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Compulsory Registration of Marriages

July, 2017

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Dear Shri Ravi Shankar Prasad Ji,

On 16 February 2017, the Department of Legal Affairs forwarded a request from the Legislative Department asking the Commission to examine and submit a report with regard to various issues relating to compulsory registration of marriages. In spite of the relentless efforts of the lawmakers and the judiciary, social evils such as child marriages, bigamy and gender violence continue to prevail in our society. The previous Commissions have also dealt with these issues and made recommendations for eradication of such evils. On the basis of the latest reference received from the Government, the present Commission studied the matter in detail and has come up with its **Report No.270** titled "**Compulsory Registration of Marriages**", which is sent herewith for the consideration by the Government.

The Commission would like to place on record its gratitude to Dr. Saumya Saxena and Ms. Anumeha Mishra, Consultants, for their commendable assistance rendered in preparing the Report.

With warm regards,

Yours sincerely,

B.S. Chauhan

[Dr. Justice B S Chauhan]

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Report No.270

Compulsory Registration of Marriages

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CHAPTER – I

Introduction and Background

1.1 Since independence, numerous initiatives have been taken to address the issue of gender inequality. Reform initiatives taken so far have succeeded to a large extent, however, child marriages, bigamy and gender violence continue to persist in our society, despite legislations prohibiting and penalising such practices.¹ Several disputes are pending before the courts regarding matrimonial status of the parties.² Women are often denied the status of wife due to absence of record proving a valid marriage. The courts have time and again emphasised on making registration of marriage compulsory, to prevent denial of status to women and to children born out of wedlock.³

1.2 Instances of marriage fraud have also come to light in recent times. In the absence of compulsory registration, women are duped into marrying without performance of the conditions of a valid marriage. This deprives women of societal recognition and legal security. Such fraudulent marriages are especially on rise among non-resident Indians.⁴ Compulsory registration can serve as a means to ensure that conditions of a valid marriage have been performed.

1.3 The Births, Deaths and Marriages Registration Act, 1886 provided for voluntary registration of births and deaths only for certain classes of people and also made a provision for effective registration of marriages under the Indian Christian Marriages Act, 1872 and the Parsi Marriage and Divorce Act, 1936. The said Acts

¹ “30% women married under age 18”, *The Indian Express* (May 31, 2016).

² “Kerala tops states with pending matrimonial cases in family courts”, *The Indian Express* (Jan 8, 2017).

³ See *Kanagavalli v. Saroja*, AIR 2002 Mad 73.

⁴ In view of such fraudulent marriages, Punjab made registration of marriages compulsory through the Punjab Compulsory Registration of Marriages Act 2012.

have been subjected to revisions and amendments from time to time since independence.

1.4 While provisions for registration exist under various laws- such as the Hindu Marriages Act, 1955, the Special Marriages Act, 1954, the Parsi Marriages and Divorce Act, 1936 and the Indian Christian Marriages Act, 1872, however, there is no provision that provides for simply keeping a record of all marriages and is available to any and every individual in the country regardless of religion, region or customs.

1.5 The Special Marriage Act 1954, laid down a procedure for registration but the Act was primarily intended to enable couples to opt out of personal laws, but this did not, however, imply that the couple has opted out of religion. It simply meant that religion has no relevance for registration of a marriage under this Act.

1.6 Though the Registration of Births and Deaths (Amendment) Bill, 1969 was introduced to include the registration of marriages, it did not cover all citizens. These amendments applied only to the Christian community and it once again remained short of becoming a national legislation.

1.7 India signed the Convention on the Elimination of All Forms of Discrimination against Women on 30 June 1980 and ratified it on 9 July 1993. After that India was expected to submit its report to the Committee on Elimination of Discrimination against Women (CEDAW). The first report was submitted in 1998. The combined fourth and fifth periodic reports were submitted in 2012. The Committee, in its concluding observations on this report in the year 2014, in para 39, urged India to speedily enact legislation to require compulsory registration of all marriages and simultaneously requested to consider to withdraw its declaration to Article 16 (2) of the Convention.

1.8 Article 16 of the Convention pertains to “Equality in marriage and family relations”. The Committee has expressed its concern in para 40 about the co-existence of multiple legal systems with regard to marriage and family relations in India which apply to the different religious groups and which results in the deep and persistent discrimination against women.

1.9 The National Commission of Women had offered a concrete solution to a number of problems arising out of non-registration of marriages by drafting a Compulsory Registration of Marriages Bill, 2005 seeking amendment to the Act of 1886.

1.10 In 2007 the Committee on Empowerment of Women, relying upon the NCW’s Bill observed that irrespective of religion, registration of marriages should be made compulsory.⁵ The report shed light on the plight of Indian women whose husbands, in a number of cases refused to acknowledge their marriage before contracting a second marriage or leaving their former wives altogether and refusing them maintenance, etc. The Committee, therefore, desired that the Government shall make registration of all marriages mandatory, making the procedure simpler, affordable and accessible.

1.11 In 2006, the Supreme Court in *Seema v. Ashwani Kumar & ors.*⁶ observed that marriages of all persons who are citizens of India belonging to various religions should be registered compulsorily in their respective States, where the marriage is solemnised. Further, as and when the Central Government enacts a comprehensive Statute, the same shall be placed before the Court for scrutiny. The judgment also referred to the Bill produced by the National Commission of Women.

