Limping Marriages and Holiday Wives

The issue of 'holiday wives' has been raised sporadically bout a solution has yet to be found. Vijaya Pushkarna reports in "the Week" (Nov. 30, 2003).

> "I encountered 'holiday wives' for the first time on a bleak January morning of 2001. I was in the office of Gaurav Yadav then superintendent of police of Jalandhar. Two young girls, accompanied by elderly men, came in to see him. While the girls sat with downcast eyes, the old men told him how they had been ditched by their NRI husbands. They sounded angry and anguished.
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> A social activist later told me that Doaba region had many such unfortunate young women. NRIs married them while holidaying in their native villages and went back to foreign lands after using them. Many were ditched at the end of the holidays. Others were looked after for a while and then dumped unceremoniously. Some women had to witness their husbands gallivanting with new brides later".

The extent of the problem has been highlighted by Dr. Prit Paul Kaur in an unpublished paper presented at the 41st annual International conference of Women Police held at San Francisco Police Department. Dr. Prit Paul Kaur has pointed out that the majority of victims are women. In rare cases, they have approached the Indian courts as their 'husbands' have obtained decrees from foreign courts where they can be easily obtained. The issue is not a new one but of great immediacy in India as the law on it is not yet satisfactorily developed and India is not part of the international conventions on it, We the Hague Conventions.

Not too many cases reach the court but , the ones that do reveal only the tip of the iceberg.

One of the moot vital issues involved was the question of domicileas on it hinged where the suit for divorce could be filed. Indian Courts followed the old English Law according to which the domicile of the wife followed that of the husband although she may not have lived with him there even for a day. It caused great hardship as it enabled the husband to file a suit for divorce in a foreign country while the wife was left in India as legally her domicile was seen to be the same as the husband's. The Supreme Court of

India relieved the women of this tyranny of this fiction as late as 1991 in 4. Narasimha Rao and others Vs. Y. Venkatalakkshmi & Anr. (1991) S. Supreme Court Cases, 451.

The term "limping marriage" was need by the Goa High Court in Pires Vs. Pires AIR 1967, Goa, Daman and Diu, 113. for situations where a couple was considered married in one country and divorced in another. In this case the court tried to lay down certain principles of Private International Law to be applicable in India as it interpreted S.13 of the Civil Procedure Code (CPC) 1908.

The facts of Pires Vs. Pires were as follows :

A divorce decree was secured by the husband from the High Court of Uganda against his wife living in Goa with respect of his Roman Catholic marriage solemnized in Goa. The record shows that the divorce was sought and secured on the ground that the wife Joequina had been living in adultery. Joequina opposed the prayer for confirmation of the decree based on foreign judgement on two grounds. First, she pleaded that she had not been given proper notice of the proceedings instituted against her in the High Court at Kampala and second that she and her husband Pires, being Roman Catholics and their marriage having been solemnized in a church at Goa where the law was and continued to be that such marriages or indissoluble, the decree obtained from Kaurpala could not be recognized in India.

The Court, making some definitive statements on Private International Law, said that all countries in the world had enacted statutory provisions with regard to how and under what circumstances could foreign judgements be implemented. In India the relevant law was to be found in sections 13 and 44-A of the CPC of 1908. Broadly speaking these provisions laid down two methods of implementing foreign judgements. One was to file a suit on the basis of the foreign judgement in an Indian court and then carry out the decree made by it.. The second was the execution of the decree of the foreign court straight away by a District Court in India if there were reciprocal arrangement between India and the country in which the foreign judgement was given. According to S.13, a foreign judgement was conclusive as to any matter directly adjudicated upon between the parties with six exceptions:

13. A. foreign judgement shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parities under whom they or any of them claim litigating under the same title except.

a) where it has not been pronounced by a court of competent jurisdiction.
b) Where it has not been given on merits of the case:
c) Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognized the law of India in cases in which such law is applicable;
d) Where the proceedings in which the judgement was obtained are opposed to natural justice ;
e) Where it has been obtained by fraud;
f) Where it sustains a claim founded on a breach of any law in force in India.

