women marrying NRIs is a very common matter. However, incidence of abuse in such cases is also high. Addressing disputes that arise from such issues is another area of concern. Most women get married and leave to a foreign land, and many are left with no means of getting away from an abusive husband. Most of the Indian missions or embassies have help desks to assist persons who are victim of abusive. There is also a scheme for legal and financial assistance to Indian women deserted by their overseas Indian spouses. However, there is no recourse for persons engaged in matrimonial disputes. Greater awareness needs to be generated about the rights of a spouse and also regarding the assistance provided by Indian Embassies/Consulates/Missions abroad.

India's Diaspora Policy : A Historical Perspective

Jawaharlal Nehru, India's first Prime Minister, pursued a policy of "active dissociation" from the Indian Diaspora. He was concerned about the impact of connecting with and advocating for, this diaspora on the sovereignty of host countries. The Nehruvian trend was continued and extended till 1980 by successive governments.

It was under the regime of Rajiv Gandhi that there was a boost in the diaspora policy, having realised Indian diaspora as a strategic asset, he invited talents like Sam Pitroda to participate in nation-building and took administrative measures to establish the Indian Overseas Department in 1984.

The policy of reaching out to the Indian Diaspora began in earnest during the tenure of Atal Bihari Vajpayee. It was under NDA-I that Pravasi Bharatiya Divas was first launched in 2003 to be celebrated on 9th of January. The government decided to celebrate it annually by holding events including bestowing awards on the prominent members of the Indian diaspora.

However, Mr. Modi is the first Indian Prime Minister who has brought the linkage between Indian diasporic community and development of the country. Diaspora has become an important feature of Modi's foreign policy. The unprecedented foreign trips undertaken by the Indian Prime Minister has strengthened the role and significance of Indian diasporic community in the development of the country, in addition to attracting global investment, aids and technology. For Modi, India's intellectual power beyond borders is 'brain gain' and not 'brain drain'.

The diaspora has not only contributed through FDI, remittances and transfer of knowledge and entrepreneurial means but also through the rise of services sector in India, especially in the IT and ITES sectors. Most importantly, the Indian diaspora is also active in local politics in countries like the U.K. and Canada. The government has also urged diaspora members to invest in social projects such as improving rural sanitation and visiting India every year to boost tourism.

The union cabinet has approved proxy voting for NRI. It's an important step in bringing the diasporic community closer to India. Till now proxy voting was only available to service personnel. It is clear that Modi Government want to leverage the Indian Diaspora as a foreign policy tool. Inaugurating the 14th Pravasi Bharatiya Divas in Bangaluru in January 2017. Modi said, "There are over 30 million overseas Indians living abroad...their footprints are all over the world...Indians abroad are valued not for their strength in numbers ...they are respected for their contributions to India and the societies where they live. In foreign lands and communities across the globe, the Indian diaspora represents for their values. They are handworking, law abiding and peace loving, and are role models for other communities."

SUGGESTIONS

There is an urgent need to repeal outdated laws and replace them with laws that address the challenges thrown up by the 21st Century. The law needs to adapt with the changing times, if it seeks to retain its efficiency. The uncertainty and opacity surrounding family laws in India have caused untold misery to NRIs, PIOs and Indian citizens alike. Therefore, new comprehensive legislations addressing new issues and challenged must be passed and implemented in an efficient manner to redress the grievances of the sizeable Indian diaspora.

Inter-country child adoption procedures must be simplified and a single uniform legislation must be provided for in matter of adoption of Indian Children by NRIs. Further, the states with high NRI population should lay down some uniform policy guidelines to be observed by State agencies, adoption homes and administrative authorities so that proper help and guidance is available to NRIs in adoption matters.

CONCLUSION

In recent years the government of India along with a number of state governments has been making efforts to reach out to the Indian diaspora. While the government began to host the Pravasi Bharatiya Divas state government too have been hosting summits with the aim of not just attracting investments from Indian diaspora but also to strengthen linkage with their native regions. A diaspora can play a crucial role in pushing to achieve their home-country's interest from abroad. The easiest way for the diaspora to contribute to their home country's development is by way of remittances, knowledge transfer, the sharing of resources, acting as unofficial Indian ambassadors. The expectations of the diaspora in return for their help from the Indian Government is varied. While those from countries like Australia, the US and Canada demand dual citizenship and easier routes to invest in India, immigrants in the Gulf states require more help in day-to-day survival, and people of Indian origin in country's like Fiji, Kenya and Trinidad and Tobago look to India for cultural ties. The Modi government will have to continue to work with these diaspora groups separately to fully benefit from the complementary relationship shared between the diaspora and its home country, focusing on flagship programs like 'Make in India', while also playing a larger role in the Indian space programme and in the expansion of trade, defence and security ties. As workers face layoffs in the middle east and America makes it increasingly difficult to get working visas. The Indian Diaspora is facing the new challenges. Both the centre and the state need to take pro-active steps to support and engage Indian's living outside their borders. USA President Donald Trump and Australian Prime Minister Malcolm Turnbull have revised business visa rules to restrict the entry of skilled migrants. The American move in particular has come as a major shock to the Indian diaspora. Since, many of them are professionals especially in the IT industry who have benefited from the H1-B regime. Very little media or policy attention is given to the new challenges faced by the Indian Diaspora and there is a need for an innovative approach for dealing with them. There is also a need for strategic diaspora evacuation policy from conflict zones of the world. Due to

lack of standard of operating procedures, evacuation could prove difficult. Indian maritime and airforce doctrines do talk about non-combatant evacuation operation (NEO) using ships and heavy lift aircrafts like the C-17 Globemaster. A crisis in Saudi Arabia in July 2016 saw Indian workers directly reaching out to External Affairs Minister Sushma Swaraj for help. In all probability, plans must have been made to get them out in an emergency. How far it could have been successful cannot be said. But one thing is certain – there is an urgent need for a coherent government policy on the diaspora with a special emphasis on capacity development along with a doctrine for evacuation operations.

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