⁵ Committee on Empowerment of Women (2006-2007), Ministry of Overseas Indian Affairs and Ministry of External Affairs (Fourteenth Lok Sabha) “Twelfth Report on the Plight of Indian Women deserted by NRI Husbands”(Aug. 2007).

⁶2006 (2) SCC 578.

1.12 In February 2008, the 18th Law Commission of India, in its 205th Report titled “Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws” recommended that registration of marriages within a stipulated period, of all the communities, viz. Hindu, Muslim, Christians, etc. should be made mandatory by the Central Government.

1.13 Again the Commission in its 211th Report⁷ proposed an enactment of a “Marriage and Divorce Registration Act” to be made applicable to the whole of India and to all citizens. Accordingly, it recommended that the Births and Deaths Registration Act, 1886 be repealed and Births and Deaths Registration Act, 1969 be re-named as “Births, Deaths and Marriages Registration Act, 2012”.

1.14 In 2012, another Bill was prepared and then tabled in parliament in view of the observations made by the Supreme Court in the aforementioned case. This Bill was introduced to amend the Registration of Births and Deaths Act, 1969 to provide for compulsory registration of Marriages irrespective of religious denominations of the parties.

1.15 The Amendment Bill of 2012 was passed by Rajya Sabha on 13.08.2013. However, the said Bill could not be taken up for consideration in the Lok Sabha and lapsed on the dissolution of the Fifteenth Lok Sabha on the 21st February, 2014. While considering the Bill on a reference from the Rajya Sabha, the Standing Committee hoped that the Bill would act as a milestone to protect women in matters of maintenance and property rights in addition to putting an effective check on bigamous relationships.

⁷Law Commission of India, “211th Report on Laws on Registration of Marriage and Divorce – A proposal for Consolidation and Reform” (Oct., 2008).

1.16 The Legislative Department, on the basis of earlier Bill, prepared a fresh draft Bill on the Registration of Birth and Death (Amendment) Bill, 2015. The Department of Legal Affairs, *vide* its letter dated 16 February 2017, has forwarded a request received from the Legislative Department, asking the Commission to examine and submit a report with regard to various issues relating to compulsory registration of marriages as below:

- (i) Whether to pursue amendments in the Registration of Births and Deaths Act, 1969 as per the Registration of Births and Deaths (Amendment) Bill, 2015 or to consider separate standalone legislation to provide for compulsory registration of marriages, in order to bring uniformity in all laws, including the Central and State Personal Laws;
- (ii) Whether the amendments are required in the Central Laws, including the Hindu Marriage Act, 1955 (25 of 1955), the Parsi Marriage and Divorce Act, 1936 (3 of 1936) and the Indian Christian Marriage Act, 1872 (15 of 1872);
- (iii) IT enablement of registration of all marriages;
- (iv) Such other matters as may be considered necessary.

1.17 This Report proposes to amend the Registration of Births and Deaths Act, 1969 to include the compulsory registration of marriages within its purview. In brief, it marriage includes marriage solemnised between a couple belonging to any caste or religion or tribe under any law or custom or usage in any form or manner recognised by law or marriage registered under any law including re-marriage.

1.18 Registration of marriage would in fact, help in better implementation of already existing laws that aim at preventing child marriage et al. It would also aid in eliminating practices such early

and forced marriages.⁸ It can be helpful in achieving gender equality and empowering women.

1.19 The recommendation is not aimed at eliminating diversity of personal laws and instead accepts prevailing customs/ or personal laws concerning solemnisation of marriage; provided that these marriages are registered under the Compulsory Registration of Births Deaths and Marriages Registration Act or any other law for the time being in force in the State. The report does not aim to nullify the existing provisions for registration of marriages under different state laws.

⁸ See Biswajit Ghosh, “Child Marriage, Society and the Law: A Study in a Rural Context in West Bengal, India” 25(2) *International Journal of Law, Policy and the Family* 199 (2011).

CHAPTER – II

Marriage Registration: A Global Overview

2.1 United Nations has recognised the importance of creating a record of vital events such as birth, death and marriage. Creation of such a civil registry for citizens serves the purpose of creating a legal document that could be used to protect and establish rights of individuals. This also results in the creation of a database that contains vital statistics of important and relevant life events. The United Nations defines civil registration as:⁹

The continuous, permanent, compulsory and universal recording of the occurrence and characteristics of vital events pertaining to the population as provided through decree or regulation in accordance with the legal requirements of a country. Civil registration is carried out primarily for the purpose of establishing the legal documents required by law. These records are also a main source of vital statistics. Complete coverage, accuracy and timeliness of civil registration are essential to ensure the quality of vital statistics.

2.2 In the Indian context however, the maintenance of vital statistics does not serve the sole purpose of record-keeping by the State. In many ways it enables social legislations to be effectively enforced. In certain countries there is also a specific register relating to registrations specifically of ‘family’ events.

2.3 This register has been termed as ‘family album’, ‘household register’ et al in various countries. In many countries the official recognition of one’s status or of family-related events such as marriage is only granted when all such events have been reported and registered in the family or civil register. For instance Japan considers a marriage to be legally effective only when the household register is updated with the knowledge of the event- this is known as *Koseki*. In

⁹ “Civil Registration Systems”, available at: <https://unstats.un.org/unsd/demographic/sources/civilreg/> (last visited on June 18, 2017).

other countries however, such registers work as centralised repositories for family events that would have legal repercussions which include births, deaths, marriages and even expatriations, as is the case in Germany where the register is known by the name *familienbuch* and France, where it is called *livret de famille*. However, this is not the sole source of official recognition for such events.

