CHAPTER-VI

CONCLUSION

This chapter deals with the recommendations and suggestions of the researcher on the basis of the discussion in the previous chapters.

Domicile and Habitual Residence:

Habitual residence seems particularly successful in allocating jurisdiction and is very likely to be adopted as the basis of Jurisdiction for the Hague Convention on Private International Law's\(^1\) new Convention on International Jurisdiction and Foreign Judgments in Civil and Commercial Matters.\(^2\) This might lead to a slightly different problem from that of dual or lack of habitual residence as decided by a single State’s courts. For example, if a defendant is considered by State A to be habitually resident in State A and by State B to be habitually resident in State B, both States will have jurisdiction

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\(^1\) See www.hcch.nl/conventions/draft

\(^2\) Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters; see also, www.hcch.nl, for model draft legislation on convention on International Jurisdiction and Foreign Judgments in Civil and Commercial Matters.
under the Convention. Similarly a gap of jurisdiction is possible, if a defendant is considered to be habitually resident in State B by State A and State A by State B. The overlap could be answered by rules on *lis alibi pendens* as in the Brussels\(^3\) and Lugano Conventions\(^4\) on the same subject. It is suggested that, the issues of overlapping jurisdiction and lack of jurisdiction should be addressed in the convention on International Jurisdiction and foreign judgments in Civil and Commercials Matters.\(^5\)

It is submitted that the Indian law describes the domicile in various laws namely:

1. Constitution of India Act, 1950
2. Indian Divorce Act, 1869

Indian courts follow the common law rules in case of any ambiguity for interpretation of domiciliary and habitual residence principles, where a case comes before the courts. However, United Kingdom passed a law namely Domicile and Matrimonial

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\(^3\) See Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 1968
\(^4\) See Lugano Convention 1988
\(^5\) Elaborately discussed in Chapter II
Proceedings Act 1973\(^6\), where the concept of domicile is changed from traditional rules.

It is in this context, it is submitted that our laws in matters of domicile and habitual residence should be changed on par with international and other national conventions to protect the interests of individuals.

**Wedlocks Turn Into Nightmares**

Law enforcers in the United Kingdom are grappling with a rather strange problem-forced marriages involving people of Indian origin.\(^7\) The method of operation stated by Mark Runacres, U.K. Deputy High Commissioner to India, today:  

"young Indian women are brought by their families settled in the U.K. to India on one pretext or the other. Here the families force them into marriages."\(^9\) This is very different in arranged marriages," the diplomat said and added that the phenomenon was noticed more in Punjabi community. Local police here had a critical role to play in helping such British citizens in distress and the U.K.'s

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\(^6\) Jason Chuah, Statues & Conventions on Private International Law, Cavendish Publishing Ltd 1996

\(^7\) THE HINDU, FRIDAY, December 3,2004 PAGE NO.20 (ISSN 0991-751X VOL.127.N0287)

\(^8\) ibid

\(^9\) Id
mission has depended to a large extent on the support extended by the law enforcers here (England).

There was also a different kind of cheating when Indian men settled in U.K. sought alliances here. “Some men of Indian origin find brides possibly with huge dowries in India,” he said. What follows is a nightmare:

Sometimes the man vanishes the morning after wedding with the money given as dowry, or even more tragic, the married women are taken to U.K. and treated badly. “There have been some extraordinary cases where the men are homosexuals...... Or they have already married,” he said. The second marriage was usually for the money.

For the women in such wedlocks, life is painful. They are exploited or end up on the streets. It is difficult for them to return to India because of the ‘Stigma’ associated with an event like this and also because their parents would have spent the last rupee in getting them married.

It was not possible to bring the book the accused since there were practical issues of jurisdiction. “But like all bad
experiences there are lessons to be learnt,” he said and added that events like this were cross-cultural challenges that needed to be tackled at “policy, legislation and at practical levels.”

**Marriage and Divorce:**

Revolutionary changes have occurred in the conflict of laws relating to marriage in several countries especially England, as the common law requirement of domicile as the basis of jurisdiction for divorce decrees, has been abandoned and the law on the question of grant of divorce as well as the recognition of foreign divorce decrees, has been liberalized both by legislature as well as the judiciary. However, India still sticks to the requirement of domicile as the basis of jurisdiction, and here there has not been scope for judicial initiative in changing the law. Nevertheless, the liberalization of matrimonial as well as matrimonial-conflict laws in the Western countries, has affected some Indian spouses and the Indian courts have had the occasion of delivering some important and interesting decisions in this sphere. Besides, Indian courts have also taken note of the

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12 *Id*
innovations in judge made law in the West and have incorporated them in some of their decisions.\textsuperscript{14}

Article 10 of the Hague Convention of 1968 on the Recognition of Divorce and Legal Separations 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 the property arising out of matrimonial relationships c) wills and succession, d) social security, and e) bankruptcy.