Thus Clause (f) of S.13 almost corresponded to clause 6 of 1102 of the Portugese Civil Code in force at Goa that enjoined that the foreign judgement the confirmation of the foreign judgement only if it did not contain any finding prejudicial to the principles of the Portugese Public Order. The sixth case mentioned in S.13 of the CPC, 1908, also covered within its ambit, S.23 of the Indian Contract Act which laid down that an agreement that was opposed to public policy shall not be enforceable. The expression 'public policy' was also used in S.1102 of the Portugese code and hence in a way, the provisions of S.1102 and of S.13 of Indian CPC, were identical.

The court refused to confirm the Kampala decree on grounds that it was opposed to state policy as enshrined in the Decree of 1946 which was the result of the Treaty between the Portugese Government and the Vatican. That Decree enjoined that Roman Catholic marriages could not be dissolved. The Decree was still law at that time despite the liberation of Goa. Hence the Kampala decree of divorce was against public policy and against the Portugese Civil Code which enshrined the principles of Portugese Public Order and hence could not be confirmed.

The court conceded that it looked odd and astonishing that a divorce decree between two parties should be valid and binding between them in one state, in this case Uganda, and not in another, that is India: However, the court said that, was not an uncommon situation. It referred to the commentary of Cheshire, who described such marriages as 'limping marriages', that is marriages regarded as valid in one country but

void in another. The only way out, was to have some uniform principles of Private International Law accepted throughout the world but this was a long way off, if at all.

Clauses (a),(b), (d) and (c) of Section 13 CPC once again came up for consideration in Maganbhai Chhotubhai Patel Vs. Maniiben (1985) The issues were with regard to competence of the court, merits of the case, natural justice and whether thee was any fraud.

Maganbhai aggrieved by the decision of the lower court that awarded Rs. 250/- per month as maintenance to his wife with effect from 2.4.1969 filed an appeal against it in the Gujarat High Court. The wife, Maniben, also came to the High Court dissatisfied aggrieved by the paltry sum awarded to her as maintenance for herself and her two children claiming at least Rs. 1000/- per month.

The facts of the case were as follows:

Maganbhai left his wife and two minor children and went to USA for further studies in Engineering. Since then, he neither came back to India nor did he care to maintain his family, so much so that even after the wife obtained a decree for the paltry amount Rs. 250/- per month, he did not pay her anything at all. It was also proved that he had a one-sixth share in the joint family property situated in village Malekpur, District Bulsar, where his father lived. Maganbhai's father, Chhotubhai Patel also did not make any provision for the maintenance of Maniben and her children. Consequently she suffered immense hardships. Her husband, on the other hand, resorted to every technicality of law possible and fought her through his father, as his power of attorney to stall the claim of his wife. Chhotubhai also contributed to her miseries by not giving the due share to her from the valuable properties in which the defendant had one sixth share although the maintenance had been changed by the trial Judge on these properties.

Maniben was married to Maganbhai on 3.3.1952 according to the Hindu rites and customs of their caste. After marriage both of them lived in their matrimonial home at Malekpur, Taluka Palsana, District Bulsar during which time two children were born – a son Praful on 9.8.1956 and a daughter Daksha, on 2.9.1961. At that time, the husband, Maganbhai, was studying Engineering at the Engineering College at Baroda. It appears that after completing his course, he proceeded to USA for three years in Engineering school. While going to USA, Maganbhai had promised his wife that he would return to India at the end of three years or call all of them to USA. However, after settling down in USA, he seems to have lost interest in his wife and wrote a letter to his wife's father on 6.12.1966 demanding a divorce. He also threatened that in case his demand was not acceded to, he would obtain a divorce through US courts and would not give anything at all to his wife. His children would also lose their rights on him an don any of his

properties. He further stated that he had become a citizen of US and so would be able to marry again.

