

Lives on the Brink

*Bridging the Chasm between Two Great
Nations, India and United States*

Anu Peshwaria



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Nations, India and United States**

By - Anu Peshwaria

Dedication

This book is dedicated to my mother, Smt Prem Lata Peshawaria, who believed in me. It is due to her that I was able to combine a world-class tennis career along with a grueling and extremely busy law practice. She also inspired me to become a caring mom for my son.

I also dedicate this book to my father because due to the grit and determination I got from my father, I was able to complete this project.

Finally, I dedicate this book to my sister, Kiran Bedi (nee Peshawaria). The support and guidance I got from her gave me the EXTRA energy and PASSION to work for the betterment of people's lives.

- Anu Peshawaria

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My greatest contributor in terms of time, commitment, and energy has been Darcy. Darcy was so involved that she could feel my hurt, anger, and passion. I thank her for her immense contribution in editing this book and making it possible.

Foreword

It gives me great pleasure to write a few words about “Lives on the Brink.” This book was written by Anu Peshawaria, who has become versed in the problems of immigrant women in America by devoting her life to helping them. Many young brides face extreme hardship such as physical abuse and exploitation at the hands of their husbands and in-laws. Anu has fought for them against all odds. She has presented such cases in American courts and advocates for them in her capacity as Legal Advisor to Counselor of Community Affairs (CCA), Embassy Of India, Washington, DC. She has done much by writing this powerful book about such women. In fact, this book is a warning to all those men who intend to exploit their spouses on foreign soil. Anu Peshawaria has shined a light on the agonies of such tortured women in the form of this very important book. Hence she deserves appreciation and support from all classes of readers.

This book should be treated as a harbinger for change...

– **Kiran Bedi** (IPS, Retd.)

Former Police Officer and Social Activist

Winner of Magsaysay Award

Preface

Their calls represent a universal phenomenon, domestic violence, but with the specific twists and turns that are unique to Indian women who marry Indian men and join them in the US. Although there have been no national or statewide studies of Indian women and domestic violence in the US, there is reason to believe that this is a growing problem. According to a recent survey in the Boston area, 40.8% of South Asian women reported having been physically or sexually abused by a male partner in their lifetime, while 36.9% percent reported some form of abuse by a partner in the past year (Raj & Silverman, 2002). That's a rate of over two out of five South Asian women reporting domestic violence, which is much higher than the general U.S. population (28% according to UNICEF, 2000). Nearly 90% were immigrant women. In addition, ASHA, a South Asian women's organization (SAWO) in Washington DC, received 500 calls from women in distress due to marital abuse in 1995 and a quadrupling of calls between 1997 and 1999 (Preisser, 1999). In 2003, a SAWO in NY (Sakhi for South Asian Women) received 1,385 domestic-violence related calls and e-mails from Indian women (Abrahams, 2005).

These statistics are alarming, but statistics tell only a fraction of their story. They tell you how many women had the courage to report the abuse or call for help. How many more are silent, terrorized, obedient to the abuser, and isolated in an abusive situation we do not know. We also do not know the numbers of those who don't call for help because they don't recognize the situation is abusive or because they don't know their legal rights in the US. All we know is that domestic violence in South Asian community "is seriously under-reported because we have seen many women who never get as far as the formal institutions" (Preisser, 1999, p. 687).

We Indian women are inculcated to keep such matters to ourselves. It is extremely difficult to overcome this tendency, especially when you find yourself in a strange land with

unfamiliar people. Your husband may have been good to you at one time, but is now behaving like a cold, cruel monster. His terror tactics, and perhaps those of his family, are designed to keep you in line, to make sure you are too scared to ask for help. You begin to believe everything you are told, that you are worthless, that you have only them, that you are incapable of making it alone in this foreign country where you don't know the rules, where you might not know the language.

But many women overcome these obstacles and call. The numbers of calls and e-mails I receive from women who are in desperate situations is astonishing. As an immigration lawyer who has worked with these cases for years, I am in a position to help. Helping these beleaguered clients has required an office in the US and in India and knowledge of the laws in both lands. However, because of the state of the current law, both in terms of immigration policy and in terms of where we are with international agreements between the US and India, in too many cases my hands are tied. To adequately assist these women, I must do more than simply answer their calls and do what I can to counsel, educate, and help them negotiate laws that too often keep them in unhealthy situations or separate them from their own children. I must appeal to the residents, citizens, policy makers and lawyers of two great countries to resolve the unique dilemma that has wreaked havoc on so many lives. Ultimately the laws need to accommodate these special cases. The awareness I hope to raise must spread to citizens of the US so that we can all make a concerted effort to relieve the suffering of some of our most vulnerable residents in this country.

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PART ONE
Problems

Introduction

Raised amongst sisters where I was born last, I was nevertheless supported every step along the way to achieving what I set out to do, and this is not typical. Both my parents and older sisters encouraged and inspired my drive to achieve in the chosen field of my dreams. At age nine I set my sights on becoming a great tennis player. I found that the more dedication I poured into it, the greater fulfillment I reaped, and eventually I found myself competing internationally.

I was the first girl to represent India in the Junior Wimbledon tennis tournament. This experience taught me that with commitment, perseverance, and hard work I could achieve improbable feats, and I grew confident in my ability to accomplish other things I found worthwhile. Due to an accident, I had to stop playing tennis and it took some time to find something I could devote myself to with the same kind of passion and dedication I had given to tennis.

Eventually I went to law school, got married, and had a son. Serving on the supreme court of India, I began to learn firsthand the way the laws are stacked against women in India. Community property law is a good example. In the event of a divorce, the man gets all the property and everything is in his name. Women find themselves in extremely vulnerable situations where they cannot leave abusive husbands because they have nothing in their name and do not have the education to support themselves. Women put up with abuse and power games because their livelihood and the welfare of their children rests in their husband's hands.

I fervently believe that as long as so many women are unhappy, India will not do well. Festering wounds spread and

eventually affect the whole body. I became convinced that women's economic progress is vital for the health and vitality of India. So I began to work on dowry and rape cases, accepting whatever my clients could offer in legal fees.

I came to the US in 1999 to open a branch office to grow my business. My practice in India had grown to encompass international law, and I was now in a position to start working with clients on immigration issues. At that point I did not intend to stay. However, the year I started to work on immigration cases, helping someone go from an H1 status to a green card, or helping someone with a student visa or family petition, women would come in and tell me about the types of family problems that I had not encountered in India and was shocked to hear about. I would go to the local gurudwara or masjid and I began to discover all that was happening on these shores that I could only describe as domestic violence.

The hardship that I saw in the US was different than the domestic violence that I saw occurring in India. It was created around US immigration policy, laws, and culture and situations that occur because Indian women married without having sufficient information about their prospective NRI husbands, green card holders, or U.S. citizens.

The problems typically stemmed from women marrying men whose parents demanded a dowry, both before and after the marriage, and then arrived to the US to find out their new husband misrepresented his situation, was already married or divorced, or had a girlfriend.

The women were then peremptorily abandoned and divorced. Many of the women came on visas that did not allow them to work, and once abandoned were threatened with deportation and sometimes forced to leave their children behind. They were without the resources to fight their cases in court.

So many Indian women were bearing the brunt of abuse wrought by U.S. immigration policy that it made me think twice about everything I knew about America. At first, I didn't know what to do about it. I began to wonder whether America was all that desirable a place to come to after all. On the one

hand everybody wants to come to the US, and on the other hand people here are suffering, really suffering, here.

And there were few resources available here in the US to alleviate it. I realized that these women needed more than legal help. They needed someone to talk to. But it costs money to hire a psychologist and it's difficult to have to pay to get things off your heart and share your pain with somebody. Even as I did my best I to counsel them, reminding them of what was in their best interest when they had lost sight of it, I knew that their need outweighed one lawyer's capacity to help. I also continued to wonder why they still wanted to come here when so many men were, and still are, taking advantage of them in so many ways.

It became readily clear to me that I needed to find some way to address the problem. First I needed to let the parents and prospective brides in India know about some of the heartaches awaiting them on this shore if they plunged into these marriages too impulsively.

I wrote *Immigrant Dreams*, which documented many of these cases, and then went to India to give workshops. I also knew that I needed to educate the increasing number of women who come to the US with notions of marital bliss only to find themselves terribly alone in these horrendous situations. So, about a year after arriving here, I decided to start SevA, which is located in the US.

SevA is a nonprofit agency (and sister to Indian Vision Foundation located in India) designed to meet the needs of women who are so often without the support they need to negotiate these complex laws and situations.

Although *Immigrant Dreams* was my first attempt to educate Indian women about these harsh realities, I soon realized that too many remained unaware of them. Hence there was a need to document as best I could the current laws and realities of life in the US for Indian women who marry NRI men.

There are still far too many nonresident Indian men who continue to take advantage of the ignorance of Indian women and create conditions for domestic abuse in America. Margaret

Abraham, who writes about the problem from a social scientific perspective in *Speaking the Unspeakable*, put it: “A violent space is created through the institution of marriage, a cultural chauvinist community, and a racialized society whereby men can silence women, use coercion on women’s bodies, and not be held accountable for their violence” (p. 85).

Indian women never dream of their husbands abusing and abandoning them in ways that they encounter here. The laws here allow their husbands to abruptly divorce them and estrange them from their children. The repercussions of this upheaval in their lives ripple through their extended families, reaping disastrous consequences.

Because of this rapidly growing problem, the government of India has begun to take notice, and fortunately, action. While I have been working on this problem for the past 10 years, doing my best to alert the Indian government to the critical state of its female citizens abroad, the Indian government has recently taken some much needed steps in designating a new ministry to deal with the problem. This ministry, called the Ministry for Overseas Indian Affairs, has only been in existence for the past four to five years. It was conceived with the intention of finding out what overseas Indians were doing all over the world and to get them back to India. However, the ministry soon recognized that the marital abuse encountered by Indian women was a top priority.

One of their first actions was to appoint me Legal Advisor to Counselor of Community Affairs (CCA), Embassy Of India, Washington D.C., with consulates in San Francisco, Chicago, Houston, and New York.

In this capacity, I am able to act as a liaison between the Indian government and female Indian citizens in the US caught in the labyrinth of domestic abuse and immigration law. I am therefore in a position to advocate for these women and recommend changes in the law on their behalf.

My duties include advising the Embassy of India and Consulates of India in the US of legal matters relating to overseas Indians, acting as counsel to overseas Indian women facing marital problems, coordinating with registered

nongovernmental organizations (NGOs), such as South Asian Women's Organizations (SAWOs), with the Indian Embassy and Consulates in USA, and educating overseas Indian women of their rights and the legal recourse available to those who are deserted by their overseas Indian spouses. This position reflects a need that no one yet knows the depth of. The women at the forefront of this fight will tell you that the proportion of South Asian women who are caught up in it is very high.

It is important to say that this problem is not confined to Indian women who come to the US but also to Indian women who marry in India and never see the shores of America. Of the 16 or more e-mails I receive, at least half of them are from women who live in India. Recently I received a call from a woman from southern India who had married a U.S. citizen.

She told me "My daughter is 16 years old and my husband is a doctor in America. He came here, we married, and after giving birth to his daughter and spending a couple of years with us, he went back to America never to be heard from or seen again!"

She has no visa to come to the US. After he left, she reasoned that her first responsibility was to raise her daughter, so she remained in India because she had a good-paying job there. Since she did not know whether she was still married after all these years or whether he had divorced her, she decided to try to locate her husband once her daughter was raised.

She found that her husband had divorced her in America without ever giving her a dime in child support or any alimony. As of this writing, I continue to support her efforts to locate him and collect from him the funding she needs to support their child.

So this book has many purposes. It begins with offering some wise, preventative measures a woman can take before marrying a man who resides in the US, regardless of his status.

This book will also cover important aspects of what immigrant women should expect when they come to the US. It is also for the parents of prospective brides or spouses of nonresident Indians, green card holders, and U.S. citizens. I am in hopes that this book will serve as a guide to women in

distress and a clarion call to action for those who want to bring an end to the suffering that so many Indian women continue to endure.

Citizens of both India and United States need to work together to change the laws and to educate others about what needs to be changed.

An extensive section of this book lays out the international agreements that the US and India have signed and need to consider signing to help counter the abuses wrought by the disparity of the marriage and family laws between these great two nations.

Wherever possible I will use cases to illustrate my points. The voices that you will hear within these pages are from those who summoned an incredible amount of courage to survive intolerable situations, to leave, and to talk about their journey.

However, I continue to recommend reading *The Immigrant's Dream* as a companion piece because it contains many other stories.



Roots of the Problem

When I was living in India, I had no notion of the kinds of things that were happening in America to the Indian women who migrated here. I, like many of my countrymen, thought that America had boundless opportunities for the men and women who emigrate from diverse countries of the globe. However, this problem was going on and sometimes it made it into the papers in India. I remember reading about a massive deportation of women from the US years ago. Many women went to the government for help. They said their husbands had divorced them and left them with no means to stay in the US. They were forced to leave their children behind and they did not have the means to go back and fight for the right to stay and care for their children.

Although I had read about these kinds of issues through the papers in India, I was not yet aware of the magnitude of the problem. And I also do not think that I would have classified it as abuse at the time. I was familiar with domestic violence both physical and mental. I think we all know about physical abuse: pushing, shoving, hitting, slapping, choking, biting, and pulling hair. In the US the problem has become so large that the personality and tactics of abusive men have become mainstream knowledge (see *Why Does He Do That: Inside the Minds of Angry and Controlling Men*). Their tactics are designed to intimidate and control, to keep all the power residing with the man. Their behavior often escalates. As they try to maintain control over the woman, they very often lose control over their actions, and many cases result in death. Many Indian women know about this kind of abuse and mental cruelty as well. I think women in India are beginning to stand up to this kind of violence.

But the kind of stories I became acquainted with here seemed all the more troubling because they took advantage of the ignorance many Indian women have about the culture and laws here. I can remember the first time I heard of the kinds of troubles that Indian women were encountering in their marriages in the US. I happened to be at one of the gurudwaras when I first learned of it. I sat down with a very attractive Punjabi woman who was about 28 years old. She indicated that she wanted to tell me something that she found very shameful. As she spoke to me, I was struck with how pretty she was. Her long dark hair was swept up in the back with strands falling attractively around her expressive dark eyes and oval face. However once she began to tell me what was going on in her life, the obvious pain she was experiencing was reflected on that attractive face.

She told me that her husband was sleeping with her sister and they were living with her under the same roof. I was taken aback and asked how such a thing could happen. She told me, "I wanted to bring my sister over and I made a big mistake. I told my husband that I would file for divorce so he could marry my sister and she could come here." Since marriage to a U.S. citizen was a way to get a green card, this woman thought that the easiest way to ensure her sister could come and live with her in the US was to divorce her own husband and let her sister marry him. She told me the arrangement she had made with her husband was, "After my sister arrives, you will divorce her and remarry me." She was astonished to find out that her husband had sexual relations with her sister after marrying her and continued to do so while living under the same roof with his former wife. I was so alarmed by her story that it took me several days to think over her predicament before I could even advise her about it. She did not want a divorce. Sadly, I realized she had very little recourse but to reconcile herself to the divorce. She was now legally divorced and in no position to work things out with her ex-husband. What is most tragic about this case is that the divorced couple had two children. I think it is important to recognize that although this woman clearly made a mistake, her husband's actions were extremely abusive, or what is known in India as

mental cruelty. He betrayed her trust, he destroyed her relationship with her sister, and he was carrying on with her sister under the same roof. Obviously, his behavior was exceedingly damaging to the woman's self esteem and overall mental health. It was also damaging psychologically to the children who are developing in the midst of such complicated hardship. But the story also helped me to realize that one of the first things women need to know is never to practice such legal deceptions for the sake of immigration status.

Her case was unique in the respect that she was the one who wanted to bring her sister over and decided to divorce her husband to do so, but it was the tip of the iceberg in many respects. It was the first of many cases I learned about of men carrying on trysts with other women in front of wives who were too dependent and too new to America to understand the choices they had. Even with the choices available to them, for women who marry abusive NRI men, the situation is still pretty grim. Immigrant women who are mentally abused continue to be left out in the cold legally in ways I will address in this book.

Another thing different about this first story is that it is far more common that Indian women are divorced by their husbands without their consent. Their husbands convince them that they are only bringing a woman over temporarily and tell them to sign the divorce papers. The woman finds out later that the man never intended to remarry her. Another thing he might tell her is that he's bringing someone close to the family over who has no other way of coming here. Because of these cases, I tell women that it is not a good idea to risk something as sacred as a marriage for the sake of immigration status. The only time one should contemplate divorce is when the marriage becomes intolerable, such as in cases of domestic violence.

Through this book, I also hope to give women enough information to recognize- earlier rather than later- that they are in an intolerable situation. Recognizing these situations early is vital. Research has shown that delaying getting help can have damaging consequences to a woman's health, both mentally and physically. Abusive actions as described in these pages have the effect of distorting a woman's ability to

recognize herself as worthy and deserving of happiness, and thus she may put up with situations that continue to do her damage. Before I continue, I want you to consider the following scenario and determine whether or not the husband's actions can be considered abusive:

Indra immigrated to US from India. One day when Indra was making dinner, she and her husband, Ajay, had an argument about making long distance telephone calls. Ajay told her that she was making too many phone calls to India and that they could not afford the high phone bills. Indra replied, "It is not me but you who are making those phone calls." At this point, Ajay lost his temper, pushed her, and slapped her across the face. Indra was holding a hot curry bowl, and she dropped the bowl. Her foot got burned. She tried to relieve her pain by using home remedies, but she had a restless night due to the severe pain. The next day, when her husband left home, she went to see her family doctor.

In a study conducted in 2004 in Boston with South Asian immigrant women, 47 women were given this scenario and asked whether they thought the husband's actions were abusive (Ahmad, Riaz, Barata, & Stewart, 2004, Patriarchal beliefs and perceptions of abuse among South Asian immigrant women. *Violence against Women*, 10, 262-282). Over half believed that Indra was a victim of abuse but a quarter of them were unable to say and 17% believed she was not a victim. The women who thought the husbands' actions were abusive did not agree with patriarchal norms and the women who were not sure or thought he was not abusive accepted patriarchal norms. So what are these norms that make it so difficult to recognize abuse? These norms have been the underpinnings of Indian society for millennia. Ask yourself, is it acceptable that a man should decide whether or not his wife works outside the house? Is it acceptable that a man decides whether or not his wife goes out with her friends in the evening? Is it ever important that a man show a woman that he is boss of the household? Is it okay for a man to have sex with his wife whenever he wants, even when she does not want to? Is it acceptable for a man to decide how much money a woman can spend on herself?

Women who answer yes to these questions tend to believe

that men have certain rights over their wives but that women do not have similar rights. Unfortunately, all too many men will take unfair advantage of this acceptance of their power and rights in the household. Both men and women who think in these terms tend to justify a husband's cruel actions against his wife as in keeping with the way a household should be run. They may believe that men have absolute control over a wife and household and view the wife as little more than his possession.

Patriarchal Underpinnings

In the above study that explored South Asian women's perceptions of abuse, the researcher found that a woman's ability to recognize an act or situation as abusive largely depended on the degree to which she agreed with patriarchal norms. According to this researcher, "*Patriarchy is a universal ideology that refers to a set of ideas and beliefs that justify male domination over women in society*" (Ahmad et al., 2004, p. 262).

A 2000 UNICEF study [1] on domestic violence internationally found that the source of problems is mainly due to four chief factors: cultural, economic, legal, and political. The cultural factors have to do with patriarchy, as mentioned above, "belief in the inherent superiority of males, values that give men proprietary rights over women and girls, notion of the family as the private sphere and under male control, and customs of marriage (bride price/dowry) (p. 7). Economic factors include women's financial dependence on men, lack of access to cash, credit, employment and education. The legal issues concern "lesser legal status of women either by written law and/or by practice" and "insensitive treatment of women and girls by police and judiciary" (p. 7). Finally, the political factors include "notions of family being private and beyond the control of the state" and lack of representation and participation in "power, politics, the media and in the legal and medical professions" (p. 7).

These factors are often exacerbated when an Indian woman migrates to the US, especially on a dependent visa. Migration definitely increases the chances that a South Asian woman

will experience expressions of patriarchy that are damaging physically, emotionally, mentally, and spiritually. The main reason for this vulnerability has to do with the greater difficulty immigrant women have of accessing support and services in the US. This difficulty is often due to lack of a social network or infrastructure in the new country, the difficulties of finding oneself in an alien culture, language barriers, and the responsibilities of looking after a household that often includes raising children.

Studies have shown that domestic abuse either begins or worsens after a couple has immigrated to the US. Perhaps because of this greater vulnerability to domestic violence, immigrant South Asian women find themselves in situations of abuse more often than the general population does. A study conducted in 2002 in the city of Boston found that 40.8% of South Asian women interviewed experienced physical abuse (Raj & Silverman). However, it may be likely that rates of psychological abuse were higher. In a 2009 study of Nepali women living in the New York area, emotional abuse and psychological abuse (at 54%) occurred much more often than physical abuse (35.6%; Thapa-Oli, Dulal, & Baba). In this same study, 75% of the Nepali women interviewed reported having been verbally insulted by their partner and 62% said that they needed permission from their partner to visit the homes of friends or relatives.

There are other aspects about life in the US that an Indian woman who migrates here should know about before she comes. Attitudes towards divorce are much different here than in India and so are the laws. These laws allow Indian men to marry in India and seek a divorce in America and there are ramifications to this that you need to be aware of. Also, there is an important difference between the laws between the two countries in regards to mental cruelty. It is also crucial to know about immigration law when migrating here. Immigration is often used to coerce a woman to do what a man wishes. Finally, the isolation many newly arrived women experience when coming to America makes it much more difficult for them to recognize the abuse and get help. A newly arrived Indian woman is often isolated from friends and even her own family.

When that happens, it's easier for a man to keep her economically deprived, and there is no intercession from extended family to help with marital problems.

The Big Differences Between Abuse in the US and India

(A) **Divorce Laws:** Attitudes towards divorce are very different in America than they are in India. Divorce is taken more casually in the US. It is not viewed as a slur on your character or is it considered shameful. It is considered a right and the law makes it very easy to have a divorce. While in India, both parties must agree to get a divorce, in the US a spouse can file for a divorce without the other's knowledge. When a case comes to court, there is not a lot of debate about why someone wants a divorce or whether the divorce is wise. Property settlement matters are predominantly at issue. Much consideration is given to the children, but current law is such that many immigrant women, depending on their visa, are vulnerable to losing custody of their children. Once divorced, depending on her status, an immigrant woman may struggle to find a way to stay in the US just to fight for the right to care for her child. Without a lot of money to pay for lawyers and legal advice, some lose heart and leave.

A man can file for divorce whether or not his wife is even in the US. This is called an ex-parte divorce. Your husband can file for a divorce in the US after three months of residency even on a work permit. A man who is only interested in a dowry could do just that.

Women who do not understand the laws and culture regarding marriage and divorce in the US might find themselves stranded in a place where they don't know anyone and don't know where to go for support. Men will take advantage of their ignorance. They will marry girls knowing full and well they are only interested in getting a dowry or pleasing their parents. Once in the US and dependent on her spouse for economic and emotional support, the woman is much more powerless than she would ever be in India. The man will abuse her knowing she has little knowledge as to the

laws, little support, and in some cases, little recourse to justice.

(B) **Mental cruelty is punishable in India:** A husband may be abusive physically, mentally, or both. Indian law recognizes both of these abuses and refers to the former as physical cruelty and the latter as mental cruelty. Indian law makes it explicit that physical violence is not a necessary aspect to cruelty. Many concur that mental cruelty can be far more damaging and cause more pain and suffering than physical beatings. In India, the law protects women whose husbands treat them in ways that are mentally cruel, whereas right now there are no similar protections for women who reside in the United States. In India, the Hindu Marriage Act was amended so that women could make a complaint against a man who treated her with cruelty of the type I've seen men do in America. Although in India it is still more difficult to prove a case of mental cruelty, the court investigates the nature of the treatment that is considered cruel and the effect that treatment has on the spouse. Indian law defines mental cruelty as any act or behavior which causes such mental pain and anguish that it is intolerable for the spouse to continue to live with the person inflicting such suffering. The type of suffering incurred on the spouse is such that it is not reasonable that the couple remain together.

In America, there are many types of mental cruelty practiced by husbands taking advantage of their newly arrived immigrant spouse. They shut off the electricity so she is forced to stay at home and shiver. They take away her passport. They threaten and intimidate her so that she is scared to go outside of the house. Women who come here to join their spouse, who they married in India, often have no work permit, and they often do not have a driver's license. The men they marry quite simply scare them to death. They put spyware on their computer and track everything they do to make sure their wives do not have any contact with the outside world. Mental cruelty is much more vicious and damaging than many people imagine. It gnaws at a woman's self esteem and makes her feel unworthy to stand up for herself or her children. She can get so depressed that she has thoughts of suicide.

In India, a man can be charged with a criminal offense if

he has been abusive whether physically or mentally. Currently, in America, mental abuse is not a punishable offense. However, if there is sufficient evidence that a man has been abusive towards his wife, it could influence who gets custody for the children. In addition, under Violence Against Women Act (VAWA), an immigrant woman, whose husbands' behavior has been mentally cruel, may self-petition for herself and her children for permanent resident status. This means that she can apply for a visa without needing her spouse to sponsor her. However there are limitations under this law, which I will go into **Part Two** of this book.

(C) **Immigration:** A man will use immigration status to control and manipulate his spouse because he knows the laws are stacked against her. When you marry an NRI, you are in an abusive situation and thus immigration becomes a major issue. For a woman who is in America on an H4 visa (a visa that allows you to stay with your husband who is a nonresident and on an H1B work permit), there are fewer ways to get support from the larger community. A woman on an H4 visa cannot work. A woman is extremely dependent on her husband financially and if abandoned or abused has little recourse. Her husband may leave her and she is left without a legal status to stay in the country. Her husband may threaten to leave her if she does not submit to his demands because he is aware of her vulnerable position. A man will use immigration status to control and manipulative his spouse because he knows the laws are stacked against her.

For example, right now, I'm working with a woman who is in the last stage of waiting for her green card. Her husband is eligible to get his green card because of his employment and so she automatically is eligible because she's married to him. He applied for her some five years back and she is very close to receiving it. However, they had a fight about two months ago and he's written to U.S. Citizen and Immigration Services (USCIS). He wrote that he was planning to divorce his wife and that he filed a case against her in India, so therefore, she should not get her green card.

This case is not uncommon. Men frequently threaten to take away their wife's status either to punish them or coerce

them to get something they want from them. It is part and parcel of the kind of abusive behavior that is exercised against Indian women in the US every day. She can wait 5 years for a green card, only to have her application disappear a few months before she expects to receive it. The problem that immigration policy poses for Indian women who are vulnerable to marital abuse has been subject to increasing focus in the domestic violence literature. Anita Raj and Jay Silverman put it succinctly in the following passage written in 2002 (note that LPR refers to legal permanent residency- or the equivalency of a green card):

“Women whose immigrant status is attached to their husbands’ U.S. citizenship or LPR status . . . are vulnerable due to the structure of immigration law. . . Unless they are aware of and have obtained protection under the Violence Against Women Act (VAWA) protections of 1994 and 2000, these immigrant spouses are reliant on their husbands for their legal right to remain in the United States and for petitioning for their permanent residency status (Orloff, 2000; Rae, 1988; Tucker, 1989). Thus control over the immigrant spouse’s immigration status is, in the absence of VAWA protection, solely in the hands of the citizen or LPR spouse. If the marriage dissolves prior to the immigrant spouse obtaining permanent residency status, again in the absence of VAWA protection, the immigrant spouse will remain undocumented and can be deportable as an illegal alien. Thus abused immigrant women ignorant of or unwilling to obtain VAWA protection and without LPR status may be very unlikely to choose to leave a batterer or report his abuse to authorities (Orloff & Kelly, 1995). Furthermore, if the U.S. citizen or LPR spouse opts not to file for permanent residency status on their spouse’s behalf, in the absence of VAWA protection, the immigrant spouse cannot attain legal immigration status (Orloff, 2000), maintaining dependence on the batterer. Disturbingly, research has found that in abusive relationships, 72% of citizen and LPR spouses do not file immigration papers for their wives (Dutton et al., 2000).” (p. 375)

(D) **Isolation:** “Increased social isolation” has long been considered a prominent component of marital abuse (Kirkwood,1993). For the wife of an NRI or U.S. citizen, for that matter, isolation sets in as soon as she marries. Since setting off to America to marry a man (whom in some cases she barely knows) is unknown territory for many women living in India, it is often difficult for a new wife to anticipate the circumstances in which she will be living. Women rarely have any conception of just how lonely and isolated they will feel once they leave their culture, family, and social network they have established in India. An abusive husband will use this to his advantage. According to a recent report about marital violence among immigrant women written by Edna Erez Ph.D. and Nawal Ammar (2003), abusers may isolate their immigrant partner in many ways, including “preventing her from calling or visiting her family back home, ridiculing her lack of or limited English skills, restricting her contact with ‘Americans’ or otherwise limiting her ability to integrate into the U.S. society (Narayan, 1995; Surpriya, 1996)” (p. 26).

The visa a woman has will sometimes make the situation that much worse. As I just mentioned, if a woman comes to join her husband, who is on an H1B work visa, and she joins him on an H4, she cannot work. She is completely dependent on him emotionally and financially. Often a husband will not even pick her up at the airport, which increases her sense of isolation. Margaret Abraham (2000) writes about the psychological experience of South Asian immigrants in the US who experience this type of domestic violence. She, like me, has seen too many women with the same story. She writes that for an immigrant woman, who has “led a relatively sheltered life, to arrive at an airport in a foreign country and not find anyone to meet her is an extremely intimidating experience” (p. 72). Even when someone is there to meet them it can be “intimidating and lonely. It heightens the feeling of being a stranger, of being different, and of being in a situation where one has little control due to lack of familiarity with the surroundings” (p. 72). However, when a husband does not receive his wife at the airport, it is experienced as rejection along with a profound sense of isolation. It’s the first sign that

here in America she will have no support whatsoever, not even from her husband. This experience happened so often to the women I met in America that I went to India to give workshops to women who were coming here to marry. These workshops helped them figure out who they should contact for help if this kind of experience should happen. I will talk about ways to handle all these experiences in a later chapter.

(E) **Economic Deprivation:** Being alone and cut off from one's friends and family increases a spouse's dependency on her husband. Women become speechless and helpless in the face of their husband's abusive behavior. Economic deprivation is another tactic used by many abusive husbands whose wives are newly arrived in the US. Studies have shown that economic dependence is big factor in making a woman vulnerable to marital violence. In the study of Nepali women in the New York area that I just mentioned, over half reported having no access to financial resources (Thapa-Oli et al., 2009). Most of them did not have checking accounts. Even the ones that were working did not have them. Among the Indian immigrant women interviewed by Margaret Abraham, "financial deprivation was a major source of isolation and powerlessness" (2000, p.). By controlling the finances, the husband successfully restricts her movement and keeps her anchored to the home. She is therefore not able to meet anyone outside of the house who could potentially offer her help in getting out of the situation.

Isolating one's wife is a typical strategy of abusive husbands but it is one that women who are on a dependent visa are particularly vulnerable to. It is all too easy to isolate a woman who is and feels isolated to begin with. It breaks down her defenses all the more quickly and leaves her feeling helpless and at his mercy without access to the knowledge or resources that would help her get out of the situations. It often gets worse every step along the way.

(F) **No Intercession from Extended Family:** As you will learn from both Ratna and Priya, who tell their stories in later chapters, there is a big difference between living here in the US and India when you get into marital difficulties. Both of these women were surprised to learn that the extended

family of their spouses were unwilling to offer support in helping them to work things out with their husbands. And their own families were back in India, too far away to be able to help. Lack of such familial support adds to a woman's isolation and leaves her not knowing who to turn to for help when her marriage starts going sour. Here's what Priya had to say when asked what she would recommend to Indian women who marry and come to the US:

I would say that it is important to maintain your own independence. No matter how much pressure there is to give in, maintain your independence, because in the end, especially in this country, you are essentially on your own. You cannot depend on anyone for anything. I mean, when people get married in India, they expect their husband to take care of everything. You might not expect him necessarily to do everything, but you do expect that he will be responsible and treat you like a part of the family. But here the system is different. Here you have to fight for yourself. When you have issues in your marriage in India you expect your extended family to support you. You would take care of the problem within the family, talk to the other generations, and try to solve your problems. Here you are on totally on your own- you don't have that kind of luxury to sit down and say, "Okay now let's meet with this couple. They are under the pressure." I'm not sure whether not having that luxury adds to the tension in marriages or not but I expect it does.



A Cautionary Tale

From the time she was a child, Neela showed a strong spirit of resilience. She insisted on pursuing an education against all odds in a family that seemed to believe that a good education would be wasted on her. She was, after all, female. Without receiving any support from her family, she was nevertheless able to get into a good school on her own merit. When she wished to further her studies in the sciences, her father refused to help, telling her mother, "What good is it for a girl to get a degree? After all, she does not need a degree to get married, have children, and run a household."

Neela was sheltered as a child and her father was an angry, impatient man. His lack of regard for the kind of future she wanted for herself and his overall treatment of her made her feel insecure about her own abilities. Her parents insisted that she marry and she admitted that at the time, "I just did not have enough faith in myself to do otherwise." Neela was feeling terribly depressed at the time she contacted me. She needed someone to talk to as much as she needed legal advice.

Neela's Story

I got married in my early 20s to a guy who turned out to be a gay man. I soon found out that he was not interested in me or in any woman sexually, and our marriage was never consummated. He was also verbally and physically abusive to me. At the time, I did not feel I could reveal this to anyone because of the stigma and shame attached to such things. However, when it got very bad I did tell my father. My parents came and got me, but my husband and his family kept most of my valuables, including my jewelry. Although I asked for a divorce, my husband would not consent to it, and eventually,

with the help of mediation we agreed to not live together as married couple. However, this agreement was not recognized by the government as a legal divorce and it was only 10 years later that I managed to get one.

The stigma I experienced from first separating from my husband and then getting a divorce was really difficult for me to overcome. People assumed that it was my fault that my marriage did not work out and I grew depressed as I could not help but feel that somehow I had failed. After the marriage, I stayed in my parents' home for a year and a half and tutored children in a capacity in which I was trained before my marriage. However, I finally moved out because I could no longer tolerate my father's treatment of me. He blamed me for the failure of my marriage. I could not understand his reaction to what had happened to me. After all, I as much as him had wanted the marriage to work out, and I was devastated by what had happened. Instead of allowing me to work, he had insisted that I get married. It had been an arranged marriage and I'm sure he never suspected that my husband was gay. But instead of understanding how emotionally vulnerable I was, he just treated me badly. My father just didn't want me to come back home and he cared more about how it looked to others than how I was feeling about how wrong my life had gone.

I lived for a time in a women's hostel and began studying for a career in business. After much pleading on my part, my father agreed to help me with my professional training, and I eventually went on to get a certificate. With this, I landed a lucrative job and began earning a decent salary. For the first time in my life I began to realize my potential as a woman with talent and a capacity to earn a good livelihood. However, perhaps because I was beginning to grow more self confident as a woman, I also missed having a family. I was hopeful that I would find someone who would make a suitable mate for me. I decided to look for someone who would be loving and give me the emotional and moral support I needed.

I subscribed to an online service and I met my second husband through it. He relentlessly pursued me, calling me every day. I felt extraordinarily blessed to meet him. He seemed

to understand all that I had been through. He showed a real interest in me, my career aspirations, and my family and was very persuasive in assuring me that in the US I would no longer experience the kind of shame and stigma that had surrounded my life in India as a divorcee. He lived in the US with his parents, sister, her husband, and their children. He arranged a meeting between his parents and myself, and they were very good to me and seemed to genuinely like me. Coming to the US seemed to promise me a new life with a new family.

Before we got married, he assured me that he enjoyed sex, and after my first marriage, I really needed such assurances. I did not want to end up in a loveless miserable marriage again. Indeed, after our marriage, while we were still in India, he was very attentive to me in this regard. He seemed to really enjoy being with me in every way. He was physically very affectionate with me.

He returned to the US, and I did not join him for about 10 months. During this time, I attended to my immigration paperwork, although he took care of most of the immigration process because I really didn't know that much about it. I got all the necessary vaccinations I needed to get to come to America. We would talk on the phone nearly every day and tell each other how much we missed each other.