2.4 Registration of marriage is not compulsory in all countries. However, most countries recognise the need for such registration.

2.5 In South Africa, laws of marriage are laid down in Marriage Act, 1961. The non-registration does not affect the validity of the marriage and marriage can be registered postnuptially. While, a duly signed marriage certificate serves as prima facie proof of the existence of the marriage, the existence of the marriage may still be proved by other evidence. Similarly, Section 8 of the Australian Marriage Act, 1961 provides for registration of marriages.

2.6 The Muslim Marriages and Divorce Registration Act, 1974 of Bangladesh also provides a complete procedure by which all marriages solemnised should be registered and non-registration is punishable with simple imprisonment which may extend up to two years, or fine up to 3000 Taka, or with both.¹⁰

2.7 In Pakistan, every marriage solemnised under the Muslim law is required to be registered compulsorily under the Muslim Family Law Ordinance, 1961. After passing of the Hindu Marriage Bill, in

¹⁰ Section 5 of the Act reads: “(1) Where a marriage is solemnized by the Nikah Registrar himself, he shall register the marriage at once.

(2) Where a marriage is solemnized by a person other than the Nikah Registrar, the bridegroom of the marriage shall report it to the concerned Nikah Registrar within thirty days from the date of such solemnization.

(3) Where solemnization of a marriage is reported to a Nikah Registrar under sub-section (2), he shall register the marriage at once.

(4) A person who contravenes any provision of this section commits an offence and he shall be liable to be punished with simple imprisonment for a term which may extend to two years or with fine which may extend to three thousand taka, or with both.”

March 2017, even the Hindus in Pakistan are required to get their marriages registered.

2.8 In Turkey, there is no specific law on registration of marriage but the marriage is concluded only through civil ceremony in front of the Registrar. This requirement flows from the Turkish Civil Code enacted in 1926 which was amended by Turkish Civil Code (2001).

2.9 In Indonesia, Article 2 para 2 of the Marriage Law of 1974 provides for compulsory registration of marriages. In Sri Lanka, under Muslim Marriage and Divorce Act, 1951 (promulgated on 1-8-1954) marriages solemnised therein are required to be registered compulsorily under section 17 of the said Act.¹¹

2.10 The requirement of celebrating and registering a marriage before a public authority and certificate of marriage as the only admissible means of proof of marriage is also available in the Civil Codes of various countries, for example:-

- (1) French Civil Code – Arts.165 to 169.
- (2) Italian Civil Code – Arts. 106, 107 & 130.
- (3) Civil Code of Brazil – Arts.1533 and 1534.
- (4) Portuguese Civil Code of 1966 – Arts.1615, 1616, 1651 & 1653.
- (5) Civil Code of Quebec – Arts.365 & 378

¹¹ Section 17(1) of the Act reads: “Save as hereinafter expressly provided, every marriage contracted between Muslims after the commencement of this Act shall be registered, as hereinafter provided, immediately upon the conclusion of Nikah ceremony connected therewith.”

CHAPTER – III

Marriage Registration: Indian Legislative Framework

3.1 In India, not recognising unregistered marriage as a valid would be highly unsuitable, as many marriages commonly take place informally in gatherings of relatives, with or without presence of priests, or in any other customary manner which must also be recognised as valid. It was for this reason that, like various other countries, India also expressed its reservation even while ratifying the Convention of 1993. Customary practices are so prolific and personal law systems also prevail making it necessary for the law to accept cultural and regional diversity. Therefore the idea is to encourage legal education among the people, so that these ceremonies can be preceded or succeeded by registration of the event.

3.2 An unregistered marriage is not to be treated as ‘void’ but simply in an attempt to encourage registration, there can be small penalties attached to non-registration. This would help in a circumstance when the spouse has been left destitute and a second marriage has been contracted by the other spouse, the proof of first marriage will be indisputable and not permit a spouse to abandon his family and maintenance obligations etc.

3.3 It is worth noting that there are various laws governing the marriage and divorce in India, the Bill seeking Compulsory Registration of Marriages is not intended to challenge or interfere with any of these prevailing systems of personal laws but to simply ensure that marriages under all customs and religions can be registered.

(i) Existing Central Legislation on Registration /Compulsory Registration of Marriages and Divorces

a. The Indian Christian Marriage Act, 1872

3.4 Part IV of the Act (Sections 27-37) contains elaborate provisions for registration of marriages solemnised by Ministers and Clergymen. There are in this Part separate registration provisions for marriages of

Christians in general and of Indian or Native Christians. Part V of the Act (Sections 38-59) provides rules for solemnisation-cum registration of marriages directly by Marriage Registrars appointed under the Act. Part VI (Sections 60-65) relates to marriages of “Indian Christians” and provides rules for certification. There are different provisions in the Act for the transmission of records of registration of various categories of marriage to the Registrar-General of Births, Deaths and Marriages.