However, Maganbhai's wife did not cave in to the pressure. But since she was not educated enough to get a job, she was completely at the mercy of her father. Finally she received a letter from him on 4.10.1968 that he had gone to stay in Mexico where he had obtained a decree of divorce against her through a Mexican court. Also, the court had also given him permission to remarry whenever he liked and that within a week she would get information of his marriage. He further said that she would not receive anything from him but that he was prepared to call the children to USA on 22.3.1972 Maniben got a letter from the Department of Justice, New Jersey, which stated that Maganbhai Patel had filed a petition for naturalization and the Department wanted to confirm whether he had provided support for his wife and children as required by the divorce decree.

After the receipt of this letter, the wife lost all hope that her husband would return or that he would make arrangements for her and her children. Hence, she filed a suit of Rs. 1000/- per month for maintenance. Maniben made four points One was that the decree passed by the Mexican Court was nothing bout a collusive mail order divorce and hence could not be recognized in India. The second was that the husband was a resident of India or alternatively of USA and the Mexican Court which passed the decree had no jurisdiction to do so. The third was that the decree of the Mexican Court was nothing but a fraud upon the court and was also a violation of the principles of natural justice. It was, therefore, liable to challenge on all the grounds mentioned in S.13 of the Civil Procedure Code. The fourth was that the trial court had erred in awarding a maintenance of only Rs. 250/- per month as the settled legal position was that the wife was entitled to one half of the earnings of the husband. Since demand was very low, the court should have decreed her entire claim. In response, the husband raised two issues One was that it was incorrect to say that the decree of the Mexican court was not binding on the wife. The second was that Rs. 250/- per month fixed by the trial court was excessive.

As stated earlier, the whole turned on the interpretation of S.13 of CPC. The copy of the judgement showed that the wife had not been served the summons personally but only through the official gazette of the state of Mexico. Also, the judgement did not state for how long had the husband been domiciled in Mexico. Apparently, it seems to have been enough for him to produce a certificate of his residence for the Mexican court to assume jurisdiction.

In deciding the case, the court relied on the earlier landmark case of Smt. Satya vs. Teja Singh, AIR 1975 SC 105 in which satya was married to Teja Singh according to Hindu rites. Both were citizens of India and domiciled in India at the time of their marriage. Two children were born to them and in 1959, Teja Singh went to USA for higher studies in Forestry in which he obtained a Doctorate. After becoming affluent he did not return to India but filed a petition for divorce in the court of the State of Nevada in USA which was granted to him. Thereafter his wife filed a suit for maintenance in the Jullunder Court. Tejasingh resisted the suit contending that because of the divorce decree of divorce obtained by him in the Nevada court. Satya ceased to be his wife and hence was not entitled to maintenance from him. The trial court allowed the wife' suit and ordered the husband to pay her maintenance. The matter then went to the High Court of Punjab and Haryana which applied the old English rule that during marriage, the domicile of the wife followed that of the husband without exception. Thus, according to the High Court, since both Teja Singh and his wife would be considered as domiciled in Nevada, and hence the divorce decree of the Nevada Court was valid. The matter was then carried to the Supreme Court which observed:

> "The answer to the question as regards the recognition to be accorded to the Nevada decree must depend principally on the rules of our Private International Law. It is well recognized principle that 'private international law is not the same in all countries'. There is no system of private international law which can claim universal recognition……It is implicit in that process that the foreign law must not offend against our public policy".

It went on to say:"We cannot therefore adopt mechanically the rules of Private International Law evolved by other countries. These Principles vary greatly and are

moulded by the distinctive social, political and economic conditions obtained in these countries".

After discussing the various cases in respect of the decrees that were being obtained in Mexico, and which had a bearing on the case, the Supreme Court further observed :

> "In determining whether a divorce decree will be recognized in another jurisdiction as a matter of comity, public policy and morals may be considered. No country is bound by country to give effect in its courts to divorce laws of another country which are repugnant to its own laws and public policy. Thus, where a 'mail-order divorce' granted by a Mexican Court was not based on jurisdictional finding of domicil, the decree was held to have to effect in New Jersey State vs. Nijjar 2 NJ 3208. American Courts generally abhor the collusive Mexican mail-order divorce and refuse to recognized them, Langner V. Langner 39 NYS 2d. 918. Mail-order divorces are obtained by correspondence by a spouse not domiciled in Mexico. Recognition is denied to such decrees as a matter of public policy".