I was so excited the day I arrived in the US and joined him and his family. However, as soon as I arrived, my husband's behavior changed drastically. He was no longer sweet and affectionate towards me. In fact he was very cold. He not only refused to hug me, but when I tried to show some affection to him, he told him that my overtures were overwhelming to him. He would not even lie close with me in the same bed at night. We rarely had sex, and when we did, he did not display any kind of passion or affection towards me. It was so different from how he'd been with me in India. This was utterly incomprehensible to me. He said that it would take time for him to get used to my body and that it would be worse for me if I made any demands of him in terms of affection or sex. Although his behavior astonished me, I gradually formed the impression that he was getting something out of seeing me beg and plead for his physical touch or anything that I needed

from him emotionally or physically. I also became aware that his behavior was geared to gain control over me and to torment me.

His family too changed their behavior towards me. Whereas in India they had been so friendly, in the US it became more and more obvious that they perceived my role in the family as a servant. They did not receive me as a family member. I would spend the entire day doing housework; I would wait on my mother-in-law hand and foot, and whatever I did, it was never enough. I was like her personal maid, attending to her hair, drawing her baths, and cleaning what ever she asked me to. In the kitchen, no matter what I did to please her, my efforts were roundly criticized by all. At times after being asked to cut up some vegetables, I was given nothing to do and expected to stand around waiting to see what more was wanted. Sometimes I stood around this way for 4 hours on end. If I expressed the desire to go do something on my own, I would be criticized and reprimanded. If I prepared anything for our meal, no one would eat anything I prepared. But on the other hand, if I did not prepare something, I would be criticized. I felt that the point of this behavior was to make me feel humiliated.

I decided to bring up this paradox openly. I did not want to waste food and at the same time did not want to be criticized for not preparing something that would go uneaten. But I was reprimanded by my father-in-law, who threatened to send me back to India if I could not tolerate the way his household was run. I was accused of coming the US to better myself, not to be with my husband. It was an ironic accusation, given that my entire life consisted on waiting on this family night and day, working 6-10 hours a day.

The family's behavior succeeded in tearing down my self-respect and self-esteem. I had applied for a work permit but it took quite a long time for the paperwork to go through. In the meantime, I wanted to take some courses that would help me get a good job. The family belittled my aspirations and told me I was not smart enough to get the type of job I was striving to get and that in any case the family would not pay for my

training. Once I got my work permit they discouraged from looking for work. I believe the main reason for this behavior was so I would continue to do chores for them. Only once, after many requests, was I taken for a job interview by my father-in-law, who reminded me that I was not smart enough to get the job I was being interviewed for. I was also told by my brother-in-law that no one would transport me to work if I did get a job, so it was pointless to look.

During this time I had no one to talk with outside of this family. I had absolutely no one. You simply can't imagine what it does to you to have absolutely no one who helps you or who values you. It was so very hard to continue to feel good about myself or feel optimistic about my future in this kind of environment.

My own husband would not eat his meals with me. If I asked him what he wanted to eat, he would become angry with me for asking. He would tell me that we should both just eat when we are hungry and not worry about what the other is doing.

I would not give up on trying to make things better for myself and that only made things worse. Every time I tried to express myself to make my needs known, my husband and his family would threaten to send me back to India. They wanted a silent obedient maid and if I showed I had a mind they grew more severe in their tactics. The more I tried to express myself and my needs, the more their threats would increase.

One day I was feeling upset and needed some time to myself, so I did not go to work in the kitchen. My husband's father stomped angrily to my room saying, "What do you think you are, a guest!?" His treatment was so horrible that I spoke to my husband about it. I asked why I was being treated like a servant. He then screamed to me that I was going back to India.

One time I tried to console him when he was upset over having to make alimony payments to his ex-wife. He was complaining that everyone wanted to take a piece out of him. I wanted to let him know that we all have problems but that I was there for him. I wanted him to understand that he could create a different kind of relationship with me. So I told him,

“Not everyone wants to take from you, on the contrary I want to give myself to you.” He got very angry with me and told me, “Mind my own business. Go back to India.”

I have never known a man who was that angry so much of the time. My father was angry, but nothing in comparison to my husband. He was so cold and cruel. I mean, I couldn't figure out how anyone could be so cold and cruel so much of the time. Some guys—some abusive guys— they'll feel remorse about treating you so badly and want to make it up to you. They will buy you flowers or take you out to dinner. Not this guy. He just sounded one angry, cruel note. He would never speak to me, listen to me, respond to me, or even argue with me. He would just walk away.

And then he abandoned me. This is how it happened. All efforts to find any bit of pleasure in my life were denied me. My husband wouldn't even have meals with me. We had no life outside of that house. He never took me anywhere so that we could be alone. He rarely shared his thoughts and feelings with me. There was a holiday coming up and I wanted him to take me somewhere as he had promised he would do when we were India. He had told me, “We will go on many vacations together.” But when I reminded him of what he promised, he told me, “No.” I told him we would have some time together, some privacy. All he said was, “You knew when you married me that I lived with my family.”

So I told him I wanted to visit a friend that I had met. I had been out shopping and met a woman who came from the same hometown as my own in India. She invited me to stay over her house, where she was living with her husband, and so I told my husband I'd like to go. My husband acted as though he did not care whether I went or not, but when they came to pick me up, he refused to come outside to meet them. He only asked me to call him when I wanted to be picked up.

It was a relief to stay with them. The couple were very welcoming and took a real interest in me. Upon finding out my efforts to find a job, my friend's husband told me he would try to get me work at his company. Although my husband claimed he did not care what I did and he behaved as if he did not care, when I called for him to pick me up, he did not answer

the phone.

His parents told me I was not welcome to come back. They told me that my husband was no longer there. Upon learning of this news, my friend's husband began pressuring me to leave even though I had absolutely nowhere to go. I found out later that my husband had spoken to him. My father-in-law told me he would pick me up on the condition that he first speak to my father. So I arranged for them to speak. He told my father that we, my husband and I, were moving out of the house because we wanted our own place. He told him that they were sending me back to India while they found an apartment for us. My husband had never mentioned leaving his parents' household. I did finally get in touch with my husband and he told me he had been kicked out of his parents' house and that he would pick me up but the only place he would take me was the airport so I could go back to India.

I was afraid to go back to my husband's family's house and the couple I was staying with no longer wanted me to stay either. However, my friend's husband arranged for a friend of theirs to take me back to my husband's family's house. When I told him I was not welcome there, the friend who was driving me agreed to take me to his house, where many members of his family were staying. That friend received several phone calls both from my husband and his family asking him to come get my belongings. I was also receiving e-mails from my husband who told me to make arrangements to go back to India.

At this point I was without resources, had no place to live, and was too scared and intimidated to go near my husband or his family. One day when no one was home at the place I was staying, I was feeling extremely depressed and lonely. I decided to take a walk in the neighborhood. Then I remembered I had an appointment to talk to a lawyer on the phone. I had been given the number from a South Asian Women's Organization. A very good friend in India had found out about this organization through an acquaintance in the US. When I asked to use the phone at a neighbor's house, the woman slammed the door on me. I was beginning to feel helpless and hopeless

and even entertained notions of ending my life. Then a police car that was driving by stopped and the officers asked me what I was doing there. They allowed me to make the call to my attorney. Once I explained my situation to them, they took me back to my husband's family's place. The family told them that I had been stealing from them. I was thoroughly depressed. I was hungry and my clothes were dirty. My sister-in-law removed all the cell phones from the vicinity where I was so I could not make a call. Within five minutes of my arriving there, two more officers came and removed me to a domestic violence shelter. I stayed there for two months and began to feel better.

My attorney helped me to get a restraining order to stop the phone calls and e-mails I was receiving from my husband and his family. I needed to find another attorney to get a second hearing to make the temporary restraining order permanent. The one I found through the shelter was from legal aid, and this attorney was reluctant to take my case because she thought my case was very weak. The lawyer said that in the US there was no legal protection from emotional abuse, only physical abuse. But I explained that my husband had been very abusive and at times very close to being violent and that I did not feel safe. I knew he would do anything to make my life tough. I still feel that way. He is a powerful person and does not want me around. The hearing went badly and my case was dismissed. For awhile, I had no money to pursue the case. That's when I found out about VAWA through Anu. With Anu's help I was able to self-petition for permanent status in the US.

Before having had this experience I never would have imagined that my marriage would have ended up like this. He and his family acted so differently when I met them in India. I mean, he seemed to be content with his life and what I found was that he was just miserable and had a very angry temperament. My father was short tempered, but my husband's anger was totally different. He was very cold and cruel. I get very scared now thinking about just how cold he was. I am convinced now that this family was just looking for a servant and they expected that someone from India would meekly do whatever she was told without protest. This kind

of family in the US is quite typical. They think that they are in the US and they have earned a right to treat you like a maid. They were into power and control and that was all. They created an environment where I could have nothing for myself at all. I did not have two hours of the day to spend the way I wished. I could not paint or draw or read. I was made to feel that I did not have a right to an independent life. I believe they wanted me to suffer and I did suffer.

I can't tell you what it's like to go through an experience like this. I had overcome quite a lot by the time I met my second husband. I had grown up with a harsh father but I had gotten a good undergraduate education. I managed to withstand the stigma of being divorced and even though I had to go back to live with my parents and my father was angry with me, I used the time back at my parents' house to make something of myself.

It's so very painful for a woman in India to feel that kind of stigma that I endured. You feel like you have no right to feel good about yourself, to have your own life. I feel like I'm very sensitive to that kind of stigma and treatment, maybe more sensitive than others who grew up differently.

One of the worst things they did was to continually threaten to send me back to India just to keep me in line. I had already had a failed marriage and it was simply intolerable to imagine having to go back to my parents' house. I could not do that again. I would feel like such a failure. I mean I think my spirit would have been totally broken. When I talked to a man from the Indian Embassy he told me that going back was one of the worse things I could do. He told me, "If you go back you won't be able to get a divorce, and without that you will spoil your life."

Another thing that was really hard is that my husband did not even tell me what was wrong with our marriage. He just left me and let his family make sure I didn't come back. Marrying a man like that made me feel so unlovable, like such a pariah. I don't have the words to describe just how destructive this experience was to me. My husband didn't touch me; they isolated me. Whatever I used to make in the kitchen, my mother-in-law would spoil that dish, just to try to destroy

my identity and confidence. It took a long time to establish my own confidence. It took 10 years of making something of myself. It's so tough to believe in yourself and present yourself as a confident person. It is not easy. It requires introspection, experience, and having good people around you. It requires having people around you who value you and support you and encourage you when you are down. They were trying to destroy all that I had built up and I feel at times they nearly did.

One thing I realize in retrospect is that I should have called the police sooner. I was in a very abusive situation and I just didn't call the police because in India we don't do that. But I can see now that they could have helped me. The shelter helped restore me to myself. I myself didn't realize just how depressed I had become. That family did everything they could to keep me isolated in that house. They did not allow me to meet anyone. I never socialized with anyone. They painted a picture that was totally false about life in the US. They told me not to bother searching for a job because I would never get one. They told me my Indian education was no good here and that an education in the US was too costly.

When I was at the shelter I learned so much about the U.S. system. I found out about all the services that were available to women like me. I found out I could go to community college for practically nothing. I found out that they would give me credit from my degree in India towards an associate degree here and so I plan to enroll soon. Right now I am working many hours at a low wage and it's still very difficult to get the funds to pay for the divorce. I was told that I would probably not get much alimony because the marriage didn't last for that long. But I really do need some financial support. Everything is so expensive. Healthcare is expensive, and here when you get a job they don't provide food as well. You buy your food separately and food is expensive. It doesn't seem fair to me that a family such as the one I lived with can so deceive a woman, so completely tear her down and then not pay any compensation to help her build a life again. It seems like a crime.

For the women who find themselves in similar situations, one thing I would tell you is that it is not the way these families tell you it is. For the longest time I felt that one of the things that I did wrong was to try and express my needs and wishes. They did not like that and things just got worse for me when I stood up for myself. I am not one of those women who just meekly puts up with bad treatment. At the point you realize that nothing you do will make your my situation better, that's the point to get out. I was just paralyzed with fright and they did wear me down. I just didn't expect I would end up in such a horrendous situation and I really didn't know the way out. There is a system that will support you if you just reach out for help.

Lessons From Neela's Story

No one imagines that their second chance at marital bliss will turn out to be such a nightmare. Neela's husband and his family gave her every reason to believe that she would be welcomed into their family with open arms. She had worked very hard to educate herself and was beginning to feel good about herself when she got married a second time. She was hopeful that she would be able to fulfill her dreams for herself.

One thing that seems obvious though, was that she did not spend enough time with her husband to be able to get a glimpse of his true temperament. It is often the case that a man will initially show much interest in the woman and only show his true colors after they have been together awhile. More time spent with both he and his family and more of a discerning eye might have clued her in to the life that was in store for her.

Although she was not on a visa that did not allow her to work, it is easy to see from her story how being unable to work really hampered her. Her story has many earmarks of an abusive situation. Although she does not mention not being picked up at the airport, the family's cold reception of her was an immediate sign that something was very wrong. Part of their tactic in keeping her isolated and feeling isolated was to ensure that what they told her about life in the US would be believed. This is a typical tactic of abusers. Keeping her isolated

was a tactic to keep her feeling threatened about the kind of life she could expect to have in the US. As one researcher observed, abusers often encourage their spouses to view the world outside as “hostile” and to ensure that she sees others as not caring about her.

When she refused to succumb to their harsh treatment of her, they threatened to deport her. Intimidation is a tactic many abusive men use to keep control over their wives, and in this case the situation was worse because an entire family abused her.

This is a lesson that is very much about how powerful the tactics of control and intimidation over another human being are. She was not allowed anything that would make her happy as a human being. She was denied any nourishment, emotionally, spiritually and sometimes even physically. She said she would often go without food while living there. When she wanted to purchase some art supplies to make cards, they teased her and tried to humiliate her, laughing at her as though she considered herself an artist. Neela asked, “Would they deny a child the paints to express himself on account of the child thinking he’s an artist?”

The tendency to increase tactics of intimidation at any sign that a woman is questioning how she is treated is also typical. Margaret Abrahams, a South Asian researcher, encountered a similar case where a woman had a very good career before she got married to her South Asian husband. She moved in with him and his family, and they began to control the money she could have, even though she had saved up quite a lot from her previous employment. When she began to question their behavior, they threatened physical violence. Her story is similar to Neela’s in another way as well. She too had been divorced once and so she was vulnerable to threats of increased stigma if she had to get a divorce a second time.

One sign of resilience is an individual’s ability to get help in an abusive situation. Neela showed resilience in finding help in a woman she was able to meet. It was remarkable that she was able to find such help in a situation where she was so thoroughly isolated.

It is equally remarkable that she was able to get out of the situation. Although it is true that her husband in effect abandoned her, it was partially because she kept trying to get her needs met in a situation in which that was impossible. Neela's true spirit of resilience won the day when she was able to speak out and do something for herself in a situation where the more she spoke out for herself, the more abusive it got.



Effects of Marital Violence

“It is critical to the promotion of a successful human journey that individuals are able to satisfy as many needs as possible for security, self-efficacy, positive identity and connectedness of reality, autonomy, and transcendence of self”

Source: *Reclaiming the Soul of Relationship* by James D Brown

From *Psychology of Good and Evil: Why Children, Adults and Groups Help and Harm Others*, Written by E Staub.

Neela’s story shows some of the effects of marital violence. She had built up a sense of self-esteem after having been raised by a father who had no faith in her ability to do anything but take care of a household. He was also short tempered and harsh with her. She herself realized that he had damaged her self-esteem and her ability to comport herself with confidence. But she was able to take care of herself, leave her parents’ household after her divorce, and start building a life for herself. Miraculously, these efforts bore fruit and she reached a point where she was feeling good about herself. She had proven to herself that she had talents and could make a good living with those talents.

The effects of her abusive second marriage was nothing short of tragic and devastating. Although Neela was able to eventually stand up for herself in her abusive marriage, get help for herself, and get out of the situation, it will take some time to heal. She will continue for some time to struggle to get back a sense of herself as a worthwhile human being. She even lost a sense of herself as an attractive, desirable woman who is deserving of love. She grew so depressed that she began to entertain thoughts of suicide. In some ways it was her very

refusal to give in and allow herself to be pushed into a corner that saved her. However, that same resilience also made her life that much harder and more painful while she was in that impossible, crazy-making situation. But recovering a sense of feeling good about herself and finding the means to take care of herself will continue to be an uphill struggle for some time. The effects of marital violence can be so profound that many women cannot find it within themselves to leave. In this section I would like to address some of the issues that make it difficult for women to leave an abusive situation and that continue to affect them even after they leave (see also *Leaving Abusive Partners* by Catherine Kirkwood).

Fear

Fear continues to haunt a woman even after she has left an abusive situation. She may continually fear repercussions from her husband and his family even after separating herself from the situation. Neela sought legal means because she knew her husband was a powerful figure in the Indian community and could do harm to her in many ways. Months after separating from him, she still fears what he will do to her if she causes him any trouble, that is, if she asks for what is legitimately hers through a divorce settlement.

Guilt

She may also feel guilty and responsible even though she is the victim. This is typical of a survivor of both childhood abuse and marital violence. One might go over in one's mind all the things that they could have done differently to change such a horrendous outcome. A woman may even tell herself that she could have been a better wife, that a man who behaves in a jealous and possessive way is showing his love for her. It is often the case that an Indian spouse will feel like a failure for not continuing to fight to save her marriage in a situation that was tearing her apart. She may wonder what it was she did wrong. We women are brought up to care for our family first and foremost and to sacrifice ourselves for the family's welfare. Indian women have been given this role—to carry on our culture (Abraham, 2000). That means ensuring that the family is cared

for, that it remains a viable unit, no matter what.

Neela tried hard to please her husband and her family by being an obedient wife and self-effacing daughter-in-law who worked to enhance the family. She knew this was expected of her and was prepared to do it. Sometimes she asks herself why she stayed for so long in a situation that was killing her from the inside out. But these are questions that cannot be answered simply in hindsight. She knows that she really didn't know what to do. The situation was crazy making. It did not make rational sense and no one in a situation like that can blame themselves for doing everything they possibly can do to make it better. In fact, this is the first tactic of fighting back, according to Margaret Abraham (2000). The women she interviewed all tried to placate the abuser. She writes, "This is done by trying to do what he wants, praising him, apologizing to him, wearing the clothes he likes, cooking what he desires, and generally engaging in the activities most perceived as minimizing the abuse" (p. 134). Many women are under the notion that they can make it work, that once the man can see how devoted his wife is, he will change. But all soon find out that the only thing that changes is that they feel worse and worse about themselves.

For Neela, the desire to make it work, especially having been once divorced, was very strong. The stigma that Neela found so unendurable in India is something that keeps a woman in an abusive situation. Who wants to be perceived as loose and selfish? In the US there isn't such stigma, but many women are so isolated within these situations they are not aware of that.

Feeling Crazy

One thing that hasn't been mentioned yet is the purposeful distortion of reality that so many abusers accomplish. Neela said about her husband's abusive family, "They painted an entirely different picture of life in the US than was real." Abusers will constantly cause a woman to doubt her own perception of herself, her relationships, and even facts about her own experience. This often leads a woman to start questioning her own reality. It is a terrifying experience to feel

that you don't know what you know. You begin to question everything you thought you knew, especially when you are in a place where you are already disoriented because you are in another country and culture. When you don't have people around you who remind you of who you really are, losing touch with what you know and who you are can be extremely debilitating.

Aloneness

Many women who are either within these situations or having escaped an abusive situation find it difficult to find support and acknowledgment for what they experienced. Many may have tried to get help while they were in the situation but found that their experience was minimized by their friends or relatives. On the other hand, women may try to minimize their own experience in order to try to live with it.

Effects on Children

If a woman has children she will feel it all the more necessary to stay. But one thing to keep in mind is that it is not always best for a child to stay in such an abusive situation.

The effects of these situations on children are profound as well; in some ways more so because the children are developing in such situations. Abusive situations may irrevocably change how a child feels about him or herself and others. It might be harder to trust people, to have a solid sense of oneself, and feel optimistic about one's future. This type of trauma can affect one's relationships as well. Children who grow up in situations that are abusive may without knowing it lower expectations about what they think they deserve from others. In essence living in such an environment can profoundly affect a child's sense of self-worth. According to UNICEF (2000), children exposed to marital abuse show a variety of problems in health, behavior, eating, and sleeping. They can have difficulties at school and in developing "close and positive friendships" (p. 9). They may even develop suicidal tendencies.



Prevention

Before Marriage

The Internet is filled with match-making sites. By virtue of the fact that these men are living in the United States, they consider themselves quite desirable. They post advertisements for an Indian girl and give little information about themselves. Many problems for prospective brides begin here. Women take the bait for a variety of reasons. They may be feeling pressured by their families to get married. Staying single can feel like a blow to the self-esteem of many Indian women. It is a tough thing to countermand the deep wishes of parents and the culture that make them feel like something is wrong with them if they are not married. Under such pressure many women become helpless in the face of an ad placed by a promising Indian man in the US.

Women who see these ads may believe that by coming to the US they can fulfill their lives. They may think of all that they and their children can aspire to in the US. Its reputation as the proverbial land of opportunity is still in vogue. Alternatively, in some cases women leave promising careers to be with husbands who themselves are trying to fulfill their longings. Perhaps because the match appears eminently desirable, too many brides and families of the bride fail to investigate the background of the prospective match. This chapter presents some valuable dos and don'ts for those Indian women who are longing to fulfill their dreams through marrying an Indian man who is living in the US. The following two precautions are a must:

(A) **Investigate His Background:** Find out the background of the person you or your daughter wants to marry. One way you can do this is by consulting an investigation agency. People spend thousands of dollars on marriages but they don't spend

a hundred on verification. It would be an enormous help to find out beforehand the kinds of things so many Indian women find out only after much heartache and suffering. You can find out if the man is already married, has a girlfriend, or whether he has children. You can find out what social circles he travels in and what kind of track record he's had when it comes to relationships. All of the things you would know about a man who lives in India you should know about a man who lives in the US. You should find out whether the man has emotional or social problems or whether he has had difficulty finding and keeping employment. The Ministry of Overseas Indian Affairs has compiled a booklet for women coming to the US to marry what they term "overseas Indians." The appellation refers to Indians who live abroad and include NRIs, Indians on green cards, and foreign citizens. The Ministry suggests that a prospective bride should check the following areas of her prospective groom:

- Marital status: have prospective spouse show affidavit stating present marital status.
- Employment details: qualifications and post, salary, address of office, employers and their credentials.
- Immigration status: type of visa, eligibility to take spouse to other country.
- Financial status (this can be verified with his employer).
- Properties he claims to own and his residential address.
- Criminal history, if any.
- Family background.

The Ministry of Overseas Indian Affairs also advises a prospective bride to check the following documents of her groom-to-be before marriage:

- Visa, passport.
- Voter or alien registration card.
- Social security number.
- Tax returns for the preceding three years.
- Bank account papers.

- Property papers. (p. 22)

The benefits of finding out whether your prospective groom has misrepresented himself or is on shaky ground in terms of financial history or work history are obvious. The men who misrepresent themselves and are in trouble in some of these areas are the types of profiles to watch out for.

(B) **Do Not Marry Someone You Do Not Know:** Even if you want to marry someone who resides in India, I advise you to get to know him first. I have documented many cases in *Immigrant Dreams* of women who married men too impulsively in India who later regretted that they did not know enough about his character or history. However, when you are about to marry someone who you know for a fact does not live in India, does not have roots in India, or does not have family there, how could you possibly decide to marry him without knowing more about who he is?

To Prospective Brides

Marrying an NRI can be much riskier than marrying a man who lives in India for a variety of reasons. Some of them are obvious. With a man who lives in India, prospective brides and parents can see where he lives and works and can ascertain the kind of reputation he has among people who know him. When the prospective groom is living in the US, he can lie about many factors in his life—including his motive for getting married. Even his parents may not reveal to the prospective bride or her family the fact that he has a girlfriend or how many he has had in the past.

There are many men residing in the US who come to India to seek Indian brides with the sole intention of pleasing their parents. They do not think twice about the feelings or welfare of the girl they marry. They have girlfriends already and they have no intention of being a good husband. When their wife joins them she is often left alone, sometimes to serve as maid while her husband continues to carry on a relationship with his girlfriend. His parents may not report his relationship either because they don't know or because they want to keep it hidden. Perhaps they want to give their son the benefit of the

doubt, thinking that once he marries a good Indian girl he will quit his current relationship. It may come as a surprise to many prospective brides what men will do in a situation when they become detached from their own culture and immersed in the U.S. culture. Please take the following precautions:

(A) **Take Time before Marriage:** Research has found that many marriages that end up being abusive are relationships where the partners got involved very quickly. Some get married without knowing each other at all, and often after a less than six-month engagement period. If you take more time to get to know your fiancé you have more chances of seeing the warning signs of an abusive man, such as moodiness, shifts in mood, flattery first and then put downs later. If a man pressures you for a commitment and tries to make you feel guilty for not committing, that is a warning sign right there. There are many warning signs contained in these pages and giving more time before marriage may be what you need to recognize them. This can save you much in the way of heartache later.

(B) **Do Not Marry Someone Whose Family Is Asking for a Dowry:** The wedding invitations have already been sent out and your parents are being continually harassed for a dowry. Your parents don't believe in it but they have been trying to accommodate the parents of the groom-to-be who continue to cause trouble. What should you do? As Priya will tell you in a later chapter, don't go through with it in spite of how shameful it might be at the time to withdraw from the marriage. This may be the biggest indication that you will have that you are marrying the wrong guy.

I grew up in a family of four sisters. We all got married and no one would have dreamed of asking us for a dowry. Since the Dowry Prohibition Act of 1961, it has been illegal to ask for a dowry. Not only is dowry a criminal offense under Section 498 A of the Indian Penal Code or the Dowry Prohibition Act, but the Domestic Violence Act of 2005 stipulates that domestic violence includes any act, omission, commission or conduct that "harasses, harms, injures or endangers" the wife with a view to "coerce" her or her relatives to "any unlawful demand" of "any dowry or other property

or valuable security.”

However, dowry has surfaced under other guises. Many grooms and their families still expect a “gift” from the bride’s family. It may be tempting to give into such demands and many families may fear that they will not be able to marry off their daughter any other way. However if the man that you intend to marry is from the US, and his family is asking for a dowry, this can be a means of getting money and giving nothing back but abuse. As I have mentioned, a man can get a divorce in America very easily and make sure that the property the couple has is in someone else’s hands at the time of the divorce. The woman is left with no status to stay in the US, no money, and is prone to stigma in India for her divorced status. There is, however, a very good way to ensure that a groom-to-be is who and what he says he is—visit him where he lives.

(C) **Visit Him in the United States:** Don’t just stay back in India and get married and hope that he is going to file papers. First come to America and find out who he is and how he lives. Many women don’t realize that there’s a visa that allows them to visit their fiancés in the US. It’s called a fiancé Visa, and it is issued so that a woman can visit her prospective husband for a 90-day period before marriage. A woman can come see where he lives, visit with him, get to know him, stay in a hotel or with family friends, meet her prospective spouse’s friends and family and then decide whether or not she wants to get married. Then she can file the paper work in the US to get married. When you go into a marriage like this you know much more about the man you will marry and you can get a good feel for how sensitive he is to you and whether he’ll be a loving, respectful husband.

(D) **Verify His Status:** Make sure he shows you verification of his legal status in the US. This is very important, as these men will frequently lie. In one case, a man told his wife that he was on a green card even though he was a U.S. citizen. One who is on a green card cannot bring his wife to the US for five years. He lied to her about his status because even though he wanted to marry her, he did not want to have her hanging around him in the US. He asked her to lie to immigration, to tell them that she was not married to him and

to come see him on a visitor's visa, which is for six months only. So she did this. When she came to the US he mistreated her every day. He even filed a restraining order against her and she had to fight the restraining order, proving to the court to that she was not mistreating him. Then he told her that he could get her a green card if she would sign papers renouncing any rights she had to alimony when they divorced. Of course because she was married to a US citizen she had a right to a green card.

(E) Do Not Listen If He Tells You to Break the Law: The case I just mentioned also serves to illustrate this advice. Men will often ask their wives to break the law, especially in the case of those who have green cards. However, once a woman breaks the law this will go against her should she need protection in the case she finds herself in an abusive marriage.

(F) Do Not Finalize Your Plans over Long Distance, through E-mail, or by Telephone: And do not get into any marriage in haste, no matter how much pressure you feel you are under to act quickly. Marriage is a life-transforming event and needs consideration and deliberation. If he claims he has no time to make arrangements in person for a life together in a foreign country, then he is probably not going to give you appropriate consideration when you are married.

(G) When Marrying in India, Register the Marriage in India: This will ensure that Indian laws can be applied should you seek the protection of those laws if the marriage goes sour.

(H) Keep a Copy of Your Passport: Keep a copy of your own passport and follow up on your visa requirements. If you have a child, keep a copy of his passport in a safe place.

These will ensure that you have enough independence should the need arise to take care of yourself and your child. Ratna's story will show why this measure should be taken.

(I) Obtain an Independent Visa if Possible: It would be better to ensure your independence by having your own employment, which you would need to qualify for H1B status. Having as much independence as possible when you reach the US will help avoid the isolation and types of abuses that

dependency and lack of employment allow.

(J) Discuss Important Marital Matters, Such As Work, before Marriage: If you are on a visa other than an H4, which currently does not allow the wife to work, make sure you discuss with your prospective groom whether or not he would allow you to work once you are in the US. A discussion about how marital responsibilities are shared would also be beneficial.

To the Family of the Bride

Many women feel pressured to marry to please their families, and in their haste to get married they will overlook many things they should pay attention to. Often they do not think of their own welfare, even when they get into abusive situations. I therefore encourage families to reconsider their priorities if they want their daughters to be happy. It is often the case that parents make sure their sons have a good education and are set out on a successful career path but believe their number one priority in regards to their daughter is to make sure she's married. However, marital bliss is not established on the same set of circumstances as it was when life was simpler, and our lives are not the same as they were hundreds of years ago. Women who marry without a means of generating an income and without a purpose or a passion independent of serving her husband may be left in a state of dependency in a situation that could be unhealthy in the extreme. The situation is even worse when a woman comes to America. Even if a woman has been highly educated in India and had a high-paying job there, she is unable to work in America under an H4 visa, the most common visa for brides. This is one of the laws I would like to see changed, but right now, a woman who is in the US on an H4 visa cannot work. So there are girls with Ph.D.s who are sitting at home doing household chores and unable to fulfill the promise that they have been educated to fulfill. They cannot pursue a gratifying career, earn an income, or create a set of relationships outside of the home.

To live a life where a man is exercising mental cruelty is a life nobody should wish on another. Reconsidering priorities would be to encourage fulfillment in a career, or at least making

sure that the situation the daughter is entering is one that will enhance her well-being and happiness. Even when a man who is a US citizen comes to India to marry, it is still imperative to investigate his background. I mentioned the women who married a doctor who was a U.S. citizen. She and her family were very impressed that she was marrying a doctor. However, after a couple of years stay in India he disappeared without letting her know where he was going. She now has a 16-year-old daughter who does not know her father. This is called a honeymoon marriage and it happens frequently. These men rise to the top of their professions, become quite wealthy, and go back to India because they believe they want to marry traditional girls. Then they find out that it is not what they wanted after all and they abandon them.

By all means if you do find out that your daughter has married a man that is mistreating her, please do not encourage her to stay in the situation. Life in the US is much different than in India and your daughter will not suffer the humiliation you think she will merely by separating from an abusive husband or getting a divorce. Parents in India too often fail to empathize with their daughters who are in these unhealthy situations. Research confirms that a high proportion of families do not support an immigrant battered woman's decision to leave the marital situation, even when her injuries have required hospitalization. Please take the following precautions:

(A) Arrange for a Bank Account for Your Daughter in the US: This step is especially important if your daughter is joining her spouse on dependent visas such as an H4 and is unable to work. As you will see, having some source of income she can draw upon is a good precaution against feeling isolated and without means to procure support or transportation.

(B) Ensure She Has the Proper Support Once She Is in the US: Make sure that your daughter has got a list of phone numbers and agencies to call when she arrives in the US. Make sure that she has the number of the Indian Embassy in the state she will be residing in. The Indian Embassy can help her with referrals to U.S. support agencies, copies of passports, and travel documents. She needs to know that help is a phone call away if there is something going on that does

not seem right or if she is not being treated right.

(C) **Ensure That Your Daughter Has the Professional or Vocational Skills to be Independent:** In this way your daughter will have some recourse if she is abandoned and she is on a dependent visa. She will be able to apply for her own visa if she wishes to continue living in the US or fight for custody rights if she has a child.

Know the US Immigration Laws

Before you leave India, make sure you are aware of your immigration status. You need to know exactly what the limitations are of your status and you are responsible for renewing or extending it at the appropriate time. Many Indian women come to the US on dependent visas. They come as a consequence of getting married to a NRI who is here on a work permit. The most typical permits I see from women who end up in the kinds of situations described in this book are H4s. H4s are given to the spouses of NRIs who are here on H-1B visas. I am going to begin with the most common visas for women who marry overseas Indians but will include other visas in case they apply to your particular situation. Some women, like Priya, whose story you will hear in a later chapter, came to the US on an H1B visa and so did not have to worry about her immigration status when problems in her marriage began to erupt. Others, like Neela, was married to a U.S. citizen. So the circumstances of coming to the US may vary widely from case to case. However, as I have mentioned, I have witnessed more heartaches due to H4 visas than any other. The various visas and/or documents are as follows:

(A) **H4s and L2s:** They are similar in many respects but in terms of the limitations placed on the spouse, they are quite different. H4 is the permit given to the spouse of an H1B. If your husband has an L1 you will be able to get an L2 provided you apply for it. An L2 allows you to enter the US as a dependent of your husband and entitles you to work. However if you are married to someone who is in the US on an H1B, you will be on an H4 and you will not be allowed to work.

Go to the US Embassy in India and they will stamp your visa with your dependent status. Once your visa is stamped,

know the limitations of your visa and what you need to keep it going.

(B) **Green Cards:** If your husband is a green card holder he cannot bring you over, even if you are married to him, for five years. Because of this stipulation, many green-card holders will ask their wives to lie so that they can come to the US, even for a short while. As mentioned previously, even though it may be tempting to lie to come to the US in order to see your husband on a visitor's visa, it is not worth it. This is a law we are trying to amend because it seems so unfair to green card holders and their wives, but until that happens, lying in order to come to the US under a visitor's permit means you could be banned from re-entry to the US.

(C) **V Visas—Spouses and Children of Lawful Permanent Residents:** The V visa is an interim measure so that spouses do not have to wait for years for a visa because of quota availability. You must meet one of two criteria to be approved:

1. You must have applications for immigration status that have been pending for at least three years.
2. The petitions for immigration that have been made on your behalf have been approved, and “three years or more have elapsed since the filing date, and an immigrant visa is not immediately available to the applicant because of a backlog of the quota” (Kimmel, 2009, p. 31.)

This means that you are eligible to be granted a V visa if the petition that was made for you has been approved, if the petition was filed more than three years ago, and no immigrant visa is available to you. Also, you are eligible if there is no pending application for an immigrant visa or pending application for adjustment of status.

(D) **U Visas:** U visas are given to victims of certain crimes. These may be available to you if you have been abused by your husband. U visas give you temporary status under which you are eligible to work for four years. I will go into the U visa in a later chapter.

(E) **H Temporary Worker:** The H is a broad category of

workers and includes specialty occupations such as farm workers, temporary nonagricultural workers, people who are trainees in a particular employment, and family members.

(F) **H- 1B. Aliens in Specialty Occupations:** This visa is for professionals who are offered a job on a temporary basis in the US. Under the Immigration Act of 1990, artists and entertainers were removed from this category. According to the USCIS, “Specialty Occupation” is defined as:

“An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor’s degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.” [2]

There is an annual quota of 65,000 people that may come to the US on an H-1B visa. The maximum period of stay on an H-1B visa is six years. Under AC21, people who are here on H-1B visas may extend their status beyond six years in certain circumstances. If they are about to receive pending or approved Labor Certifications or I-140’s, which are for permanent residence, they may stay while their new status is pending.

