

FAQs

How to address issues related to Marriages of Indian nationals to Overseas Indians

1. Is there any way through which I can check the background of my overseas Indian would be husband / wife (bride or groom) ?

Before you are engaged to or marry an overseas Indian, please verify through your network of family, friends, neighbors etc. (both in India and in foreign country), the following details:

Verify the following details about the overseas Indian through your network of friends, relatives, local Indian Associations /Community/Organization/ NGOs etc, in the country where the overseas Indian is residing;

1. To verify status of spouse as actually represented:

- ✓ Marital status: whether he/she is single, divorced, separated, has live in partner.
- ✓ Employment: Educational Qualification and post, salary, address of office, employers.
- ✓ Immigration: Type of visa, eligibility to take spouse to the foreign country
- ✓ Financial status of spouse(debts if any etc.)
- ✓ Criminal antecedents
- ✓ Family background

2. Ask for copy of following documents relating to the overseas Indian spouse and keep a copy with you and your parents:

- ✓ Permanent residence status
- ✓ Visa for foreign Country
- ✓ Social security number
- ✓ Passport number
- ✓ Tax returns of the preceding 3 years
- ✓ Proof of Address in foreign country

3. Don'ts in respect of marriages with overseas Indian:

- Do not trust any bureau, agents, touts or a middlemen.
- Do not agree to forge papers or enter into fake transactions for any

- reason or on any pretext, for purpose of going to foreign Country.
- Do not finalize marriage in secrecy. Publicizing and sharing the information about the NRI marriage amongst the family, friends and close relatives could help you in getting vital information about the overseas Indian and his family which you may not be able to collect otherwise.
 - Do not agree to have only a registered marriage or getting the marriage solemnized in secrecy.
 - Do not agree to the marriage taking place in foreign country.

2. My husband is demanding dowry and is ill-treating me after I moved with him to a foreign country. What should I do?

- i. First and foremost, do not accept the demand for dowry by or on behalf of your overseas Indian spouse to end your ill-treatment, abuse or desertion.
- ii. You can approach the nearest Indian Embassy/Consulate for assistance/advice, to file a complaint with the local police about harassment, abandonment, ill-treatment by the spouse etc.
- iii. The Indian Embassy/Consulate can assist and put you in touch with local Indian Association/ Organization/ local NGOs, approach the local police, contact your family/friends, etc. who could help you.
- iv. The Indian Mission can help you obtain initial legal/financial assistance so that you can file a case against your husband in the foreign country.

3. Is registration of marriage compulsory in India?

Some States in the Indian Union have enacted legislations to make marriage registration compulsory (Andhra Pradesh, Delhi, Goa, Gujarat, Himachal Pradesh, Karnataka, and Maharashtra.)

Registration of marriage is optional in other states.

After you marry the overseas Indian, register the marriage at the office of the Registrar in India before you/your spouse leave the country. The marriage certificate issued by the Registrars' office and a copy of it should be kept with you and your family in India.

Please keep documentary proof like marriage photographs, wedding invitation, copy of the husbands' passport driving license, P.R./ Visa for foreign country, any other ID proof issued by the foreign country.

Do's in marriages with Overseas Indians

- Keep copy of Marriage registration certificate
- Complete with the help of your overseas Indian spouse all the paperwork for issue of visa and other formalities before he/ she leaves India.
- Obtain an affidavit from the potential overseas Indian groom/ bride about his marital status (that he/ she is single).
- Obtain a health/comprehensive insurance policy before arriving in the foreign country.
- Once you reach the foreign country, keep your passport with you and at least one copy of the passport.

4. What to do after marrying an overseas Indian?

- i. Keep a list of important contacts in the foreign country such as neighbors, friends, relatives, your husband's employer, police, ambulance and Indian Embassy or High Commission.
- ii. Photocopies of all important documents: Your passport, visa, bank and property documents, marriage certificate, wedding photos.
- iii. In case these documents are lost/forcibly taken away /destroyed by your spouse or in-laws, copies will be useful. If possible, **keep an e- mail account, where you can save copies of scanned documents and scanned soft copies** with you or/and any person you trust.

5. If abandoned by overseas Indian spouse?

- i. In India, you can file a complaint/ FIR under 498A IPC on grounds of cruelty with police in local police station in the area where you were abandoned.
- ii. Offences committed outside India would be deemed to have been committed within the territory of India by virtue of Section 188 of the Cr. P.C. Therefore, you can lodge a complaint for the same in India.
- iii. If your husband has abandoned you in a foreign country or harasses you abroad, you may approach the foreign police or the following
 - ✓ Indian Embassy/ Consulate in the foreign country
 - ✓ Employer of the husband
 - ✓ Local Indian Associations/ Indian Community Organizations.