Hence, even American states have refused to recognize divorces obtained in Mexican Courts which were more notorious than those of Reno, Nevada. The Supreme Court as also observed that Mexican Courts granted divorces to all and sundry whatever be their nationality or domicile. The judgement neither stated that the husband was a domicile of Mexico State or that he had an intention to continue his residence there. It appears that even after a short story in a hotel in Mexico, a certificate may be granted and such a certificate of residence might be granted and a divorce obtained on it.

Teja Singh was not found to be that he was not a bonafide resident of Nevada,much less domiciled there. The Supreme Court observed:

> thus, from 1960 to 1964 the respondent was living in Utah and since 1965 he has been in Canada. It requires no great persuasion to hold that the respondent went to Nevada as a bird-of-passage, resorted to the Court there solely to found jurisdiction and procured a decree of divorce on a misrepresentation that he was domiciled in Nevada. True, that the concept of domicile is not uniform throughout the world and just as long residence does not by itself establish domical, brief residence may not negative it. But residence for a particular purpose fails to answer the qualitative test for the purpose being accomplished the residence would cease. The residence must answer ' a qualitative as well as quantitative

> test', that is, the two elements of factum at animus must concur. The respondent went to Nevada forum-hunting, found a convenient jurisdiction which would easily purvey a divorce to him and left it even before the ink on his domiciliary assertion was dry. Thus, the decree of the Nevada Court lacks jurisdiction. It can receive no recognition in our Courts.

In the case of Maganbhai, there was no dispute that he was a domicile of India. Then he stayed in USA and hence was domiciled there. But nowhere did it state or prove that he was ever domiciled in Mexico. Domicile was a jurisdictional fact and hence if it could not be proved, the court of that region would not have the jurisdiction and its decree would not be accepted as valid. Therefore, Magenbhai had obtained the decree by fraud.

Hence, the Court did not recognize the Nevada decree of divorce.

Also, the judgement had not obviously not been given on the merits of the case. The husband appeared before the Mexican court only once at the time of filing of the petition. The summons were not delivered to the wife but only published in the official gazette and this could not be considered proper service. Only the husband's counsel appeared before the Court and read the submissions. The husband neither deposed before the court nor gave any evidence. The wife, too, neither appeared before the Mexican Court nor submitted to its procedure. The decree for divorce was passed against her without recording any evidence after the alleged publication of the service in the official gazette She also submitted no defence. This was against natural justice. The Court, after examining the income of the husband, granted Rs. 1000/- per month as maintenance and ordered the husband to also pay arrears together with interest at the rate of 6% per annum.

These issues once again came up in Y. Narasimha Rao and others vs. Y. Venkatal lakshmi and Anr. (1991) 3 Supreme Court cases, 451. Narasimha Rao and Venkatal lakshmi were married at Tirupati on February 27, 1975 and they separated in July 1978. the appellant Narasimha Rao filed an application for dissolution of marriage in 1978 in the sub court of Tirupati averring that he was a resident of New Orleans, Louisiana, USA and that he was a citizen of India. Meanwhile he filed another application of dissolution