(G) **H-2B Other Workers:** This category applies to anyone who will be in temporary employment of labor in which US workers are in short supply. There is a 66,000 annual ceiling on these permits.

(H) **J-1 Exchange Visitor:** J-1 visas are given to overseas Indians who participate in visitor exchange programs. They include experts, industrial and business trainees, students, medical interns, and residents and scholars (professors, students, and research scholars). This visa may also be given to international and government visitors, teachers, and even camp counselors and au pairs. Sponsors of J-1 programs can include a U.S. agency or organization, a recognized international agency that has offices in the US, and an organization that is a citizen of the US. The U.S. citizens can be individual citizens, a partnership in which

the majority of partners are U.S. citizens, a corporation that trades on the U.S. stock exchange with the majority of officers and shareholders U.S. citizens. It can also be a nonprofit entity with a majority of citizens as officers, or it can be an accredited educational institution created under U.S. law.

(I) **K Fiancé or Fiancée of U.S. Citizen:** Overseas Indians who are engaged to a U.S. citizen can come to the US on this visa. In order to qualify to visit the US on this visa, the fiancé must have met the person she intends to marry within the last two years. The U.S. citizen files the documents with the appropriate U.S. Citizen and Immigration Services (USCIS), whatever the jurisdiction is over the U.S. citizen's residence location. The USCIS approves and forwards the petition to the U.S. Consulate where the fiancé applies for it. The marriage must occur after 90 days of entering the US. Once the fiancé is married, she can file Form 1-485, which is an Application to Register Permanent Residence. The USCIS converts the new spouse's status to conditional residence.

(J) **K-3 and K-4 Spouses of US Citizens and Their Children:** A nonimmigrant status for spouse and citizens was created in 2001 by the LIFE Act. Before LIFE, spouses of U.S. citizens and their children could enter the US with immigrant visas only. As of 2001, they are admitted as non-immigrants under K-3 and K-4 classifications and while in the US continue with obtaining permanent immigrant status.

(K) **L-1 Intracompany Transferee:** These visas are for overseas Indians who have been working for a company in India in a specialized knowledge capacity or as an executive for a year within the preceding three years the visa is granted. An L-1 holder must be transferred for a temporary assignment to an office subsidiary or affiliate of the company in the capacity which qualifies them, whether it be having specialized knowledge, being a manager, or in an executive capacity.

(L) **M-1:** M-1 visas are available for students who want to come to the US to attend vocational or other recognized nonacademic educational programs offered in the US.

(M) **US citizen:** If your husband is a US citizen, he can bring you over right away.



Signs of Trouble

It is best to recognize signs of trouble, both so you can avoid getting into an abusive situation in the first place and so you can get out of an abusive situation as quickly as you are able to identify it as one. Once you recognize the situation for what it is, do everything humanly possible to get out of it. I can guarantee you, after seeing so many of these cases, that if you stay in the situation, it will only get worse. Abuse can take many forms. There is physical violence and mental cruelty, which most people are acquainted with, but there is also isolation, economic deprivation, intimidation, and forced servitude. A woman may be subject to these forms of abuse from her husband and/or his family, as Neela's story demonstrates. There is also a form of abuse known as spiritual abuse. With this form of abuse your partner may manipulate you, using your religious background or spiritual beliefs to do so. He may also keep you from practicing your beliefs.

Bear in mind that a man who is mentally cruel might be capable of resorting to physical violence. In many instances a man who shows a desire to control his wife begins with verbal insults and his attempts at manipulation and control escalate until he lashes out physically. Isolation is a frequent tactic of these men. They have a need to make sure they are the only influence on their wives and so they see that she has no other means of support. Men control their wives in a variety of ways so it is important to recognize the type of behavior that is controlling. Men who are physically and mentally abusive tend to want to know where their wives are at all times and restrict their activities. This restriction of activities is called isolation. If a woman has little opportunity to do things for herself that are self-enhancing and life-enhancing then that can be

considered abusive.

Abusive men also engage in crazy-making behavior. In Neela's story, the family would make her stand for hours in the kitchen with nothing to do. She had to stand there merely to be at her mother-in-law's beck and call, but the moment she tried to do something for herself she was reprimanded. Crazy making situations are no-win situations. If you do something to please your husband or family, you may be criticized. If you decide not to do something because they do not seem to want it or appreciate your efforts, you are criticized for being lazy and not contributing. Here are some warning signs that may indicate that you are in an abusive situation.

- *He or his family insists on a dowry.* If a family insists on a dowry, it is a huge warning sign. A man can take your money and get a divorce immediately. If this happens, you can still file a complaint in India. Dowry laws still apply to a person who lives overseas. The laws of India still apply to an Indian citizen who is in the US for a temporary period of time. A dowry has many forms. Parents might say, "We have spent so much money on our son's education and we want them to get a good start." They may promise you that the new couple will buy a house with the money you give, but it ends up going to him alone.

- *Your husband does not pick you up at the airport:* In this instance, your husband has married you in India, comes first to America, and then does not bother to get you when your plane arrives. This may be one of the first signs that your situation will be abusive. Please take note. It is not too early to get out. Getting out may save you some severe emotional damage. In a later chapter, I will give you some places to call and to go for help if that occurs.

- *Your husband attempts to restrict your activities to the household.* If your husband insists on knowing where you are at every minute of the day and in general does not want you to leave the household except for the most necessary errands, this is a big red flag. Restricting a wife's activities is part of an attempt to isolate her. He may not want you to develop relationships outside the household, and he may try to limit

your phone contacts as well.

- *Your husband puts you down and sometimes uses vulgar language to do it.* This is often the first sign a woman has that she is with an abusive man. It is a very bad sign when your partner calls you names and especially if he uses foul language to do it. It is a very important indication of the degree of hatred he may have towards women, and perhaps himself.

- *Your husband expects you to be the perfect wife.* Often times a man will expect his wife to fit into his ideals of what a woman should be. However it is not humanly possible for anyone to live up to unrealistic expectations. He may expect you to be everything to him and then criticize you for falling short.

- *Your husband's moods rapidly switch from being nice to extremely angry.* In addition, your husband may sulk. You may find him in a buoyant, flattering mood one moment and sulky and withdrawn the next. These men often have a difficult time controlling their emotions and they can give into their black moods. Their sullen hatred gets directed outward to the people closest to them. Unfortunately if you are married to a man like this, his hatred gets directed most frequently and unfairly upon you.

- *Your husband punches walls or breaks objects when angry.* This means that your husband is given to uncontrollable angry outbursts. Unfortunately, men who punch walls sometimes find themselves punching human beings when their anger escalates and they feel a need to keep their wives in their control.

- *Your husband blames you for how he feels and/or behaves.* Often times an abusive man will blame others for how he feels or negative situations he may get in. If he mistreats you he may blame you for leading him to do it. An abusive man rarely takes responsibility for his own behavior.

- *Your husband is extremely jealous.* Although your husband may tell you that jealousy is normal or a sign of love, questions about who you had contact with during the day, or jealousy over the amount of time you may spend with family,

friends, children, or activities that nurture you as a person are signs that he may be insecure and possessive.

- *Your husband does not allow you to have access to the finances:* Once in America, your husband keeps you housebound or economically deprived. For example, your husband may not want you to have any control of the bank account. Cutting a woman off from financial resources ensures that she can have no life outside of the home and ensures her isolation from all avenues of support. In addition, he may not want you to see that he has sent all the money he has earned to India, where you will not be able to have access to it.

- *Your husband does not tell you how much money you have or where it is:* In America there are community property laws. These ensure that the wealth of a household gets distributed fairly between both spouses should there be a divorce. Many men make sure the women will get nothing if and when they file for divorce. They do this by funneling their money into accounts of relatives in India or elsewhere. This way, if there is a divorce, the man will be able to show there are no assets to divide. Not allowing you to know what your shared assets are and where they are may be a means of coercion. A man who knows he has an economic advantage may treat his wife anyway he likes knowing she will be in a helpless situation should she think of leaving him.

- *Your husband asks you to sign something without sufficiently explaining what it is you are signing.* This has been a problem for many women who did not take the time to look at what her husband was asking her to sign. I have seen many cases where men took credit cards out in the name of their wives. They use the money in some way, such as buying a house, with no intention of paying it back. When the women starts getting calls from the credit card agencies, which threaten to take legal action against her, she has no idea what she did. The men sometimes later declare bankruptcy, which ruins a woman's credit history. If she decides to divorce her husband, or he divorces her, it is another strike against her when it comes to proving she is a responsible adult capable of independently caring for their children. She could lose a custody case over it.

- *Your husband does not allow you full access to the house or utilities (shuts off the electricity or heat when he is not home).* This is a particularly cruel form of mental cruelty in the form of deprivation and it happens more frequently than you may imagine. I have seen countless cases where the husband keeps his wife shivering at home during cold weather. This was one amongst a wide ray of abuses that were documented by a recent client of mine. She said her husband and his family would leave her alone at home for days without food, money, phone, cable TV, or Internet. His family would also insist that she do all the household chores by hand in spite of the fact that they had more modern conveniences available, such as a dishwasher, vacuum cleaner, and washer and dryer. They would only cook food that they liked and were unwilling to give her access to the kitchen so she could make something for herself. They also gave her no money for food.

- *Your husband and/or his family treats you like a servant.* The case in point for this example is Neela's story. Her story is testimony to just how damaging this kind of abuse can be to one's self-esteem.

- *You have no health insurance.* In the US, health care is costly. It is especially expensive if you get in an accident and need to go to the hospital or get cancer, which costs a lot of money to treat. Hospital visits, surgeries, and tests have made health care so expensive that there is a system in place to insure that people don't lose their entire savings if they get sick. They have to pay health insurance usually by the month and this insurance will pay most of their health care bills and protect them from the costs of getting very sick. But in the US, health insurance is also very costly and often a man will not pay to get insurance for his wife. If this is the case, your husband may ask you to do home care remedies and not take you to a doctor when you're sick. Ask him about health insurance and whether his employment pays for it. Some companies do pay for it and if he is working for a good one, it should be paying for his and yours both.

- *Your husband refuses to take you to the doctor and instead asks you to take home remedies.* Any husband who treats his spouse like this is not interested in her welfare.

Regarding Immigration Law

- *Your husband does not file the paperwork for your immigration status.* You need to know what kind of visa you have and the paperwork that is required—you need to ask for a copy of all your paperwork. If your husband is in the US either on a green card or as a U.S. citizen he must file for permanent residency status on your behalf. Research shows that in abusive relationships in the US, 72% of husbands fail to file this important paperwork for their wives (Dutton et al. as cited in Raj & Silverman, 2002).

- *Your husband files a petition for your visa and later withdraws it*

- *Your husband threatens to revoke your visa.* This is the same as threatening to deport you and it is an abusive action, as Neela's case aptly shows.

- *He asks you to break the law and lie.* The dangers of this I have related earlier.

- *He uses immigration status to force you to do something that is against your best interests:* In one case, a woman reported that her husband got his citizenship and agreed to file for his wife's green card on the condition that she file for a divorce and sign away her rights to alimony or an equitable division of their assets.

- *Your husband threatens to notify immigration officials and have you deported.* A woman recently told me that her husband had a wide range of tactics to wear down her defenses and make her feel worthless. He would call her fat and ugly and say that he was embarrassed to take her out in public. He would leave her alone in the house in order to isolate her. He frequently threatened her that if she reported to the police or anyone else the horrendous things he was doing to her (and this included regular physical beatings, often when she tried to walk away from him when he was verbally abusing her) he

would get a divorce and she would end up on the street. He also threatened to deport her to India and divorce her on the grounds of desertion, ensuring she would not get a single penny. Many men will distort the law in order to scare their wives into complying and staying in an abusive situation. The purpose of these threats is to continue to wield absolute control over a woman and make her believe he has all the power and she has no recourse.

Signs of Physical abuse

- *Your husband pushes you*
- *Your husband shoves you*
- *Your husband punches you*
- *Your husband hits you with his hand or an object*

Signs of Sexual abuse

A husband uses many different avenues to exercise control over his wife. These tactics are often aimed to make the wife feel inadequate as a wife. Margaret Abraham (2005), who has extensively studied marital violence among South Asian Indians, wrote that sexual abuse “is manifested through marital rape and through controlling a woman’s reproductive rights, as well as in the abuser showing his power and control by having sexual relations outside marriage, making his wife feel sexually and interpersonally inadequate. Frequently, the abuser’s knowledge that the woman is isolated and that he has no social accountability exacerbates the situation.” (p. 440) This is true especially when men go home to India to marry and then never tell the prospective bride that he intends to continue his relationship with an American girl. It is easy to underestimate how destructive this behavior can be to a women’s self-esteem. A man who carries on an adulterous relationship openly is sending a message to his wife that she is not desirable or measuring up as a woman. It is all the more damaging to women who find themselves in an alien culture with no one to talk with and no one to go to for help.

I’ve also seen cases where a couple has lived here a long time and the husband openly has a girlfriend on the side. The

woman sometimes feels she is too old to move out and find employment for herself, so she simply stays in a loveless marriage in the role of a maid.

Sometimes there are no warning signs at all. In some cases a woman can marry in India and have an intact marriage there, as well as give birth to children, only to find her life and family torn apart when they get to the US. Such was the case with Ratna.



When Worse Comes to Worst

Early one morning I received a call from a woman who had an edge of panic in her voice. This was not unusual, I am used to answering calls of distress from my clients. However Ratna's story was particularly heart-rending. Ratna came to me after years of fighting an intransigent battle alone in the American courts. As of this writing, she has gone through thousands of dollars and unbelievable suffering as she tries to hold onto her only son. Her fight is far from over and she is barely holding on to her sanity as she struggles to find a way to stay here and fight for him. I'm not sure how long it's been since she's seen him. It costs her \$120 for each supervised visit, and, with mounting court costs and few ways of earning an income while she is fighting this battle, money is in short supply. The strength she continues to muster after such hardship is incomprehensible and is a testimony to the resilience of the human spirit. Ratna herself believes that her strength comes from knowing that she fights this battle not only on behalf of herself and her son, but for every Indian women who might find herself in a similar situation—torn between two courts and two countries.

Ratna's story is typical in the sense that it illustrates so many of the things that can go wrong when an Indian woman joins her husband in America. She and her husband had fallen in love and his parents had convinced her parents that it was in everyone's best interest to get them married. She told me their union was founded on love and trust. She said, "We chose each other. But all of that got lost when we came to this country."

Her husband came to the US in 2000 under an H1 work visa, and while he was attempting to launch a successful life

there, Ratna and their four-year-old son remained in India. It is initially difficult for a man to bring his entire family over when he first arrives, and so the family had to make some sacrifice while he set up the necessary conditions to provide adequately for the family. He worked and stayed at a friend's house to cut down on expenses and Ratna continued to work in India at a federal job that she had had for almost 13 years. Her job paid quite well and she gained satisfaction from using her considerable talents and expertise. She and her son would visit him for several months out of the year, but after four years, her husband wanted the family to be reunited in the US permanently, and so she quit her job and came.

I must say that this in itself is not as easy as one might imagine. It is not easy to lose the support of family, close friends, and the kind of social network Ratna had built up over 13 years at work. Add that to the pressure she must have felt to establish a supportive social infrastructure so her son could thrive in a place where she had few contacts, and the picture becomes a little clearer. Hardship occurred almost immediately as her husband lost his job a few months after their arrival in the US. He was on an H1 work visa, and that meant that he needed to have employment in the country for the family to stay. Fortunately he found another job, but when Ratna had to move from the West Coast to the South West, the task of settling in once again presented itself. She herself had an H4 visa, which allows dependents to stay with their husband in the US. Eventually Ratna's entire story spilled out, as she needed once again to go over all the terrible events of the last few years. Here is what she told me so in hopes that with the full context of her story I would be able to give her the best legal advice I could.

Ratna's Story

My son entered pre-kindergarten and all went well for several months. When things got rocky between us, I never suspected the real cause. We had been very close friends with a couple we met who had been living in the US for 16 years. We had all come from the same state in India and spoke the same common language, Marathi. Her husband and mine had

even gone to the same college together. We were so close that our families would go on vacations together. This went on for about two years. One day, completely out of the blue, my husband told me not to go out as I usually would because divorce papers would be delivered and I needed to sign them. This was extremely shocking to me for obvious reasons.

As you know, in India, if a couple isn't getting along, the family is usually there to step in to try to resolve it. I soon realized how devastating it was to be so far from our families that they could not help us. You can call over the phone, but it just isn't the same as their being able to physically be there to help a young married couple confront the situation. They are too far away to have much influence over their children and so it's difficult to save a marriage outside of the country. I never suspected anything was wrong, and without their help, I never had the chance to resolve it.

I also found this shocking because all the while I thought my husband and I were setting down roots in this new country and making a new life for ourselves, he was having an affair with his best friend's wife.

I have learned that extramarital affairs here in the US are very common. They are not so much in India. And you know, even when they do happen in India, they are rarely a cause for divorce. A man might be having extramarital life but he is still fulfilling his responsibility to wife and family, and families are not hurt to a larger extent. He may fall in love with someone, but when that passion is gone, he rejoins the family. He tries not to hurt his family. I truly believe that if we had been living in India, I may never have found out about it. In India, I certainly never would have anticipated that without warning he would ask me for a divorce. I mean we had been having fights, it's true. After the first several months we were united here, the fights began. But only after his affair came to light did I realize the source. I gradually came to realize that here, in America, sticking with family does not have the same moral or ethical imperative that it has in India. And here, divorce is becoming more and more common among Indians. Once people get here, they seem to get mesmerized by this culture. There are vast opportunities and people just start

looking to gratify their desires. There just isn't as much of an ethic to stick to the family and their commitments here as there is in India.

I also realized that he had been covertly planning this divorce, every last detail of it, for some time, so that when he told me that day that he wanted me to sign papers, I had no idea of what the meaning or implications of it were to me. I certainly didn't have the slightest notion that I was about to lose my son. I had no way of knowing my husband would ever want his son to be estranged from his mother. But suddenly I was confronted with the irreversible facts: He had hired an attorney and filed all the papers. He came home and told me, "Tomorrow you will be getting your papers so stay at home."

One thing I'd like to tell other women who are in similar situations is that if you feel your marriage is going sour, you should not hesitate to approach some women's organization immediately. You should not hesitate to call 911 and report any physical violence your husband does to you. Two or three days before he told me I would be getting served the divorce papers he hit me and slapped me. Like many of you, I consider our culture to be different. We do not call 911 when there is a fight; we consider it a family matter. It doesn't matter if he beats us up or threatens us, we don't approach the legal authorities to step in. That's our culture. That's how we are brought up by our parents. It's a mindset. Indian women just don't pick up the phone can call 911. It's different if someone tries to kill you or poison you. But for slapping, twisting your hand, pushing you to wall... We just don't call the police on our husbands. But here, calling 911 can save your life in more ways than just physically. When it comes to immigration status, they will ask, "Do you have a domestic violence case launched? Did you ever go to the police? Did you call 911? If you have, then we can file a new visa for you. Without that, you can not stay in the country."

I realize it was a mistake that I did not call. I never thought that it could have helped me so much with immigration. Also I'd like to tell you when your marriage is going sour, keep your documents in safe place. My husband stole our son's passport.

After he filed, I did everything I could to save my marriage. At that point, I still had not realized how determined he was to do it or that he had meticulously planned the whole thing out. He had planned it so that I would have no legal grounds to stay and fight for the custody of my child. He planned it so that I would lose visitation rights. I tried to appeal to the man who made his vows to me, who I knew had loved me. I said, "You said when you chose me that I was your best friend." He said, "We are two different personalities and cannot stay under one roof anymore." I was not prepared for him to act so coldly towards me. I could not drive, nor could I work. I had no social security number. I had not been educated in this country. I had been educated in India. I was on an H4 visa as a dependant. This meant that I was dependant on him and his status. When he cut me off I was neither eligible to stay or work. You can't work on an H4. And if you don't have a social security number you cannot work anywhere. You can't even get an apartment. All I could do was to fight the divorce, but I didn't have the money to consult lawyers. I did baby sitting to get help from friends. He found out about this and told the court that I was working illegally, doing baby sitting illegally. I couldn't believe that he could be that cruel or that he would want to deprive his son of his mother. But he seemed determined. I had no idea that my world could come crashing down so fast around me. Without a social security number, I could not get a place to stay or a phone connection. If I have to call someone, I have to go to friend's house. If I need to call a women's organization or try to do something about my immigration status, I have to borrow a phone. If I want to call my parents and let them know how I'm doing and what is going on, I have to ask someone for help.

I wrote to the consulate and embassy but I knew that I had little recourse with the laws being the way they are. India and the United States need to figure out a way to bridge the gaps in their contrasting laws. Ideally, I think the Indian government should have some counselor or mediator when a women like me approaches them with this kind of problem. It would be best if some legal entity that had the best interests of the child in mind would approach both parties and talk to them so that

both were able to stay here and take care of the kids. The problem is that the laws even within the US courts are very different: I mean the family court and the immigration laws. The family court laws do not interfere with immigration laws, and men take advantage of this loophole. My husband said to me, "I know the court will not allow you to take our son out of the country, and you are the one who has to leave the country." He knew that because I had no help, could not work, and therefore could not succeed financially. He knew there would come a point where I would simply have to go back to India without my son. That was his whole plan and is still his plan.

Well I ultimately was able to get an attorney by borrowing a lot of money. One of the first suggestions was this, "If you have your son's passport, borrow money, take the first flight to India and try to file a divorce on him in your country. He was born in India. You have family structure. There you can work and hire a lawyer. India's laws will prevail. They will give you your son and give him visitation rights. Once you attend the first hearing here in the US, you cannot leave because you will be disobeying the law. If you go for a first hearing you are bound to fight the whole case. And how can you fight the case? How can you stay here with no immigration status, family support, money, education in this country, and job?" So I went to look for our passports and when I opened my suitcase I found my husband had taken my son's passport.

I went back to the lawyer and asked, "What do I do now?" He advised me to go home and try and talk with my husband. He said, "Say that you want to go back to India with your son and do not have the money to fight a legal case for him here." Tell him, "I don't want anything from you. I just want my son. You can have him every summer. For two months, you can enjoy him, and for the rest of the time he can be with his mother." I tried to talk with him, but all he said was, "I don't want to stay with you. I want my son to stay here. You can fight for custody or leave him with me. I think he'll have better future here." I ended up borrowing a great deal of money from family and friends to fight for my custody rights. During the last four years I've spent \$70,000 and the custody issue is still not resolved.

From the time I learned about the divorce, I began to worry about my immigration status. I knew that once the divorce was finalized I would go out of status; I would no longer have my H4 and I would be forced to leave the country. My attorney proposed that I request that the divorce not be finalized until I got my green card. My husband had actually begun the process of filing for a green card for both me and himself. However, once the divorce was finalized, in September 2008, his immigration attorney withdrew from my case. My husband was not interested in helping me stay so that I could be with my son. She did issue me an employment authorization card, but under the circumstances I knew that I could not be totally dependent on my EA card.

I had to have a back up plan for the day I would go out of status. I trained to get a certificate to teach in a Montessori school. As soon as I got my degree I went around hunting for school. I was looking for someone who could sponsor my H1 visa.

One of the schools I applied to had two Indian ladies running it. I started working on my H1 as a teacher and then later the EA came. However, I lost this job because I had to go to India to sell our property for the divorce settlement.

We had property in India that was in both our names. We entered into a mediation agreement which stipulated that I transfer the property to him and he would pay me half the funds. The judge had asked my husband if he had the money to pay me for half of the property and he said he had taken out a loan and that yes he had it. Upon hearing this, the judge signed the final decree. But when we met at Starbucks to complete the deal, he didn't have the money. I had brought four people with me to that meeting because I did not want to meet with him alone. I brought my employer and her husband's best friends. My ex-husband's best friend acted as a mediator and he and his wife came. I was ready to sign the paper and expected him to pay me but he didn't. I had borrowed so much money by then, thinking I would get that money and be able to pay them back. I had borrowed 75,000 for legal fees. My friends, 80% of them Indian women, had trusted me to pay them back. My father, back in India, had borrowed a huge

amount of money to help me fight this battle. He wanted to help me but had no legal status and could not come over and help me himself. To not have the money to pay all these people back was a devastating discovery for him. The divorce was over and my ex-husband did not pay me the money he promised he would. I was completely broke. I picked up the phone and called my dad to tell him what had happened. I cried, and when I put the phone down, I barely gave a thought to how my dad had taken the news. Only later did I think of how much hardship this had caused him. Everybody had heard what happened to his daughter. My father was on the other side of globe unable to do much more than go deep into debt to help me. He'd asked for help to bring back his daughter and grandson, had told them that she needed money to fight for custody in the courts and for her immigration status. He had even called up several Indian organizations asking for help. He talked to the police and went to a New Delhi women's development project. But with my latest news, he had lost all hope. He had borrowed so much money and he must have thought, "How am I going to repay them?" I don't know what went on. It was midnight in India when we spoke. There is a 12-13 hour-time difference between our countries. I know he discussed the situation a little bit with my brothers and that everyone went back to bed. In the morning, they went into his room, and found that he had hanged himself.

It was a turning point in my life. I had been fighting and struggling here with the support of family and friends, and now I felt responsible for all the heartache I had caused them. I had lost my father in this battle and it increased my determination to go on fighting. I got back my son's passport so I could take him to my dad's funeral in India. I did not tell my ex-husband that my dad had committed suicide; I told him only that he died. I felt it would fall on deaf ears. He resisted but eventually allowed my son to come with me, knowing how important it would have been to my father. After 18 days in India, I came back and he filed another suit declaring that I had not signed over the house papers. This money I was going to get was for two houses that we had bought in the course of our marriage.

When I came back he said he didn't have all the money but if I would transfer over one property he would give me half the money for it. So I did that. When I came back from my father's funeral, he paid me. I thought, *if only he could have paid that sooner—a life could have been saved*. When he was holding onto that check I cried and thought, what's the point of getting this check now? He's telling the court again, "I have paid her half the money" and my question is, can I get back my daddy with half the money? I have not recovered yet from my daddy's death.

I started representing my case by myself with whatever law knowledge I had. I had finished my masters in India when I got married. I had had my son within the first year of our marriage and never practiced. I filed my own motions and argued in front of the judge. My husband on the other hand had hired the best American lawyer he could find. He's married to a rich women who had been working in this country for 20 years. On the legal front, I could not match him. He had no bank balance. He showed them that he had no money at time that he filed for divorce.

The family court doesn't recognize immigration problems. I think that's the main crux that needs to be fixed. There should be a law passed that stipulates that the judge does not finalize the decree until the woman gets her green card through the husband. Otherwise he should allow his wife and son to go back to India. The woman is not asking for money or a job, nothing but to solve her immigration problem. Women are very strong. I think sometimes that men are the weaker sex. A woman like myself needs just this one thing to be fixed and then she can take care of herself. Even if she is beaten up on many levels she can survive if she can stay in this country to fight another day. I do not have the choice to leave. I have to stay to alive for my son to come back to me. I see no reason why I must be separated from my son.

Six months ago we were asked to appear in court. That judge gave him the benefit of doubt. He had said I was refusing to transfer the property. I showed her all the e-mails I sent to him asking for him to fulfill his part of the bargain by giving me the money he owed me for them. He wanted me to transfer

over the other property so he could sell it and pay me for it at future date. But with all that had transpired, I knew that I could not trust him to do that. He told me that he had buyers in India and could sell the property. The only recourse I had to get the rest of my money was to go back to India to sell it. It is very difficult to sell property from here. One has to give over the power to do escrow but he wasn't ready to do that.

My ex-husband also decided to marry his new wife in India. She, who had been my friend, now feared that since I was his first wife, and we were married in India and my son was born in India, that I could fight for custody of my son in India. She did not want that legal battle, so she decided to marry him again in an Indian court.

He wrote an e-mail that he intended to get married and sell the property in India. He said he had a lot of buyers. He said that we would meet at the registrar's office and we would sign over the property to the buyer. So I agreed to this in front of the American judge.

At this point, 2009, we had 50-50 custody. In the American courts, the court tries to find out who is the better parent before deciding custody. They conduct a social study, and they did that in our case also. That went on for 18 months. They produced a report that was 136 pages long. The court found that I was a better parent and decided that he should get visitation rights. However, I had an Indian attorney and my husband was able to bribe him. I was very firm that I wanted primary custody but my ex wanted to get back 50% custody. It looked like we were headed for a jury trial to resolve it, but I was not ready to do that, I simply did not have the funds. And because of the report, I believed that nothing could stop me. But at that point, before the jury trial, we were sent to mediation. Mediation is a step that parties often take to keep the matter from going to a jury trial. The mediation went on for 12 hours. I was shocked to see the response from my own lawyer. My lawyer tried to convince me that I should settle for the 50-50 custody arrangement and promised that in return he would convince my husband to help me get a green card. It was a mutual understanding, he told me. He told me, "I will get you child support- and half the money owed you on your

property. But for this, you must agree that you will not go to a jury trial and that custody will be 50-50." The truth is I was broke and going to jury would cost a lot of money, \$8-10,000. By this time I had already spent \$40,000 and I figured that this way I would cut my losses and get my immigration status through ex. My lawyer said he'd ask to put the divorce on hold. Our mediation agreement was June 2008. The divorce was finalized Sept. 29, 2008 and I was still hoping to get a green card at that point. I fought one year for the division of the property, which was finally resolved in June 2009. But while I was working on selling the property to get the money to pay back the court costs, my son was kidnapped by my ex-husband.

I went to India in on the 4th of June, 2009, to sell the property. He went on the 7th of June to get remarried to his new wife in India. He had behaved as though he was ready to sell the building and split the proceeds with me.

But when I went to look to see if the house was ready for sale I saw that he had rented it out to students and that it was a mess. He had told me that he had whitewashed it and put an ad in the paper. But I saw that he kept six tenants in that one house. He had rented it without my permission and was collecting rent without giving me any of it. I had to get the help of police to get the house vacated.

Although I was supposed to come back to the US by August 3rd, I felt that I needed to sell the property or I would never get the proceeds from it. I sent a letter to the court letting it know why I could not come back on August 3rd.

My ex-husband had given the court the idea I was not cooperating, not signing the papers over to him, when the truth was he never had any intention of selling it. He just did not want to pay me money he owed me. He intended to cheat me on the property. I knew that if it were to be sold, I had to stay and see that it was done.

I needed to see that it got repaired and that it was in salable condition. Then I had to see that it was sold. I was also aware that the judge always gave him the benefit of the doubt. The judge had given very clear orders and I was afraid that if he

could somehow show that I was not ready to sign over the property that the court would put me in jail for contempt of court.

Knowing that I was supposed to come back to the US by the 3rd of August, my ex launched a complaint about me to the police. He did this on the 7th of July, even though he knew I wasn't due back until the 3rd. He did not show the police the court papers; he simply said he did not know my whereabouts. They did not check my return date nor the court papers. He gave the Texas police my e-mail and the police wrote an e-mail to me in India.

They explained that my ex had filed a report and was worried about my safety. They said, "We want to know where you are." I replied to them that I came to India and that my ex-husband knew where I was. I told them I was at my parents' house and that I was fine.

He went back to court—on the same day I had responded to the police, the 9th of July, and filed a motion for modification of the parent-child relationship. When I returned and got the papers, I saw that he had returned from India on the 4th of July, went to court to file a child-parent modification, took a temporary order from the court on 17th of August claiming sole custody of our son. He showed that I had not come back to the US by August 3rd as I was supposed to do. The court proceeded to hear his case without investigating what had happened.

I was not given any notification, although the court did appoint someone to represent me, an Amicus attorney. Amicus attorneys are appointed to assist the court in protecting the best interests of the child. My ex and his lawyer gave this attorney the wrong e-mail address and so he was never able to reach me. The court gave my ex sole custody, which he continues to have.

But he also knew it was another matter to have India honor this order. He knew that if he came with the order of the court claiming full custody of Michael, I wouldn't comply and neither would the Indian courts.

He had done that in my absence and I was going to

challenge that order. As far as I was concerned, I legitimately had Michael for the summer. For him to legitimately take Michael, he would have to go through the Indian courts or the police.

On Aug 17th the American courts gave him sole conservativeness of Michael. He came back to India with that order in Sept. I was not notified by the court that he was given it. He went to the passport authorities, knowing that our son and passport were with me. He didn't want to approach me. He didn't say, "I want to take him back." He was afraid that I would say, "Show me the order. Let us try to implement it in a proper way." He knew he had gotten the order by twisting the truth about me and that I would challenge the order. He launched a false complaint and affidavit. He said that he had lost his son's passport and wanted to get a duplicate. In India, both the mother and father need to sign the form. He forged both mine and Michael's signatures. He chose this method because he knew that it would be difficult in India to implement any US child custody order.

On September 15, 2009, my ex kidnapped our son. In August, I had enrolled him in school. I knew that as long as I had my son my life was safe. I believed that I could not go back to the US until the property was sold, and I could not send my son back without me because having my son was my protection from my husband while in India. I put him in international school so his education would be the same and he could return to an American school without being too far behind. My ex sent people to kidnap him. They stopped the school bus that my son was on, beat up driver, and took him. The school would not have given him Michael unless he had shown them an identity card, which he didn't have.

The school filed a report and the police arrested my ex's sister, who was involved in the kidnapping. She is on bail now. I think he began to realize—either he had to get me back to the US or kill me—or I would just keep fighting in the courts of India these matters that had implicated his family, including his brother and sister. He was now having to defend himself and his relatives of kidnapping and forgery. In addition, after four years of battle, he was exhausted and out of money. He

had figured that when he filed for divorce I'd just give up and go back to India. He was not ready for such a long drawn-out fight and I think he just wanted it over. Out of desperation, he sent someone after me.

He had figured that I would not be able to sell the house without his help. But when he saw that I was serious, that I had evacuated the tenants, he sent his brother-in-law to the house to forcibly evacuate me from it. He did not want me to sell the property. He hired men to follow me and throw me out. One afternoon while I was looking after the repairs of the house a person knocked on the door. I opened a small window and the person told me, "I am an agent of your ex-husband's brother. I am the same agent that put the tenants in the house. I need to pick up some boxes of books that the students left on the patio." I was concerned to let in anyone who came on behalf of my ex. I told him that I didn't know or recognize him and that I would hand over the stuff in the presence of the police. I was worried about my physical safety at this point. That person told me that the students were to have their exams and needed to prepare. The box contained their study materials. He let me see the three students that I had asked to leave. They came forward and said, "Ma'm, please open the door. We cannot come tomorrow. Our tests are tomorrow." I told them that I would get the box and give it to them. I went to the patio, picked up the three boxes, and began to open the door to push the boxes out. But the minute I opened the door, the agent, or who I believed was an agent, three men, three students, and my ex-brother-in-law forced me back and rushed into the house. They dispersed and appeared to be looking for something. They spread across the four corners of the house. My brother-in-law found the house keys and put them in his pocket. When I said, "give me my keys back" he threw the keys to the next person and they kept tossing them one to another until the last person took them and went away. At that point my brother-in-law took out a retractable knife with a razor-type blade that is used to open envelopes. He exposed the blade and cut two stripes on my neck saying, "Don't you ever come back to this house again."

While all this was going on my servant unobtrusively locked

himself in one of the rooms and called the police. They came in three minutes, which hardly ever happens. At the time of Michael's kidnapping, I had made out a report. I was warned never to go anywhere by myself and to use public transportation. I knew I was in danger. Everywhere I went in India I saw my ex-brother-in-law and these men following me, even before Michael was kidnapped. The police had answered my call so quickly because they were giving me extra protection. Every night two police officers would come to my apartment complex and inquire whether anything had happened. I have a strong case against my brother-in-law. Charges were filed, the police took pictures, they identified the weapon, and recorded the time of the incident. He was arrested. I think my ex was moved to make a gesture towards coming to some agreement with me because he figured if I stayed in India I would be a continual threat to his family. So he got me back with the promise of a green card.

In spite of the trauma this and my son's kidnapping had caused me, I believed it was in my son's best interest that my ex and I try to resolve our differences. In an attempt to mediate our issues over custody of Michael, one of my friends in the US spoke with him. He proposed that if I took back the forgery, kidnapping, and assault charges against his relatives, he would help me get a green card and I would get back 50-50 custody of our son.