- ✓ Friends and relatives.

6. What to do after reaching foreign Country?

- ✓ Open a bank account in that country to withdraw money in emergency and be financially independent.
- ✓ Read and understand the laws of the foreign country and your rights there, especially against any form of abuse or neglect, ill-treatment, domestic violence, how to get residence permit, etc.
- ✓ After marriage keep in touch on phone and e-mail with friends and relatives in the foreign country.
- ✓ Wherever possible, learn the language of the foreign country in which you are living.

7. How can I file a case against my overseas Indian husband?

- The Ministry of External Affairs operates a scheme for giving legal/financial assistance to Indian women deserted by their overseas Indian/foreigner husbands through NGOs empanelled and legal organisations with Embassy / Consulate.
- Such assistance is provided through Embassy / Consulate in the USA, UK, Canada, Australia, New Zealand, Malaysia, Singapore and the Gulf countries such as Oman, Bahrain, Kuwait, Qatar, KSA and UAE.
- The amount of assistance provided per case under the scheme to deserted Indian women is upto USD 3,000 in developed countries and USD 2,000 in developing countries. Please contact the Welfare Officer or the Indian Community Officer of the concerned Indian Embassy/ Consulate for further details.

Guidelines about the scheme and application form are at:

Weblink: <http://mea.gov.in/legal-and-financial-assistance.htm>

8. Who is eligible for assistance under the scheme?

The assistance would be 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:-

- i. The woman is an Indian passport holder.

- ii. The marriage of the woman was solemnized in India or overseas with an overseas Indian or a foreigner.
- iii. The woman is deserted in India or overseas within 15 years of the marriage; or
- iv. Divorce proceedings are initiated within 15 years of marriage by her overseas Indian / foreigner husband or
- v. An ex-parte divorce has been obtained by the overseas Indian / foreigner husband within 20 years of marriage and a case for maintenance and alimony is to be filed by her.
- vi. The scheme would not be available to a woman having a criminal case decided against her, provided that a criminal charge of Parental Child Abduction shall not be a bar if the custody of the child has not yet been adjudicated upon.

- vii. “Parental Child Abduction” for this purpose will be defined as the unauthorized custody by the mother, without the other parent’s agreement and contrary to family law ruling, which largely removes the child from care, access and contact of the other parent and family side and shall be deemed to be Parental Child Abduction.

- viii. International child abduction occurs when a parent, relative or acquaintance of a child leaves the country with the child or children in violation of a custody decree or visitation order. Another situation is retention of children when they are supposedly taken on vacation to a foreign country and are not returned.”

- ix. A criminal charge of Parental Child Abduction, in the context of this Scheme, would mean the framing of charge against the mother by the police authorities consequent on lodging FIR or its equivalent.

- x. The domicile of Indian 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 / foreigner husband or in India at the time of making the application.

- xi. Preference will be given to applicants on the basis of financial need.

- xii. Assistance will be provided to meet the legal and other costs, by the Heads of Indian Missions/Posts overseas directly to the applicant’s legal counsel empanelled with the concerned Indian Mission/Post, or through the Indian Community Associations / Women’s organizations / NGOs acting on the woman’s behalf in

an overseas legal institution.

- xiii. The assistance will be limited to US\$ 3000 per case for developed countries and US\$ 2000 per case for developing countries and will be released to the empanelled legal counsel of the applicant or Indian Community Association / Women's organization / NGO concerned to enable it to take steps to assist the woman in documentation and preparatory work for filing the case.

9. How can I obtain counseling and legal services abroad?

Counseling and legal services are provided through credible Indian Women's Organizations/Indian Community Associations and NGOs abroad. A list of such organizations abroad which are working with the Indian Embassy/ Consulate to help Indian nationals abroad is available on the Ministry Website at this link: (<http://www.mea.gov.in/legal-and-financial-assistance.htm>)

10. How can I apply for legal and financial assistance provided by Ministry?

You may see the guidelines; complete the form available on the website of MEA (<http://mea.gov.in/legal-and-financial-assistance.htm>). The applications for providing legal aid received by the Indian Missions/Posts are examined by the Mission/Post on case-to-case basis and approved by the Mission/Post, before they are sent to Ministry.