b. The Kazis Act 1880

3.5 Marriages among the Indian Muslims are solemnised by religious officials known as the “kazi”. The Act empowers State governments to appoint kazis for the purpose of assisting Muslims with solemnisation of marriages, etc. Section 4 of the Act makes it clear that presence of a State appointed kazi will not be mandatory for any marriage. Before, or immediately after, the “nikah” ceremony the kazi prepares a nikah-nama (agreement containing all terms of contract of marriage) which gives full details of the parties and is signed by both of them, and by two witnesses. The kazi authenticates the “nikah-nama” by putting his signature and seal on it. Printed forms of standard nikah-nama are stocked by all kazis who fill in it the details of the marriages they solemnize, issue copies to both parties, and preserve a copy in their records. These can serve as proof of marriage for the purpose of registration of Muslim marriages.

c. The Anand Marriage Act, 1909

3.6 This was enacted in order to allow for registration of marriages among Sikhs. It derived from the word *Anand Karaj* which means a ‘joyful union’. The Act was subsumed within the Special Marriage Act in 1954 and Hindu Marriage Act in 1955. However, it was amended in 2012 to again include the registration of marriages of Sikh couples who chose to opt out of the Hindu Marriage Act, 1955.

d. The Parsi Marriage and Divorce Act, 1936

3.7 Section 12 of the Act provides that the priests are required to periodically transmit their records to Marriage Registrars appointed under the Act. A priest who neglects to certify a marriage or to transmit its copy to the Marriage Registrar will be guilty of an offence punishable with simple imprisonment up to three months, or with fine up to a hundred rupees, or with both. Further, the Marriage Registrars are to be appointed by the State Government for various areas and they are required to transmit their records to the Registrar-General of Births, Deaths and Marriages under Section 9 of the Act.

e. The Special Marriage Act, 1954

3.8 The Special Marriage Act, 1954 is available to all Indian citizens irrespective of religion and was originally enacted to enable cross-community marriages. Marriages are registered under section 15 of the Act by the Marriage Officer specially appointed for the purpose. Marriage records by all Marriage Officers, is periodically transmitted to the Registrar-General of Births, Deaths and Marriages. Periodicity and forms are to be prescribed by the State governments under the Rules to be framed for carrying out purposes of this Act (Sections 48-50).

f. The Hindu Marriage Act, 1955

3.9 Section 8 of the Hindu Marriage Act, 1955 lays down for registration of marriages. Registration under this Act is to facilitate the person to have proof of marriage by way of registration. The State Government has been empowered to make rules for registration of the marriage.

g. The Foreign Marriage Act 1969

3.10 This Act was enacted to facilitate solemnisation of civil marriages by Indian citizens in foreign countries. Under section 3 of

the Act, Marriage Officers are to be appointed by the Central Government for this purpose, in its Diplomatic Missions abroad. The Act provides that an Indian citizen may marry another Indian or a foreigner. Like in the Special Marriage Act 1954, under this Act to solemnisation and registration of marriages are parts of the same transaction. The procedure for solemnisation and registration of such marriages is more or less the same as under the Special Marriage Act 1954. Marriage Certificate Books are to be maintained in all Diplomatic Missions. There is no provision in this Act for transmission of records to any general registry of the country. It also makes a provision for registration of pre-existing marriages solemnised in foreign countries under the laws of those countries.

(ii) Developments in States and Union Territories in India

3.11 Pursuant to the directions/ observations of the Supreme Court in *Seema v. Ashwani Kumar*¹² many states have passed law or framed rules for compulsory registration of marriages, i.e.

(A) Compulsory Registration of Marriages Acts:

- (i) The Punjab Compulsory Registration of Marriages Act, 2012 provides for compulsory registration of marriages solemnised within the State under any law governing the parties irrespective of their religion, caste, creed or nationality.
- (ii) The Delhi (Compulsory Registration of Marriage) Order, 2014 extends to all marriages solemnised in Delhi irrespective of cast creed and religion professed by the parties to the marriage.
- (iii) The Haryana Compulsory Registration of Marriages Act 2008 provides for compulsory registration of marriages solemnised

¹²*Supra* note 6.

within the State, irrespective of caste, religion and creed and for matters connected therewith or incidental thereto.

- (iv) The Meghalaya Compulsory Registration of Marriages Act 2012 provides for compulsory registration of marriages solemnised in the State of Meghalaya and for matters connected therewith; amended by the Meghalaya Compulsory Registration of Marriages (Amendment) Act, 2015.
- (v) The Uttarakhand Compulsory Registration of Marriage Act, 2010 provides for the compulsory registration of all marriages solemnised in the State of Uttarakhand so as to prevent child marriages, check bigamy or polygamy, help women to exercise their rights of maintenance from husband and custody of children, enable widows to claim inheritance and to serve as deterrent to husbands deserting their wives and for matters connected therewith or incidental thereto.
- (vi) The Tamil Nadu Registration of Marriages Act, 2009. “Marriage” includes all marriages solemnised by persons belonging to any caste or religion under any law for the time being in force, or as per any custom or usage in any form or manner and also includes remarriage. As per Section 3 of the Act Marriages to be compulsorily registered. It reads:

Marriages to be compulsorily registered.— Every marriage performed on and from the date of commencement of this Act shall be registered under this Act notwithstanding the fact that the said marriage had been entered in the marriage registers governed by any other personal laws of the parties to the marriage or custom or usage or tradition).

- (v) Similarly, Rajasthan too has enacted the Rajasthan Compulsory Registration of Marriages Act, 2009, wherein it is provided for Compulsory Registration of Marriages of citizens of India solemnised in the State.