He sent me the green card interview papers and I was set up for a Dec 7th interview. I arrived in the US on Nov 30th for this interview. I didn't realize that on Dec 1st there was a hearing to make the sole conservatorship order, which had been a temporary order, permanent. No one had notified me about this hearing.

I was scheduled for the interview to get my green card at 7 a.m., and on the morning of the 7th at 6:45 a.m., I arrived only to find that my ex or his lawyer had called the police to arrest me for charges.

The charges included interfering with a U.S. child custody order and keeping our son in India too long. They claimed I had left country without his knowledge and that I did not hand the child to him in India. The court was aware that I

had not taken Michael there illegally but the police were not. I had my immigration attorney with me. She pleaded with the police saying, "She needs this interview. Can you please wait for her to have it before you take her away? You can wait the whole time at the window and she will be in plain sight." But they did not agree. The interview would not have taken long not much longer than 15 to 20 minutes. They would not give me another interview.

Even though I was able to prove my innocence, I lost my interview. The police were not going to reissue it.

It was 7-7:13 a.m. by the time we reached the jail. I gave my attorney the number of a friend. They were asking \$5,000 dollars bail. I had to appear in court to prove my innocence. I then had to borrow more money to try and regain custody of Michael.

I searched for a lawyer I could afford. The lawyer I wanted had a retainer fee of \$25,000. The less expensive lawyers ranged from \$10-15,000. I hired the most reasonable lawyer I could find who was asking \$7,500. She was an ex-judge. She went back to court and reopened the case.

My lawyer proved I was not notified about the December 1st hearing. And the judge granted me permission to reopen the case.

Now we are requesting that the judge set aside the Aug 17th case. This means a possibility of reversing the ruling since I was not notified of the hearing. The problem is that she almost spent \$6,300 and she wants me to give her more money to move forward on the case. I don't have the money, am not working, and I'm trying desperately to get back my immigration status.

That is my biggest hurdle at this point. I'm on an EA authorization and my status is due to expire November 30th. So that is what I'm working on.

I approached a battered women's organization to see if I could file a U visa. They suggested that I file for a visa under the Human Rights Initiative (HRI). This has to do with filing for a U visa or a VAWA visa-which has to do with the violence against women act.

I found out that I did not qualify for a U visa, but when I went to the Baptist immigration center, I found that I could get a VAWA visa if my ex-husband has his green card. Women whose spouses have brought them into country and then divorce them qualify if the spouse is a citizen or has a green card.

But when I called my ex-husband's immigration attorney he said that information was confidential and he refused to talk with me. My lawyer wants his alien number because that information will let her know. Otherwise, in order to get a VAWA visa, a domestic violence case had to be registered by the police. However, I never did call the police about his pushing me and slapping me around in the US and after four years it is too late to file one.

In addition, the kidnapping and assault happened in India. Those records cannot be used as evidence here. It is an open kidnapping case and there is proof that the passport was forged by him. But India is not signatory to the Hague convention and that's why nothing he did in India matters in the US. However, if a kidnapping takes place within a country that is signatory, then there is an extradition treaty of 1997, and it would fall under that.

There is still the possibility of taking the kidnapping case through the Indian courts. The Indian government issues a Red notice, and it is considered a red alert at international airports and seaports. My ex would be arrested upon trying to enter or leave India. If they succeed in getting a Yellow notice, they can get my husband and son back to India. That's what my lawyer says. But it will take a lot of money and time for the case to go through the Indian courts that far. The Indian courts are slow. To get something at the ministry level through the Supreme Court would take at least eight years. My son is already ten. By then he'd be eighteen.

But if I go back to do that, I can't come back. I thought I would first work on my immigration status, get a job, save enough money to go back to court to prove that my Ex got custody of my son in my absence, without my knowing about the hearing. Another thing that happened is that before filing for the divorce, he put all the money he had in India and to his

girlfriend so that after the divorce he could put it back in his account. That way he did not have to pay any alimony.

If I reopen the case, I know that the battle I will be fighting will no longer be for Michael alone.

These legal battles are only for rich people. Women on H4 visas are at the mercy of husbands who-by virtue of their schemes-force their wives to pay all the legal fees so that they will give up and leave the country in defeat. But, just because we don't have money does that mean we can give up on our kids?

After losing my dad, my money, my status, and getting assaulted, I refuse to give up.

I still cannot believe that my husband had me arrested. I cannot believe a person I loved would ever do that. When I married him I put all of my trust into him. When I came here to be with him, I left everything behind. It's something about love, trust, morals, or ethics; I just can't believe he did that.

And my family members are so mad at me. They can't understand why I trusted him enough to go back for an immigration interview.

I came back to America only to get arrested. They urge me to fight this fight from India, but I know I need to be here to do it. If I've learned anything, it is that I have to know what he's doing in regards to the court and fight for my side. I feel I have to fight from both countries.

I continue this fight for women like me who are fighting for our children under threat of deportation. If my efforts can help to solve one immigration problem for women then all of it will be worth it. My dad will not have died in vain.

I believe my son will know the truth about why I can't be with him right now. When he grows up, he will come to know the whole truth. He's so extraordinary. He understands so much. He did lose a lot of weight. He was so traumatized from the kidnapping.

I used to take him to play therapy to help him cope with the divorce. After the kidnapping, I begged my ex-husband to take him to play therapy. I think he was worried that if he

took him to the same play therapist she would find out what happened and so he's taking him to another play therapist but only once a month.

I told him how much he used to look forward to seeing the play therapist he has grown to know. I was confident that she would tell us how to help him out. But now he's lost that too and I need to reach him.

My resources are low, I have to get a job, I have to resolve my immigration problem so I can keep fighting for him. If they would just give me another interview, or if I could get a VAWA, oh God that would solve so much of my problem. God is GREAT. I keep praying.

There is power and strength in prayer. I will continue to go around searching for jobs, baby-sitting jobs. I cannot get a work visa at this point because if I start working full time I will not be able to fight my court case.

Courts and all are only open from 8-5 on weekdays. I cannot afford to lose my focus. Once I figure out how I can stay past November, I can reopen the case.

What Ratna told me at the end can serve to bring strength to everyone in a similar situation:

"I'm a great believer in destiny

Keep working.

There is light at the end of the tunnel.

You have to help your own self out.

One day the results will come.

One truth can never change:

He's my son

I am his mother

What the police think

What people think

Are Nothing Next to What I Know

He's my son; I'm his mother

That is enough for me

I know my son

*I have to have belief and trust in that bond
I might be fighting for the next eight years
And he will come back to me
I can go back
Or stay
But I have to hold on
People with death sentences go on day by day
But if my fight can serve as an example
If I can let people know what wrong moves
I have made
And I can give that to other women- Then I have done
something
I have to reach out to women about
How to survive in this country
And fight for custody
And meet the requirements
I have proved I'm the best mom- best parent
I'll get my H1 status
Day and night I'll do cleaning jobs
Cook Indian food - earn money for cooking
This country is full of opportunities
It's not that easy to get jobs in India like here
This land is full of opportunity-It's how I pay for my
lawyers
You have to know how to grab it
Someday I hope to open an office in my own house
But we have to get the immigration laws and family laws
to work together
and India and the US to work together
You, Anu, and many like me, will continue to work hard
until it happens"*

Lessons from Ratna

Domestic violence has been well-documented in the United States and much of Ratna's story has earmarks of an abusive relationship.

Ratna's husband's behavior was typical of a battering husband both before and after he served her the divorce papers. It is clear that he did not stop treating her badly even when she wanted to work things out with him for the sake of their son.

Before her husband served divorce papers on her, the couple would get in fights where he would slap her and push her against the wall. This is clearly an example of domestic violence of the physical variety.

Having her followed in India and threatening her life, is also physical violence. However, much of what Ratna's husband engaged in falls under the category of mental cruelty. Other terms for this kind of abuse are emotional or psychological abuse.

The way he carried on an extramarital affair can be considered abusive. Men who carry on extramarital affairs often do so as an indication of their power and control over their wives.

Once the woman finds out, she feels powerless and helpless to do anything about it. In her book, *Speaking the Unspeakable: Marital Violence Among South Asian Immigrants in the United States*, Margaret Abraham talks about this form of abuse. She calls it "flaunting the sexual other."

I have seen too many cases of this kind of abuse. Men carry on affairs in front of their wives. They flaunt them openly and expect their wives to simply put up with it. It is very common that women unite with their husbands in the US only to find them refusing to give up their girlfriend.

I know one woman, Mira, who is still married to a man who is practicing open adultery. Using other women to make their wives feel rejected and inferior are acknowledged forms of abuse and must be treated as such by the women.

Another earmark of abuse is how he left her without means

to support herself so she could fight for the right to see her child.

Ratna's husband never gave her any indication he was unhappy with their marriage. He coldly planned their divorce and made sure all his income was not in his name so she would not get any of their shared communal property. Another abusive act her husband committed was refusing to sell the property in India and give her the money. Ratna experienced extreme hardship in being without the necessary funds to fight for her marriage and for custody of his son.

In addition, when Ratna tried to earn some money under the table, her husband reported her to the authorities. This is a form of economic abuse.

Threatening to report or reporting baby-sitting jobs is a form of abuse because the Ratna had no means to support herself and fight for custody of her child. He was using whatever means of power that were at his disposal. Unfortunately, her husband had all the power in that he had the means of livelihood, the immigration status, and money for lawyers. However as Ratna fought back, his tactics to intimidate her escalated.

The threat of a spouse kidnapping a son is also something Indian women typically face. An unpublished report compiled for the U.S. Justice Department in 2003 by Edna Erez and Nawal Ammar noted, "Battered immigrants who contemplate leaving the United States . . . have been concerned that if they leave their children in the U.S. with a trusted relative, their abusers will either petition the courts for custody of the children or attempt to kidnap the children." Ratna's husband did both and got away with it.

Ratna's case reveals that although the immigration laws have been revised to protect immigrant women who are threatened with domestic violence, these laws need to go much further to help women like Ratna.

Ratna's ex-husband's abusive behavior continued when he offered her a chance to obtain her green card and instead had the police arrest her. Then, he continued to try to control her ability to stay in this country by not revealing his immigration

status. It was important to Ratna whether her ex had a green card because she may have been eligible to self-petition for a VAWA visa.

She would qualify if her husband had obtained a green card, even though she did not petition while they were still married. Under VAWA, you qualify if “your marriage to your abusive spouse was terminated within the 2 years prior to filing of the petition, and there is a connection between the termination of the marriage and the battery or extreme cruelty.” [3]

In addition, “The actual grounds for the termination of the marriage do not need to explicitly cite battery or extreme cruelty.”

Ratna’s story shows how agonizing it can be to find the means to stay in the country to fight for custody rights of one’s child. She became mired in debt through the divorce, was attacked in India, and struggles to obtain a visa that will allow her to regain the custody she has lost. It is an uphill battle and makes a strong case for the need for these two countries to get together to stop such abuses.



PART TWO
Solutions

I Recognize the Signs, Now What Do I Do?

If you are an Indian women who has married an NRI and feel isolated and alone, be aware of the signs of a potentially abusive marriage. Once you recognize that you are in an abusive situation it is imperative that you get help immediately. Get out of the situation at the very first sign.

Call for Help

You can take the following steps:

(A) **The Indian embassy:** If your husband does not meet you at the airport, inform the Indian embassy right away. Get the address and phone number of the Indian embassy in your state. This is such a huge warning sign that you need to find safety right away. Do the smart thing and find a place to stay until you investigate further the situation you are getting into. The embassy can guide you to reach that place. If you find out he's having an affair or living with someone else, report it to the police. This is abusive and no woman should tolerate such a situation. If you recognize any of the warning signs that were addressed in the previous chapters and you have nowhere to go, the Indian government will find you a place to stay so you're secure for a few days. At the very least, the embassy will put you on a plane back home. In this way, you will be safe and not stranded somewhere or in a situation that will only get worse. If you need help with immigration they will put you into contact with me as long as I am Legal Advisor.

(B) **The Police:** It is not part of our culture to call 911 and many Indian women are hesitant to do so. Even when a man gets violent, women are reluctant to call for help. I will suggest other types of resources that should be instituted that Indian women will be more comfortable accessing, but until they are

more widespread, the police can at least provide a woman with some immediate relief. Both Ratna and Neela realized they should have called the police. Ratna realized that had she called the police there would have been documentation of domestic violence, which would have helped her obtain a visa under VAWA. Neela realized she could have gotten relief a lot sooner than she did for her situation. Neela needed a place to stay and the police were able to provide her with that.

Along with contacting the embassy or the police at the first sign that something is wrong with your marriage or living situation, you may want to contact other organizations that are designed to assist Indian women whether they are newly arrived or have been in the US for some time. Besides SevA, the organization I founded to assist women with legal matters and which I will describe in the next chapter, there are South Asian Women's Organizations (SAWO) in many areas of the country. If you find there are none around you, there are often help lines and battered women's shelters for women who find themselves domestic violent situations. You find these organizations by using the Internet. Use a search engine such as Google and type in "SevA Legal Aid, Fremont, Ca." or "South Asian Women's Organizations" and your city and you will find where you need to go for help. If you cannot find these in your area, look under "help for abused women" and your state or nearest city and you will find there are battered women's shelters that will house you and help you. Neela said she finally began to regain a sense of herself and learned a lot about domestic violence and the kinds of services and support available to her while in a shelter. There are also support groups for abused women and knowing you are not alone in your situation can be a great relief.

(C) **South Asian Woman's Organizations:** To those who live close enough to them, these organizations can be of great help. In her book *Speaking the Unspeakable: Marital Violence Among South Asian Immigrants in the United States*, Margaret Abraham documents the results of her interviews with 25 South Asian women who were in situations of domestic violence in the US. She also documents the emergence of South Asian Women's Organizations in the US and their contribution

to changing immigration law as well as supporting women physically, emotionally, and legally in getting out of abusive situations and moving on in their lives. These organizations began to sprout up around the US in the 1980s.

In spite of low funding they are staffed by passionate volunteers and offer whatever they can in the way of assistance: They offer financial assistance so that women can buy food and clothing and also at times to help with legal affairs. They often refer women to lawyers and help them find lawyers who will work for free if the woman does not have the funding to hire one herself. They help women fill out the paper work to get a restraining order on their husbands. Volunteers will often go to court with you and find female South Asian interpreters if needed. This has been one issue these organizations have fought to change, ensuring that the court interpreters are not biased against women. Many male interpreters have distorted what the judge was telling a woman and these organizations raised many objections, ensuring that women in abusive situations get a fair hearing before the court. They are also able to assist in applying for green cards and with child custody cases.

Once a woman on an H4 permit, for example, has found a way to establish an immigration status that allows her to stay in the US, she is ready to find gainful employment. Besides legal assistance, many of these organizations can connect women to job training programs, English language classes, workshops in writing resumes, and helps them with job searches.

South Asian Women's Organizations also provide counseling services from professionally trained counselors to volunteers. There is also group support in these organizations. Some organizations even have multilingual help lines available. For a list of these organizations, see Chapter 15.

Finding Shelter

There are many battered woman's shelters all over the US. These shelters can be accessed by either contacting a South Asian Women's Organization, SevA Legal Aid, asking the police, or your local government office. The easiest way to

currently contact these organizations is by conducting a search on the Internet. Use Google or another search engine and type in the words “battered women’s shelter” and your city and state. Help is just a few clicks away. See **References** for useful websites and **Chapter 15** for organizations to contact.

Taking Legal Action

It may be necessary to file a restraining order as Neela did. This is often the first step a woman takes after separating herself from an abusive situation. The important thing is that you be in a safe situation. Getting a restraining order accomplishes this by ensuring that your husband keep his distance from you. Restraining orders are temporary and need to be followed by a hearing so that the woman continues to be protected.

Getting Financial Assistance

The following options may be available for financial assistance:

(A) **The Ministry of Overseas Indian Affairs’ Scheme:** The Indian government, under the auspices of the Ministry of Overseas Indian Affairs, has a scheme for giving legal and financial assistance to Indian women deserted by their overseas Indian spouses. Women who qualify will receive 1500 U.S. Dollars “to assist deserted Indian women in documentation and preparatory work for filing their cases abroad.”

The term “overseas Indian” includes NRIs and foreign citizens who are of Indian origin. Counseling and legal services would be provided by “credible Indian Women’s Organizations and Indian Community Associations and NGOs identified for providing such services and empaneled with the Indian Mission in the USA, the UK, Canada, Australia, New Zealand and the Gulf.” The South Asian Women’s Organizations listed in Chapter 15 of this book would qualify.

The scheme is available to women “who have been deserted by their overseas Indian spouses or are facing divorce proceedings in a foreign country subject to the following conditions:

1. The women is an Indian passport holder..

2. The marriage of the woman has been solemnized in India.
3. The woman is deserted in India or after reaching abroad within five years of the marriage.
4. Divorce proceedings are initiated within five years of the marriage by her overseas Indian spouse.
5. An ex-parte divorce has been obtained by the overseas Indian spouse within 10 years of marriage and a case for maintenance and alimony is to be filed.
6. The scheme would not be available to a woman facing criminal charges or having a criminal case decided against her.
7. The domicile of the woman seeking relief under the scheme is not relevant for allowing the benefit. The woman may be domiciled in the country of her overseas Indian spouse or in India at the time of making the application.
8. Preference may be given to applicants on the basis of financial need.
9. Assistance will be limited to meeting the initial cause and incidental charges for documentation and filing of the case by the Indian women's organization/NGO on the women's behalf.
10. The assistance will be limited to US \$1500 per case and will be released to the Indian community organizations/NGO concerned to enable it to take steps to assist the woman in documentation and preparatory work for filing the case.
11. The women's organization/NGO will make efforts to enlist the community advocates, preferably women advocates, to extend further legal assistance/appearance in court on a pro-bono basis.

(B) **VAWA:** In some circumstances you may qualify for financial assistance to fight your legal case through provisions in Violence Against Women Act (VAWA) [4]. If you are in an abusive situation and your spouse is a citizen or has a green card and you qualify for VAWA, which is outlined below, you

may qualify for financial assistance as well according to the latest 2005 revisions in the act.

Finding A Way To Stay In The US

As Ratna's story exemplifies, finding a way to stay in the US can make a painful situation all the more painful. Ratna's number one priority had to be her immigration status because she needed to be in the US to fight for the right to care for her child. Supervised visits were costing her more than she could afford, and lawyers' fees are expensive, so fighting for the right to not be separated from one's child continues to be an uphill struggle for many women who find themselves in an abusive situation. Here are some broad guidelines for women who need to find a way to stay in the US. The following options are worth considering:

(A) **If You Are on an H4:** If you are on an H4 and find yourself in an abusive situation, get out of the situation as soon as possible. Being on an H4 does put you in a difficult situation in terms of getting work, even securing a place to live, but you can get the help you need to put you in a safe place. Call the Indian Embassy, call SevA, a nearby SAWO, or a nearby shelter. If you have a child, you can apply for temporary visa based on the need to visit your child.

(B) **If Your Spouse Has a Green Card or Is a U.S. Citizen:** If you are in an abusive situation and your spouse has a green card or is a U.S. citizen, then VAWA may be able to offer assistance with immigration status and even financial help to fight your legal case depending on your circumstances (see above section).

VAWA offers immigrant women in abusive situations many protections that she did not have before the law. [5] Since the protections offered to immigrant women went into law in 1994, a woman can "self-petition" for her status rather than be at the mercy of her spouse. Previously, only a spouse could file for her or her children. In order to self-petition, a women needs to show that she has been subjected to "extreme cruelty" by the spouse during a legitimate marriage. In addition, she needs to be married to a spouse who is a citizen or holds a green

card for three years and he did not file a petition for her. There are other qualifications that it is important to know about:

1. She must be a person of “good moral character.”
2. She has lived in the US with her spouse (who is either a citizen or holds a green card)
3. She is currently living in the US
4. She married in good faith
5. She or her child was battered or subjected to “extreme cruelty” by her husband during the marriage
6. She or her child would face “extreme hardship” if deported.

Note that extreme hardship includes the stigma that an Indian woman faces for being divorced. There was another important provision in this law. It protects an abused woman from the circumstances of her husband trying to sabotage her chances of staying in the country by terminating the marriage. In addition, if she is in the process of being deported, her deportation can be suspended if she has been in the US for three years and she is being deported because her husband failed to file the initial petition for her to stay or if he refuses to cooperate in her meeting the requirements of the joint petition to move her from conditional status to green card. To be eligible for this suspension of deportation an abused women must meet the following requirements:

1. She must have been in the US for at least three years prior to the application.
2. She must have been battered or her spouse inflicted extreme cruelty upon her.
3. Her spouse must be a green card holder or U.S. citizen.
4. She must be of “good moral character.”
5. Deportation would cause “extreme hardship” for either she or her child.

As of 2000, battered immigrants were able to reopen their closed deportation cases up to one year after the final judgment of their deportation case. However if the woman is able to show “extraordinary circumstances or “extreme hardship” to the children, then this one year limitation can be waived.

Also as of 2000, women may self-petition for a VAWA visa if their marriage ended two years before filing, provided they can “demonstrate a connection between the termination of the marriage and the battery or extreme cruelty.” However, even if they cannot demonstrate such a connection, USCIS states:

“A battered spouse may be eligible for battered spouse cancellation of removal. To qualify for battered spouse cancellation of removal, you must meet the other requirements that would be necessary for approval of a self-petition. In addition, you must have been physically present in the United States for 3 years immediately preceding the filing of the application for cancellation of removal, and you must demonstrate that your removal from the United States would result in extreme hardship to you or your child.” [6]

Cancellation of removal means that proceedings can be canceled in situations where the spouse is married to a bigamist (Raj & Silverman, 2002). Raj and Silverman note, “Once awarded cancellation, the spouse and/or her eligible children can be granted parole to protect them while family-based visa petition is pending” (p. 389).

In addition, as of 2000, women can file for a VAWA even if they do not reside in the US, as long as their spouse is a US citizen or holds a green card.

(C) **U Visas:** As mentioned earlier, the U visa is issued to victims of crimes, among which is domestic violence. This visa regulation was issued by the U.S. Citizenship and Immigration Services (USCIS) on September 2007 and has been in effect since October 2007. The following criteria must be met. The visa is granted to noncitizens who have been victims of a crime and who:

1. Have suffered substantial physical or mental abuse from criminal activity (includes domestic violence)
2. Have information about such criminal activity
3. Are able to assist officials of the government in investigating and prosecuting such activity
4. The criminal activity must have violated U.S. law and occurred in the US.

The abuser does not need to be a U.S. citizen or legal permanent resident, nor does the visa petitioner need to have been married to the abuser to be eligible.

The petitioner also does not have to physically be in the US to qualify for the visa. She can apply from abroad as long as the above criteria of the criminal activity violating U.S. law and occurring in the US has been met. Only 10,000 U visas can be granted annually.

Once you have been issued a U visa you can stay in the US up to four years. You may apply for an extension and these are granted under specific circumstances. You may also file for lawful permanent status after three years. In addition, with a U visa you are eligible to work in the US. The link to the necessary forms is in **References** (under **Other Pertinent Websites: USCIS**).

Getting a Divorce

If your husband is abusing you in one of the ways I have mentioned in this book, then leave him and divorce him. Women who grow up in India do everything they can to make a bad marriage work. They are brought up to believe that they have failed if they get a divorce and feel they must kill themselves to make it work. Ironically they are killing themselves by staying in a bad marriage. Culturally, it is a big slur to be a divorced woman in India, but in America it is not. Right now there is no life after divorce in India, whereas in America, there are many avenues to building a life here if a woman wishes. I have seen many cases in America where the Indian woman is educated. She may not have an education in America, but often she has an Indian education and has earned a livelihood in India before she came. In Margaret Abraham's 2000 study, of the 25 immigrant Indian women she interviewed who had stories of marital abuse, 17 were employed in professions. Perhaps because these women had a means of making a living they had the courage to get a divorce. Seventeen got a divorce, and 5 were separated. Only 2 continued to stay married. Most of these women got help from a South Asian Women's organization, of which I will go into in detail in this chapter.

Emotionally Moving On

It is not easy to move on emotionally once you find yourself in an abusive situation. No woman deserves to be treated in ways that leave her feeling less capable, desirable, intelligent, or lovable than she is. All the ways that men use to keep women under their control are designed to break her down until she feels incapable of independence, of looking after herself and her child if children are involved.

Women in these situations often want to know why their husbands act the way they do. Even after their husband leaves them they are still wondering what happened and why. Because their husband's behavior is so incomprehensible, the woman invariably blames herself. She thinks she must be inadequate in some way to make a man take such action against her. Often it is not constructive to think too much about why these men do what they do. A woman needs to start looking after her own self interest and detach herself emotionally from the man. His behavior indicates he is sick and needs help. Although there is little you can do for him now, there is much you can do to bring the joy back into your own life that you so richly deserve.

Having survived situations that made you feel powerless, it is time to find a way back to your own life. But a woman needs support to make such a transition. This chapter will list organizations that can provide help to Indian women who find themselves in some of the situations described in this book.

Talking About It

Anyone who survives a traumatic situation needs to find a way to live with the aftermath of the trauma. That is part of the healing process. Women who survive abusive situations need to talk about what happened to them and to find some way to understand their experience and eventually to accept it and to know they are not to blame for any of it.

It has been pointed out that by putting language to experience and defining it for themselves, women take back their much needed power. It has been noted that language for experience is often defined by those in power. Even the term

“battered women” has not been coined by women who experience it. As Catherine Kirkwood noted in *Leaving Abusive Partners*:

“The definition of ‘battered women’ as women who are physically attacked or injured without recognition of the deep destructive nature of emotional abuse. . .reflects the presence of male language in the popular definitions of women’s experiences. When women can name their abuse, they not only further their opportunity for healing, but they also reclaim the power that has been used by others in creating false images or concepts about the nature of abuse. They reclaim the power to define and speak their reality.” (p. 131)

Counseling Services

Women who attend individual counseling begin to understand that they are not the ones to blame for their husband’s treatment of them. This may sound obvious to some people, but women who readily understand this intellectually often have a hard time understanding it emotionally. In Margaret Abrahams (2000) book, a woman named Ratna wrote about her experience with counseling:

“Finally I came one day here [to the SAWO]. First for group counseling, then I had some individual counseling. The first meeting I had with everybody here made me think of how much I needed this support. How much I needed to talk about it. And all the time I had been so ashamed, thinking it was my fault all the time. But then I realized that it was not I. It was him that was sick and needed help. It wasn’t me that wasn’t attractive enough for him. I was not the one whose cooking wasn’t good for him. I was not the one who wasn’t cleaning. It was he. His mental sickness that made him abuse me.” (p. 167)

There is another story that is heart wrenching but which also offers hope to women who find themselves in intolerably abusive situations. This is a case that has been documented in *Emerging Voices* by Sangeeta Gupta. *Emerging Voices* is a compilation of stories submitted by South Asian women living in the US. Pooja’s story is a little bit different from the stories

already told in this book, but much of what she went through is similar. Pooja grew up in the US and her parents convinced her she should marry an Indian. Her parents did not believe that a marriage in America would be stable and so they arranged her marriage to a “nice Indian boy” believing that “my happiness depended on marrying an Indian.”

Pooja tried very hard to “compromise” and “adjust” to the situation. She got up at 5:30 a.m. “to make the traditional homemade Indian bread, worked full-time, kept religious fasts and everything else I could do to be the ‘ideal Indian wife.’ Why was it important to be as Indian as possible? Because I needed an identity. . . I planned my wedding with high hopes and plenty of dreams.”

She supported her husband through school and worked very hard to be a doting wife. She said that this came at some cost to her. “Gone was the outgoing, happy, bubbly girl he had married,” Pooja reports, “and in her place was a woman who became more and more submissive, who tried harder and harder to please a man who was changing every day.” After he got work and was no longer dependent on Pooja financially he physically abused her more frequently. She said, “After seven years, I finally realized that there was no marriage left to save. That realization was the beginning of a five-year journey of pain, acceptance, and discovery.” She moved as far away as possible from him and said:

“My mind grew calmer as I put more and more miles between us. For some inexplicable reason, I was not afraid of being on my own-starting over. Maybe it was because I had hit rock-bottom and the only place I could go was up. In any case, I enrolled in college classes, got a job, and began therapy. Therapy was a big step for me as Indians, like other Asian groups, don’t believe in it, but in the last few months, I had read enough books on divorce to realize that I had a rocky road ahead of me. And it has truly been hard. . . I felt as if all my dreams had been shattered and I wondered if I would ever stop hurting. But I have. It’s true what they say about the healing effects of time. . . I’ve found that I heal a little more every day.”+ (p. 224)

I think what's important in Pooja's story is that she began to realize that she was an individual who had choices and that she needed to make them for herself. She said, "even if I fail, its okay because, at least, I was the one to decide. I realize that I no longer have to let my life be ruled by other people's standards and opinions. These are easy words to say, but it's hard to change 30 years worth of conditioning! But I am changing—even if it's one step at a time. ... My goal is to prevent other women from suffering as I did by showing them that there is a way out. . . that there is life after a disastrous arranged marriage. I want to tell them that hearts can be rebuilt and dreams can be renewed."

Lack of funding for counseling services is still an issue for many areas of the country. Neela is on a month's long waiting list to see a therapist who will see her on a sliding scale. We need funding for South Asian Woman's Organizations to do all that they are capable of doing in providing women like Neela with the help they need.



SevA Legal Aid

“The idea of forming SevA Legal Aid came to me because I felt there was a tremendous need to simplify the laws as they had become very complex. Also there was a tremendous need to make them universal since migration and globalization had made it nearly impossible to follow different laws in different countries. Common people do not understand complex laws and commit crime inadvertently. It has to be someone’s duty to make them understand these complexities and who else can do it better than compassionate lawyers.” Anu Peshawaria in an interview in Roshini Magazine

SevA was founded in 2006 with a mission to provide hope, support, and secure justice to vulnerable South Asian immigrants across the globe. SevA has been trying to bridge the gap between the critical need of people for legal aid and essential services across countries like US, China, Vietnam, India, Fiji, Bangladesh, Bhutan, Nepal, and Pakistan. It has been able to attract more than 40,000 members in a single year. Besides offering assistance to South Asian women who find themselves in situations of marital abuse, SevA is also working to change immigration laws so that some of these abuses will end.

Right now SevA Legal Aid has official headquarters in Fremont, California and offices in India, the UK and Canada. SevA Legal Aid is run mostly by volunteers but I offer my assistance in encouraging and supporting women in filling out paperwork and advising them in terms of legal status. Since I started SevA, people have come to me to share their problems, and I have often played the role of a counselor as well as legal advisor. Through SevA I try to reach as many Indians and as many communities who are here in the US as possible.

SevA Services

The following services are being provided by the SevA:

(A) **Legal Advice:** The motto of SevA is to provide “compassionate justice.” SevA strives to empower and look after women and children by providing ethical and respectful immigration council. SevA Legal Aid offers free legal advice in the areas of matrimony and domestic issues, immigration issues, and international law. It handles cases pertaining to child abuse, domestic abuse, dowry rights, adultery, and divorce. Besides offering help with paper work and assistance in how best to attain legal status for women involved in domestic violent situations, SevA Legal Aid refers women to lawyers and litigation services. The fee these lawyers charge are on a sliding scale and based on what a woman is able to pay.

(B) **Training:** SevA Legal Aid also offers workshops. These workshops educate women in both India and the United States of many of the problems contained in this book. It offers education as to Indian and United States law and also serves as a source of community support to women involved in domestic violent situations.

(C) **E-India Verify:** As mentioned elsewhere, SevA Legal Aid provides a service to anyone in the US or in India to verify the background of a potential spouse who is living in India.

SevA's Background

SevA provides an abundance of information to guide Indians who are new to the Bay Area. It provides community resources, information on driving, banking, immigration laws, the American language, culture, and even shopping. It has also given workshops on insurance, and day-long events on U.S. citizenship. SevA also provides workshops and programs for seniors.



Coming Out Whole: Life After Divorce

There are a couple of factors in Priya's story that differ from women who come here on dependent visas such as H4s. She had already earned a graduate degree in the US and had a job when her marriage was arranged in India. She was in the US under her own work visa, an L1, while her husband-to-be was living in the US on a green card with his parents. However, there were troubling signs from the very beginning. For a reason that was not clear, he did not want to register the marriage in India, although the couple had a religious ceremony there. His parents also consistently harassed Priya's parents for a dowry in the form of a car and other things, but her father did not believe in dowries and refused to budge. Still, Priya had no idea what kind of life she would be in store for once they began living as a married couple in the US.

Priya's Story

I moved in with my husband and his parents and right away I could see my life with them was not going to be easy. I quickly realized that his parents never got over the fact that they didn't receive a dowry. The entire time I was married to my husband they never let me forget it and they never let up on trying to get more out of me. They expected supreme subservience to them, insisting that I behave according to their every demand. I think some of this was to be expected. But they also asked me personally invasive questions, which was demeaning. They constantly harangued me for not getting a better paying job. And they would make such comments even in front of their friends.

I was on an internship at the time, which is typical when you embark on a professional career in the US. You expect to

not earn much during this time because you are still learning. I knew that I would eventually make money and it didn't make sense to give up my career aspirations for the short-term benefit of a higher paying job. In retrospect, I believe my parents-in-law thought that with my qualifications I should be able to earn enough to make up for the fact that they didn't get a dowry. So they were determined to get something from me or make my life miserable until I caved into their demands. They knew what the cost would be for me to give up my career. They simply didn't care. At this point I began to get scared that their desire for more and more from me would never die. I began to realize that even if I got the kind of job they wanted me to get it wouldn't have been enough. They'd want something more from me and there would be no end to it.

In looking back at how the marriage began, I knew there were troubling signs, but I think many Indian girls go through some hardship in the beginning. In Indian traditional arranged marriages, a girl knows that there will be dowry—she knows she will face a tough time—she is aware of that reality. And so, I was aware that things would not be rosy. The thing is, even though girls are aware of that, they still have hopes that the marriage will work and they do everything they can to make it work. Especially in an arranged marriage. You don't know the other person and getting to know the person takes time. So I expected that I would gradually come to know him and learn why I was married to him and then hope that through our struggles things would eventually fall into place. You know, I thought I'd get busy with the kids and we could put all of our initial problems in perspective. I mean people do try to make the marriage work even though these things are interfering, like dowry and harassment. We women know that we are always at a lower level in terms of control.

However now, when all is said and done, I probably knew in the very beginning that this was going to be bad. I mean I did know before the marriage. We were engaged, but yet to be married. The demands from their family of dowry were really unreasonable—so at one point in time my father was very close to calling the marriage off. But then it was too late because we had already distributed the invitations. Society back then was

different; since the last six years or so a lot has happened. But at that time, to withdraw from the marriage once you have distributed the invitation cards was really a shame. But if I knew then what I know now, I wouldn't have gone through with it. It's not worth it. It would have been better to face the shame.

Things kept getting worse at their house and I finally I was able to convince my husband to find another apartment for us. He found the apartment and signed the lease without consulting me or putting my name on it with his. But I eventually persuaded him to put it in both our names. However, he insisted that I pay rent for the time we had lived with his parents. He would often get into rages over such things and shove me around the house, scaring me into submission. Ultimately, I gave him the money. He also insisted that I pay the entire rent for our new apartment, which I did. I never knew his true financial situation, as he kept this information from me. He never let me see his assets. He was making good money, I knew that, but as soon as his paycheck came, he would hide it. He also hid all information about his green card and immigration.

We moved a little distance away from his parents and I was hoping that we would leave that stressful atmosphere behind us. However, as soon as we were on our own, my husband's behavior began to grow more and more irresponsible. He began returning late every night. One of the things I was beginning to find out at this point in time was his seeming inability to take our marriage seriously. In short, he never took on the responsibility of being a married man. In his single days he lived the life of a carefree bachelor; he would come home whenever he wanted and go wherever he wanted. After marriage, he continued to behave that way. His habit of getting home quite late continued to wear on me for the rest of our marriage.

I mean, when you get married, you don't expect someone to change overnight, but you expect your spouse be conscious of the other's feelings. He was the one who essentially decided to get married. Nobody forced him. Even if it was arranged, he consciously made the decision to get married. But he never

really took the responsibility for that. Once he stayed away a few nights merely because we had gotten into an argument. He was completely immature in that way.

He had many friends and he was constantly socializing with them. And they were the only ones he would allow me to meet. They never spoke about the kinds of things that people who are planning for families speak about.