Based on the aforesaid analysis\textsuperscript{15}, it is submitted that many of the foreign divorce decrees granted by foreign courts are given \textit{ex parte}, with one side being un-represented and thus unheard, and very often being unaware that the marriage has been dissolved by a Court. This may happen because of non-service of summons if one spouse is in India for various reasons, or on account of incomplete or incorrect information provided to the Court by the spouse who has sought the divorce. Even if they

\textsuperscript{14} For a Survey of Indian Private International Law, Upto 1955, See, T.S.Rama Rao, ‘Private International Law in India’. 1955 Indian Year Book of International Affairs, p.219

\textsuperscript{15} See chapter iii
are aware of the divorce petition, they often face practical difficulties in contesting the case if a visa is not granted, or the spouse abroad had never sponsored the visa, as well as the high costs involved.

In these circumstances, it is submitted that the Indian Government should make appropriate laws for the protection of Indian women from this peril and render justice. There shall be a uniform law for recognition and enforcement of foreign judgments in relation to matrimonial disputes. Moreover the following suggestions may be taken into account while making the law:

- The spouses should be informed at the time of marriage which law will be governed in case of divorce.
- If spouse left for foreign country the details of the wife must be produced before the embassy in the presence of wife.
- The notice of divorce shall be communicated through the Indian high commissioner wherever the applicant files the case.
• There shall be a provision stating that the wife shall be informed the whereabouts of the husband while sending notice.

• A special department can be established in the High Commissioner of India to deal issues of private international law in general, marriage, divorce, maintenance and custody of child in particular.

• The respondent shall be provided all the facilities in time to contest the case in the foreign country, if the circumstances are required.

• Maintenance to wife shall be provided through the High Commissioner of India, in the concerned country. The newly established department should deal with the issues of personal law matters. There are many number of Indian people affected due to lack of mechanism to provide relief for the deserted wives.

It is submitted that the Indian wives are put in peril for getting maintenance in the case where husband files case in foreign country and obtained exparte decree. There are various lacuna in the Indian law for recognition and enforcement of
maintenance obligations. India is not actively participating in international convention’s on maintenance obligations where as the other party being a foreigner, that party is availing the law of other forum and escaping from the jurisdiction of India. There is a long delay for finality of cases in India which would cause greater inconvenience to the parties.

It is also humbly submitted that, India should participate in all Hague Conferences to solve the sufferings of the Indian spouses. There shall be municipal law to look after these types of family law problems particularly in the context of Indian Private International law.

**Child custody:**

The removal of a child from one country to another without knowledge of the other spouse or against the court order of that country shall be curtailed through the following measures:

a. The spouses shall be informed about the travel of the child to the High Commissioner before the removal from one country to another.
b. The Spouses shall be advised to get NO OBJECTION CERTIFICATE from the embassy stating that there are no court proceedings or any other legal allegations pending against the child and spouse.

c. The spouse shall be informed through the High Commissioner of India about travel of child in a case where the child travels with another spouse.

d. India should take part in the Hague Convention on International Child Abduction to co-operate with other nationals so as to reduce the abduction of child from one country to another.

Parents who abducted their children found a safe haven internationally because it was easy for them to hide. This is because legal systems and law enforcement were far too complicated for the searching parent to get a rapid response. Among the member states of the Hague Convention on the Civil Aspects of International Child Abduction 1996, international cases are approached and resolved in a more uniform and consistent way.
Hague Conventions:

India has taken steps only in relation to inter-country adoptions.\textsuperscript{16} In connection with other aspects, there is no comprehensive legislation dealing with issues as discussed in previous chapters. At present, more number of states are participating in the Hague conference and also preparing the draft legislations in their countries whereas India is lacking the active part in this regard. This type of action by Indian government may put the Indian parties in problems without proper solutions. It also creates the conflict between two national laws, where one country has clear draft legislations in conformity with the Hague conventions while Indian lacking active part in this regard.

Recognition and Enforcement of Foreign Judgments:

Indian law\textsuperscript{17} governs recognition and enforcement of foreign judgment subject to the fulfillment of the conditions laid down these laws. In United Kingdom, there are separate laws for each

\textsuperscript{16} See the guideline issued by Government of India, Ministry of Welfare: Gazette of Indian, Extraordinary Dated May 29, 1995

\textsuperscript{17} Code of Civil Procedure 1908, Indian Evidence Act, 1872
issue. In India there are no specific laws dealing with private international law. Though Indian law commission drafted a model bill on the Recognition of Divorces and Legal Separations Bill, 1976\(^\text{19}\), the bill maintains its status quo without any further steps.

Today there are more Non-Resident Indians (NRI’s) and Persons of Indian Origin (PIO’s) living in the U.K. and U.S.A. however, India does not have adequate laws to meet the challenges pose by the problems as discussed in the chapters three, four and five. Therefore, it is submitted that India should take proper steps to protect the interest of the aggrieved parties in cases involving the Private International Law matters particularly recognition and enforcement of foreign judgments.

These suggestions are made with a earnest hope of safeguarding the interests of Non-Resident Indians, Persons of Indian Origin and all affected Indian Spouses. It is high time in the era of


\(^{19}\) See Indian Law Commission, 65\(^{\text{th}}\) Report on Recognition of foreign divorce decrees, 1976
globalisation and privatization, where the boundaries are opened worldwide. It is submitted that, it is necessary to implement the above suggestions otherwise, the interests of the affected Indian Spouses, NRI’s and PIO’s will put in problems without proper solutions.