- (vi) The Mizoram Compulsory Registration of Marriages Act, 2007 provides for compulsory registration of marriages solemnised in the State of Mizoram, "marriage" includes all the marriages contracted by persons belonging to any caste, tribe or religion, and the marriages contracted as per any custom, practice or tradition, and also includes re-marriages.
- (vii) Further there are the Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976, (3) The Himachal Pradesh Registration of Marriages Act, 1996, and (4) The Andhra Pradesh Compulsory Registration of Marriages Act, 2002.
- (viii) In Odisha, the registration of marriages were regulated under various Acts and Rules; namely, (i) the Orissa Mohammedan Marriages and Divorces Registration Act, 1949 and Rules, 1976 for Muslim Community (Section-8 and Rule 2A) (ii) the Orissa Hindu Marriage Registration Rules, 1960 (Rules-4, 4A and 4B) (iii) the Indian Christian Marriage Act, 1872 (Sections-6 and 9) and (iv) the Special Marriage Act, 1954 (Section-3). Pursuant to the judgement of the Hon^{ble} Supreme Court in *Seema v. Ashwani Kumar*¹³, the Odisha Hindu Marriage Registration Rules, 1960 and the Odisha Mohammedan Marriages & Divorces Registration Rules, 1976 were amended in the year 2006 and registration of marriages of Hindu and Muslim religions are compulsory since then.
- (ix) In Goa, the process of registration of marriage with the State Government is initiated before its solemnisation under religious rites and ceremonies of the parties to the marriage. The position of registration of marriage in the State of Goa is progressive in view of the fact that it is governed under Civil Registration Code of 1912 which is mostly based on the Portuguese Code of 1867. The said Act is applicable to Daman & Diu as well. Even marriage of Roman Catholics solemnised

¹³ *Supra* note

under canonical law need to be routed through the Civil Registration Office. Marriage of Christian community could only to be solemnised by the Priest of the Church when No Objection Certificate from the Sub Registrar Office is produced before him. Article 1 of the Code of 1912 provides for compulsory registration to fix authenticity and juridical individuality of each citizen and to serve as basis of his civil rights. Article 4 thereof provides that no other mode of proof can be accepted. Article 6, thereof, provides that if lack of registration is attributable to an interested party, for proof, such party has to resort to judicial proceedings.

- (x) In Puducherry, the Pondicherry Hindu Marriage (Registration) Rules, 1969 have come into force w.e.f. 7th April, 1969. All Sub-Registrars of Puducherry have been appointed under Section 6 of the Indian Registration Act, 1908 as Marriage Registrars for the purposes of registering marriages. In the Union territory of Puducherry, marriages of various communities are registered with the Local Bodies Authorities under Municipal/Commune Panchayat limits under the provisions of the Registration of Marriages by “Decret” dated 24.04.1880 or under the Hindu Marriage Act, 1955 or the Special Marriage Act, 1954 by the Sub-Registrars of the Registration Department.¹⁴ Previously, the French Civil Code was used for registration of Births, Deaths and Marriages in the Local Bodies of the Union territory of Puducherry. The Registration of Births and Deaths Act, 1969 was implemented in March 1979 for registration of births and deaths. However, the Registration of Marriages is still under the said French Civil Code.
- (xi) In Jammu and Kashmir, as regards Muslims, Section 3 of the Jammu and Kashmir Muslim Marriages Registration Act,

¹⁴ See Department Related Parliamentary Standing Committee On Personnel, Public Grievances, Law and Justice , “Fifty Fifth Report on the Registration of Births And Deaths (Amendment) Bill, 2012 (2013).

1981 provides that marriage contracted between Muslims after the commencement of the Act shall be registered in the manner provided therein within 30 days from the date of conclusion of Nikah ceremony. However, the Act has not been enforced.

- (xii) So far as the Union territory of Chandigarh is concerned, the Hindu Marriage Registration Rules, 1966 have been framed.
- (xiii) The Tripura Recording of Marriage Act, 2003 regulates compulsory recording of marriage solemnised under the Act updated by the Tripura Recording of Marriage (Amendment) Act, 2013.
- (xiv) Earlier there were other laws that existed for the purpose of registration of marriages. They are: (1) The Bombay Registration of Marriages Act, 1953, In five States provisions had been made for voluntary registration of Muslim marriages. These are Assam, Bihar, West Bengal, Orissa and Meghalaya. The Assam Moslem Marriages and Divorce Registration Act, 1935; the Orissa Muhammadan Marriages and Divorce Registration Act, 1949; and the Bengal Mohammedan Marriages and Divorce Registration Act, 1876 are the relevant statutes. Many of these have been repealed for replaced by new legal regimes.

(B) Compulsory Registration of Marriages Rules:

- (i) Bihar Marriage Registration Rules, 2006 are with respect to the compulsory registration of marriages. The same are applicable to the marriages of all citizens of India solemnised in the State;
- (ii) Madhya Pradesh Compulsory Marriage Registration Rules, 2008 for all marriages solemnised in the State.
- (iii) The Kerala Registration of Marriages (Common) Rules, 2008. provides that all Marriages solemnised in the State shall

compulsorily be registered irrespective of religion of the parties. The Rules are now being implemented through the Director of Panchayat, who is Chief Registrar of marriage.

- (iv) Compulsory Marriage Registration Rules, Chhattisgarh, 2006 makes marriage registration compulsory for all, irrespective of community or religion.