Early on in our marriage I got pregnant and had a miscarriage. It was a very stressful time for me and neither my husband nor his parents offered me any kind of comfort or acknowledgment of how difficult it was for me. When I got pregnant again, his parents came to stay with us, ostensibly to provide support, but on the contrary, they created undue stress for me. I was already anxious because of the miscarriage and I was worried I would have another. They again began to insist I make more money and proceeded to make my life hell again.

During this time, I would arrive home from work needing to rest and they would not allow me to lie down. They insisted that I work in the kitchen or do other household chores. My husband always sided with them. His parents also isolated me during my pregnancy from anyone who could offer support to me. My husband refused to speak with me and his friends refused to meet with me or help me in any way. He and his parents berated me, telling me that I deserved this horrid treatment and he threatened to take my baby away once it was born. Once, he even shoved me around during an argument and I feared my baby would be harmed. I had no physical or mental reprieve from the stressful situation.

Although I thought of leaving the situation, I had no family support in the US and did not know how I would manage alone. However, I did ask my parents to come help me with the birth. They wanted to be with me because they knew I was going through a lot and with a child on the way - and they knew I would need help. So they bought the tickets and made all the necessary preparations, including getting permission from immigration, to come. But right before they were due to arrive my husband threatened to leave if they came. So I was like in the middle-I didn't know whether to let him leave and have them come or have him stay and tell them

not to come.

I think all of this behavior was essentially another way to isolate me. He wanted me to struggle after the baby was born. He wanted to limit the amount of time I could take off work—just to keep pressure on me, and I think his whole thing was to make it so that I wouldn't be able to cope with it. So that I would leave my job and go back to India.

People may wonder why he would want me to go back to India. I think it was basically to destabilize my life. He wanted to keep me off balance. If I were to go back to India with a child I would be stressed out there too because the society is different there. Then I would not be able to come back and find another job here. I would have blown my opportunity to take advantage of all I had earned here. I believe the object was just to ensure that I could not live a normal life. I think that it was a kind of sick pleasure that he took—it was a way to have control over someone else's destiny. He got pleasure from knowing he had the power to make or break my life.

At the time I did not know what to do. I ended up telling my parents not to come and they lost the money they had paid for the flight. I was simply devastated. There was no one else was around to support me: Neither my husband, his relatives, nor his friends offered the least amount of mental support for this critical time in my life. I had a severe hemorrhage during the delivery and was weak for months after. On top of this, my daughter was born with birth defects. My husband and his family blamed me for these defects and to this day I have wondered whether they were a result of the stress I was under during my pregnancy. I fell into a depression after the birth, feeling completely alone. Although my health was not good, my husband refused to get me help with the household chores and the baby.

Once I was able to return to work, my husband continued to behave in a selfish, irresponsible manner. Although my child was susceptible to catching infections, he would spontaneously take her to his parents' house in spite of my protests. Once, when I objected, he pushed me against the wall. I threatened to call the police but he would not stop. I dialed 911. It was the only time I called the police. However, once they arrived I

worried what would happen if my husband were arrested. I thought I would be completely alone and I feared what would happen next. One of my husband's brothers had moved close to us and I pled with him to intercede in our marriage so we could make it work. However, he never answered my call.

I realized how different things are here in the US in terms of what you can expect from family. Here you really have to fight for yourself. When you have issues in your marriage you can't expect your extended family to support you. In India, you would take care of the problem within the family, talk to the other generations, and try to solve your problems. Here you are on totally on your own—you don't have that kind of luxury to sit down and say, "Okay now let's meet with this couple. They are under pressure and need our help." I'm not sure whether not having that luxury adds to the tension in marriages or not, but I would imagine it does.

I was feeling the stress from so much harassment from the family and there was a lot of stress at work too. So I was lucky that I could get a therapist from work. It was free and I thought it might help just to talk to some someone about what I was going through.

And it did help a lot. Cause I was so isolated. His friends were the only ones I knew and they were never willing to let me air my side. So seeing a therapist was really helpful in that way. It didn't solve my marital problems but it helped me gain a needed perspective on them.

Meanwhile things continued to fall apart at home. My husband would leave and because he had a key to the apartment he'd come back at midnight and start working on his computer. That would be really hard because I had to get up early for work. Then he'd spend a couple of nights at his brother's and I never knew when he was coming or going. It was willful behavior on his part. And then he just left the house permanently.

Eventually, he filed for a divorce and it took a while before I could respond to it. I think it took time for me to wake up and realize that it was the best thing to do. By that time my self-esteem really had begun to suffer. I mean my symptoms

were even showing up at work. Even the most basic, simplest ways that I had of showing my confidence-like my ability to stand up for myself-were gone. This was really bad because at work I was expected to be independent and have my own thoughts. Even my boss commented that I was being so submissive and that I don't speak up even when someone says something wrong to me.

When he hired me I wasn't like that or he wouldn't have hired me. Within two years he could see this change. He didn't know what was going on, because I never told him about my personal issues but he would say, "You have to get rid of fear; you have to speak up."

I guess my environment at home was too different from work and that I really couldn't have a dual personality. I mean it wasn't as if at home I could be one kind of person and then be radically different at work. So I guess that my home life was starting to affect my independent personality. But I never gave up work. I never would say, "OK I cannot do this. I cannot work. I'll go to India. I'll stay with my parents." I continued to work and kept trying to do the best I could but I guess my personality changed. With all of that humiliation and all their attempts to make me feel inferior-it gets to you after a certain point. You cannot avoid it. You start doubting yourself-anything you do-you start doubting whether you are doing it right or not and whether people like it or not. So my self-esteem was being affected.

When he filed for divorce he just filed the case on his own. I guess for almost eight months I didn't do anything about it. But because he didn't give me child support, I hired a lawyer and then he started paying support. I think partly I hesitated to make our separation final because I just didn't want to get into legal hassles. I didn't know the laws here. I was on a temporary visa-an L1, which is similar to a H1 work visa-and I didn't make enough money to support myself and my child. Plus it was all I could do to take care of her on my own and work. So I had no time to fight a case. You need to spend time on a legal case. So I kept quiet and focused on my work and my child, thinking that when things got a little settled I would say, okay now I have to do this too.

But I did realize I needed to do something about my immigration status. First of all, if you are on a temporary visa you cannot afford to take time off of work for family problems. You have to handle them simultaneously. If you have family problems and you have work pressures, you have to learn to cope with them, all at the same time. You cannot take time off work to solve one problem and then go back to work.

Also, with the immigration problem solved, you don't have to be thinking about work all the time. When you are on a temporary visa, there is much more pressure on you even if you have a job. Employers know you are on a temporary visa and know you don't want to risk losing it, and they try to get the max out of you. But once you are a permanent resident, once you have attained a way to stay here, you realize you have other options too. If you cannot handle your current situation, you know you have choices. And that makes you feel more relaxed. You know it's not the end of the world if your current job doesn't work according to expectations.

So I began looking for help for my immigration status on the Internet. I knew about VAWA—I had read about that somewhere. It was around the time when he had left the house and I had to go back to India. And I knew that he was going to apply for citizenship and that he didn't sponsor my green card and was not willing to. And because I had a child with medical issues, I knew I could not just leave the country—her care needs to be followed up. So I just Googled it or something—that's how I ended up finding Anu. Before that I didn't know about her or anything. I came to find out that she was the sister of Kiran Bedi, who is very famous in India. That was a surprise. I was very conscious about things in India. I used to read the newspaper and knew about people's families. I knew what Kiran Bedi was doing. It was quite a surprise to learn she had a sister and that sister was a lawyer here in the US working on immigration. So, Anu helped me to apply for VAWA and I finally got my permanent status.

Maintain Your Independence

When Priya was asked what she would say to women like herself who were planning on marrying residents of the US

she said:

I would recommend that all women or girls especially from a different country try to gain their independence as much as you can. I think in the long run it helps. At least I know it helped me. Because if I give in, if I'm forced to do something I really don't want to do, I will never do it right. So if you keep your independence you can think about what you're doing and you are responsible for the consequences too. Things may not be perfect, but at least it is your choice. And you will find ways to overcome problems if there are any.

So in that way I think that all girls, who are in such a situation, have to try to retain their independence—and this is doable. I know most of the girls who go through a traditional marriage and then come to the US are educated. They at least have their MA degree. So it is not as if they cannot do anything on their own. Being independent may be hard but it will not be impossible. I mean, there's little choice in it—it's like a choice of suffering a whole life or suffering for a few years

And independence also means having your own source of income and having your own visa. So I know that an H4 visa is a dependent visa but if you are qualified, you should try to get a job and be on your own visa. That way you won't have any immigration problems when you are dealing with personal issues.

I think one of the ways the husband tries to control his wife is through immigration. And there is always the fear that he will make you go back, that you will have to go home to India without your husband which is actually worse than staying alone here. You have your parents there but that looks good only a few months. You have your family but then you realize you have to struggle on your own. If I were at home I might not have the courage to start fresh and get a degree and a job. But because I already had a job—that was one thing that I never gave up— it helped me go through this. Also when you have a job and you enjoy that work you can put all your energy into work and not be distracted by these things that have happened in your life. I remember talking to someone about all the work I was given to do and how stressed out I was . . . and that person said, "It's good you have so much

work to do—you're not thinking about the past—you are actually helping yourself by doing the work and getting more experience—I think it will help you in the future.”

Working retains a bit of yourself. You are not totally that devalued person they have been telling you that you are. The more you are working the more your self-esteem grows. You are no longer in that sticky situation where you are thinking, “Why did that happen to me? Why am I so unlucky?” You know that place where you look at happy people and start comparing yourself? With a job you will have a higher self-esteem as you gradually heal. And then you can take things in a positive way— the things that happened. That’s why I think when you are independent—having your own work or having your own routine— life is better. It is much better than being lost in family problems. I think there is no end to the suffering these people inflict on you. I think that if I had tried to keep them happy—my ex-in-laws— I would still be unhappy. There would be no end to that misery.

Life after Divorce

Priya also talked about how her life is now. Thus, she said, “My husband got his U.S. citizenship and we are now sharing custody. I have my daughter most of the time and he has her every Wednesday. And then on alternate weekends she stays with him. Initially this was hard. When she was young, like only a year old, I found it very difficult to part with her. But now I look forward to it because I get a break too. And he also looks forward to it because he likes to see his daughter. So it’s going well for all three of us. We both know what’s happened. Maybe it will be harder later on when she starts asking us questions, but so far it’s going well. I don’t worry too much about how she will be treated when she is there either anymore. When she was little, I worried more because she needed more care. But now that she can talk and express her feelings, I am confident that if there were a problem, she would tell me. And there are advantages to her as well. She gets to know her father. Her father is more of an outgoing kind of person than her mother. He has a lot of friends and he is very social, so I think that if she gets that from him it will be good for her. That’s the

positive side. I also think that much of the way my ex behaved was due to the pressure he got from his parents. Since our divorce, there isn't that kind of pressure.

Having a court order has helped a lot. We have a custody schedule and everything; it's much better for both of us—instead of not knowing what the other person will do or won't do. He's a U.S. citizen, so if he wants to stay he has to abide by the rules of this country. He has to pay child support. He can be taken to court if he does not. And his parents don't have control over what the court says; they cannot go against what the courts have ordered. His parents may not like that's he's giving me money for his own child, but they cannot escape it. So in that way, the influence of the parents is less now.

But I don't know, if he goes for another arranged marriage—which I think he will—it might be repeated. I would imagine it would be. They would again control their daughter-in-law. She will take it on, and if she does not, she will go through the same thing I did. She should try to stand up for herself, because when parents have a daughter-in-law, they are in control. I don't expect them to change. And he's still young, so he will get married again.

Getting Support

One of the things Priya says that has helped a lot since her divorce is joining a support group for divorcees:

The group I've joined is called a support group. They come together, have occasional get-togethers, and have festivals. It's a large group of people and you can find people who are like you. Many of the women who go through this are probably not aware that such groups exist. If the husband divorces them they think they will be alone in a foreign country. Unless they are outgoing. Some women are, so it's not as hard, but for the traditional ones, like me, who have had arranged marriages, the ones that stay at home—for them, even in support groups—they can find women like themselves. There are women who are homey types like I am, and others who are more outgoing. So within the same group you can find people who match your interests or your life style, which I think is great.

So you get together with these people and you're not isolated anymore. And because they've gone through the same thing—maybe not harassed or abused, but divorced—it helps you get back into life. When you are going through this, you are just so isolated. You usually don't want to meet people because you don't trust people anymore. I mean your whole outlook changes when you go through so much. It sometimes takes being with other people to realize that you're not on your own. You begin to realize that there is life beyond that—what you went through.

And largely due to spending time with them in recreational pursuits I enjoy, I'm starting to get back myself. I don't think I'm totally there, but I'm gradually getting there. I think it takes time to get over having a divorce, having a child with whom you're sharing your custody with your ex and all. I am independent and I do my own stuff, but there are times when I'm not so sure about whether what I'm doing is right or not, which I think is part of the effects of having gone through an experience like this. But I'm getting there, gradually.

I have gone through blaming myself and sometimes I still do. Sometimes I think, "Oh if I had done it this way, things would be better." But you always have that when things go really wrong. You think if you had done things a different way, maybe things wouldn't have ended up the way they did. The main thing I now feel is for my daughter. She's little. She's four. And she doesn't know what's going on. She's shuttling between two houses because of the custody thing, but she doesn't know the relationship I have with my Ex. So as she grows, I will have to tell her things. That's why these support groups that I am a member of help—because you meet people who are going through that same thing and they can help you negotiate these struggles that we all are going through one way or another.



What Needs to Be Done?

In India

You can take the following steps, if you are in India:

(A) **Prenuptial Workshops:** There is a need for workshops for a bride-to-be and her parents so that they can learn about the various avenues offered to get to know her husband to be. A woman needs support to withstand the pressure to marry at once. These workshops may give the family the help they need to make sure the situation she is entering is a healthy one and so that the bride will not feel so alone once she is married and at a great distance from her parents.

(B) **Workshops for Women Migrating to the US:** More support in India is needed for women who are preparing to join their husbands in the US. There should be more workshops such as those that SevA provides so that women can get support for what they are doing. They will need much information in the way of support networks and community services in the area they will be living.

(C) **Men's Groups:** UNICEF advocates men's groups to help eliminate domestic violence. One of the underlying factors that contribute to domestic violence is cultural, including gender-specific socialization, cultural definitions of appropriate sex roles, expectations of roles within relationships, belief in the inherent superiority of males, and values that give men proprietary rights over women and girls, notion of the family as a private sphere under male control. . .acceptability of violence as a means to resolve conflict" [7]

The report advocates men's groups so that men will begin to evaluate their roles again. The study reports:

“The UNICEF has launched initiatives to work with men on improving knowledge about the male role in the family. And men’s groups in many countries are taking the lead to examine cultural and social assumptions on masculinity, and develop strategies to help men curb violent behaviour.” (p. 16)

(D) **Change in Indian Law in Regards to Indian Embassies:** Right now if an Indian woman is in the US and she gets a divorce she can revert to her maiden name. However if she wishes her passport to reflect her maiden name the Indian Embassy is unable to do it. Indian law should be changed so that Indian embassies can honor the wishes of the Indian resident in the US.

In the US

You can take the following steps, if you are in the United States:

(A) **Verification Services:** In India, I have started a verification system called *eIndia verify*. Anyone who is residing in the US and wants to marry an Indian man or women is able to use this system to check the background of the person they wish to marry. They can find out his social status, his financial status, and many things it is necessary to know about a person before one gets involved on such a serious level. Performing a background check in India is as simple as going to eIndiaverify.com and filling out a form. We need such an agency in the US for prospective brides and bridegrooms living in India who want to marry U.S. residents. In the US it could work the same way as it does in India. We need one on the national level where a person can go to one website and get information about residents of every state. We have such examples as Legalzoom, which conducts legal services, such as helping people do the paperwork for a divorce. Like Legalzoom, such an organization can actually be a private, for-profit entity, with perhaps a portion of their work being provided on a sliding scale according to the income of the person who needs the service. This could be one of the biggest agenda items for SevA legal aid, and it’s one reason we started it, but SevA needs funding to do it.

(B) **A National Hotline:** Here, in America, there is 911, which many Indian and other immigrant women do not like calling. There should be a comparable number that every immigrant woman knows to call for help. The phones should be answered by people with the education and expertise or simply the knowledge of the reasons these women are likely to be calling. As many who have worked in with the South Asian community in the US know, Indian women simply do not call for help for fear of being misunderstood. As Preisser (1999), wrote:

“For the South Asian client, the advocate (who may also provide legal and social services) becomes an important person. However, when South Asian women seek assistance from mainstream advocates or service providers, they are faced with communication problems. These problems arise in part from a failure of the service providers to understand the cultural context and issues of the client.”

In addition, Abraham (2005) wrote:

The police and the courts also exacerbate women’s experiences of domestic violence through racial, gender and cultural stereotyping (Abraham, 2000). The abuse of immigrant women is compounded when the police, courts and the Department of Health are unresponsive or collude with government agencies such as the Immigration and Naturalisation Services. Issues such as lack of cultural sensitivity in the institutional response can deter women from seeking institutional support to end domestic violence. (p. 442)

The 2000 report by UNICEF that has been mentioned recommends “Women’s Police Stations” which are already in effect in some countries. These are in place at Sao Paulo (Brazil), Argentina, Columbia, Costa Rica, Peru, Uruguay, and Venezuela. Malaysia, Spain, Pakistan, and India are also mentioned as “having set up their own versions” (p. 17). The report especially lauds India’s version:

“In India, each station has female civilian workers attached, who provide advice and support, referring women to support networks and suggesting other options. Because these stations are designed to provide comprehensive support to women,

including social, legal, psychological, housing, health, and day-care services, they respond to the many levels of support that a victim of domestic violence needs." (p. 17)

They do point out that the one problem with these stations in India is that women are "discouraged from registering complaints at other police stations" (p. 17). As a consequence, women at times need to travel and "are no longer assured of protection from the regular police stations in their neighbourhood. (p. 17)

In the US this problem can be averted because the women on the other end of the hotline can provide a badly need liaison between the women in need and the regular police stations which will eventually take their reports. Organizations that are already in existence to work with women who are in domestically violent situations can take the call, listen to the woman's situation, and then help her to go to the next tier of help, which may be the police station. There is a big need for such a hot line. As been mentioned and documented extensively, women from India often do not want to call the police because of their background. They do not call the police in India and they are not likely to call the police in the US. Many are isolated and do not know this country well enough to know it's okay to call. Therefore, this one step would be a big one in helping women in abusive situations find the assistance they need. As Erez and Ammar (2003), who explored domestic violence among the immigrant communities in the US, wrote:

The major obstacle influencing immigrant women's marginalization is their reluctance to make contact with social services and the justice system for fear of jeopardizing their immigration status or deportation. There are grave ethical issues confronting multi-cultural societies concerning the provision of humane support for all people within its borders, irrespective of immigration status. In light of this imperative, we must continue to reexamine laws and procedures by which abused immigrant women have to navigate in order to resist or escape violence. (p. 242)

They added, "It is therefore critical to simplify the procedures and expedite the processes battered immigrant

women need to follow in their search for safety.” (p. 243)

The US has the technological capacity to create such a national system and number. Although it will take some political will to drive a campaign that would make women aware of the number, the same political momentum that has helped to implement VAWA protections for immigrant women can provide momentum for such a national hotline. Short of instituting separate police stations for women, the line could connect women to an existing organization that would have a line set up for this specific purpose.

(C) **Legal Cell:** I have made recommendations to the Indian government that it help establish a legal cell to provide legal assistance to Indian women in need (see final chapter, Anu Peshawaria for current efforts underway). The hotline discussed above could provide Indian women with needed information regarding the latest Indian scheme for financial assistance and also direct them to a legal cell or network of lawyers who are willing to provide legal assistance either pro bono or low bono.

(D) **Amending the VAWA:** VAWA is not the only law that needs modification to protect immigrant Indian women who find they are in abusive situations, but it is a place to start for many women who find themselves in abusive situations or are threatened with divorce and do not have money to either fight it or for custody. In the report compiled for the Justice Department to assess the needs of immigrant women in domestic violent situations, several recommendations were made (Erez & Ammar, 2003). [8] One of them might have helped Ratna if she had been able to give enough evidence that she was in an abusive situation. It was recommended that Legal Services Corporation (LSC) funded programs use non-LSC funds to do the following: represent battered immigrant women in any legal matter connected to the abuse in any case, in which the relationship between the victim and the abuser is covered by state domestic violence laws. Also allow the use of federal LSC funding to assist battered immigrants in VAWA immigration cases.

This would have given Ratna the funding she needed to fight for her child. Based on their research Edna Erez and

Nawal Ammar's other recommendations include the following:

- Give battered immigrants who entered on fiancé visas equal access to VAWA's immigration protections;
- Offer protection to immigrant victims of elder abuse;
- Provide access to self-petitioning to immigrant young adults, particularly incest victims, who were abused as children under the age of 21 but who failed to file their VAWA self-petition before turning 21 years of age;
- Allow battered immigrant spouses and children of lawful permanent residents to self-petition within two years of the abusive lawful permanent resident spouse's death.
- Grant battered immigrant spouses and children of citizens and lawful permanent residents access to food stamps and SSI;
- Exempt battered immigrant qualified aliens eligible for public benefits who first entered the United States after August 22, 1996, from the 5-year bar to receipt of benefits;
- Clarify that battered immigrants and other qualified aliens get access to public and assisted housing;
- Ensure that battered immigrants are not cut off by divorce from their ability to use some or all of their abusive spouse's 40 quarters to qualify for public benefits.

(E) **Gathering Data:** Studies have been conducted in the US documenting this problem, but more needs to be done in terms of data collection. As noted in the domestic violence literature

Research to inform policy and service practices has lagged far behind. A review of the published literature in psychology, sociology, anthropology, medicine, and law reveals a paucity of research on both the prevalence of IPV in immigrant communities and how immigrant status impacts women's risk for abuse. (Raj & Silverman, 2002, p. 268).

It would be useful to know how many South Asian women are seen in the courts with restraining orders, how many ex-parte divorces there have been, how many have been deported,

and how many were divorced by their spouse. It would also be useful to know more about the pattern of some of these men who marry and divorce again and again. The court has records, now the data needs to be collected and studied so that we have some idea about the magnitude of the problem. Being apprised of the magnitude of the problem would expedite its remedy in the law and the courts.

(F) **Change in the US Immigration Law:** The number one change in immigration law should be to prevent men who are Indian citizens here in the US on a temporary visa from the ability to divorce their wives after three months of stay here. In addition, women who are here with their spouses on H4 visas should be able to work. As mentioned elsewhere, changing this law would go a long way to alleviating the plight of Indian women who find themselves in abusive situations in the US. When asked what was the number one law that needed to be changed based on the needs of the women they serve, Arizona South Asians for Safe Families (personal communication, October 21, 2010) responded, "Status of H4, nonimmigrant visa: in particular, ability to apply for driver's license, go to school, work legally [even if temporarily] and apply for permanent residency on their own without being dependant on their [abusive] husband's consent."

The inability to work keeps Indian immigrant women in situations where they simply are not on equal footing in terms of being able to earn a livelihood and being able to foster a social life outside of the household. As it currently stands, if the husband of an Indian immigrant woman on an H4 visa divorces her, the wife is put into a situation where she cannot remain in the US. The laws of the US need to be modified to remedy the situations that help perpetuate the abuse of Indian women and this is a very important first step.

(G) **Education of Judges of Indian Law and Culture:** Judges who are deciding divorce and custody cases need to be apprised of Indian law and culture. This is of paramount importance. They need to know about dowry law, and the types of abuses that are happening in the US due to the disparity of laws and culture between the US and India. Judges need to be versed in Indian case law so they will understand

why certain divorce decrees are not being recognized in India, which would under normal circumstances recognize them. Consultants who are versed in these laws could be brought in to advise them. For example there could be state-nominated people who are expert in such law. In addition, there should be training programs implemented for judges in cities like Fremont with large Indian populations. A magnitude of divorce cases are coming before them and they need to be equipped to handle these cases in a way that takes into consideration pertinent factors such as marital laws in India.

(H) Education of Immigration and Naturalization Services Officers and Judges about Domestic Violence: Currently, there are provisions under VAWA 2000 called “STOP funding [that] may be used to train Immigration and Naturalization Services officers and immigration judges in intimate partner violence” (Raj & Silverman, 2002, p. 390). Since this funding is provided by law we should see that these workshops actually take place.



Bridging the Chasm (Part I): International Treaties

“One thing I think would help women like me . . . is if the Indian and US governments entered into an agreement that women like us who have a custody battle going on can have status as long as it is going on so that they can share time with their kid. As long as that custody battle is going on, the courts should allow us to go back to our country with our kids.” Ratna

The Need for Cooperation Between Countries

Indian women need some assurance that they will not lose their children when their spouse divorces them in the US. Right now, if a woman is on an H4 visa, she is vulnerable to being deported when her husband leaves her. Ratna’s case exemplifies the type of hardship visited on women who are on dependent visas. She has lost custody of her child and has to pay for the right to visit him. She is fighting for a right to stay in the country so she can continue to be part of his life.

In many instances, men use the threat of deportation as a tool to get their spouse to submit to the onerous situations imposed by themselves and their families. As I have already mentioned, this kind of protection can come in a change in U.S. immigration law. There also needs to be a more thorough recognition of the difficulties that newly arrived Indian women face in the US.

The American policy makers and judges should recognize and honor the laws of India when it comes to marriage and divorce and consider the effects of granting divorces too quickly and without proper service to the spouse (especially when the spouse resides in India). The US should not be granting divorces to Indian citizens who have been visiting the country for three

months. Judges in the US who are deciding on divorces of Indian citizens should be mindful of matters that may be pertinent to the case that occurred in the native country of the two parties. At present, in spite of some headway in international law where countries have agreed to get together to act on the child's best interest, cases like Ratna's fall through the cracks. Ratna's case is a good example of what happens at present when the pertinent aspects of a divorce case occurs in two countries with very different cultures and family laws. The next section of this book will present some international agreements already in place that are designed to remedy the kinds of situations described in this book.

Current State of International Law

To date there is not an official, international lawmaking organization with the authority to execute laws that can be interpreted by a global court. However the *Statute of the International Court of Justice 1945* has been universally accepted, even though, "it technically only applies to the sources that the International Court of Justice (ICJ) must apply" (Buck, 2005, p. 21). This means that it only applies to "sources," such as international agreements and conventions as stipulated in Section 2.4.1.1:

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply,
 - (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
 - (b) international custom, as evidence of a general practice accepted as law;
 - (c) the general principles of law recognized by civilized nations;

subject to the provisions of Article 59, [9] judicial decisions and the teachings of the most highly qualified publicists of the various nations, as a subsidiary means for the determination of rules of law.

2. The provision shall not prejudice the power of the Court

to decide a case *ex aequo it bono*, [10] if the parties agree thereto. (Art 38; as cited by Buck, 2005, p. 22).

The sources of international law include both private and public agreements. Whereas public international law mainly deals with relations between countries and how they may work together to solve a particular problem, private international law deals with laws that regulate private relationships across national borders, and cases within legal systems where the laws of another country must be considered. Public international law primarily involves the hearing of cases presented by countries, whereas, individual cases can be heard under the auspices of private international law. Although these are general guidelines, it should be noted that public international law has the potential to wield a great deal of clout when it comes to issues of domestic violence.

According to UNICEF's (2000) report, one convention that was made under the auspices of public law that was designed to prevent and address domestic violence issues is the Elimination of Violence Against Women:

The United Nations Declaration on the Elimination of Violence Against Women, calls on States to "pursue by all appropriate means and without delay a policy of eliminating violence against women" and, further to "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons" [11].

Both public and private law have conventions and treaties to create law. Agreements between nations have many different names to them: They can be called Statutes, Pacts, Declarations, Conventions, Charters, Covenants, Protocols, and Treaties. It is important to understand though, that a convention must be ratified to become legally binding. In other words, a convention is held with the hopes of establishing an international agreement on a matter, which will then be ratified by the participating members of the world community. However, if a country does not ratify the convention, it is not held to that particular agreement. In addition, although it somewhat complicates matters, certain countries require

legislation to be passed before that country is bound to an agreement even if the country has signed it. This means that not all treaties are automatically incorporated. Often a country will sign a convention but then the deliberative body of that country needs to ratify it. For example, the US was one of the first signatories to the Convention on the Rights of the Child, and even helped draft it, but the Senate of the US has failed to ratify it and make it the law of the land.

International Agreements, Conventions, and Treaties

A convention is an agreement between countries that lays out basic standards of conduct for governments to follow. States must ratify or approve the standards of conduct laid out in the convention before it becomes legally binding. The UN has guaranteed human rights, and some human rights conventions have occurred as early as the beginning of the 20th century. In 1926, for example, the League of Nations framed a Slavery Convention but did not suggest how the agreement would be supervised. The agreement therefore could not be enforced.

Most human rights conventions occur under the auspices of the United Nations. After World War II, there was much agreement that certain human rights should be guaranteed to all; thus the Universal Declaration of Human Rights was formed. Among the human rights that are granted under this declaration are “life, liberty, and security of person” and that “no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” There are rights that protect you from discrimination and grant everyone “an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” [12]

Two important rights covered by the Universal Declaration of Human Rights in Article 14 are, “Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from nonpolitical crimes or from acts contrary to the purposes and principles of the United Nations.”

Thus in a case that has been described in this book, a man who has committed a crime that affects his wife in India should not be allowed to seek asylum in the US.

Under Article 16, men and women are also entitled to “equal rights as to marriage, during marriage and at its dissolution.” Another right that is pertinent to the issues raised in this book is the right to work: “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment” (see Article 23). This right should be extended to dependent spouses of NRI living in the US who hold H4 visas.

Another right, found in Article 29, is the right to have just laws and international agreements to uphold these rights: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

Conventions do not automatically carry the same weight as a law does and they must be made into treaties in order to be legally binding for countries that ratify them. The Declaration of Human Rights had to be made into two treaties, both having to do with human rights. The first, involving civil and political rights, and the second, involving economic, social and cultural rights, make up what is known as the International Bill of Human Rights. There have continued to be conventions that cover areas of human rights in more detail.

How Conventions Are Enforced

The laws that are contained in conventions and treaties are not enforced in the same way as countries enforce laws. For example individuals cannot file a claim in an international court. There is an International Court of Justice in The Hague in the Netherlands. It does rule upon cases that countries bring up. In July 1998, with a vote of 120 countries, a treaty set up the International Criminal Court (ICC), which is an independent organization located at The Hague. It is not part of the United Nations. It is the first entity of its kind, representing a breakthrough in international agreements. It has “reached consensus on definitions of genocide, crimes against humanity and war crimes” and is designed to “help

end impunity for the perpetrators of the most serious crimes of concern to the international community” according to its official website. [13]

Conventions are enforced by four general means. First, it must be established in the writing of the convention that a committee of experts supervise the convention so that it is a viable, enforceable entity. Second, countries that have ratified the convention must provide ongoing reports on how the standards in the convention are being upheld within that individual country. Third, any country may file a complaint to the committee about another country’s failure to uphold these standards. Fourth, individuals are allowed under specific circumstances to file a complaint against their own country if they fail to fulfill the rights or standards laid out by the convention.

Treaty Bodies

The treaty body is the committee that supervises how these standards, or laws, are being implemented in the countries that have ratified the particular treaty. The members must come from countries that have ratified the convention or treaty. The treaty body helps interpret the standards of the convention and supervises the ratifying countries by reading the reports and responding to them. Treaty bodies then submit their own reports to the UN General Assembly annually or biannually.

Two conventions of particular importance to this discussion are Convention on the Elimination of All forms of Discrimination and Convention on the Rights of the Child. They are as follows:

(A) Convention on the Elimination of All Forms of Discrimination against Women: This convention was converted into a legally binding treaty in 1981. The Committee is still discussing whether or not it will hear complaints from individuals (rather than countries). The US has signed but not ratified this convention, while India has both signed and ratified it. [14] It has been ratified by 186 countries. The US is the only party to the agreement that has not also ratified it. Among the important provisions that can be utilized to shape laws to protect women who are potentially vulnerable to domestic

violence is Article 2, which holds

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women. [15]

In 1992, the Committee on the Elimination of all forms of Discrimination Against Women (CEDAW) adopted the Declaration on the Elimination of Violence Against Women, which was later adopted by the United Nation's General Assembly. The Declaration draws on the entire body of international law that would help fulfill the provisions of the

Convention on the Elimination of all forms of Discrimination Against Women.

Note that violence against women is not mentioned in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). However, since that convention's inception in 1981, this issue has "emerged as one of the most pressing issues to be addressed by the international community," (p. 62) according to the International Women's Tribune Centre (IWTC) in *Rights of Women: A Guide to the Most Important United Nations Treaties on Women's Human Rights*. There has been pressure from activists across the globe and subsequently a succession of UN sponsored global conferences have strongly condemned it. In late 1993, the UN adopted a Declaration on the Elimination of All Forms of Violence Against Women and appointed a Special Rapporteur on Violence Against Women, whose job it is to "uncover and address the vast dimensions of the problem" (p. 62) reports the IWTC. On its website the UN reports. [16]

"In the Fourth World Conference on Women in Beijing in September 1995, the Platform for Action's core document stated that Governments declared that violence against women constitutes a violation of basic human rights and is an obstacle to the achievement of the objectives of equality, development and peace."

The declaration is still not legally binding but it carries weight and may become a law. [17]

(B) United Nations Convention on the Rights of the Child: This convention is unique in many ways from other international treaties and international law. It was produced only after a long process that began in 1978. It was unique in that non-governmental organizations participated in both creating the treaty and reports. Another aspect has been the extent to which states have shown an eagerness to participate in the treaty by ratifying it. Sixty-one states signed on the first day it was opened for signatures. This is a record for treaties. In 1990 it became international law with 192 parties signatory to it. Only two countries have not ratified it: the US and Somalia. It "has become, in effect, the template for the international legal rights of the child" (p. 13) according to Trevor

Buck, author of *International Child Law*.

One of the pertinent articles, Article 3, holds that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary considerations.” [18]

This includes matters relating to child custody. The “best interest of the child” is a standard adopted in most Western countries that encourages a detailed analysis of each individual case and relies on the discretion of the judge who decides the case. In many jurisdictions, honoring and implementing the conduct laid out in this convention would require a complete overhaul of child custody laws or a creative approach to the laws currently on the books. Article 4 of the convention decrees that countries shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, State Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

Article 9 of the UN Convention on the Rights of the Child holds that a child has a right to be raised by his or her parents even if the parents are separated. The child has a right to maintain contact with both parents on a regular basis. The exception to this is if it is not in the best interests of the child to do so.

Article 10 lays out that it is a participating country’s responsibility to ensure a parent see his or her child even when the parents reside in different countries, or “States” as the language of the convention uses. This would appear to have an influence on immigration law. Paragraph 1 of Article 10 stipulates:

“In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by State Parties in a positive, humane and expeditious manner. States Parties shall further

ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.”

Paragraph 2 of Article 10 provides for the right of the child to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country.

This means that the rights of the child to see his or her parent could possibly supersede immigration law. In Ratna’s case, if the United States was signatory to this agreement and both India and the United States properly honored it, the judge would have had to take into account the child’s right to see his or her mother and find a way for Ratna to stay in the country. At this point in time, India is signatory to the agreement but the US is not. The application of the UN Convention on the Rights of the Child in Canada, how it prevented a Canadian nonresident from being deported, and how it helped her to gain permanent resident status will be elaborated in the next chapter.

In addition, participating countries are encouraged to “promote the conclusion of bilateral or multilateral agreements or accession to existing agreements” (Article 11 para. 2), especially in regard to children who are taken “in breach of custody rights” to another country. According to Trevor Buck in *International Child Law*, the Committee on the Rights of the Child “will frequently criticize states that have not ratified the Hague Convention of 1980” (p. 133), which lays down the major international agreement regarding international child abduction and will be discussed in the next section. In sum, as Trevor Bucks reports:

“The CRC is a good example of the ‘globalisation’ process, the worldwide convergence of normative legal standards. In its relatively short existence, it has influenced the operation of other international, regional and domestic law and policy. . .it

has also provided the international community with a powerful vehicle to institute programmes of action and shape policy initiatives to further advance their practical implementation.” (p. 47)

The Hague Conference on Private International Law

The Hague Conference has as its main purpose “to work for the progressive unification of the rules of private international law. [19] Since its inception it has been drawing up multilateral conventions whose purpose it is to guide jurisprudence in many areas of international law. Its first session took place in 1893 in the Netherlands and there were six sessions that took place between that time and the WW II. In 1951, it became a permanent institution and it had its nineteenth session in 2002. There are 64 member countries. The Hague Conference holds conventions, which nonmember countries can sign and ratify as well.