of marriage in the Circuit Court of St. Louis, Missouri, USA. In the petition he, besides alleging that he had been a resident of the State of Missouri for ninety days or more immediately preceding the filing of the petition, stated that his wife Venkatalakshmi had deserted him for one year or more by refusing to continue to live with him in the United States and particularly in the State of Missouri. However, from the averments made in the petition at the Sub Court of Tirupati, Narasimha Rao and Venkatalakshmi had last resided together at New Orleans, Louisiana and never in the State of Missouri. Venkatalakshmi filed a reply in the Missouri Court without prejudice to the contention that she was not submitting to the jurisdiction of the foreign court. The Counry Court in the State of Missouri assumed jurisdiction on the ground that Narasimha Rao had been resident in the state of Missouri, ninety days before commencing action in the court. The Missouri Court passed a decree for the dissolution of marriage on February 19,1980 in the absence of Venkatalakshmi only on the ground that the marriage was 'irretrievably broken'. The petition at Tirupati was dismissed as Narasimha Rao did not pursue it. But he remarried and Venkatalakshmi filed a criminal complaint against him and his new wife for the offence of bigamy. They, however, argued for their discharge in view of the decree for the dissolution of marriage passed by the Missouri Court. The Magistrate discharged Narasimha Rao and his second wife on grounds that there was no prima facie case against them. But on revision, the High Court set aside the order of the Sub Court holding that a photostat copy of the Missouri decree was not admissible evidence.

Under the provisions of the Hindu Marriage Act, 1955, only that district court had jurisdiction within whose local limits civil – (i) the marriage was solemnized, or (ii) the respondent, at the time of the presentation of the petition resided, or (iii) the parties to the marriage last resided together, or (iv) the petition or was residing at the time of the presentation of the petition, in a case where the respondent was, at the time, residing outside the territories to which the Act extended, or had not been heard of as being alive for seven years or more by those persons who would naturally have heard of him if he were alive. Therefore, the Missouri Court had no jurisdiction to entertain the petition according to the Act under the Hindu Marriages Act which the parties were married. Further, irretrievable breakdown of marriage was not a ground recognized under the

Hindu Marriages Act for dissolution of marriage and therefore, a decree on that ground could not be accepted as valid under S.13 of the CPC..

Further, the decree could not be sustained because it had not been pronounced by a court of competent jurisdiction. Narasimha Rao had stated that he was a resident of Missouri State when records showed that he was only a bird of passage there and was ordinarily a resident of the State of Louisiana. He had, if at all, only technically satisfied the requirement of residence of ninety days with the sole purpose of obtaining the divorce. Relying on Smt. Satya Vs. Teja Singh (1975) ISCC 120, the Supreme Court said that it was possible to dismiss this case on the narrow ground that Narasimha Rao had played a fraud on the foreign court by representing to it incorrect jurisdictional facts. It had already been held in Smt. Satya vs.Teja Singh that residence did not mean a temporary residence or that which was intended to be permanent for future as well.

However, the Supreme Court did not dispose of this case on this ground alone as it said that there was nothing to show that the Missouri Court could not assume jurisdiction on the basis of a mere temporary residence. But it wanted to address itself to the larger question whether even in such cases, should the courts of India should recognize the foreign divorce decrees. It recognized that the rules of Private International Law were not codified in India but lay scattered in different enactments like the Civil Procedure Code, the Contract Act, the Indian Succession Act, The Indian Divorce Act, the Special Marriage Act and others. Some rules had evolved through judicial decisions. The problem in cases involving matrimonial disputes, custody of children, adoption, testamentary and intestate succession and others was compounded because they were governed by personal laws which were different for different sections of society and hence no uniform rules could be laid down for all the citizens.

The court said that other countries and legal systems distinguished between matters that concerned personal and family affairs from those dealing with commercial relationships, civil wrongs and other such matters. The law in the former area tends to be primarily determined and influenced by social, moral and religious considerations, and public policy played a special and important role in shaping it. Hence, in almost all the countries the jurisdictional, procedural and substantive rules which are applied to disputes arising in this area are significantly different from those applied to claims in others areas.

This was because country could afford to sacrifice its internal unity, stability and tranquility for the sake of uniformity of rules and comity of nations that were important and appropriate to facilitate international trade, commerce, industry, communication, transport, exchange of services, technology, and other such areas. This had been recognized both by the Hague Convention of 1968 on the "Recognition of Divorce and Legal Separations as well as by the Judgements Convention of the European Community of the same year. Article 10 of the Hague Convention expressly provided that the contracting States might refuse to recognize a divorce or legal separation if it was incompatible with their public policy. The Judgements Convention of the European Community also expressly excludes from its scope (a) status or legal capacity of natural persons, (b) rights in property arising out of a matrimonial relationship (c) wills and succession (d) social security and (e) bankruptcy. A separate convention was contemplated for the last of the subjects.