The applicant has to submit completed form and relevant documents such as,

- a) Photocopy of marriage certificate;
- b) Photocopy of Indian passport;
- c) Declaration of annual income;
- d) Declaration that no criminal case is pending against the applicant;
- e) Declaration that the applicant holds only Indian Passport;
- f) Details of present status of case filed;

which after completing can be forwarded either to the concerned Indian Embassy/Mission/Post or to the Overseas Indian Affairs II Division, Ministry of External Affairs.

The completed applications should be sent to the
Joint Secretary(Overseas Indian Affairs-II,
Ministry of External Affairs,
Akbar Bhavan, Chanakyapuri, New Delhi.
Telephone No.: 011-24676210
Fax No.: 011-26882431
Email: jsoia2@mea.gov.in

11. How can I initiate criminal proceedings against overseas Indian spouse?

(i) You can file a criminal case against your husband under the relevant provisions of the law, under Section 154(1) Cr.P.C.

(ii) Section 498A deals with Husband or relative of husband of a woman subjecting her to cruelty: and is punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(iii) You can write to the SHO (Station House Officer, under Section 154(3) Cr.P.C. If the Police refuses to lodge the complaint, then you can forward the complaint to the Superintendent of Police of the concerned District, who, if satisfied that the information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer, subordinate to him.

(iv) File a Criminal Complaint before the Magistrate under Section 156(3) Cr.P.C. Any Magistrate empowered under section 190, may order such an investigation on the basis of a criminal complaint filed by the aggrieved wife.

(v) All offences committed by the husband outside India would be deemed to have been committed within the territory of India by virtue of Section 188 of the Cr.P.C.

12. I have filed a complaint under section 498A IPC, but my in-laws have thrown me out of the house. What should I do?

You can file an application under the 'Protection of Women under Domestic Violence Act' 2005 and Court will grant order of Residence.

By virtue of Section 27 of the Protection of Women from Domestic Violence Act 2005, an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Judicial Magistrate seeking relief under the Act, within the local limits of which;

- a) the aggrieved person permanently or temporarily resides or carries on business or is employed; or
- b) the respondent resides or carries on business or is employed; or
- c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

13. My husband is not attending criminal proceedings in India. The Indian Court has issued warrant for the arrest of my husband who is an Indian Citizen. What should I do?

You can move application for impounding of his passport. The governing rules are as below:

- Section 10 of the Passport Act 1967 governs impounding and revocation of passport. An application can be made to the concerned Passport Authority for such impounding or revocation in form of simple request as no prescribed proforma is given under the Act.
- Subsection(3) states that the passport may be revoked if; *the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;*
- Subsection(3) (e) states that, *if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India.*
- Subsection(3) (h) states that *“if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has*

been so issued or an order has been so made”.

14. Whom shall I approach for compliance of Criminal Judgment/order passed by the Hon’ble Court?

The Ministry of Home Affairs has issued guidelines for service of summons/notices/judicial processes on persons residing abroad. The complainant may peruse it in consultation with her lawyer the “MHA guidelines”

(Weblink: http://cbi.nic.in/interpol/mha_circ_service_process.pdf).

The court order shall be addressed to the Under Secretary (Legal), (IS-II), Ministry of Home Affairs, NDCC-II Building, Jai Singh Road, New Delhi 110001

15. How can I search for location/whereabouts of my overseas Indian spouse?

You can contact your family, friends, neighbours etc. or Indian Associations/NGOs etc. in the country where overseas Indian resides. The list of such associations is available on the weblink <http://www.mea.gov.in/legal-and-financial-assistance.htm>

16. My husband has abandoned me and children in foreign country, what should I do?

Contact your family, relatives and friends both in India and foreign country and seek their help, advice or assistance.

The Indian Mission through their empanelled NGOs, local community welfare associations can assist in filing a case approaching NGOs, contacting your family or seeking legal advice, provide shelter for some days.

List of NGOs, lawyers, Indian Associations, in foreign countries registered/empanelled is at the weblink:

http://mea.gov.in/images/attach/A_Details_abroad.pdf-

You may contact them to seek assistance.

17. What are the rights of women against exploitation in the context of Protection of Women from Domestic Violence Act enacted in 2005)?

- Right against physical/sexual exploitation (498A IPC)
- Right against economic exploitation (S.125 of CrPC)
- Right to compensation against desertion (1994 6 SCC 641).
- Right to keep the children below 5 years under the custody of the

mother.