Between 1951 and 2008, the Conference has adopted 38 international conventions. These conventions are reviewed by an entity called Special Commissions, which act in a very similar manner as treaty bodies do. The Hague Conference maintains that even when they are not ratified, the Conventions have an influence upon legal systems, in both Member and non-Member States. They also form a source of inspiration for efforts to unify private international law at the regional level, for example within the Organisation of American States or the European Union. [20]

These conventions can become law in the same way as any other convention mentioned here. The conventions handle issues that are pertinent to addressing the issues raised in this book. They handle conflict of laws issues, jurisdictional issues and foreign judgments, and importantly, international judicial and administrative cooperation.

Both India and the United States are members of the Hague Conference. However, there have been conventions that lay out how to handle matters of marriage and divorce which the US and India have not signed. For example, a very pertinent

agreement which neither country has signed is the Convention on the Recognition of Divorces and Legal Separation of 1970. However, both countries are willing to recognize decrees of foreign countries to varying degrees.

The US recognizes divorces that are decreed in other countries based on the principle of parity, which will be touched on below. India will uphold them under certain conditions as well. I will speak more on that in the next section.

The two Conventions are as follows:

(A) **Convention on the Recognition of Divorces and Legal Separation:** The subject of how to resolve issues concerning marriage and divorce that involve more than one legal system was one of the first to be addressed by the Hague Conference on Private International Law at the turn of the 20th century. In 1902, the Hague Convention, which dealt with conflicts of law and jurisdiction in the area of divorce and separation, was adopted. However fifty years later circumstances related to divorce and separation had changed so much that a new convention had to be made. It was drawn up in 1970 and went into force in 1975.

According to the Outline of the 1970 Hague Recognition of Divorce Convention, the convention's aim was to facilitate the recognition in one Contracting State of divorces and legal separations obtained in another Contracting State and thus assure divorced and separated spouses that their new status shall receive the same recognition abroad as in the country where the divorce or separation is obtained. [21]

This has important implications to dependent children. By clarifying the legal relationship of the couple, it provides a way to consider the best interest of the children of the couple. However it is important to add that "it does not apply to orders relating to pecuniary obligations or to the custody of children." This means that it does not help resolve matters pertaining to property or child custody. According to the outline of the convention.

The Convention provides for recognition of divorces or legal separations obtained in a Contracting State if, at the date the proceedings were instituted, the respondent had his or her

habitual residence there, or the petitioner had his or her habitual residence there.

In certain circumstances a country can refuse to abide by the convention: If at the time of the divorce or legal separation both parties were citizens only of the country in which “recognition is sought” and “the law applicable according to the private international law of that State would have led to a different result than the law applied by the State of origin,” then the law may not be abided by. This basically means that once you are both citizens of a particular country the international law does not take precedence over that country’s law.

(B) Hague Convention on the Civil Aspects of International Child Abduction: The Hague Convention of 1980 is ultimately concerned with the return of children who have been removed from the country of their “habitual residence,” or children who are retained in another country, illegally. The other object of the convention is to “ensure that the rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.” [22]

“The idea behind the notion of habitual residence” writes Trevor Buck in *International Child Law*, “is that a child should be returned to the country where he or she has the most obvious connection prior to a wrongful removal or retention.” The Convention’s aim is to restore the position the parties were in prior to the wrongful removal. Buck also points out that the Convention leaves out a formal definition. This allows for the courts and central authorities to be flexible in coming up with solutions that are practical, considering the range in contexts they may be presented with. It should be noted though that the meaning of habitual residence has been heavily litigated in countries that have ratified the Convention. Buck refers readers to Beaumont and McEleavy, 1999, pp. 88-113, for the body of case law that has developed concerning habitual residence. While earlier cases seemed to stress a “factual” element, which depended on the country the child lived in prior to removal, “intentional” factors became salient in later cases. In any case, “it is settled law that the child’s habitual residence cannot be

changed by the *unilateral* action of one parent” (p. 140), according to Trevor Buck.

The convention defines wrongful removal or retention as breach of rights of custody. It also includes wrongful “retention,” such as in the case where a child leaves his or her country of habitual residence with the explicit approval of the person who has custody rights and then is retained in that country past the time allotted by the custody agreement. The right to take a child to a country other than his or her habitual residence is called “right of access.” The Convention does not apply to anyone over the age of 16. The Convention provides for a method to implement the provisions of this agreement in Article 6.

“A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities. Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.”

This applies to a country like the United States, which has a decentralized government. Some implications of this provision to US law will be touched upon in the next chapter. In cases where a child is taken away from his or her habitual residence it is of the utmost importance that jurisdictions act promptly in returning the child. Article 11 of the convention stipulates:

“The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children. If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested

State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.”

One drawback of the convention is that it fails to establish “common rules on jurisdiction, recognition and enforcement.” Therefore, since 1980, another convention known as “Brussels II” Convention was drafted in March 2001 in order to “unify the rules of conflict of jurisdiction in matrimonial matters and in matters of parental responsibility so as to simplify the formalities for rapid and automatic recognition and enforcement of judgments.” (Stark, 2005, p. 82)

The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

This convention was signed in the 21st session of the Hague Conference on Private International Law on November 23, 2007 and 70 states have signed it, including the US. The object of the Convention is “to ensure the effective international recovery of child support and other forms of family maintenance” by the following means [23]:

- an efficient and responsive system of cooperation between Contracting States in the processing of international applications;
- a requirement that Contracting States make available applications for establishment and modification, as well as for recognition and enforcement, of maintenance decisions;
- provisions which ensure effective access to cross-border maintenance procedures; a broadly based system for the recognition and enforcement of maintenance decisions made in Contracting States; and
- expedited and simplified procedures for recognition and enforcement; and a requirement of prompt and effective enforcement.

The Convention aims to expedite family matters regarding alimony by standardizing forms, facilitating the exchange of

information, and by establishing language requirements. For example Article 44 takes care of the latter by stipulating:

“Any application and related documents shall be in the original language, and shall be accompanied by a translation into an official language of the requested State or another language which the requested State has indicated, by way of declaration in accordance with Article 63, it will accept, unless the competent authority of that State dispenses with translation.”

According to the outline of the convention, the Convention “is remarkable for the emphasis which it places on “effective access” to procedures, recognising that small financial obstacles confronting an impecunious creditor may deter the bringing of an international claim.”

An important provision in this Convention which applies to the cases presented in this book deals with the “provision of free legal assistance in child support cases” which the Convention stipulates, goes “much further than any previous Hague Convention to ensure that the international procedures will be genuinely accessible.” This would be a great boon to women who are without support and simply cannot afford to hire proper legal assistance. The Convention adds that this provision is cost effective “in the light of the considerable savings in social support costs that can accrue from the effective enforcement of private support obligations.”

The Convention calls for Central Authorities in the countries of ratifying members to “cooperate with each other and promote cooperation amongst the competent authorities in their States to achieve the purposes of the Convention” and “seek as far as possible solutions to difficulties which arise in the application of the Convention.” It is in part in keeping with the commitment of this Convention to facilitate cooperation between countries “to achieve the purposes of the Convention” that the Law Commission of India Report No. 219 [24] recommended that the Indian government sign this convention. Report No. 219 will be presented in full in the next chapter.



Bridging the Chasm (Part II): Where India and the United States Stand in Regards to Domestic Violence and Family Matters

There is a significant body of international law that can be utilized to influence judgments that pertain to cases involving domestic violence. In December 1993, the General Assembly of the United Nations adopted resolution 48/104, The Declaration on the Elimination of Violence Against Women, [15] which cited all the international conventions and articles that apply in protecting women from domestically violent situations. In the Declaration, the General Assembly of the UN recognized “the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings,” and noted that “those rights and principles are enshrined in international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”

This document was intended to provide “a comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms,” and ensure “a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women.”

The UNICEF report on domestic violence from 2000 maintains there are “three doctrines, developed by human rights scholars and activists, [that] have to be taken into account when dealing with the issue of violence against women by private actors” (p. 10). The factors, due diligence, equal protection of the law, and domestic violence as torture, are derived from the Declaration, which was adopted by the UN due to its intention to fulfill the provisions afforded women under the Convention on the Elimination of All Forms of Discrimination Against Women. The provisions of this Convention and another that will be touched upon later in this chapter, the Convention of the Rights of the Child, are public laws that can have far-reaching implications when it comes to influencing the decisions made in the jurisdictions of a participating country.

The Concept of Due Diligence

According to the 2000 UNICEF report, [26] domestic violence, “whether it is perpetrated by private or state actors, constitutes a violation of human rights” and nations have a “duty under international law. . .to prevent and to respond to human rights abuses” (p. 10). Under the concept of due diligence, which was adopted in 1992 by the Committee on the Elimination of Discrimination Against Women, “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation” (p. 10).

The Committee made the following recommendations as to the responsibilities of nations to protect women from domestic violence:

1. Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including violence and abuse in the family, sexual assault and sexual harassment in the workplace;
2. Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and

women;

3. Protective measures, including refuges, counselling, rehabilitation action and support services for women who are experiencing violence or who are at risk of violence. (UNICEF, 2000, p. 10)

As mentioned previously, India has signed the convention and ratified it in 1993, soon after it adopted this recommendation, while the US has signed but not ratified it. [27]

Equal Protection under the Law

This doctrine protects victims of violence from discrimination from law enforcement agencies. If a country discriminates, it can be held accountable for “violating international human rights standards of equality” (p. 10). As mentioned previously, Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women can be used to hold countries accountable for enacting and modifying legislation that protects women from domestic violence. It holds that governments must “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” [28]

Need for Cooperation at All Levels

The 2000 UNICEF report calls for the need for “cooperation on all levels” to prevent and alleviate violence against women. It states:

“Overwhelmingly, governments lack the necessary expertise to develop and implement policy relating to violence against women. Therefore, a more cooperative relationship between governments and civil society should be built to combat violence against women.

An integrated, multi-disciplinary approach with lawyers, psychologists, social workers, doctors and others working together to gain a holistic understanding of each particular case and the needs of the individual is the best option. Giving attention to the real-life context of the battered woman, her

hopelessness, dependency, restricted options, and her consequent need for empowerment, should underpin every approach. The goal is to work with her to develop her capacity to decide her own future.”

Recognition of Divorce and Legal Separation in Foreign Countries

The position in two countries is as follows:

(A) **In the US:** Right now the United States does recognize divorces obtained in other countries through the principle of comity. According to the U.S. Department of State’s website, Travel.State.gov, a service of the Bureau of Consular Affairs.

“A divorce decree issued in a foreign country generally is recognized in a state in the United States on the basis of comity (*Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895)), provided both parties to the divorce received adequate notice, i.e., service of process and, generally, provided one of the parties was a domiciliary in the foreign nation at the time of the divorce. Under the principle of comity, a divorce obtained in another country under the circumstances described above receives “full faith and credit” in all other states and countries that recognize divorce. Although full faith and credit may be given to an ex parte divorce decree, states usually consider the jurisdictional basis upon which the foreign decree is founded and may withhold full faith and credit if not satisfied regarding domicile in the foreign country. Many state courts which have addressed the question of a foreign divorce where both parties participate in the divorce proceedings but neither obtains domicile there have followed the view that such a divorce is invalid (*Weber v. Weber*, 200 Neb. 659, 265 N.W.2d 436 (1978); *Everett v. Everett*, 345 So. 2d 586 (La. Ct. App. 1977); *Kugler v. Haitian Tours, Inc.*, 120 N.J. Super. 260, 293 A.2d 706 (1972); *Estate of Steffke v. Wisconsin Department of Revenue*, 65 Wis.2d 199, 222 N.W.2d 628 (1974); *Commonwealth v. Doughty*, 187 Pa. Super. 499, 144 A.2d 521 (1958); *Bobala v. Bobala*, 68 Ohio App. 63, 33 N.E.2d 845 (1940); *Golden v. Golden*, 41 N.M. 356, 68 P.2d 928 (1937)29.” [29]

(B) **In India:** Current Indian law regarding recognition in

India of foreign matrimonial judgments has been reviewed by Anil and Ranbjit malhotra and Rambert de Mello in their book, Acting for Non-Resident Indian Clients. They point out that in Section 13 of the Indian Code of Civil procedure, which is the provision that relates to “the conclusiveness” of judgments made in foreign courts, “There is no separate provision of law prescribed in the HMA 1955 or SMA 1954 relating to recognition of foreign matrimonial judgments.” (p. 69) However in a case that was decided upon in 1991, Y Narasimha Rao v Y Ventata Lakshmi, the Supreme Court of India laid down new guidelines in this area. The ruling holds that foreign judgments will not be recognized by Indian courts if they have been “obtained by fraud” (Malhotra et al., p. 69). This guideline “need not be only in relation to the merits of the matter but may also be in relation to jurisdictional facts.” (p. 69)

This ruling is especially important in the context of the material presented in this book because it “declared a divorce decree passed by a US court unenforceable. (p. 69) There were three factors that the Supreme Court took into consideration in its ruling. The first was that husband filed for divorce in the State of Missouri after having been a resident of that state for 90 days. Second, the divorce decree was passed “on the only ground of irretrievable breakdown of marriage.” (p. 69) Third, “the respondent wife had not submitted to the jurisdiction of the court.” (p. 69) In fact, the wife had raised objections to the divorce on several grounds, including the fact that they were both Hindus, were governed by Hindu law and got married at Tirupati in India under Hindu law. She further contended that she was an Indian citizen and was not governed by the laws in force in the State of Missouri. Hence, the foreign court had no jurisdiction to entertain the petition. (Malhotra et al., p. 69)

The circuit court of St. Louis County, Missouri, had no jurisdiction to entertain the petition, under which jurisdiction in the USA, admittedly, the parties were not married. Secondly, irretrievable breakdown of marriage is not one of the grounds recognized by the HMA 1955 for dissolution of the marriage.

The court’s interpretation of section 13 of the Indian Code

of Civil Procedure 1908 with reference to the “validity of divorce decrees” was that a foreign judgment is not conclusive as to any matter directly adjudicated upon between the parties if (a) it has not been pronounced by a court of competent jurisdiction; (b) it has not been given on the merits of the case; (c) it is founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable; (d) the proceedings are opposed to natural justice; (e) it is obtained by fraud; or (f) it sustains a claim founded on a breach of any law in force in India. (Malhotra et al., p. 70)

I think that it is important to go into this ruling in detail because there are important implications of this ruling that pertain to India’s recognition of private international law. This ruling seems to underscore India’s acknowledgment of the pain and suffering such divorces have wreaked on Indian citizens. Justice PB Sawant “analysed and consolidated the reasons for framing the guidelines under Section 13 of CPC 1908” as follows (again according to the 2004 work, *Acting for Non-Indian Clients*):

“The rules of Private International law in this country are not codified and are scattered in different enactments such the Civil Procedure Code, the Contract Act, the Indian Succession Act, the Indian Divorce Act, the Special Marriage Act etc. In addition, some rules have also been evolved by judicial decisions. . .13. We cannot also lose sight of the fact that today more than ever in the past, the need for definitive rules for recognition of foreign judgments in personal and family matters, and in particular matrimonial disputes has surged to the surface. Many a man and woman of this land with different personal laws have migrated and are migrating to different countries either to make their permanent abode there or for temporary residence. Likewise there is also immigration of the nationals of other countries. The advancement in communication and transportation has also made it easier for individuals to hop from one country to another. It is also not unusual to come across cases where citizens of this country have been contracting marriages either in this country or abroad with nationals of the other countries

or among themselves, or having married here, either both or one of them migrate to other countries. There are also cases where parties have married here have been either domiciled or residing separately in different foreign countries. This migration, temporary or permanent, has also been giving rise to various kinds of matrimonial disputes destroying in its turn the family and its peace. A large number of foreign decrees in matrimonial matters is becoming the order of the day. A time has, therefore, come to ensure certainty in the recognition of the foreign judgments in these matters." (p. 70)

It would seem that, overall, in regard to recognition of foreign divorces the Hague Convention's statement is accurate, "Even when they are not ratified, the Conventions have an influence upon legal systems, in both Member and non-Member States." Indeed, the convention has had some influence on the rulings of India and the US despite neither country being signatory to this particular convention. In ordinary circumstances, it is likely that India, like the United States, would honor such foreign decrees under the principle of comity. However, given the problems Indian citizens are undergoing due to the disparity of marital laws between the US and India, it is clear that India will continue to use discretion when it comes to the particular circumstances of a decree handed down in the US. As a report submitted to the Indian government dated March 2009 entitled "Need for Family Law Legislations for Nonresident Indians" stipulates:

"The Indian courts have now started looking into the merits of the matters and deciding them on the considerations of Indian law in the best interest of the parties rather than simply implementing the orders without examining them. Fortunately, we can hail the Indian Judiciary for these laudable efforts and till such time when the Indian legislature comes to the rescue with appropriate legislation, we seek solace with our unimpeachable and absolute faith in the Indian Judiciary which is rendering a yeoman service." [30]

I will go into this report in greater detail, but for now, it is important to understand that the 1991 ruling of *Y Narashimha Rao v Y Venkata Lakshmi* is a critical one for Indian women in the US who wish to fight their divorce in the US in order to

legally uphold their rights as Indian citizens.

It also becomes clear that current divorce laws in the US, which allow nonresident Indians to divorce after at least three months residency in the country, have wreaked havoc and chaos in the lives of Indian citizens, especially the spouses of NRIs and their entire families in India and that in *Y Narashimha Rao v Y Venkata Lakshmi*, the Supreme Court of India and the Indian justice system will continue to take those factors into account when deliberating whether foreign divorce decrees should be recognized. Whereas under ordinary circumstances, the Indian courts may have recognized foreign divorce decrees, under current circumstances they cannot. In 1991, the apex court wrote the following broad principles in the interpretation of Section 13 of the CPC 1908 in order “to prevent erring spouses from taking advantage of liberal matrimonial laws in foreign jurisdictions which permit quick divorce on easier grounds not available in the Indian jurisdiction” (Malhotra et al., 2004, p. 72):

1. Section 13 (a) states that a foreign judgment shall not be recognised if it has not been pronounced by a court of competent jurisdiction. The court was of the view that this clause should be interpreted to mean that only such court which the HMA 1955 or the law under which the parties are married recognises as a court of competent jurisdiction

2. Section 13 (b) states that if a foreign judgment has not been given on the merits of the case, the courts in this country will not recognise such a judgment. 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 are married, and (b) that the decision should be a result of the contest between the parties. The latter requirement is fulfilled only when the respondent is duly served and voluntarily and unconditionally submits himself/herself to the jurisdiction of the court and contests the claim, or agrees to the passing of the decree with or without appearance in court. A mere filing of the reply to the claim under protest and without submitting to the jurisdiction of the court, or an appearance in the court either in person or through a representative in order to object to the jurisdiction of the court, should not be

considered as a decision on the merits of the case.

3. Marriages which take place in India can only be performed under either the customary or the statutory law in force in India. Hence, the only law that can be applicable to the matrimonial disputes is the one under whom the parties are married, and not any other law. When a foreign judgment is founded on a ground not recognized by such law, it is a judgment which is in defiance of the law in India. Hence, it is not conclusive of the matters adjudicated therein and, therefore, is unenforceable in India.

4. Section 13 (d) of the CPC 1908 makes a foreign judgment unenforceable on the ground that the proceedings in which it is obtained are opposed to natural justice. The court held that in the realm of family law, such as matrimonial disputes, this principle has to be extended to mean something more than mere compliance with the technical rules of procedure. Therefore, it is necessary for the court to ascertain whether the respondent was in a position to represent himself/herself and effectively contest the said proceedings.

5. Section 13 (e) of the CPC 1908 stipulates that the courts in India will not recognise a foreign judgment that is prima facie obtained by fraudulent means. The court here placed reliance on its earlier decision in *Satya v Teja Singh* (1975 (2) SCR 197). In this case it was held that the fraud need not be only in relation to the merits of the matter but may also be in relation to jurisdictional facts.

It is important to point out that in order for a foreign judgment to be recognized the judgment must have been made on the "merits of the case." In section 13(b), those merits include the fact that "the law applicable to divorce is the one under which they were married." Therefore, those who married in India are subject to Indian matrimonial laws when they divorce. As cited above, "When a foreign judgment is founded on a ground not recognized by such law, it is a judgment which is in defiance of the law in India." Also in section 13(b), before recognizing a foreign divorce, the court will determine whether "the respondent was in a position to represent himself/herself and effectively contest the said proceedings." This would nullify the judgment that the

American court made when it took away Ratna's custody rights. In addition, the Indian courts make it clear that foreign judgments that have not been properly served will not be recognized. Again, in 13(b), "The latter requirement is fulfilled only when the respondent is duly served and voluntarily and unconditionally submits himself/herself to the jurisdiction of the court and contests the claim, or agrees to the passing of the decree with or without appearance in court."

Malhotra et al. (2004) stipulate that the need to write such clear guidelines, "arose on account of the large number of foreign divorce decrees, mostly obtained in default, for which enforcement was sought in India, giving no option to the deserted spouse" (p. 72).

They go on to mention a case, *Smt Neeraja Saraph v Jayant V Saraph* (JT 1994 (6) SC 488), which sounds much like the types of cases that I have been dealing with for over 10 years. In this case, a postgraduate student and the daughter of a senior air force officer appealed her divorce decree that was handed down in the US. In India, she was earning a monthly salary of Rs 3,000. She married a man who had received his doctorate in the computer sciences and was working in the US. Her father-in-law had approached her family through a friend to the respective families. They were married in India in August of 1989 and wrote letters back and forth to one another after her husband returned to the US that same month. He persuaded her to leave her job in India and join him in the US, and so she resigned from her job in November. She was still attempting to obtain a visa when the marriage went sour in December 1989. In June of 1990, her brother in law handed her "a petition for annulment of marriage presented in a US Court" (p.72). The abandoned wife filed a lawsuit in India for damages against both her husband and father-in-law "for ruining her life in *forma pauperis*. The suit was decreed ex parte for a total sum amounting to Indian rupees 22 lacs" (Malhotra et al., 2004, p. 73).

Here is a verbatim account of the courts findings (JT 1994 (6) 488 at pp 490 and 491, paras 4 and 5 as cited in Malhotra et al., 2004, p. 73):

4. . . . Various submissions have been advanced on behalf of the father-in-law to support the order of the High Court including his helplessness financially. Is it a case of any sympathy for the father-in-law at this stage? In our opinion not. True the decree is ex parte. [31] Yet it is a money decree. However, no opinion is expressed on this aspect as the appeal is pending in the High Court. But the order of the High Court is modified by directing that the execution of the decree shall remain stayed if the respondents deposit a sum of Rs 3,000,000/- including Rs 1,000,000/- directed by the High Court within a period of two months from today, with the Registrar of the High Court....

5. Why the facts of this case have been narrated in brief with little background is to impress upon the need and necessity for appropriate steps to be taken in this direction to safeguard the interest of women. Although it is a problem of private International Law and is not easy to be resolved, but with change in social structure and rise of marriages with NRI the Union of India may consider enacting a law like the Foreign Judgments (Reciprocal Enforcement) Act 1933 enacted by the British Parliament under Section (1) in pursuance of which the Government of the United Kingdom issued Reciprocal Enforcement of Judgments (India) Order 1958. Apart from it there are other enactments such as Indian Colonial Divorce Jurisdiction Act 1940 which safeguard the interest so far 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. This domicile rule is not necessary to be gone into. But feasibility of a legislation safeguarding interest of women may be examined by incorporating such provisions as:

- 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 husband both 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 44A of the Civil Procedure Code which makes a foreign decree executable as it would have been a decree passed by that court.

This is an important ruling. The guidelines above were laid out so that wives who reside in India and who are abandoned by husbands who live abroad could be protected from many of the hardships they suffer now. As Malhotra et al. (2004) point out, "It will be noted that the proposed guidelines in both the above-mentioned Supreme Court rulings [*Y Narashimha Rao v Y Venkata Lakshmi*, and *Smt Neeraja Saraph v Jayant V Saraph*] are meaningful and if implemented could mitigate the plight of wives deserted in India by foreign husbands" (p. 73). This court has made clear the need for legislation, and, "As yet no Indian law has been enacted to protect the rights of deserted and abandoned spouses in India" (Malhotra et al., 2004, p. 73). Yet it is no small measure for those who are in such situations to know that Indian courts will protect them should they "protest against the uncontested foreign divorce decrees invariably obtained in default by spouses from overseas jurisdictions" (p. 73-74).

Need for Family Law Legislations for Non-resident Indians: Law Commission of India's Report No. 219

For 10 years I have been working with countless women who marry NRIs, green card holders, or U.S. citizens only to be subsequently abandoned by them in India or who find themselves under the threat of deportation after their husbands divorce them in America. I am now working with the Indian government in an official capacity to help find solutions that will reduce the hardship of many Indian women who marry NRIs.

The Indian government has recently been proactive in its search for solutions for these problems. One step they have taken is to utilize the Ministry of Overseas Affairs to attend to the problem. Another step to help remedy this problem has

been in the form of the Law Commission of India. In March 30, 2009 the Law of Commission of India submitted a report entitled, "Need for Family Law Legislations for Nonresident Indians," to the Indian Government, in which it lays out several solutions, including the need to enter into international agreements with other countries.

Report No. 219 presents the problems that have arisen due to the increase in emigration of Indians to other countries either on a permanent or temporary basis and especially Indians marrying foreign nationals or NRIs living in foreign soil. The subsequent transnational marital disputes are delineated. The authors write, "This migration, temporary or permanent, has also been giving rise to various kinds of matrimonial disputes destroying in its turn the family and its peace." [32] The Law Commission goes on to detail the types of problems that have arisen as a consequence of such marriages:

"Over the years a large number of Nonresident Indians (NRI) have multiplied in every jurisdiction abroad and so have the problems. Abandoned bride in distress due to runaway foreign country resident Indian spouse, stressed nonresident Asian parent frantically searching [for] spouse in India who has removed their child from a foreign jurisdiction in violation of a foreign court order, desperate parent seeking child support and maintenance, nonresident spouse seeking enforcement of foreign divorce decree in India. . . bewildered officials of a foreign High Commission trying to understand the customary practices of marriage and divorce exclusively saved by Indian legislation, foreign police officials trying to understand intricacies of Indian law in apprehending offenders of law on foreign soil: these are some instances of problems arising every day from cross-border migration. Thus the number of problems is myriad, but the solutions are a few or nonexistent."

They add:

"There are a large number of legal issues that concern a sizeable section of the Global Indian Community residing abroad. Though the nonresident Indians have increased multi-fold in foreign jurisdictions, family law disputes and situations are handicapped for want of proper professional information and advice on Indian laws. The lure for settling in foreign

jurisdictions attracts a sizeable Indian population but the problems created by such migration largely remain unresolved.” [33]

(A) **Difficulties Faced under Indian Law:** Report No 219 states that the problems that now abound relating to NRI marriages are not easily resolved by current law. According to this document, India has tried to apply multiple current laws and to interpret them in the context of the current situation and these remedies available to them “often leave the problems unresolved.” [34] For example, when the NRI returns to India, he seeks to “import the foreign law of the overseas jurisdiction from where he has migrated.” [35] We have seen instances of this in the last section, which documented the courts’ attempts to not allow foreign judgments to prevail when it comes to divorce decrees in more liberal countries such as the US and UK. Report No. 219 acknowledges such cases, “In matters of divorce, since irretrievable breakdown of marriage is not a ground for dissolving the marriage under Indian law, Indian Courts in principle do not recognise foreign matrimonial judgments dissolving marriage by such breakdown.”[36] The Law Commission of India will go on to recommend that Hindu matrimonial law be amended to include “irretrievable breakdown” and this will be touched upon later.

In Report No. 219, the Law Commission also cites instances where children are removed and brought to Indian soil in violation of a foreign court order, noting, “Surprisingly, even very little help is available in areas of matrimonial offences and problems arising out of child abduction.” [37] As has been documented elsewhere in this book, India is not currently a signatory member of the Hague Convention on The Civil Aspects of International Child Abduction. The report will go on to make a case that India consider signing that treaty as well as consider adaptations of other conventions outlined in this book. The Commission sums up its preliminary argument with, “The list of problems is myriad but the solutions are few or nonexistent.” [38]

As has been detailed in this book elsewhere, the overriding concern of the Indian Court is to protect Indian women from being taken advantage of. This concern is reflected in the Report

No. 219: "Leaving a helpless deserted Indian spouse on Indian shores confronted with a matrimonial litigation of a foreign court which he or she neither has the means or ability to invoke often results in despair, frustration and disgust." [39] However, it is also concerned about the reason Indians go to foreign courts to seek judgments. The report says:

"Such a situation is created because either Indian law provides him no remedy or because he finds it easier and quicker to import a foreign court judgment to India on the basis of alien law which has no parallel in the Indian jurisdiction." [40]

Further they explain, "This clash of jurisdictional law is commonly called Conflict of Laws in the realm of Private International Law which is not yet a developed jurisprudence in the Indian territory. [41] The fact is, India is in "need new urgent legislation. [42] to address these problems, because "times have changed and India has not [43] and that "fortunately, judicial legislation is the only crutch available." [44]

To outline the current guidelines laid down by the Indian courts to handle such problems, Report No. 219 gives a verbatim account of the pivotal court case that has already been introduced in this book as laying down new guidelines in this area. What is important in the next section is the reference to Hague Convention of 1968 on the Recognition of Divorce and Legal Separations:

3.3 In *Y. Narasimha Rao vs. Y. Venkata Lakshmi*, the Supreme Court observed that no country can afford to sacrifice its internal unity, stability and tranquility for the sake of uniformity of rules and comity of nations which considerations are important and appropriate to facilitate international trade, commerce, industry, communication, transport, exchange of services, technology, manpower etc. This glaring fact of national life has been recognised both by the Hague Convention of 1968 on the Recognition of Divorce and Legal Separations as well as by the Judgments Convention of the European Community of the same year. Article 10 of the Hague Convention expressly provides that the contracting States may refuse to recognize a divorce or legal separation if such recognition is manifestly

incompatible with their public policy. The Judgments Convention of the European Community 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. [45]

In regards to signing the “Hague Convention of 1968 on the Recognition of Divorce and Legal Separations as well as by the Judgments Convention of the European Community of the same year” this report makes clear that India may sign and ratify such a convention and still provide protection to their citizens in distress over liberal divorce laws. As cited above, “Article 10 of the Hague Convention expressly provides that the contracting States may refuse to recognize a divorce or legal separation if such recognition is manifestly incompatible with their public policy.” Further, the Law Commission of India states rightly that signing such international agreements is an important step in solving this problem. The report again referred to the Supreme Court’s ruling in *Y. Narasimha Rao vs. Y. Venkata Lakshmi*, which referred back to another report by the Law Commission, Report No. 65, which pertains to the recommendations of the Law Commission on “Recognition of Foreign Divorces [and] elaborately discussed the import of section 13 of the Code of Civil Procedure in the context of recognizing foreign matrimonial judgments in the country.” [46] Of special note here is that the problem the report and the Court is most concerned with is “matrimonial law and what we state here will apply strictly to matters arising out of and ancillary to matrimonial disputes.” [47] The ruling explains that the attempts that have been made so far to resolve these matters have followed “the English rules of Private International Law whether common law rules or statutory rules. The dependence on English Law even in matters which are purely personal, has however time and again been regretted.” [48] It added, “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.” [49]

The problem has been exacerbated in recent years as the courts try to keep up with the complicated issues regarding NRI marriages:

“In spite, however, of more than 43 years of independence we find that the legislature has not thought it fit to enact rules of Private International Law in this area and in the absence of such initiative from the legislature the courts in this country have been forced to fall back upon precedents which have taken their inspiration, as stated earlier, from the English rules. Even in doing so they have not been uniform in practice with the result that we have some conflicting decisions in the area.

11. The rules of Private International Law in this country are not codified and are scattered in different enactments such as the Civil Procedure Code, the Contract Act, the Indian Succession Act, the Indian Divorce Act, the Special Marriage Act etc. In addition, some rules have also been evolved by judicial decisions. In matters of status or legal capacity of natural persons, matrimonial disputes, custody of children, adoption, testamentary and intestate succession etc., the problem in this country is complicated by the fact that there exist different personal laws and no uniform rule can be laid down for all citizens. The distinction between matters which concern personal and family affairs and those which concern commercial relationships, civil wrongs etc. is well recognised in other countries and legal systems. The law in the former area tends to be primarily determined and influenced by social, moral and religious considerations, and public policy plays 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 other areas. That is as it ought to be. . . .”

The current state of the law regarding these marriages is detailed below. I think the purpose is to lay out what is currently available to the courts given the current circumstances and to direct the legislature in amending current laws and fashioning new laws to deal with the problem. A concluding

statement underscores the sentiments expressed by Judge PB Sawant's in his ruling of *Y Narasimha Rao v Y Venkata Lakshmi* (JT 1991 (3) SC 33):

"13. We cannot also lose sight of the fact that today more than ever in the past, the need for definitive rules for recognition of foreign judgments in personal and family matters, and particularly in matrimonial disputes has surged to the surface. . . . A large number of foreign decrees in matrimonial matters is becoming the order of the day. A time has, therefore, come to ensure certainty in the recognition of the foreign judgments in these matters. The minimum rules of guidance for securing the certainty need not await legislative initiative. This Court can accomplish the modest job within the framework of the present statutory provisions if they are rationally interpreted and extended to achieve the purpose. It is with this intention that we are undertaking this venture. We are aware that unaided and left solely to our resources the rules of guidance which we propose to lay down in this area may prove inadequate or miss some aspects which may not be present to us at this juncture. But a beginning has to be made as best as one can, the lacunae and the errors being left to be filled in and corrected by future judgments.

14. We believe that the relevant provisions of Section 13 of the Code are capable of being interpreted to secure the required certainty in the sphere of this branch of law in conformity with public policy, justice, equity and good conscience, and the rules so evolved will protect the sanctity of the institution of marriage and the unity of family which are the corner stones of our societal life.

15. Clause (a) of Section 13 states that a foreign judgment shall not be recognised if it has not been pronounced by a court of competent jurisdiction. We are of the view that this clause should be interpreted to mean that only that court will be a court of competent jurisdiction which the Act or the law under which the parties are married recognises as a court of competent jurisdiction to entertain the matrimonial dispute. Any other court should be held to be a court without jurisdiction unless both parties voluntarily and unconditionally subject themselves to the jurisdiction of that court. The

expression “competent court” in Section 41 of the Indian Evidence Act has also to be construed likewise.”

Report No. 219 of the Law Commission goes on to cite in full sections of this ruling that have already been addressed by this book. It is Section 13(b) and 13(c), which stipulate that decisions of foreign courts should be on “grounds under the law under which the parties are married” [and] “where the judgment is founded on a refusal to recognize the law of this country in cases in which such law is applicable, the judgment will not be recognized by the courts in this country,” respectively.” [50]

The remedy the Law Commission has in mind is to amend existing Indian law, that is, the Hindu Marriage Act of 1955 and Special Marriage Act of 1954, so that Indian Law can recognize certain foreign judgments. The recommendation is to include irretrievable breakdown of marriage as a grounds of divorce.