The courts in India had so far tried to follow the English rules of Private International Law in these matters whether they were common law rules or statutory rules. This dependence on English Law had however, often been regretted, but nothing much had been done to remedy the situation. The Law Commission in its 65th Report had made some recommendations on this subject in since April 1976 but nothing much had happened. Even the British were circumspect and hesitant to apply their rules of law in such matters during their governance of this country and had left the family law to be governed by the customary rules of the different communities. It is only where there was a void that they had stepped in by enactments such as the Special Marriage act, Indian Divorce Act, Indian succession Act and others. The legislature of independent India had enacted rules of Private International Law in this area and in their absence the court had been forced to fall back upon precedents taken from English rules. Even here there was no uniform in practice resulting in conflicting decisions.

However, the court emphasized there was a great need for definitive rules for recognition of foreign judgements in personal and family matters and particularly in matrimonial disputes. Men and women with different personal laws had migrated and were migrating to different countries either to live their permanently for temporary residence. Similarly nationals of other countries were also migrating. Increased

communication and transportation had made it easier for individuals to hop from one country to another. It was also not unusual to come across people marrying foreign nationals either in India country or abroad or having married here, either both or one of them migrating to other countries. There were also cases where parties have married here were either domiciled or residing separately in different foreign countries. This migration, temporary or permanent, had been giving rise to various kind of matrimonial disputes destroying the family and its peace. A large number of foreign decrees in matrimonial matters was becoming the order of the day. A time had, therefore, come the court felt to ensure certainty in the recognition of foreign judgements in these matters. The court then proceeded to lay down minimum rules of guidance to secure this through the interpretation present statutory provisions, particularly S.13 of the CPC.

Clause (a) of Section 13 stated that a foreign judgement shall not be recognized if it has not been pronounced by a court of competent jurisdiction. Such a court could only be one which the Act or the law under which the parties were married recognized as competent to entertain the matrimonial dispute. Any other court should be held to be a court without jurisdiction unless both parties voluntarily and unconditionally subjected themselves to it. The expression "competent court" in Section 41 of the Indian Evidence Act had also to be similarly construed.

Clause (b) of Section 13 stated that if a foreign judgement was not given on the merit of the case, the Indian courts will not recognize it.. This clause should be interpreted to mean (a) that the decision of the foreign court should be on a ground available under the law under which the parties were married, and (b) that the decision should be a result of a contest between the parties. The latter requirement was fulfilled only when the respondent was duly served and voluntarily and unconditionally submited himself/herself to the jurisdiction of the court, contested the claim, or agreed to the passing of the decree with or without appearance. A mere filing of the reply to the claim under protest and without submitting to the jurisdiction of the court, or an appearance in it. either in person or through a representative for objecting to the jurisdiction of the Court, should not be considered as a decision on the merit of the case.

Section 13 © required that the Indian courts would not recognize a foreign judgement if it had been obtained by fraud. However, in view of the decision of the

Supreme court in Smt. Satya vs. Teja Singh the fraud need not be only in relation to the merits of the matter but may also be in relation to jurisdictional facts.

The second part of clause © of Section 13 stated that where the judgement was founded on a refusal to recognize the law of this country where it was applicable, the judgement would not be recognized by the Indian courts. The marriages which took place in India could only be under either the customary or the statutory law in force here. Hence, the only law that could be applicable to the matrimonial disputes was the one under which the parties were married. When therefore, a foreign judgement was founded on a jurisdiction or on a ground not recognized by such a law, it could not be treated as conclusive of the matters adjudicated under it and was therefore, unenforceable in India. For the same reason, such a judgement would also be unenforceable under clause (f) of Section 13, as it would obviously be in breach of the matrimonial law in force in this country.