- Right to back matrimonial presents.
- Right against dowry.
- Right against cruelty, bodily harassment, torture, etc.
- Right against domestic violence (S.3)

18. What is Domestic Violence, mental/emotional abuse, verbal/social abuse and economic abuse?

1. Domestic Violence and activities considered illegal

The following acts on the part of the husband constitute domestic violence and are illegal in most countries and against which the local police of every country can be approached for protection and help:

- Physical abuse
- Mental and emotional abuse
- Verbal and social abuse
- Sexual abuse
- Economic abuse

2. Instances of mental/emotional abuse

- Blackmailing, coercion, threat, pressure
- Accusing the woman of loose morals
- Humiliating, both in public and private
- Breaking household goods, killing family pets
- Threatening to hit or harm children & close relatives

3. Instances of verbal/social abuse

- Abusing and derogatory name calling
- Maligning in front of peers and friends
- Insulting in front of others
- Abusing her parents, friends & family
- Enforcing isolation, physical confinement, restricting familial contacts, controlling movements: generally treating badly

4. Instances of economic abuse

- Controlling all family income and limiting access to finances
- Forcing not to take up employment
- Forcing financial dependency
- Not providing sufficient funds for household expenditure
- Accusing of misuse or misappropriation of finances

19. What is the procedure for divorce when there is mutual consent between Indian national and overseas Indian spouse?

- No grounds are required to be given if divorce is by mutual consent.
- The husband and wife should remain in a relationship and stay separately for the preceding one year before giving a joint application.
- The judge will issue a notice after six months intervening period.
- If the couple do not change their mind after six months and still seek divorce, the same shall be granted to them.

20. What is the procedure for the service of judicial process including summons/show-cause notices etc. upon person(s) residing outside the geographical limits of India?

CIVIL MATTERS

As per Allocation of Business Rules of the Government of India, service of judicial process outside India including summons/show-cause notices etc., in Civil Matters is regulated by reciprocal arrangements as per statutory provisions in the Civil Procedure Code.

In the absence of such notified arrangements, the question of service of judicial processes outside India would require to be examined and decided by the *Ministry of Law & Justice (Joint Secretary & Legal Adviser, "A" Wing, Shastri Bhawan, New Delhi)*, in view of the relevant Indian Municipal Laws.

CRIMINAL MATTERS

Service of judicial process outside India including summons/show-cause notices etc., in Criminal Matters, the *Ministry of Home Affairs (Joint Secretary (IS-II), NDCC-II Building, Jai Singh Road, New Delhi – 110 001)* is the nodal Ministry and the Central authority for seeking and providing mutual legal assistance in criminal law matters. The Ministry of Home Affairs receives all kind of such requests, examines and takes appropriate action.

21. How can an Overseas Indian be deported or extradited for cases related to marital issues. What is the procedure to extradite a person from outside India to face trial in India?

A person can only be deported/ extradited, if he is wanted by any Law Enforcement Agencies in criminal case. Normally, criminality is covered by the law of that country, where accused is residing and India

has Extradition Treaty/Arrangement with that country.

The Ministry of External Affairs (CPV Division) should receive a formal request for extradition from the concerned investigating agency or from the relevant state police authorities.

The process of extradition is invoked and negotiated on the basis of established International legal principles.

India has signed Extradition Treaties with several countries (updated list is available on MEA website at <http://mea.gov.in/leta.htm>)

Extradition of subjects wanted in Criminal Cases registered against them out of matrimonial/private/family disputes matters is not in conformity to the law of Extradition. Such offences lack dual criminality criteria which is mandatory for seeking extradition from the country of location of the subject.

22. How can a look-out-Circular be issued against an overseas Indian?

You can ask for **Look-out-Circular** (LOC) to be issued by the investigating agency in cognizable offences under IPC or other penal laws, when the overseas husband is deliberately evading arrest or not appearing in the trial court despite NBWs (Non Bailable Warrants) and other coercive measures and there is a likelihood that he will leave the country to evade trial or /arrest.