Another important guideline the report recommends, as stipulated in the *Y Narasimha Rao v Y Venkata Lakshmi* ruling clause 13(d), is to ascertain whether the respondent “was in a position to present or represent himself/herself and contest effectively the said proceedings.” [51] This is an important element. Ratna’s case underscores the need for the courts in the US to consider such guidelines. She is currently proceeding to reopen her case on such grounds. Another important element which would serve to help Indian women in distress who have been deported and cannot fight on their own behalf is this suggestion:

“If the foreign court has 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 are in breach of the principles of natural justice.” [52]

An implication of these guidelines would be that currently there is some need to acknowledge the divorce decrees of foreign nationals but that they will not be recognized if the consequence is unjust to the respondent, who in many cases does not have

the means to contest a divorce. With the recommendation of signing the Convention on the Recognition of Foreign Divorces and Legal Separations, and to amend Hindu matrimonial law to include irretrievable breakdown of marriage, the government of India, through the Law Commission of India, appears to be trying to accommodate the ability to do so and is certainly showing a willingness to do so. It has reminded the government that even with signing the Convention India would still be able to protect the spouses of NRIs from abuse and desertion in the US: "Article 10 of the Hague Convention expressly provides that the contracting States may refuse to recognize a divorce or legal separation if such recognition is manifestly incompatible with their public policy." [53]

That consideration is clearly in keeping with the rulings of Indian courts when it comes to NRI spouses who are deserted. Note that there are three exceptions to the *Y Narasimha Rao v Y Venkata Lakshmi* ruling, which states, "The jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married." [54] One exception is "where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married." [55]

However, three months may not be enough to declare "habitual" residence in some cases. A report on NRI marriages by the National Commission for Women in New Delhi, notes that the NRI in this case was a "bird of passage" and that residence does not pertain to a "temporary residence for the purpose of getting a divorce." [56]

"According to the Court, the decree dissolving the marriage passed by the foreign court was without jurisdiction in this case as according to the HMA Act neither the marriage was celebrated nor the parties had last resided together nor the respondent resided within the jurisdiction of that court. The decree was also passed on a ground which was not available under the HMA Act which is applicable to the marriage. Further, the decree had been obtained by the husband by representing that he was the resident of the Missouri State

when the record showed that he was only a “bird of passage”- He had, if at all, only technically satisfied the requirement of residence of 90 days with the only purpose of obtaining the divorce. The court reiterated that residence does not mean a temporary residence for the purpose of obtaining a divorce, but ‘habitual residence’ or residence which is intended to be permanent for future as well.” [57]

There is another case in which the Indian courts considered three months “very transient, temporary and casual.” [58] In *Harmeeta Singh v Rajat Taneja* 102 (2003) DLT 822, [59] a spouse of an NRI was deserted by her spouse 6 months after marrying him and three months after arriving in the US to live with him. She filed for maintenance under the Hindu Adoptions and Maintenance Act in India and the Supreme Court passed an “order of restraint against the husband” preventing him from continuing with his divorce proceedings and also requesting that he present a copy of the order to the US court. The Court went on to say that even if the husband went through with the proceedings the decree “would be unlikely to receive recognition in India as the Indian court had jurisdiction in the matter and the jurisdiction of the US courts would have to be established under Section 13, CPC.” [60] Further, the husband would be “held guilty of committing bigamy in India and would be liable to face criminal action for that” until the US divorce was recognized. [61] In addition, the Court stipulated that the wife’s stay in the US was “very transient, temporary and casual,” [62] and for that reason may be unable to litigate the case in the US for financial reasons. Therefore the “Delhi courts would be the forum of convenience in the matter.” [63]

Further, regarding NRI marriages, Report No. 219 cites the Supreme Court’s references to the case of *Smt. Neeraja Saraph vs. Shri Jayant V. Saraph*, [3] recommending provisions that will serve to safeguard “the interests of women:”

3.4 In the case of *Smt. Neeraja Saraph vs. Shri Jayant V. Saraph*, [3] the Supreme Court held that although it is a problem of Private International Law and is not easy to be resolved, but with change in social structure and rise of marriages with NRI the Union of India may consider enacting a law like the

Foreign Judgments (Reciprocal Enforcement) Act, 1933 enacted by the British Parliament under Section 1 in pursuance of which the Government of United Kingdom issued Reciprocal Enforcement of Judgments (India) Order, 1958. The Court recommended that feasibility of a legislation safeguarding interest of women may be examined by incorporating such provisions as-3 JT 1994 (6) SC 488

- (a) no marriage between a NRI and an Indian woman which has taken place in India may be annulled by a foreign court;
- (b) provision may be made for adequate alimony to the wife in the property of the husband both in India and abroad;
- (c) 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 44A of the Civil Procedure Code which makes a foreign decree executable as it would have been a decree passed by that court. [64]

These provisions are important. Indian law will not recognize any annulment decree by a foreign court if the Indian woman was married in India. The woman is entitled to alimony whether the property of her husband is in India or abroad. The third would have significant ramifications in the US courts providing they acknowledged and upheld this provision.

(B) **Recommendations of Report No. 219:** The US already recognizes separations and divorces through the principle of comity. Here Report No. 219 gives a specific recommendation to the Indian government to enter into “reciprocal agreements like Section 44A of the Civil Procedure Code which makes a foreign decree executable as it would have been a decree passed by that court.” [65] Importantly, the report makes the recommendation that the following conventions “be examined as to their relevancy and adaptability in the Indian context:”

1. Convention of 24 October 1956 on the law applicable to maintenance obligations towards children

2. Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children
3. Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants
4. Convention of 15 November 1965 on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions
5. Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations
6. Convention of 2 October 1973 Concerning the International Administration of the Estates of Deceased Persons
7. Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations
8. Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations
9. Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes
10. Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages
11. Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
12. Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons
13. Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
14. Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance
15. Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations. [66]

Report No. 219 lays down specific guidelines to help India resolve some of the problems that have beleaguered Indian woman abroad who have married NRIs and have been abandoned, divorced, deported, and/or unable to see their children. It appears under these current and unique conditions that the Law Commission of India recommends that the government of India either sign the particular International Treaties they list above in the realm of International Private Law or that the Indian government consider using the above conventions to help India form law that is adequate to protecting its citizens and that will be honored by countries whose laws are detrimental to these citizens. The latter laws would be fashioned under the idea that in the US, Canada, and UK, where the problems with NRI marriages are flourishing, these new laws will be honored under the principle of comity or reciprocal agreements.

In summary, Report No. 219 suggests the urgency of the Indian legislature to enact “some composite legislation” to both “deal with the problems of nonresident Indians” and “to avoid them from importing judgments from foreign courts to India for implementation of their rights.” [67] The remedy they suggest is to fashion laws that will apply to NRIs “rather than letting them invade the Indian system with judgments of foreign jurisdictions which do not find applicability in the Indian system.” [68]

It suggests that the Indian Courts will not simply “mechanically enforce judgments and decrees of foreign courts in family matters.” [69] The solutions it recommends “partly exist in proper implementation of existing laws, framing of proper regulations, creation of Family Courts and Fast-track Courts and amendment of existing legislation.” [70] The report suggests the following be included in the proposed legislation to aid the problem of too many NRIs seeking remedies in foreign courts:

“Registration of marriages must be made compulsory. This will in turn ensure compliance of conditions of a valid marriage, provide proof of marriage and act as a deterrent for bigamous practices. Section 8 of the Hindu Marriage Act, 1955 makes it optional for State Governments to provide for rules

for providing for registration of marriages. It is opined that States with significant NRI migration must make marriage registration compulsory particularly when one of the spouses is an NRI. Simultaneously, it should be made obligatory that the NRI spouse must give intimation of registration of his marriage to the concerned Embassy/ High Commission in India, in which country he is presently resident. The States in India with high migration incidence should make and notify rules under Section 8 providing for compulsory registration of marriages and incidental matters related thereto. The Commission has already made similar recommendation as to registration of marriage and divorce in its 211th Report titled "Laws on Registration of Marriage and Divorce - A Proposal for Consolidation and Reform." [71]

One implication of registering marriages in India is that foreign courts will be more likely to recognize such marriages.

The next recommendation pertains to allowing for divorce on the grounds of "breakdown of marriage when at least one of the spouses is an NRI subject to safeguards provided by legislation." [72] This requires an amendment of the Hindu Marriage Act of 1955 and the Special Marriage Act of 1954 and should be done so to encourage NRIs to seek divorce in Indian courts and not try to import foreign judgments. Importantly, it is to "give a chance to the Indian spouse to defend on convenient and equitable terms in Indian courts." [73] It goes on to point out:

"Further, the Law Commission in its 65th Report on 'Recognition of Foreign Divorces' (1976) made a radical departure in suggesting that, in considering the questions about the recognition of foreign decrees of divorce, our courts should base their decisions not only on the question of domicile, but also on the basis of habitual residence and nationality." [74]

In consideration of "ancillary orders" dealing with matrimonial issues such as custody, the Indian courts would not consider those orders binding "even though the foreign decrees of divorce are recognized:"

"The said Report also considered the problem about the ancillary orders passed by the foreign courts in dealing with

matrimonial proceedings and on this matter, the conclusion of the Commission was that these ancillary orders should not be treated as binding by our courts even though the foreign decrees of divorce are recognized. These ancillary orders concern the custody of children and other allied questions, and it was felt that it would be juristically imprudent to treat them as binding. The Commission had appended a Bill entitled "The Recognition of Divorces and legal Separation Bill, 1976" with the said Report to give shape to its recommendations." [75]

The next recommendation concerns alimony in cases of NRI marriages. It recommends amending the Hindu Marriage Act of 1955 and the Special Marriage Act of 194 by including "provisions for maintenance and alimony of spouses, child custody and child support as also settlement of matrimonial property." [76] This is suggested so that women who marry NRIs and who either remain in India or are deported to India are adequately cared for "in accordance with the income and standard of the NRI spouse in the foreign jurisdiction. [77]

It is also recommended that governments simplify procedures when it comes to "matters of succession, transfer of property, making/execution/implementation of wills, repatriation of NRI funds." [78] Regarding property problems, the Commission recommends that Fast-Track Courts be set up, especially in States where there are significant NRI populations and where presently there are none. The Commission adds, "A fresh proposal should be mooted to set up such courts as soon as possible." [79]

Report No. 219 explicitly recommends, "India must become a signatory to the Hague Convention on the Civil Aspects of International Child Abduction, 1980." [80] They also recommend that until India signs that treaty that it form liaisons with "foreign missions" to assist the return of children to their country of origin if they have been removed in violation of the court orders of that country.

The report suggests that these changes be implemented "either by providing a new composite legislation for NRIs or suitable changes can be made in existing legislations for streamlining the laws and procedures." [81] It further suggests

that “a core committee of specialists in the field of Private International Law should be constituted at the earliest to prepare a comprehensive draft to suggest the said changes in legislation in the best possible way.” [82]

Hague Convention on the Civil Aspects of International Child Abduction

The status in two countries is as follows:

(A) **In the US:** The pertinent part of this discussion regarding the US being a signatory to this convention is that the US Senate ratified this convention in spite of qualms about a national concern binding states to comply with the convention. More will be touched upon in these qualms in the concluding remarks of this chapter.

(B) **In India:** Report No. 219 also touched the problems of child abduction. This section of the report introduces the fact that India is not signatory to the Hague Convention on the Civil Aspects of International Child Abduction, 1980 and it recommends that India sign it.

The Law Commission of India submitted an earlier report, Report No. 218, recommending that India sign the Hague Convention on the Civil Aspects of International Child Abduction for the following reasons:

“ . . .It can be observed that, the Indian Courts while deciding cases pertaining to minor children have not followed a uniform pattern. There also is an absence of progressive development in the subject. If some matters are decided with prime importance placed on the welfare of the child, some are based on the technicalities of various provisions of law and jurisdictional tiffs. The reason cited for this can be the absence of any law that governs this aspect. This only will affect the condition both physical and emotional of the child, who is caught in the fire of shattered relationships. . .

The situation only shows that the time has come for some international perspective in this regard. The fact that India not being a signatory to the Hague Convention on the Civil Aspects of International Child Abduction may have a negative influence on a foreign judge who is deciding on the custody of

a child. Without the guarantee afforded by the Hague Convention to the effect that the child will be swiftly returned to the country of origin, the foreign judge may be reluctant to give permission for the child to travel to India. As a logical upshot, India should become a signatory to the Hague Convention and this will, in turn, bring the prospect of achieving the return to India of children who have their homes in India. . .

We believe that India should keep pace and change according to the changing needs of society. The Commission, therefore, recommends that the Government may consider that India should become a signatory to the Hague Convention which will in turn bring the prospects of achieving the return to India of children who have their homes in India.” [83]

In the meantime, Report No. 219 offers up an alternative to signing an agreement such as UK-Pakistan Judicial Protocol, which was signed on January 17, 2003. The report points out that Pakistan is also not signatory to the Hague Convention on the Civil Aspects of International Child Abduction, 1980 and that their agreement could serve as a template for India to enter into with other countries. It suggests that this agreement “incorporate the effective provisions of the Hague Convention for the return of the abducted children to the country of the habitual residence” and adds that “Perhaps, the crying need of the day exists for one in India also.” [84]

There is an obvious need for such an agreement. The British and Indian Governments have “recently signed a treaty to extradite offenders of criminal law but in respect of matrimonial problems there is no such agreement, treaty or protocol. Even Legislative changes are still a far cry.” [85]

Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

The status in two countries is as follows:

(A) **In the US:** The US was the first country to sign this convention and the U.S. Senate ratified it during the current session at the time of this writing, September 2010. The benefits

to ratification were laid out in a bulletin of the National Child Support Enforcement Association:

“This Convention contains procedures for processing international child support cases that are uniform, simple, efficient, accessible, and cost-free to US citizens seeking support in other countries. It is founded on the agreement of countries that ratify the Convention to recognize and enforce each other’s support orders. Similar procedures are already in place in the United States for processing interstate child support cases.” [86]

The bulletin goes on to explain that “many provisions of the Convention were drawn from the US experience with the Uniform Interstate Family Support Act, adopted by all states as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).” [87]

Another benefit of ratifying the agreement would be the establishment of central authorities which will facilitate applications for services, documents and case information, using the Internet where is it is able to do so.

It also applies only to situations where “the custodial parent and child live in one contracting country and the noncustodial parent lives in another contracting country.” [88] It would seem that this provision would enable women stranded in India with their sons or daughter to collect adequate alimony and child support from their U.S. resident husband. The report states, “Its primary focus is on uniform procedures for enforcement of decisions and for cooperation among countries.” [89]

According to the National Child Support Enforcement Association, the treaty will effectively support its aims and will not be costly on state and federal governments:

“Ratification and implementation of the Convention will impose a minimal fiscal burden on state and federal governments because the US federal law already requires states to process international cases. Indeed, ratification and implementation may reduce the time and effort agencies have to spend trying to enforce orders abroad as other ratifying countries will be required to provide certain services to US

creditors and debtors initiating support cases abroad.” [90]

In a report by the Committee on Foreign Relations approving the treaty for passage onto the Senate floor in 2010 the Committee on Foreign Relations considers the Convention to be an important step in efforts to ensure that children in the United States receive the financial support they need from a parent living abroad. It reports that there are over “15 million child support cases in the United States, including 150,000 international cases, and . . .the number of international cases is likely to increase.” It also notes that “only minimal changes to the U.S. law would be required. . . [and would be achieved] through adoption of an amended version of the UIFSA by states and other relevant jurisdictions, as well as through conforming amendments to Title IV of the Social Security Act. [91]

It mentions that in July 2008 the National Conference of Commissioners on Uniform State Laws (NCCUSL) “approved model state implementing legislation for the Convention through proposed amendments to the UIFSA.” [92] The UIFSA is the Uniform Interstate Family Support Act, which as its name suggests, facilitates the cooperation of individual state law on an overarching concern such as the retrieval of child support. The Committee on Foreign Relations stipulated that it would not bring the treaty to the Senate floor until all US states adopt these amendments (referred to as UIFSA 2008).

(B) **In India:** The Law Commission of India in Report No. 219 has recommended that the Indian government consider signing Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. [93] It apparently recognizes that this instrument will protect its Indian citizens who have been abandoned in India after marrying NRIs and U.S. citizens in cases whether they married in India and were left at home, or married in India, were taken abroad, and had a divorce judgment filed against their will.

Concluding Remarks

It appears that on its side, the Indian government and the Indian courts are doing all they can to protect their vulnerable citizens who marry NRIs and then run into marital trouble abroad. As the literature, the Indian court decisions, and above

report on this topic suggests, the path is not easy to ameliorate these problems. While Report No. 219 suggests that the Indian government enter into an agreement such as the UK-Pakistan Judicial Protocol, which was signed on January 17, 2003, to try to resolve the problem of international child abduction, they make no such recommendation for individual agreements with countries like the US, Canada, and the UK whose liberal laws regarding divorce are wreaking equal havoc in the lives of Indian citizens who marry NRIs in those countries.

These issues need to be discussed far and wide in both India and the US in order to resolve some of these jurisdictional problems. While Indian citizens suffer and the Indian courts and government step up efforts to seek remedies, it appears that no such attempts are being made on U.S. shores. It is high time that the U.S. policymakers become apprised of the effect U.S. divorce laws have on India's female citizens who marry in India and come to the US to reside with their husbands. Agreements must be made with the US and India as respective parties, especially in regards to amending immigration legislation to prevent some of the injustices that have occurred because of the disparity in marriage and divorce laws in the US and India. Awareness of how Indian women have lost contact with their children and have been kept in abusive situations under the threat of deportation must reach a much larger audience for adequate legislation to be fostered. Thus, this awareness must make its way to all channels available.

Indian policy makers should make it a point to raise this issue with American officials and urge them to come to an agreement with India to ameliorate some of the hardships that Indian women face when they marry NRIs. U.S. citizens should exert as much influence as possible on their representatives to take measures on behalf of Indian NRIs. The number one step to resolving some of the hardship is to modify laws that grant divorces to NRIs. Indians who are in the US on a temporary basis should not be allowed to file for divorce.

That one fix would be a huge step in the right direction. In addition, U.S. policymakers need to be apprised that its divorce decrees and other decisions relevant to family matters will not be recognized by India

“If the foreign court has 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.” [94]

It is only fair that a man who leaves his Indian wife, threatens deportation, and causes her deportation by filing divorce proceedings against her pay for her “travel, residence and litigation where necessary” so that she can represent her own interests and the interests of her child in court. Otherwise, the proceedings do constitute an injustice. Ratna’s story makes this abundantly clear. She is struggling hard to stay in America and fight to see her child; meanwhile she is being charged more than she can afford for supervised visits.

Number two is to allow spouses of NRIs who are here on H4 visas the right to work. This change in the U.S. immigration laws would go a long way in alleviating some of the suffering Indian women who are dependent on their spouses now endure. Women who are allowed to work are not so easily isolated and stranded in a foreign country. They have more resources at their disposal, and if their husband does file for a divorce, they are in a better position to apply for a H1B work visa. In addition, a woman who is working will be in a far better position to be granted custody than one who does not have a job.

Lets face it, the current U.S. laws are stacked against Indian women who arrive on H4 visas and cannot work. I think these pages have made that abundantly clear. Priya acknowledged that having a job put her in a far greater advantage when her husband left her than many other woman who are similarly divorced by their husbands. There are already international laws that have been readily agreed to by the world community that have been fashioned to protect just this type of injustice. One, which India has signed and ratified but which the US has yet to sign, is the Convention on the Elimination of Discrimination Against Women. As the UNICEF report has pointed out, it is an important agreement when it comes to violence against women because of the concept of due diligence. It hold states responsible to take “effective legal measures,

including penal sanctions, civil remedies and compensatory provision” (p. 10) to protect women against domestic violence. The provisions of Violence Against Women’s Act (VAWA), which have been laid out in an earlier chapter, are laudable, but the US needs to do more to see that its laws protect Indian women from the abuses they are increasingly at risk for. The Law Commission of India urges signing of that convention in Report No. 219. The Law Commission also recommends that India sign the Recognition of Divorce and Legal Separation. The US should sign it as well. Further, the Law Commission has recommended that India sign the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, while the US is in the process of ratifying it. These are agreements would help to form a bridge under which the countries can cooperate on behalf of NRI women. However there is one law that has been shown to have teeth when it comes to a mother under threat of deportation and separation from her children, and it should be a priority for activists in the US who want to see the kinds of abuses documented in this book end. It is the Convention on the Rights of the Child.

The Need for the U.S. Senate to Ratify the UN Convention on the Rights of the Child

The US should consider ratifying the United Nations Convention on the Rights of the Child. It is one of only two nations in the world who has not signed it; the other exception is Somalia. The convention constitutes a potentially powerful instrument for resolving the kinds of issues laid out in this book. Its aim is for governments to act in the best interest of the child. Indeed, the Convention on the Rights of the Child represents a landmark. Trevor Buck writes in *International Child Law*:

“The speed at which this Convention was ratified and the number of nations involved strengthens the argument, at least on a pragmatic basis, that this Convention has established itself as the key international instrument that sets out the fundamental principles of international children’s rights.” (p. 17)

He adds that at the international level it is now easy to point to children's rights by identifying provisions laid out in the UN Declaration of Human Rights 1948 and the two other UN Covenants established in 1966 (International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights), and the UN Convention of the Rights of the Child. However

"The approach of legal positivism has simply been to point to the existence of such rights in contemporary legal instruments. . .[while] it has been said that the UN Convention on the Rights of the Child, and indeed other international treaties, are vehicles for 'manifesto' rights, that is, rights that reflect mere aspirations." (p.17)

For example, one lawyer on the subject identified Article 27 the child's right to adequate standard of living as a case in point (Buck, 2005).

However, Buck maintains that when examined closer one can see that this article of the convention does provide a "legal standard, namely that parents have the 'primary responsibility' for securing favourable living conditions. The state, by implication, has a secondary responsibility to assist parents and other caretakers in these tasks and in case of need provide material assistance and support programmes, particularly with regard to 'nutrition, clothing and housing" (p. 17). In other words it provides a "useful structure. . .in which the right to an adequate standard of living can be operationalised. It also contains a more detailed obligation on states to secure the recovery of maintenance for children (Art 27(4))" (p. 17).

In addition, the supervising committee of the UN Convention on the Rights of the Child encourages the coordination of participating governments. Countries that are signatory to the Convention have a responsibility to see that its guidelines are being carried out within the state regardless of the decentralization of the government. The Committee that oversees the implementation of the agreement in participating states stresses, "there must be safeguards to ensure that decentralization or devolution does not lead to discrimination. [95] An important attribute to the Convention, and the aspect that gives it teeth is the following:

“The Committee welcomes the incorporation of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments in some but not all States. Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice. Incorporation by itself does not avoid the need to ensure that all relevant domestic law, including any local or customary law, is brought into compliance with the Convention. In case of any conflict in legislation, predominance should always be given to the Convention, in the light of article 27 of the Vienna Convention on the Law of Treaties. Where a State delegates powers to legislate to federated regional or territorial governments, it must also require these subsidiary governments to legislate within the framework of the Convention and to ensure effective implementation (see also paragraphs 40 et seq. below).” [96]

Its impact on participatory countries confirms its effectiveness. In *Convention on the Rights of the Child: International Law Support for Children*, Mower, Jr. writes that Nicaragua received “commendatory comment from the committee” as a result of its willingness to consider action that would give constitutional status to the convention; its major changes in laws relating to sexual abuse of women and children; its engagement in comprehensive examination of various laws affecting children to ensure the compatibility of the laws with the convention’s provisions; its establishment of a National Commission for the Promotion and Defence of the Rights of Children; and the proposed creation of an office of ombudsman for children.” (p. 176)

What’s more, the Committee on the Rights of the Child is one of two conventions that has the capacity to recommend that studies be conducted on pertinent aspects of child’s rights. Statistical data gathering is necessary to recommend specific changes and the committee often points to the need for countries to gather statistical data in this area. Article 4 of the Convention requires international cooperation. Regarding the principle of the best interest of the child, Buck (2005) writes

that the Committee “has consistently urged states to progress the work of *integrating* the principle into their legislation, regulations and judicial and administrative procedures (CO Croatia, 2004 and CO Kyrgyzstann, 2004” (p. 59) and in relation to parental custody disputes.

It seems an important step for the US to take if it wants to ensure that its laws will protect a child from being unduly separated from his or her mother due to immigration laws that make no allowance for a mother who has been divorced without her consent. Ratna would like to see the courts uphold such rights. Indeed Article 9, which lays out the principles of non-separation from parents, and Article 10, family reunification, have caused the Committee to comment on signatory countries that do not provide legal provisions for “protecting a child’s right to maintain contact with his or her parents.” [97]

Thus, this Convention has been deemed to be useful and is an important structure for ensuring a child’s right to see his or her parents even when those parents have been separated. It also helps ensure a child’s right to maintenance and thus a mother’s right to receive it from a spouse that has divorced her. Therefore, it would seem that the obligation of the state “to secure the recovery of maintenance for children” is an important one. Finally, the Convention of the Rights of the Child has been applied in Canadian courts in a case not too dissimilar to Ratna’s.

Convention of the Rights of the Child Applied in Canadian Courts

In a preface to the document, “The Application of the Convention on the Rights of the Child by Canadian Courts since Baker: Coasting or Speeding up?” Dated November 19, 2004, Jacques Chamberland, Justice of the Court of Appeal of Québec wrote:

“Some judicial decisions represent distinct turning points in the evolution of the law. *Baker v. Canada (Minister of Citizenship and Immigration)* [1] is one of those cases. For public law jurists, the judgment sparked off a revival of interest

in the challenging issue of the relationship between international law and Canadian domestic law. [2] More particularly, it renewed the interest of Canadian jurists in the *Convention on the Rights of the Child*. [3] This is illustrated by the regular application of this Convention over the past five years, not only in immigration cases but also in a number of other matters either directly or indirectly touching on child protection.” [98]

This Canadian case involved a Jamaican woman named Ms. Baker who came to Canada on a visitor’s visa in August 1981 and stayed without ever gaining permanent status as a resident. When the Canadian government became aware of her lapsed status, she was deported. According to Jacques Chamberland, Justice of the Court of Appeal of Québec, Ms Baker applied for an exemption from the requirement to apply for permanent residence from outside Canada on the basis of “compassionate or humanitarian considerations” pursuant to Section. 114(2) of the *Immigration Act* [4] and Section. 2.1 of the *Immigration Regulations*. [99]

She explained that she was the sole care-giver of her two children who were born in Canada and who “depended on her for emotional support.” [100] Her application was refused. An immigration officer in charge of the inquiry noted that the children’s interests may not have been taken into consideration. This apparently gave Ms. Baker grounds to apply for a review of the decision made by the immigration authorities by the Federal Court. In this she “argued that it contravened several articles of the *Convention on the Rights of the Child*, which Canada had ratified on December 13, 1991 but never incorporated into domestic law.” [101]

When the Federal Court Trial Division and the Federal Court of Appeal “dismissed the application for judicial review.” [102] they stipulated that the international convention “did not form part of domestic law.” [103] It added that the law should be interpreted to the farthest extent possible “to avoid conflicts with Canada’s international obligations’ but that “requiring ministerial discretion to be exercised in accordance with an international convention that has not been implemented by domestic law would interfere with the

democratic principle of the separation of executive and legislative powers.” [104]

The case went to the Supreme Court of Canada, which overturned the ruling of the Federal Court of Appeal on July 9, 1999 in a split decision. Jacques Chamberland Justice of the Court of Appeal of Québec wrote that Madam Justice L’Heureux-Dubé, writing for the majority of the Court found that the immigration officer’s decision was inconsistent with the values underlying the grant of discretion. Invoking the objectives of the Act, international law and Ministerial guidelines, she concluded in her reasons that the words “compassionate and humanitarian considerations” require particular consideration of the interests and needs of children. [105]

Madam Justice L’Heureux-Dubé wrote further:

69. Another indicator of the importance of considering the interests of children when making a compassionate and humanitarian decision is the ratification by Canada of the Convention on the Rights of the Child, and the recognition of the importance of children’s rights and the best interests of children in other international instruments ratified by Canada. International treaties and conventions are not part of Canadian law unless they have been implemented by statute: . . . *the Convention has not been implemented by Parliament. Its provisions therefore have no direct application within Canadian law.*

70 *Nevertheless, the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review. . .*

71 The values and principles of the Convention recognize the importance of being attentive to the rights and best interests of children when decisions are made that relate to and affect their future. . . The principles of the Convention and other international instruments place special importance on protections for children and childhood, and on particular consideration of their interests, needs, and rights. *They help show the values that are central in determining whether this decision was a reasonable exercise of the H & C power.* [106]

(Emphasis added by report) Jacques Chamberland wrote on the appropriateness of relying on international conventions when applying immigration law:

The *Baker* decision thus establishes the principle that, in the process of statutory interpretation and in matters of judicial review, it is entirely appropriate to rely on provisions of international conventions which have not been incorporated into legislation but with which the State is presumed to have a will to be in compliance. [107]

Thus, the *Baker* case's influence on case law sparked a renewed interest in the UN Convention on Children's Rights, and this interest, especially in matters regarding immigration, has been confirmed in the amount of cases that have declared it as precedence in their decisions. Jacques Chamberland concludes:

"The impact of *Baker* on the Canadian legal landscape is undeniable.

Standards set out in international conventional law – and in particular, those established in the *Convention on the Rights of the Child* – are now benefiting from greater illumination and analysis." [108]

The fact that the UN Convention on the Rights of the Child took precedence over immigration law in Canada shows the extent to which it has proved a useful structure and for countries like Canada, which feel impelled to uphold the values contained within it. Even though it had not been incorporated into domestic law, the *Baker* Case, by creating a precedent, proved a pivotal vehicle for doing so.

The US has not yet ratified the Convention, because, as Trevor Buck (2005) writes, "Family law matters generally fall within the competence of state legislatures rather than the federal government in the US, so there are fears that ratification would federalize an area of law traditionally within the states' competence" (p. 77).

The US Constitution stipulates that an international treaty should be binding in both state and federal courts. This means that like the *Baker* case, American courts could begin to cite the treaty.

The fact that the legislation would have teeth on behalf of the right of a child to see his or her parent should be a reason to sign it. The US was able to override similar worries (over federal legislation trumping individual states jurisdictions) when it came to signing the Hague Convention on the Civil Aspects of International Child Abduction. It was ratified by the U.S. Senate in 1988 in spite of initial similar qualms. In 1981, around the time President Ronald Reagan submitted to Congress his letter of transmittal asking them to ratify the treaty, there had been unifying legislation already in effect in the US to resolve such matters domestically. This Act is called the Uniform Child Custody Jurisdictional Act, and more about how it works can be found in *Interstate Custody Litigation: A Guide to Use and Court Interpretation of the Uniform Child Custody Jurisdictional Act*. The act's purpose is to promote the cooperation between courts of different states, (2) to provide for litigation to take place in the state with the "closest connection" to the child, (3) discourage continuing controversy by encouraging binding decisions, and (4) penalize parents for "abductions and other unilateral removals of children. (p. ix)

The guide to its use and court interpretation noted that the implementation of the Hague Convention on the Civil Aspects of International Child Abduction "will require some federal legislation, since the question of whether federal or state courts should be the ones to make determinations under the treaty is now very much open" (p. 93). It goes on to say:

:It has always been state courts that have made custody determinations in the United States, and only those courts have acquired any significant familiarity with the issues. The treaty contemplates that in a federal system like ours, there could be a "central authority" implementing the treaty in each state and a "central central authority" for the federation." (p. 93)

However in President Reagan's Letter of Transmittal to the Senate of the US October 30, 1985, he wrote:

"Federal legislation will be submitted to provide for the smooth implementation of the Convention within the United States. This legislation will be consistent with the spirit and

intent of recent congressional initiatives dealing with the problem of interstate child abduction and missing children.” [109]

In his appeal to the Senate to ratify the agreement President Ronald Reagan noted:

“The Convention is designed to secure the prompt return of children who have been abducted from their country of habitual residence or wrongfully retained outside that country. It also seeks to facilitate the exercise of visitation rights across international borders. . . Moreover the Convention establishes a judicial remedy in wrongful removal or retention cases which permits an aggrieved parent to seek a court order for the prompt return of the child when voluntary agreement cannot be achieved. An aggrieved parent may pursue both of these courses of action or seek a judicial remedy directly without involving the Central Authority of the country where the child is located.” [110]

Reagan emphasized that the Convention “would represent an important addition to the State and Federal laws currently in effect in the United States that are designed to combat parental kidnapping—specifically, the Uniform Child Custody Jurisdiction Act now in effect in every State in the country, the Parental Kidnapping Prevention Act of 1980, the 1982 Missing Children Act and the Missing Children’s Assistance Act. . . . In short by establishing a legal right and streamlined procedures for the prompt return of internationally abducted children, the Convention should remove many of the uncertainties and the legal difficulties that now confront parents in international child abduction cases.” [111]

The US Senate has also ratified The Hague Convention on International Recovery of Child Support, which required the states to amend the UIFSA, an Act in place for the purpose of cooperation between jurisdictions for the overarching goal collecting child support. It is hard to imagine why the individual states would feel threatened by the US adopting a treaty such as the Convention on the Rights of the Child, given the successful implementation of other uniform legislation that states have adopted concerning the best interests of children.

It is worth mentioning that the US participated in the UN Convention on the Rights of the Child's drafting and did sign it. The US Senate however has failed to ratify it.

Buck notes the drawbacks for the US in not signing it:

"It has also been an important strand to United States foreign policy to encourage human rights observance in other states, a policy surely made more difficult by its own delays in ratifying such instruments and in particular its complete failure to ratify the CRC." (p. 78)

Therefore, US ratification of the UN Convention on the Rights of the Child should be consistent rallying point for those of us who would like to end the kinds of injustices that are now occurring when NRIs divorce Indian citizens in the US. Signing on to the Convention means that a country is responsible for taking all "appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention." [112] The fact that it could have such an enormous potential impact because it becomes a law of the land in the US means that there is all the more reason to fight for it. The Convention provides a vehicle for international cooperation. Perhaps cases like the Baker case could be tried citing the provisions outlined in the Convention protecting the child's rights to continue to have personal relations with his or her parents. If this law is passed and courts in the US begin citing it and implementing its provisions, then a woman's right to see her child and the government's obligation to facilitate that right becomes the law of the land.



How Can I Help?

To everyone who reads this book, it is obvious that much needs to be done to alleviate the suffering that is currently happening to Indian women who marry NRIs. U.S. immigration policies need to be changed and there needs to be an agreement in regards to marital and custody laws between India and the US. One way to get involved is to join SevA. Go to the website SevA Legal Aid and become a volunteer, donor, or a friend who wants to share your views with us. Go to www.sevalegalaid.com. There are other things that you can do to help in your unique capacity as a parent, citizen, or activist.

As a Parent

Parents who read this book should keep in mind that divorce is not the worst thing in the world for their daughter who finds herself in an abusive marriage. When their daughter reaches out to them in desperation, many parents who reside in India will continually try to persuade them to please their husbands and try to make the marriage work. It might be helpful to know that a divorce in the US does not carry the same kind of stigma as it does in India. In America, your daughter will lead a much happier life outside of an abusive marriage. It is likely she will be able to provide for her children and do quite well once she is out of the intolerable situation. The most miserable women I have seen are the ones that do not get a divorce because they try to please their parents.

As an Indian Citizen Who Cares

The courts in India are obviously acting responsively to the plight of many Indian women who are abandoned by their

foreign spouses. However, as Anil and Ranjit Maholtra point out in *Acting for Non-Resident Indian Clients*, there is a need for some codified law to protect the rights of these women. Indian citizens can put pressure on their legislative bodies to do that in a variety of ways. Women can join women's empowerment groups in India to advocate on the behalf of many women in India and abroad who are abandoned by their husbands, deported, and in need of child support. They can join forces together to act on behalf of this cause. They can raise funds to support educational efforts, they can sponsor workshops, which SevA would be happy to do, to counsel Indian women at home and abroad about this issue.

Indian citizens should urge India to adopt the Hague Convention on Civil Aspects of Child Abduction and to investigate the idea of India becoming signatory to the conventions that the Law Commission of India recommends they look at. These are listed in Chapter 10 of this book. Indians can also urge their government to ensure that Indian women overseas who are encountering the types of marital problems documented in this book will have access to the resources they need to fight for their rights. Financial assistance would aid their ability to gain badly needed legal and counseling services, as well as help care for themselves and their children. It is a very hard road back to oneself, as Neela can testify, after being in an abusive relationship. One way to start would be to implement the proposals that I have already suggested. I lay out the substance of these proposals in a subsequent chapter, Anu Peshawaria. I have proposed an agency to be set up in the US to gather data on this issue and to provide legal assistance to women in need.