Clause (d) of Section13 made a foreign judgement unenforceable on the ground found that the proceedings in which it was obtained were opposed to natural justice. This was an elementary principle on which any civilized system of justice rested. However, in matters concerning the family law such as matrimonial disputes, it had to mean something more than mere compliance with the technical rules of procedures. In proceedings in a foreign court it was not enough that the respondent had been duly served with the process of the court. It was also necessary to ascertain whether the respondent was in a position to present or represent himself/herself and contest the case effectively. This requirement should apply equally to the appellate proceedings if and when they were filed by either party. If the foreign court had not ascertained and ensured such effective contest by requiring the petitioner to make all necessary provisions for the respondent to defend including the costs of travel, residence and litigation where necessary, it should be held that the proceedings were in breach of the principles of natural justice. This jurisdictional principle was also recognized by the Judgements Convention of the European Community. If, therefore, the Indian courts also insisted as a matter of rule that a foreign matrimonial judgement would be recognized only if it was of the forum where the respondent was domiciled or habitually and permanently resided, would the provisions of clause (d) be satisfied.

From this discussion the Court deduced the following rule for recognizing a foreign matrimonial judgement in India. The jurisdiction assumed by the foreign court as well as the grounds on which the relief was granted must be in accordance with the matrimonial law under which the parties were married. The exceptions to this rule might be as follows : (i) where the matrimonial action was filed in the forum where the respondent was domiciled or habitually and permanently resided and the relief was granted on a ground available in the matrimonial law under which the parties were married ;(ii) where the respondent voluntarily and effectively submitted to the jurisdiction of the forum and contested the claim based on a ground available under the matrimonial law under which the parties were married; (iii) where the respondent consented to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.

The most important thing that the court attempted to do by clarifying the law was to give protection to women, the most vulnerable section of society to whatever strata they might belong. The court freed them from the bondage of the tyrannical and servile rule that the wife's domicile followed that of her husband and that it was the husband's domiciliary law that determined the jurisdiction and judged the merits of each case.

The exploitation of women married to men of Indian origin abroad came once again to light in 1994 in Smt. Neeraja Sarpah Vs. Shri Jayant V. Sarpah and Amt. (JT 1994, 6 S.C. 488) and the court once again tried to provide some safeguards for the woman as she was the more vulnerable party in a marriage. Neeraja Sarpah, an educated young lady with an M.A. and a B.Ed. degree to her credit, daughter of a senior Air Force Officer, employed as a teacher drawing a salary of three thousand rupees per month was married to Jayant Sarpah, a Doctor in Computer Hardware and employed in the United States. The marriage was performed with great gusto on 6.8.1989 and Neeraja was to join him after giving up her job. She ultimately resigned in November , 1989. Thereupon Jayant refused to have anything to do with her. In June 1990, Jayant's brother came to India carrying two letters. One was a petition for annulment of marriage in a US Court and the other was a letter from Jayant's father expressing regret for what had happened. However there was no offer of compensation for the wrong done to Neeraja. Neeraja sued Jayant in forma pauperis and the suit was decreed in her favour for about

twenty two lakh rupees or two million two hundred thousand rupees. Hayant filed an appeal against this in the High Court. The High Court stayed the implementation of the decree and, subject to Jayant depositing a sum of rupees one lakh or one hundred thousand rupees within one month of the order, permitted Neeraja to withdraw 50% of it; Jayant's father expressed his financial helplessness which prompted Neeraja to appeal to the Supreme Court.

The Supreme Court rightly pointed out that in cases like this "It is not the soothing words alone" which are "needed but some practical solution to the disaster." The Court ordered Jayant to immediately deposit a sum of rupees three lakhs or three hundred thousand rupees with the Registrar of the concerned High Court from which Neeraja would be entitled to withdraw rupees one lakh or one hundred thousand rupees without any security. The remaining rupees two lakhs or two hundred thousand rupees were to be deposited in a nationalized bank in a fixed deposit. The interest accruing on it was to be paid to Neeraja every month pending final decision of the High Court on the appeal against the initial money decree. The Supreme Court also stated that in case the proceedings were not decided within a reasonable time Neeraja would have the option to move an application for withdrawal of any further amount.