LOC is a coercive measure to make a person surrender to the investigating agency or Court of law. The subordinate courts' jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of Non Bailable Warrant or affirming Non Bailable Warrant.

a) The investigating Officer shall make a written request for **Look-out-Circular** to the concerned officer, as notified by the circular of Ministry of Home Affairs, giving details & reasons for seeking LOC. The competent officer alone shall give directives for issuing LOC by passing an order in this respect.

b) The request for issue of LOC must invariably be issued with the approval of an officer not below the rank of:

i. Deputy Secretary to the Government of India; or

- ii. Joint Secretary in the State Government; or
- iii. District Magistrate of the District concerned; or
- iv. Superintendent of Police(SP) of the District Concerned; or
- v. SP in CBI or an officer of equivalent level working in CBI; or
- vi. Zonal Director in Narcotics Control Bureau(NCB) or an officer of equivalent level (including Assistant Director (Ops.) in Headquarters of NCB); or
- vii. Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Excise and Customs; or
- viii. Assistant Director of IB/BoI; or
- ix. Deputy Secretary of R&AW; or
- x. An officer not below the level of Superintendent of Police in National Investigating Agency; or
- xi. Assistant Director of Enforcement Directorate; or
- xii. Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary of the Government of India; or
- xiii. Designated officer of Interpol

c) Look-out-Circulars are also issued as per directions issued by any Criminal Court in India.

23. What are different notices such as Red Notice, Yellow Notice, Blue Notice, Black Notice, Green Notice, Orange Notice, INTERPOL-United Nations Security Council Special Notice and Purple Notice ?

- i. Red Notice- To seek the location and arrest of wanted persons with a view to consider extradition or similar lawful action.
- ii. Yellow Notice- To help locate missing persons, often minors or to help identify persons who are unable to identify themselves
- iii. Blue Notice- To collect additional information about a person's identity location or activities in relation to a crime.
- iv. Black Notice- To seek information on unidentified bodies.
- v. Green Notice- To provide warnings and intelligence about persons who have committed criminal offences and are likely to repeat these crimes in other countries.
- vi. Orange Notice- To warn of an event, a person, an object or a process representing a serious and imminent threat to public safety;
- vii. INTERPOL-United Nations Security Council Special Notice— Issued for groups and individuals, who are the targets of UN Security Council

Sanctions Committees.

viii. Purple Notice – To seek or provide information on modus operandi, objects, devices and concealment methods used by criminals.

24. What assistance will the National Commission for Women (NCW) provide to me?

National Commission for Women in New Delhi is the nodal authority and the apex national level organization of India with the mandate of protecting and promoting the interests of women.

- Contact Details:
NRI Cell- National Commission for Women
4, Deen Dayal Upadhya Marg
New Delhi-110002
Telephone Number: +91-11-23234918
Fax: +91-11-23236154/6988
Email: nricell-ncw@nic.in
- NCW enables women to submit their complaints from any corner of the world. Depending upon the nature of the complaint, they take the following actions:
 - a. Notices/Summons are issued to the opposite party/parties/concerned authorities calling upon them, to furnish their reply on the complaint received or to appear in NCW and respond to the complaint.
 - b. Complaints are forwarded to the police authorities for action taken reports, where any matter is pending for investigation or any failure on their part to take appropriate action.
 - c. Complaints are forwarded to Indian Embassies abroad for desired action at their end
 - d. Complaints are forwarded to Ministry of External Affairs, Ministry of Home Affairs and Ministry of Law and Justice for expediting the service of summons, warrants issued or any orders passed by the appropriate courts of law.
 - e. Complaints are forwarded to the Passport Authorities for matter relating to Passports.
 - f. If necessary, complaints can be forwarded to the employers of the respondent husband to take necessary action against him.

25. I am living in Australia and facing problems with my overseas Indian husband. What assistance can I get in Australia?

You can approach the Department of Social Services, Government of Australia and the local police for assistance.

Contact Details:

Tuggeranong Office Park
Soward Way (cnr Athllon Drive)
Greenway ACT 2900
GPO Box 9820
Canberra ACT 2601
For International Callers: + 61 2 6146 0001
Email enquiries - complaints@dss.gov.au

- In Australia, domestic and family violence are crimes against the law. A person who commits these crimes can go to jail, whether they are a man or a woman.
- If you or someone you know is in danger call the Australian police on 000.
- For free, confidential advice, telephone and online counseling and information and support, call 1800 RESPECT on 1800 737 732. 1800 RESPECT is Australia's National Sexual Assault, Family and Domestic Violence Counselling service. Counsellors will listen to you, answer questions and can refer you to other support services in your local area. If you need a free interpreter call 131 450.
- Domestic and family violence includes behaviour or threats that aim to control a male or female partner by causing fear or threatening their safety. Domestic and family violence can include:
 - hitting
 - choking
 - denying essential money to the partner or family
 - isolating the partner from friends and family
 - insulting or constantly criticizing the partner
 - threatening children or pets