As a US Citizen Who Cares

U.S. citizens should lobby their representatives to urge them to make amendments to current U.S. immigration laws. The number one law that should be amended is the provision that stipulates that women who are here with the husbands on H4 visas cannot work. This book is testimony to the problems that women encounter when they are unable to work, isolated from their families by abusive men, unable to build a social network

here in the US, and then threatened to be deported back to India. When men divorce them they are left without resources and often a way to see their own children. Allowing women to work on H4 visas would change much of this. Women who are here with husbands on L1 visas are allowed to work. There should be no reason why women on H4 visas cannot do the same. In addition, urge your representative to sign the Convention of the Rights of the Child, which would have meaningful ramifications to women like Ratna who are struggling to stay in the country just to see her child. Also, help pass legislation that would facilitate an Indian women's willingness to call for help. The 800 number mentioned in Chapter Ten of this book would go a long way to ensure that women do not suffer in silence when they badly need help.

Also, U.S. citizens need to assist in raising awareness of this issue. Donating this book to libraries or taking this book to their local gurudwaras or temples would make this information available to the women who need it right now. Help in the way of funds for SAWOs to provide services is also needed. Lack of funding for counseling services is still an issue for many areas of the country. As previously mentioned, Neela is on a month-long waiting list to see a therapist who will see her on a sliding scale. We need funding for South Asian Woman's Organizations to do all that they are capable of doing in providing women like Neela with the help they need. SevA also needs funding and volunteers to carry out the work that needs to be done in the US on behalf of Indian women like Neela who get caught in the chasm between two great countries.



Resources: Organizations to Contact

Battered Women's Shelters

How to find a Battered Women's Shelter is at the following address.

http://www.ehow.com/how_8640_find-battered-womens.html

South Asian Women's Organizations

SAKHI: For South Asian Women

Lists on its website organizations across the US:

South Asian Anti-Domestic Violence Organizations in the U.S.

<http://www.sakhi.org/gethelp/southasianorgs.php>

California

Aasra

Freemont, California

1.800.313.ASRA

510.657.1245

Email: asraa1@aol.com

Maitri

San Jose, California

www.maitri.org

1.800.8.MAITRI

408.436.8393

Email: maitri@maitri.org

Narika

Northern California

www.narika.org

1.800.215.7308

510.540.0754

Email: narika@narika.org

Sahara (South Asian Helpline & Referral Agency)

Artesia, California

Hotline: 1.888.724.2722

Tel: (562) 402-4132

www.saharaorg.org

Email: sahara@saharaorg.org

South Asian Network

Los Angeles, California

562.403.0488

Email: kripa@southasiannetwork.org

Connecticut

Sneha

Connecticut

www.sneha.org

1.888.58.SNEHA

860.658.4615

Email: sneha@sneha.org

Georgia

Raksha

Atlanta, Georgia

www.raksha.org

1.866.725.7423

404.842.0725

Email: raksha@mindspring.com

Illinois

Apna Ghar

Chicago, Illinois

www.apnaghar.org

1.800.717.0757

773.334.4663

Email: info@apnaghar.org

Maryland

ASHA – Asian Women’s Self Help Association

Washington D.C., Virginia, and Baltimore, Maryland

www.ashaforwomen.org

1.888.417.2742

201.207.1248

Email: asha@ashaforwomen.org

Michigan

MAIFS – Michigan Asian Indian Family Services

Detroit, Michigan

www.maifs.org

1.888.664.8624

248.477.4985

Email: info@maifs.org

New Visions: Alliance to End Violence in Asian/ Asian-American Communities

www.ssw.umich.edu/newvisions/

734.604.1808

Email: newvisions@umich.edu

New Jersey

Manavi

New Jersey
www.manavi.org
732.435.1414
Email: manavi@manavi.org

New York

AWAKE
Rockland County, New York
845.368.2011

Turning Point for Women and Families

New York City, New York
www.turningpoint-ny.org
718.883.9400
Email: info@turningpointny.org

Sakhi for South Asian Women

New York City, New York
www.sakhi.org
Helpline: 212.868.6741
Office: 212.714.9153
Email: contactus@sakhi.org

North Carolina

Kiran
North Carolina
www.kiraninc.org
1.866.KIRAN.INC (1.866.547.2646)
919.865.4006
Email: kiraninc@hotmail.com

Oregon

Sawera
Portland, Oregon

www.sawera.org
503.778.7386
503.641.2425
Email: sawera@sawera.org

Pennsylvania

Sewaa
Philadelphia, Pennsylvania
www.sewaa.net
215.62.SEWAA (73922)
Email: sewaa@sewaa.net

Texas

AADA - Asians Against Domestic Abuse
Houston, Texas
www.aadainc.org
713.339.8300
Email: info@aadainc.org

Daya

Houston, Dallas and San Antonio, Texas
www.dayahouston.org
713.914.1333
Email: info@dayahouston.org

Saheli

Austin, Texas
www.saheli-austin.org
512.703.8745
Email: saheli@usa.net

Virginia

ASHA - Asian Women's Self Help Association
Washington, D.C., Virginia, and Baltimore, Maryland

www.ashaforwomen.org
201.207.1248
1.888.417.2742
Email: asha@ashaforwomen.org

Washington, D.C.

ASHA – Asian Women’s Self Help Association
Washington, D.C., Virginia, and Baltimore, Maryland
www.ashaforwomen.org
1.888.417.2742
201.207.1248
Email: asha@ashaforwomen.org

Washington (State)

Chaya
Seattle, Washington
www.chayaseattle.org
1.877.92.CHAYA (24292)
206.325.0325
Email: chaya@chayaseattle.org



Anu Peshawaria

Legal Advisor to the Indian Embassy

On Oct 22nd 2009, Anu Peshawaria was appointed as the 1st Legal Professional Advisor to the Embassy of India, Washington DC, in the Department of Community Affairs. She currently advises all U.S. consulates located in San Francisco, Chicago, Houston, and New York. She advises officers from the embassy of India and other consulates of India in the USA on legal matters relating to overseas Indians. She counsels overseas Indian women facing marital problems and their families, coordinates with registered NGOs, embassy and consulates in USA, and monitors the cases referred to NGOs under the MOIA scheme for legal/financial assistance to women.

Anu Peshawaria became apprised of the marital abuse issues Indian women were facing in the US when she moved to the US in 1999. Since then, she has been diligently working to educate both the women in India before they come to the US and policy makers in the Indian government about the abuses that occur because of the discrepancy in the two nations' laws and culture. She started SevA Legal Aid to help educate Indian women both in the US and in India. She wrote "*Immigrant Dreams*" in one of her initial attempts to educate Indian women about the potential dangers lurking in America if they did not take heed to verify their potential spouses background. She has continued to publish articles, give workshops, hold a weekly radio show every Tuesday, and has made many television and radio appearances both in the US and India on this issue.

She continues to fight for these women in her new official capacity, but SevA foundation needs help. The need is overwhelming and the resources are not enough to keep up with the need. Anu Peshawaria is answering approximately 40-50 emails a day from women in India and the US. Her phone rings so often that she is a practically a one- woman-24-hour hot line. About half of her calls come from women in India, and the rest come from women in the US. No matter what time of day or night they call, Anu will pick up the call, regardless of what she is doing.

When it is the middle of night for Anu in the US, people from India are just waking up and calling her. People from Boston and New York call her when they wake up at 7 a.m., which for Anu, who resides in California, is 4 a.m. in the morning.

Women in India ask for legal advice pertaining to child custody laws, maintenance or alimony, and desertion of spouses. They may be trying to locate men who have left them and their children, without ever having properly served their wives divorce papers. Some of these women do not know if they are still married, and many have never received a penny in alimony or maintenance support. They also call about dowry issues and physical and mental cruelty. Indian parents call. Indian fathers call. They want to know about U.S. immigration laws, how they can come to the US to contest their lawsuit, or how they can reverse an existing judgment that a US court made in cases of a spouse deserting them.

As so many of these cases show, women in India have a difficult time fighting their cases from abroad. Even in the US, Indian women are dis-empowered and struggle to fight these cases. Three eloquent voices have testified to this in these pages.

Anu Peshawaria is able to offer something that is very valuable to all of these women and parents: legal advise. The situations women find themselves in can be extremely emotionally debilitating.

Anu can often offer short-cuts to women who are too emotionally confused to negotiate the complicated landscape of US immigration and marital laws, let alone the complicated

landscape of International Law pertaining to family matters. She has found that helping them with their immigration status is a significant step in alleviating their plight. She often refers them to lawyers who will work on a sliding scale, and of course she refer them to a SAWO, if one is near, for further assistance.

The government of India is one of her clients and she advises it on how to help Indian immigrants fight for justice in the US. She is operating out of her own offices in Seattle, Washington and Fremont, California and doing this work often at her own expense. This book is intended to raise awareness of an issue that needs much more help than she herself can provide in the way of infrastructure and funding.

This book was written in an effort to lay a road map for those who are interested in solving the plight of these women. SevA needs funding, and organizations like SAWOs that have budded up around the US also need funding. With enough consistent effort we can begin to make the necessary changes in the law and alleviate some of the suffering we have seen in the stories of Neela, Ratna, Priaya and countless others.

Proposals Submitted

The Indian government under the auspices of the Ministry of Overseas Indian Affairs consulted Anu as to why more Indian women were not taking advantage of the grant (referred to also as “scheme”) they offer. She gave them her assessment regarding this and advised them to take proactive action to further educate the citizens in both US and India and set up an agency in the US to gather data and to provide legal assistance to these women. The substance of her proposals dated are summarized below:

On the issue of reasons for underutilization of allocated funds by the Indian Missions under the scheme, firstly, most of the deserted women are not aware of this scheme.

Secondly not enough education and publicity has been done to make overseas Indians aware of this scheme, and thirdly, without proper knowledge of the laws of various countries it is very difficult to help overseas Indian women in international marriages. Proposals should be made to do

educational seminars in all countries including the USA and India and have a legal aid cell to monitor and assist these women. A help line with a 1-800 number, which could be publicized so that non-profits, NGOs, and Indian women can reach that number in order to find out new schemes of the Indian government would be extremely useful. Finally the eligibility criteria should be looked into closely to ensure that deserving cases get covered under the scheme.

In this proposal, Anu Peshawaria recommended that the Indian government set up a community legal resource that could provide pro bono legal aid work. She pointed out that she had spoken to several agencies, such as the Community Legal Resource Network (CLRN) at CUNY School of Law, about forming a legal resource network on the East Coast for Indian women in need. She pointed out that CLRN had agreed to provide a network of 350 lawyers who would be willing to advise overseas Indians at little or low cost through CLRN. CLRN is composed of several hundred lawyers who are graduates of the CUNY School of Law, including Fred Rooney, Esq., who is eminently suited for such a collaboration. He is well versed in area of international family law, has served on the International Forum on Parental Child Abduction, and is known for being an expert in Hague Convention practice.

Anu Peshawaria added that this collaboration with Fred Rooney, Esq. could be a start from which “to grow our network to assist all overseas Indians suffering from human rights abuse and issues such as fake marriages and immigration problems.”

A November 17, 2009 proposal also advised the setting up of a community lawyer network. This proposal was the outcome of steps that Anu Peshawaria had taken to inquire into the most significant needs of the overseas Indian community at this time. She had sent a note to all consulates who are currently handling these problems to convene a meeting with NGOs (SAWOs and other organizations on handling marital abuse in the South Asian community in the US) and consul members “so that we could understand exactly what type of services if implemented by the government would be effective and to design strategies and find solutions to encounter this huge problem.”

She added that she met in early November that year with the San Francisco Consulate “on the issue of finding ways to strengthen the government of India scheme” and discussed the idea of extending the grant to men who are deserted by their wives and that “men desert their wives and divorce in the US since it is easy even though it’s not valid in India.” There was also the suggestion that the consulates have “easy-to-understand pamphlets to be handed over at the time the passports.”

In addition, it was recommended that educational workshops be held and media attention be attracted so that the parents of the girls can be educated.

The role of an investigative agency to help do background checks to avoid fraudulent marriages was also discussed. This proposal went on to suggest the setting up of a network to provide legal help for women in situations of marital abuse, who especially need legal help with immigration and custody:

Finally it was discussed that that the main problem is that legal support and legal services are very costly and that is a very big requirement.

It was suggested that we need to have a broad spectrum of legal representation all over USA to help the overseas Indian women and the setting up of a free legal centre. It was pointed out that NGO SevA take the task of filing and follow-up on paperwork for all women free and Anu pointed out that SevA is so far focused in the area of education and has done workshops to create awareness for these causes, written books, printed publicity material, and been providing support to destitute women. Unless we are supported by the government or any other organizations or other publicly funded program, it will be an impossible task.

Further, in a meeting with the Consul General in charge of Women Affairs in New York and the Director of Overseas Ministry in a visit to the New York Consulate, “the largest and most problematic issue that emerged was how to tackle the issue of getting legal aid for women in the USA and how to find a solution to getting legal representation for deserted women.”

Anu Peshawaria made the recommendation that the Ministry follow up on her contact to use the network of community lawyers on the East Coast to begin the process of growing a network in the US to meet the needs of Indian women in the US:

By this current association we can make available a huge network of lawyers to advise and guide the overseas Indians in their battle for justice in a foreign land. I think this would be the perfect solution for one of our most vital and long-standing problem of finding free legal support at little or no cost to the government. It is a long-standing and urgent need to have a hotline with an easy number like "911" for all these abused women to turn to for help.

On February 1, 2010, Anu Peshawaria visited three women's shelters in the New York Area. She also visited with law schools and the New York Consulate. She suggested the following proposals which are currently pending with the government of India.

1. Conduct educational seminars in all countries including USA and India to educate women of laws concerning marriage, divorce, marital property, child custody, and alimony.
2. Have a centralized agency along with staff to monitor cases of women in order to give proper feedback to the government
3. Set up a national help line to be located anywhere in the USA with a 1-800 number which can be publicized so that NGOs and Indian women can reach that number in order to find out new schemes of the Indian government as well as help and guide them in cases of emergency.
4. Set up a website containing all the legal information as well as immigration laws in order to help an Indian women in case of an emergency.
5. Set up a background agency to help do background checks before marriage to avoid fraudulent marriages.
6. Provide financial support to deserted women in India to be able to travel to the US to defend their rights and

get justice for themselves and their children

Background

Anu Peshawaria founded Indian Vision Foundation and SevA Legal Aid to help Indian women both in the United States and India as well as others who have limited resources and are in need of legal help. Anu Peshawaria is a social activist who has been lending her expertise as a lawyer for 25 years to clients who are need her services the most. She served on the Supreme Court of India and is an attorney in India and the United States of America.

She holds a law degree from University of Delhi Law Centre, and a degree in executive management from Stanford University in California. In her private practice in India and US she has helped hundreds of women with a range of issues including gaining legal immigration status in the US. She has handled hundreds of immigration matters, Indo/US divorce cases, domestic violence, and other issues of fraud and misrepresentation.

She is also well known for her accomplishments as a world class Tennis champion and has represented India at Wimbledon. For the past 12 years she has been working to ameliorate the growing problems in the South Asian women's community due to marital abuse involving immigration law. She has dedicated her services both in an unofficial and recently in an official capacity to raise awareness of these issues and the need for the US and India to work together to solve this problem.

Awards

She has been the recipient of a number of awards, as follows:

- The Hindu Rattan award in 2009 for her work in helping Indian immigrants in the US.
- The Pravasi Divas Award in 2008 by the chief minister Prakash Singh Badal.
- Award for Excellence by the American Federation of

Muslims in 2006 for her outstanding and generous contributions to the community and her achievements in as an attorney.

- Outstanding Community Leadership Award in 2005, which was presented by the City of Fremont, California for her outstanding work to launch legal aid programs that assist new immigrants to successfully adapt to U.S. customs and laws and enjoy a higher quality of life in their new country.
- Political Watch Award in 1997 and 1998 for her work in defending tortured female protestors in Uttarakhand, India. She wrote about the incident in 1994 at Muzaffarnagar, Dehradun, Delhi, Gopeshwar, Rishikesh and the surrounding areas of UP. The police of Uttarakhand attacked 300 silent protesters, all women, who supported the statehood of Uttarakhand.

The police raped and physically beat these woman and also killed their children. Anu Peshawaria did a thorough report of these incidents and submitted it to the Home Ministry. Her report sought a full-fledged probe by a female judge. Special courts were set up to resolve the issue. As a result of Anu Peshawaria's efforts, 345 perpetrators were arrested for these acts. In 2000 she was granted Alien of Extraordinary Ability status by the Immigration and Naturalization Services of the US for her exemplary athletic, human rights, and legal/social contributions. She also holds the position of President of Indus Attorneys with branches in India, US, Canada, and London, UK and handles complex litigation cases, immigration, family law and business mergers and acquisitions.

She founded Immigration and Business Services Worldwide, Inc. These offices offer a comprehensive range of immigration and business services to all, regardless of the client's financial resources. Her offices are situated in India, the US, and Canada and the UK.

Anu Peshawaria is the author of *Immigrant's Dream*, which documents a number of cases of marital abuse involving immigration law in the US. She is also the author of numerous articles, including:

- “Dowry: An Ill-Defined Crime” published in March 31, 2006, which defines dowry laws in India and deconstructs the Dowry Prohibition Act of 1961/1980
- “Institutional Racism and Immigrants” in June 2006 India Express
- USA Patriot Act in 2006, which defines the U.S. Patriot Act and its impact on the privacy of US citizens.
- “NRI “Fake Marriages Spell Doom for Many,” which describe the multifaceted problems inherent in NRI marriages.
- “Divorce,” which elucidates the differences between divorce laws in the US and India.



References

For those of you who want to learn more about marital abuse among South Asians in the US, I am including some of the materials I have used as part of my research. Some of this is for the purpose of verifying the truth of what I have laid out in these pages and partly this section can serve as a useful resource guide to those who would like to carry the torch in helping others who find themselves in such situations. I encourage women in India and in the US to take up this project and educate themselves and others as to its existence.

Please note the following:

(A) All references have been given as roman numbers in the text in parentheses. The complete details of references have been appended in this section (titled **References**)

(B) All notes have been given in the text in box brackets. The complete detailed notes have been appended in the section titled **Notes**.

Domestic Violence Among South Asian Immigrants in the US

Books

(I) *Domestic Violence in the Chinese and South Asian Immigrant Communities* by Elizabeth Midlarsky, Anitha VenkaRatnamani-Kothari, and Mauira Plante. Published at Teachers College, Columbia University, NY, USA. A chapter in the book, *Violence and Exploitation Against Women and Girls*. Published in 2006 by Blackwell Publishing in Boston Massachusetts.

(II) *Emerging Voices: South Asian American Women Redefine Self, Family, and Community*. Edited by Sangeeta R. Gupta. First published 1999 by AltaMira Press in Walnut Creek/London/New Delhi.

(III) *Immigrant's Dream: Stories, Laws, Rights* by Anu Peshawaria. Published 2009 by India Vision Foundation,

Fremont, California, USA.

(IV) *Leaving Abusive Partners: From the Scars of Survival to the Wisdom for Change* by Catherine Kirkwood. First published 1993 by Sage Publications in London, Newbury Park, and New Delhi.

(V) *Marriages to Overseas Indians: A Guidance Booklet*. Published In January 2007, by the Ministry of Overseas Indian Affairs Government of India in New Delhi.

(VI) *Psychology of Good and Evil: Why Children, Adults and Groups Help and Harm Others*, Written by E. Staub. Published in 2004 Cambridge University Press in US

(VII) *Reclaiming the Soul of Relationship* a doctoral dissertation by James D Brown. Published in 2010 through Pacifica Graduate Institute, Santa Barbara, CA

(VIII) *Speaking the Unspeakable: Marital Violence Among South Asian Immigrants in the United States* by Margaret Abraham. First published 2000 by Rutgers University Press in New Brunswick, NJ and London

(IX) *Why does he do that? Inside the Minds of Angry and Controlling Men* by Lundy Bancroft. Publishers Weekly says:

This fascinating investigation into what makes abusive men tick is alarming, but its candid handling of a difficult subject makes it a valuable resource for professionals and victims alike. Bancroft, the former co-director of Emerge, the nation's first program for abusive men, has specialized in domestic violence for 15 years, and his understanding of his subject and audience is apparent on every page. "One of the prevalent features of life with an angry or controlling partner is that he frequently tells you what you should think and tries to get you to doubt or devalue your own perceptions and beliefs," he writes. "I would not like to see your experience with this book recreate that unhealthy dynamic. So the top point to bear in mind as you read (this book) is to listen carefully to what I am saying, but always to think for yourself." He maintains this level of sensitivity and even empathy throughout discussions on the nature of abusive thinking, how abusive men manipulate their families and the legal system and whether or not they can ever be cured. Jargon-free analysis is frequently broken up by

interesting first-person accounts and boxes that distill in-depth information into simple checklists. Bancroft's book promises to be a beacon of calm and sanity for many storm-tossed families

Domestic Violence and Women's Rights in India

(X) Women: Laws and Judicial Pronouncements by Jessy Kurian, S.A. P. M.Ed. LL.B Member of National Commission for Minority Educational Institutions, Government of India.

Articles on Domestic Violence in South Asian Communities in United States

(XI) "A Preliminary Study of Intimate Partner Violence Among Nepali Women in the United States" by Soni Thapa-Oli, Hari Bansha Dulal, and Yoko Baba in *Violence Against Women*, 2009, volume 15, page 206.

(XII) "Domestic Violence and the Indian Diaspora in the United States" by Margaret Abraham in *Indian Journal of Gender Studies*, 2005, volume 12, pages 427-451

(XIII) "Domestic Violence in South Asian Communities in America: Advocacy and Intervention" by Amita Bhandari Preisser in *Violence Against Women*, 1999, volume 5, 684-699.

(XIV) "Immigration Policies Increase South Asian Immigrant Women's Vulnerability to Intimate Violence." *Journal Of The American Medical Women's Association*, volume 60 issue 1, 26-32.

(XV) "Intimate Partner Violence Among Asian Immigrant Communities: Health/Mental Health Consequences Help-Seeking Behaviors, and Service Utilization" by Yeon-Shim Lee and Linda Hadeed in *Trauma Violence Abuse*, 2009, volume 10, pages 143-170. This article was originally published online 20 April 2009.

(XVI) "Narratives of Suffering of South Asian Immigrant Survivors of Domestic Violence" by Diya Kallivayalil in *Violence Against Women*, 2010, volume 16 pages 789-811.

(XVII) "Patriarchal Beliefs and Perceptions of Abuse among South Asian Immigrant Women" by Farah Ahmad, Sarah Riaz, Paula Barata and Donna E. Stewart in *Violence Against Lives on the Brink* _____ 205

Women, 2004, volume 10, pages 262-282.

(XVIII) "Violence Against Immigrant Women and Systemic Responses: An Exploratory Study" by Edna Erez Ph.D. and Nawal Ammar Ph.D. Department of Justice Report No. 202561

(XIX) "Patriarchal Beliefs and Perceptions of Abuse Among South Asian Immigrant Women" by Farah Ahmad, Sarah Riaz, Paula Barata and Donna E. Stewart, 2004, in *Violence against Women*, 2004, volume 10, pages 262-282.

(XX) "Violence Against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status in Intimate Partner Violence" by Anita Raj and Jay Silverman's in *Violence Against Women*, 2002, volume 8, pages 367-398.

International Family Law

Books

(XXI) *Acting for Non-Resident Indian Clients* by Anil Malhotra and Ranjit Malhotra and Rambert de Mello. Published in 2004 by Jordon Publishing Limited in Great Britain

(XXII) *Bringing International Human Rights Law Home: Judicial Colloquium on the Domestic Application of the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child*. Published in 2000 by the United Nations.

(XXIII) *Commentary on the Conflict of Laws Fifth Edition*. By Russell J. Weintraub, Professor of Law Emeritus and Holder of the Ben H. & Kitty King Powell Chair in Business and Commercial Law Emeritus University of Texas School of Law. Published in 2006 by Foundation Press in the US.

(XXIV) *Convention on the Rights of the Child: International Law Support for Children*. Written by Glen Mower, J. Published in 1997 by Greenwood Press in Westport Connecticut and London.

(XXV) *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance* (Treaty Doc. 110-21)

(XXVI) *International Child Law* by Trevor Buck, Senior Lecturer, Faculty of Law, University of Leicester. First

published in 2005 in Great Britain by Cavendish Publishing and subsequently published in the USA and Canada by Routledge-Cavendish

(XXVII) *International Custody Litigation: A Guide to the Use and Court Interpretation of the Uniform Child Custody Jurisdiction Act*. Published in 1981 by the Bureau of National Affairs in the USA.

(XXVIII) *International Family Law: An Introduction* by Barbara Stark, Visiting Professor of Law, Hofstra Law School and Professor of Law, University of Tennessee. Published 2005 in the US by Ashgate Publishing in Great Britain

(XXIX) *Rights of Women: A Guide to the Most Important United Nations Treaties on Women's Human Rights*. Published in the USA 1998 by the International Women's Tribune Centre. Available from Women, Ink.

(XXX) *Standard of the Best Interests of the Child: A Western Tradition in International and Comparative Law* by Claire Breen from the University of Waikato, Hamilton, New Zealand. Published in 2002 by Martinus Nijhoff Publishers in the Hague, London, and New York

Hague Conference on Private International Law Websites

Areas of Private International Law. Find all the Conventions concerning the international protection of children, family and property relations at the following link:

(XXXI) http://www.hcch.net/index_en.php?act=text.display&tid=10

(XXXII) Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations

http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=80

(XXXIII) Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

http://www.hcch.net/index_en.php?act=conventions.text&cid=131

(XXXIV) Hague Convention on the Civil Aspects of

International Child Abduction

http://www.hcch.net/index_en.php?act=conventions.text&cid=24

International Public Law Websites

(XXXV) UN Convention on the Rights of the Child- find the full text at:

<http://www2.ohchr.org/english/law/crc.htm>

(XXXVI) Universal Declaration of Human Rights. On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. The full text can be found at

<http://www.un.org/en/documents/udhr/index.shtml>

(XXXVII) Convention on the Elimination of All Forms of Discrimination Against Women

The full text can be found at:

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

Reports

(XXXVIII) *Need for family law legislations for nonresident Indians*. Submitted to the Government of India (Report No. 219) Ministry of Law and Justice Law by the Commission of India. (2009). Available at <http://www.lawcommissionofindia.nic.in>

(XXXIX) *Domestic Violence Against Women and Girls*. A 2000 report by UNICEF Children's Fund Research Centre in Florence, Italy. Available at <http://www.unicef-irc.org/publications/pdf/digest6e.pdf>

(XL) *Report on problems relating to NRI marriages: Legal and other interventions on NRI marriages* ncw.nic.in/PDFFiles/Book-NRI_Marriage.pdf

U.S. Immigration Law

(XLI) *Immigration Made Simple: An Easy to Read Guide to the U.S. Immigration Process (8th edition) published 2009 by Next Decade in US. Immigration Made Simple* by Barbara

Kimmel. Published in 2009 by New Decade in New Jersey, US.

(XLII) *U.S. Immigration Made Easy (14th edition)* by Llona Bray, J.D. (author of *Becoming a US Citizen*.) Published 2009 by Nolo in US.

Other Pertinent Websites

(XLIII) Application of the Convention on the Rights of the Child by Canadian Courts Since the Supreme Court Decision in Baker. This website lays out the Baker Case in which the Convention on the Rights of the Child superceded all other applicable law in the case of a deported parent who claimed the right to visit her child. The conference, "Making Children's Rights Work: National and International Perspectives" can be found showing how the Convention was applied in this case. http://www.canadiancrc.com/UN_Convention_on_the_Rights_of_the_Child_Application_Canadian_courts_J_Chamberland_Nov04.aspx

(XLIV) Campaign for the US Ratification of the Convention on the Rights of the Child (CRC). Visit this important campaign and get involved at <http://childrightscampaign.org/crcindex.php>

(XLV) National Child Support Enforcement Association. This website contains "Quick Facts: The Hague Convention on International Recovery of Child Support" at <http://www.ncsea.org>

(XLVI) Relevant Decisions Of The Courts In India ipc498a.files.wordpress.com/.../judgments-on-nri-cases-by-the-courts-in-india.pdf

(XLVII) Women'sLaw.org U-Visa Laws for Crime Victims <http://www.womenslaw.org/>

(XLVIII) USCIS. Fact Sheet: USCIS Issues Guidance for Approved Violence Against Women Act (VAWA) Self-Petitioners <http://www.uscis.gov/portal/site/uscis/menuitem>

(XLIX) USCIS. Petition for U Nonimmigrant Status. <http://www.uscis.gov/portal/site/uscis/menuitem>

(L) USCIS: Violence Against Women and Department of Justice Reauthorization Act:

<http://www.uscis.gov/portal/site/uscis/ilink/>

(LI) U.S. State Department: Travel.State.gov, A Service of the Bureau of Consular Affairs Recognition of divorces obtained in other countries based on comity:

http://travel.state.gov/law/family_issues/divorce/divorce_592.html



Notes

1. Full report available at www.unicef-irc.org/publications/pdf/digest6e.pdf
2. See www.uscis.gov/err/D1%20...Issued.../42008_01D1101.pdf
3. See USCIS Questions and Answers: Battered Spouses, Children and Parents under VAWA <http://www.uscis.gov/portal/site/uscismenuitem.5af9bb95919f35e66f614176543f6d1a/vgnextchannel=b85c3e4d77d73210VgnVCM10000082ca60aRCRD>
4. See USCIS VAWA and DOJ Reauthorization Act of 2005 Section 815 Application for VAWA-Related Relief (This relief was also granted by VAWA 2000)<http://www.uscis.gov/portal/site/uscis/ilink/?vgnextchannel=fa7e539dc4bed010VgnVCM1000000eccd190aRCRD&SC=/ilink/docView/PUBLAW/HTML/PUBLAW/0-0-0-31434.html>
5. See Anita Raj and Jay Silverman's "Violence Against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status in Intimate Partner Violence" in *Violence Against Women*, 2002 (8), 367-398, Table 4 which gives the details of rights under VAWA 1994, problems due to omissions and implementation brought about by subsequent legislation, "Illegal Immigration Reform" and "Immigrant Responsibility Act" and changes made to VAWA in 2000 to provide relief for those problems.
6. See USCIS Questions and Answers: Battered Spouses, Children and Parents underVAWA<http://www.uscis.gov/portal/site/uscis/menuitem>
7. UNICEF's Report No. 6 on Domestic Violence Against Women and Girls, p. 7, for full text see <http://www.unicef-irc.org/publications/pdf/digest6e.pdf>
8. "Violence against Immigrant Women and Systemic Responses: An Exploratory Study" by Edna Erez and Nawal Ammar of Kent State University submitted 11/14/2003 Available www.ncjrs.gov/pdffiles1/nij/grants/202561.pdf

9. "The decision of the Court has no binding force except between the parties and in respect of that particular case." (Statute of the ICJ, Art 59 as cited in Buck, 2005, p. 21)
10. According to what is right and good; in equity and good conscience
11. p. 10
12. (see <http://www.un.org/en/documents/udhr/index.shtml> for the complete Universal Declaration of Human Rights)
13. See <http://www.icc-cpi.int/Menus/ICC?lan=en-GB>
14. See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en for State parties who have signed and ratified this agreement
15. Full text of the convention is available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>
16. See www.unescap.org/ESID/GAD/Issues/Beijing+15/...to.../FIJI.pdf
17. Full text of the convention is available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>
18. see <http://www2.ohchr.org/english/law/crc.htm> for full text
19. See the Hague Conference on Private International Law's website at http://www.hcch.net/index_en.php
20. See the Hague Conventions http://www.hcch.net/index_en.php?act=text.display&tid=26
21. See http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=80 for Outline and full text of the Convention on the Recognition Divorces and Legal Separations
22. See http://www.hcch.net/index_en.php?act=conventions.text&cid=24 for full text of the convention
23. For full text of the convention, see http://www.hcch.net/index_en.php?act=conventions.text&cid=131

24. See Report No. 219 at lawcommissionofindia.nic.in/reports/report219.pdf
25. For full text of the Declaration on the Elimination of Violence Against Women see <http://www.unhchr.ch/huridocda/huridoca.nsf/%28symbol%29/a.res.48.104.en>
26. Full report available at <http://www.unicef-irc.org/publications/pdf/digest6e.pdf>
27. See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en for State parties who have signed and ratified this agreement
28. Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women is available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>
29. See U.S. State Department: Travel.State.Gov, A Service of the Bureau of Consular Affairs
Recognition of divorces obtained in other countries based on comity:
http://travel.state.gov/law/family_issues/divorce/divorce_592.html
30. See lawcommissionofindia.nic.in/reports/report219.pdf page 22
31. Ex Parte means “from (by or for) one party” (Pronounced in English as: [ks ÈpQrti/]). An ex parte decision is one made in absence of one of the parties of the suit or controversy. This note is neither in the original court text or in the Malhotra et al. (2004) text.
32. See lawcommissionofindia.nic.in/reports/report219.pdf
This is a quote from Y Narashimha Rao vs. Y Venkata Lakshmi JT 1991 (3) SC 33
33. lawcommissionofindia.nic.in/reports/report219.pdf p 6.
34. Ibid., p. 10
35. Ibid., p. 11
36. Ibid., p. 11-12
37. Ibid p. 12
38. Ibid
39. Ibid

40. Ibid. p. 11
41. Ibid. p. 11
42. Ibid.
43. Ibid., p. 12
44. Ibid., p. 12
45. Ibid., p. 13
46. Ibid
47. Ibid p. 14
48. Ibid
49. Ibid
50. Ibid p. 16
51. Ibid
52. Ibid
53. Ibid., p. 13
54. Ibid., p. 17
55. Ibid
56. See Report on problems relating to NRI marriages:, legal and other interventions on NRI marriages, p. 25 ncw.nic.in/PDFFiles/Book-NRI_Marriage.pdf
57. Ibid
58. National Commission for Women, India, Important Case Laws related to NRI marriages available at <http://ncw.nic.in/frmNRIImpCaseLaws.aspx>
59. Ibid., para 1
60. Ibid., para 2
61. Ibid
62. Ibid
63. Ibid
64. See lawcommissionofindia.nic.in/reports/report219.pdf, p. 19
65. Ibid
66. Ibid., p. 20
67. Ibid., p. 22
68. Ibid
69. Ibid
70. Ibid., p. 23
71. Ibid. p., 23
72. Ibid., p. 24
73. Ibid

74. Ibid
75. Ibid. p. 25
76. Ibid
77. Ibid
78. Ibid., p. 26
79. Ibid
80. Ibid
81. Ibid., p. 27
82. Ibid., p. 27-28
83. See lawcommissionofindia.nic.in/reports/report218.pdf, p. 20-21
84. lawcommissionofindia.nic.in/reports/report219.pdf, p. 21
85. Ibid. 85
86. National Child Support Enforcement Organization Quick Facts: The Hague Convention on International Recovery of Child Support. See ncsea4.timberlakepublishing.com/.../PG&R%20Quick%20Facts%20-%20Hague%20Convention%20and%20UIFSA%203-10-09.pdf, p. 1
87. Ibid., p. 2
88. Ibid., p. 3
89. Ibid
90. Ibid
91. See <http://www.gpo.gov/fdsys/pkg/CRPT-111erpt2/html/CRPT-111erpt2.htm> VII. Committee Recommendations and Comments
92. Ibid., see V. Implementing Legislation
93. See lawcommissionofindia.nic.in/reports/report219.pdf
94. Ibid., p. 16
95. General measures of implementation of the Convention on the Rights of the Child, C of VI, Administrative and Other Measures www2.ohchr.org/english/bodies/crc/docs/GC5_en.doc
96. See www2.ohchr.org/english/bodies/crc/docs/GC5_en.doc IV Legislative Measures
97. see <http://www2.ohchr.org/english/law/crc.htm>

98. See www.canadiancrc.com/
UN_Convention_on_the_Rights_of_the_Child_Applicatn_Canada_in_court_J_Chambland_Nov04.ppt
p. 2
99. Ibid
100. Ibid
101. Ibid., p. 3
102. Ibid
103. Ibid
104. Ibid
105. Ibid
106. Ibid. p. 4
107. Ibid
108. Ibid., p. 14
109. See Hague Convention on the Civil Aspects of Child
Abduction: A message from the President (1985)
110. See [www.missingkids.com/en_US/documents/
FederalRegisterDoS.pdf](http://www.missingkids.com/en_US/documents/FederalRegisterDoS.pdf), p. 2
111. Ibid
112. See <http://www2.ohchr.org/english/law/crc.htm>