The Supreme Court opined that this was a problem pertaining to Private International Law and not easy to resolve but

> with change in social structure and rise of marriages with NRIs the Union of India may consider enacting a law like the Foreign Judgements (Reciprocal Enforcemnt) Act, 1933 enacted by the British Parliament under Section (1) in pursuance of which the Government of United Kingdom issued Reciprocal Enforcement of Judgement (India) Order, 1958. Apart from it there are other enactments such as the Indian and Colonial Divorce Jurisdiction Act, 1940 which safeguard the interests so far as the United Kingdom is concerned. But the rule of domicile replacing the nationality rule in most of the countries for assumption of jurisdiction and granting relief in matrimonial matters has resulted in conflict of laws.

The Supreme Court suggested certain provisions which could be incorporated in a legislation safeguarding the interests of women:

(1) no marriage between a NRI and an Indian woman which has taken place in India may be annulled by a foreign court.

(2) Provision may be made for adequate alimony to the wife in the property of the husbands in India and abroad.

(3) The decree granted by Indian Courts may be made executable in foreign courts both on principle of comity and by entering into reciprocal agreements like Section 44-A of the Civil Procedure Code which makes a foreign decree executable as it would have been a decree passed by the court.

The latest case is that of Vikas Aggrawal Vs. Anubha (JT 2002 (4) SC 78 where the focus was on S.151 and Or.10of the Civil Procedure Code. Vikas Aggarwal filed an appeal in the Supreme Court against the judgement and order of the Delhi High Court 18.10.2002 dismissing the appeal challenging the order by which the appellant's defence was struck off in the suit pending in the Delhi High Court.

The appellant Vikas Aggarwal and the respondent Anubha were married on 11.5.1999 after which they went to USA. They obviously did not manage to get along as Vikas filed a divorce petition in America as early as on 22.7.1999. The notice of these proceedings was served on the respondent Anubha. She, however, left America and managed to come back to India; she filed a suit on 6.9.1999 in the Delhi High Court for maintenance and expenses pendenate lite. The Delhi High Court passed an interim order on 5.11.1999 as follows :

> For the present in the interest of justice and since no permanent prejudice is likely to be caused to the defendants if the hearing in divorce case pending in the superior court, State of Connecticut, USA is deferred for a short period, I restrain the defendant from proceeding further in the superior court, State of Connecticut, USA for a period of thirty days from today.

The appellant Vikas, however, moved for a recall of the order on 12.11.1999 but the court was later informed on 16.12.1999 that the decree for divorce had been passed at Connecticut, USA. The learned single judge passed an order on 9.3.2000 directing the defendant to appear in person under Order 10 CPC. The defendant preferred an appeal

against the order of 9.3.2000 before the division bench which was withdrawn with a statement that an application would be moved before the learned single judge for recall of the order. Ultimately by the order dated 24.8.2000, the court struck off the defence of the appellant, Vikas stating:"It is quite clear that despite several opportunities granted to the defendant to appear before this court, he has resolutely refused to do so. The defence of defendant is therefore, struck off."

An appeal in front of the division bench of the High Court against this order was also dismissed. Against that dismissal, the appellant Vikas appealed to the Supreme Court. The Delhi High Court wanted clarification from Vikas when it came to its notice that the court in America had passed the decree of divorce despite the order of restraint passed on 5.11.1999. The court doubted whether its order had been truly communicated to the American court. Vikas, in spite of several efforts of the court, did not appear before it. Instead his attorney stated that the Delhi High Court's order had been brought to the notice of the American court but the American court had refused to enforce the restraint as the Indian court had no jurisdiction over the American court. However, the Supreme Court pointed out, the restraint was not on the American Court but on Vikas. Since he had failed to comply with it, he had been ordered to appear in person. His failure to do that as well resulted in his defence being struck off.