(C) Acts /Rules are under process in some States and Union Territories:

The other States and Union territories are also taking steps to make necessary law on the subject. The proposed draft of U.P. Compulsory Marriage Registration Rules, 2014 is under consideration of the Government. Some Union Territories, i.e. Union Territory of Andaman and Nicobar Islands have forwarded draft law to the Union Government. The Nagaland Registration of Marriage Bill, 2012 was deferred and again discussed in April, 2014 in the Nagaland Legislative Assembly.

CHAPTER – IV

Judicial Pronouncements

4.1 The Supreme Court and the High Courts have time and again emphasised on the need to make registration of marriages compulsory. The most notable decision came in *Seema v. Ashwani Kumar*¹⁵ while dealing with the matter related to issue(s) of marriages observed as under:

“[...] we are of the view that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective States, where the marriage is solemnised.”

4.2 Thus the Court directed that the States and the Central Governments to take the following steps:

(i) The procedure for registration should be notified by respective States within three months from today. This can be done by amending the existing Rules, if any, or by framing new Rules. However, objections from members of the public shall be invited before bringing the said Rules into force. In this connection, due publicity shall be given by the States and the matter shall be kept open for objections for a period of one month from the date of advertisement inviting objections. On the expiry of the said period, the States shall issue appropriate notification bringing the Rules into force.

(ii) The officer appointed under the said Rules of the States shall be duly authorized to register the marriages. The age, marital status (unmarried, divorcee) shall be clearly stated. The consequence of non-registration of marriages or for filing false declaration shall also be provided for in the said Rules. Needless to add that the object of the said Rules shall be to carry out the directions of this Court.

(iii) As and when the Central Government enacts a comprehensive statute, the same shall be placed before this Court for scrutiny.”

4.3 The compliance of the above order by all States and Union Territories is yet to be reported. The case has been listed 34 times. It

¹⁵*Supra* note 6.

was last listed on 21.3.2017. Many States and Union Territories have filed affidavits reporting compliance of above directives and some are yet to file as discussed in the previous chapter.

4.4 In *Kanagavalli v. Saroja*¹⁶, the Madras High Court underlined the importance of registration in providing security to women. It opined that if registration were compulsory, prosecution for bigamy could be made easy. If a Hindu male contracts a second marriage and registers it, at least the second wife will have as proof, the document to show that the marriage was registered between her and the man. It remarked:¹⁷

... non-registration of marriages has landed many women ... in a relationship which while extracting from her, all the duties of a wife, leaves her with neither the right under law, nor the recognition in society. In addition, the Hindu male is able to contract a second marriage without any fear.

4.5 Similarly, in *Baljit Kaur & Anr v. State of Punjab & Anr.*¹⁸, the Punjab and Haryana High Court reiterated the ratio in *Seema case* and opined that making registration of marriage compulsory would reduce the disputes related to solemnization of marriages.¹⁹

4.6 It has been opined by the Kerala Court that an instruction that marriages solemnised between persons belonging to different religion are not registrable under the Common Rules formulated pursuant to the Supreme Court's decision in *Seema Case* is repugnant and contrary to the provisions contained in the Rules.²⁰ In *S. Balakrishnan Pandiyan v. The Superintendent of Police*²¹, the high court emphasised that the Tamil Nadu Registration of Marriages Act, 2009 is a secular law and it makes registration of marriages performed under all

¹⁶ AIR 2002 Mad 73

¹⁷ *Ibid.*

¹⁸ (2008) 151 PLR 326

¹⁹ See also *Najma v. Registrar General of Marriages & Anr*, 2012 (1) KHC 655

²⁰ *Deepu Dev v. State of Kerala* AIR 2013 Ker 51.

²¹ (2014) 7 MLJ 651

religious faiths compulsory. It also held that the Registrars in the State of Tamil Nadu can register the marriage without the presence of the parties, only under exceptional circumstances, for reasons to be recorded in writing and not otherwise.

4.7 A registered marriage not only establishes the status of the spouse but also helps in succession disputes. In *Sushma W/o Hemantrao Bodas v. Malti W/o Madhukar Machile*²², the Bombay High Court on the basis of marriage certificate ruled in favour of a valid marriage. The court also remarked that registration of marriage facilitates proof of marriage in succession and other disputes.

4.8 These judgments indicate that the non-registration of marriage may lead to difficulties particularly when matrimonial disputes arise. The National Commission of Women recommended that women must insist on registering marriages to prevent cases of fraud.²³ Compulsory registration of marriage seems a pragmatic solution in the light of these cases.

²² 2009 (111) Bom LR 3974

²³ “Problems Relating to NRI Marriages”, available at: <http://ncw.nic.in/pdf/files/nridodont.pdf> (last visited on April 26, 2017).

CHAPTER - V

Revisiting the Reports of the Law Commission of India

5.1 The 18th Law Commission of India began its work on the request of the Supreme Court of India, in Writ Petition (Criminal) No. 81 of 2006²⁴, to assist it on certain issues relating to child marriage. The Commission submitted its 205th Report which suggested a law which will eradicate the evil of child marriages. One of the recommendations in this report reads as under:

“Registration of marriages within a stipulated period, of all the communities, viz. Hindu, Muslim, Christians, etc. should be made mandatory by the Government.”

5.2 The 18th Commission took up the subject of Registration of Marriage and Divorce, *suo motu* in light of the directions of the Supreme Court dated 14.2.2006 in *Seema v. Ashwani Kumar*²⁵ that all marriages shall be compulsorily registered and that the State Governments shall initiate action for rule-making in this regard. The Commission examined the existing enactments and observed in its 211th Report that there is a great diversity in respect of laws for registration of marriages.

5.3 The 18th Commission also noted that the Births, Deaths and Marriages Registration Act, 1886 which states that “Births and Deaths” are to be registered under the Act by the Registrars of Births and Deaths appointed by the State, but there is no provision for registration of marriages and hence the title of the Act is somewhat misleading. Under the Act, Registrar-General of Births, Deaths and Marriages is to keep proper Indexes of the certified copies of Marriage Registers received by him under the provisions of the Special Marriage Act, 1954, Indian Christian Marriage Act, 1872 and Parsi Marriage and Divorce Act, 1936. Then there are few other State laws on

²⁴*Delhi Commission for Women & Anr. v. Union of India & Anr.*, W.P. was called on 21.04.2014 for hearing and dismissed as withdrawn.

²⁵*Supra* note 6.

Marriage Registration in Bombay, Andhra Pradesh, West Bengal but nowhere failure to register a marriage which is otherwise compulsory, affects the validity of marriage in any way. The administrative machinery for registration of marriages is not regulated everywhere by one and the same law. In different parts of the country it is regulated by one of the three central laws – the Births, Deaths and Marriages Registration Act, 1886, the Registration Act, 1908 and Registration of Births and Deaths Act, 1969 – or by a local law, or a combination of both. This creates a lot of confusion with registration officials as well as people who want to or are required to register their marriages.

5.4 Thus, 18th Law Commission stated that the wide diversity of laws relating to registration of marriages makes the process complicated and confusing. It recommended enactment of a “Marriage and Divorce Registration Act” to be made applicable to the whole of India and to all citizens irrespective of their religion and personal law and without any exceptions or exemptions.

5.4 The 18th Commission, in its 212th Report titled “Laws of Civil Marriages in India – A Proposal to Resolve Certain Conflicts, 2008” suggested to enact law to resolve conflicts between various family laws rather than addressing the question of marriage registration directly. The report noted that:

Numerous marriages take place in India which are outside the ambit of various personal laws but cannot be governed by the Special Marriage Act either for the reason of not having been formally solemnised or registered under it. The question which law would then apply to such marriages remains unresolved.

5.5 Thus, acknowledging this gap, the Commission recommended amendment to both the Special Marriage Act, 1954 and the Foreign Marriages Act, 1969 to make registration of marriages compulsory for the people without compromising on their religious practices and personal laws.

5.6 The 18th Commission further suggested that the term ‘special’ deserved reconsideration in light of the fact that cross-community marriages are now common. The Report also suggested that all marriages be required to be registered under the Special Marriage Act 1954 with the exception of those between, Hindus, Sikhs, Buddhists and Jains. The report therefore did not envision a separate legislation for Compulsory Registration of Marriages but sought to create an umbrella legislation out of the 1954 Act itself. However, this Commission is disinclined towards such an expansion of Special Marriage Act 1954 because it would entail a through revision of for instance, provisions relating to prohibited degrees of marriages, among many others, which are not questions that directly concern the Bill on registration of marriages.

5.7 The suggestions by the 21st Commission deal, only with registration of marriages and not with any substantive aspect of family law governed by various matrimonial laws – general and community - specific. Accordingly, the Births, Deaths and Marriages Registration Act, 1886 be repealed and Births and Deaths Registration Act, 1969 be re-named as “Births, Deaths and Marriages Registration Act” with a provision that officials working and records maintained under the former Act shall be deemed to be working and maintained under the latter Act.

5.8 Registration of Marriages need not lay down conditions as required under the Special Marriage Act 1954 but instead aim merely at such registration for record-keeping purposes while permitting all diverse customs and ceremonies to remain valid proofs of marriage.

5.9 The idea is not to lay down a procedure recognised for solemnisation of marriage but only for registration of marriages. Thus in effect, the Compulsory Registration of Marriages Bill aims to recommend changes along the lines of Compulsory Registration of Births and Deaths, with no effect on different Marriages Acts or personal law.

CHAPTER - VI

Need for a Central Legislation to regulate compulsory Registration of Marriages

6.1 In view of the developments that have taken place in the States and Union territories with respect to legislations on Compulsory Marriage Registration, the core question for consideration arises is as to whether there is a need for Central Legislation on the subject? And if so, then the next question arises as to whether to pursue amendments in the Registration of Births and Deaths Act, 1969 as per the Registration of Births and Deaths (Amendment) Bill, 2015 or to consider a separate standalone legislation to provide for compulsory registration of marriages is required?

6.2 Before providing directions for the registration of marriages in *Seema v. Ashwani Kumar*²⁶ the Supreme Court noted that, such a law would be of critical importance to various issues such as: (a) Prevention of child marriages and to ensure minimum age of marriage. (b) Prevention of marriages without the consent of the parties. (c) Check bigamy/polygamy (d) Enabling married women to claim their right to live in the matrimonial house, maintenance, etc. (e) Enabling widows to claim their inheritance rights, other benefits and privileges which they are entitled to after the death of their husband. (f) Deterring men from deserting women after marriage. (g) Deterring parents/guardians from indulging in trafficking of women to any person including a foreigner, under the garb of marriage.

6.3 Further, the Supreme Court observed that though, the registration itself cannot be a proof of valid marriage per se, and would not be the determinative factor regarding validity of a marriage, yet it has a great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons

²⁶*Supra* note 6.

whose marriage is registered and the age of parties to the marriage. That being so, it would be in the interest of the society if registration of marriages is made compulsorily. Accordingly directions were issued for States/ Union territories and Central Government. The relevant part of the Order dated 14.02.2006 reads as under:

“(iii) As and when the Central Government enacts a comprehensive statute, the same shall be placed before this Court for scrutiny.”

6.4 Prior to the above directions of the Supreme Court on the subject, there have been suggestions/ demand to make registration of marriages and divorces compulsory in an official registry at international and national levels, i.e., United Nations Organisations²⁷; National Human Rights Commission²⁸; the Steering Committee on Empowerment of Women and Development of Children²⁹; Committee on Empowerment of Women³⁰; National Commission for Women³¹ Law Commission of India; Parliament Standing Committee; States and Union territories. Further, after solemnisation of marriages or after divorce many Statues provide rights, liabilities and obligations for parties (male and female) and children. Various kinds of rights and disputes that arise out of marriages/divorces are –restitution of conjugal rights, offences relating to marriage, legitimacy of children, dispute relating to custody of children; dispute relating to *stridhan* or dowry, dispute relating to cruelty and harassments; succession of properties, visit to foreign countries, dispute relating to divorce or separation; dispute relating to maintenance, period for remarriage etc.

²⁷Article 16(2), Convention on the Elimination of All Forms of Discrimination against Women, A/RES/34/180, (Dec.18, 1979), and CEDAW

²⁸National Human Rights Commission, “Annual Report” (1995-96) para 4.6, *available at* :http://nhrc.nic.in/ar95_96.htm (last visited on May 3, 2017).

²⁹Planning Commission of India, “Report of the Steering Committee on Empowerment of Women and Development of Children for the Eleventh Plan” (2006), *available at* :http://planningcommission.nic.in/aboutus/committee/strgrp11/str11_wcd.pdf (last visited on May 4, 2017).

³⁰*Supra* note 5.

³¹National Commission for Women, Draft on the Compulsory Registration of Marriages Bill, 2005, *available at*:<http://ncw.nic.in/pdf/files/compmarriagebill.pdf> (last visited on May 4, 2017).

On such issues a large number of disputes including that of NRIs are being adjudicated in various tribunals/ courts. Non-registration of marriage affects women and children. Women are the prominent victims of bigamous relationships and property disputes etc. face immense difficulty in establishing their marriage. Therefore, it has become necessary to enact a law to safeguard the future of married/divorcees and to check child marriages/ trafficking of young girls to any person including foreigner under the garb of marriage.

6.5 The Registration of Births and Death Acts, 1969, provides for Registration establishments consisting of Registrar-General, Chief Registrar and Registration Division and Registrars in each State and Union territory. It also provides procedures for registration of births and deaths and for maintenance of records and statistics. Further, by virtue of the powers conferred under section 30 of the aforesaid Act, rules for compulsory registration of births and deaths have been framed by many State Governments and Union territory Administration. In the Statement of Object and Reasons of the Act, the need of adequate and accurate countrywide registration data for the purpose of national planning, organising public health and medical activities and developing family planning programmes etc. has been noted. It was felt that in order to develop a sound and unified system of registration in the country, a central legislation on the subject necessary.

6.6 Therefore, it is worth considering the amendment of the aforesaid Act to include Registration of marriage as well within its scope so that existing administrative machinery is able to carry out registration of marriages in accordance with the specified procedures. Further, the States at one office/ place will be able to maintain necessary records and statistics of registration of marriages. This will make the proposal financially viable because it will not be causing any

extra financial burden in establishing separate infrastructure to implement the proposal.

6.7 The ultimate object is to provide a mechanism for ‘compulsory registration of marriages’ which is being proposed for all citizens of India irrespective of the religion or caste of the parties, manner, time or place of solemnisation of the marriage or custom/ enactment under which marriage is solemnised or personal laws of the parties. The Registration of Births and Deaths Act, 1969 is dealing with only the registration of births and deaths. Therefore, it is not desirable to have a separate legislation for compulsory registration of marriages as it may not serve any useful purpose. This Bill will also be a step forward in making visible the forms of customs and practices under which the marriages are solemnized.

6.8 The current legislative system often leaves unanswered gaps where in the absence of pronounced court orders several cases seem to fall astray. In the *Court on its own motion (Lajja Devi) v. State (NCT of Delhi)*,³² a full bench of Delhi High Court identified the conflicting legislations that still do not pronounce clearly what is the legal minimum age to marry in India. Section 5(iii) of the Hindu Marriage Act, 1955 and section 2(a) of the Prohibition of Child Marriage Act, 2006 prescribes 18 as the minimum age for the bride and 21 as the minimum age for the groom. Muslim Law in India recognizes marriage of minor who has attained puberty as valid. The Special Marriage Act also prescribes 18 and 21 as the legal minimum age for women and men respectively. However, under section 11 and 12 of the Hindu Marriage Act, marriages where one or more parties do not meet the legal minimum age requirement are neither void nor voidable and merely liable to pay fine. Section 3 of the Prohibition of Child Marriage Act deems a marriage where one or more parties is minor as voidable at the option of the minor. There is also a question of guardianship,

³² 2013 CriLJ 3458.

where the laws are unclear on the point as to whether the husband can be a guardian of the wife, according to Section 6 of the Hindu Minority and Guardianship Act, 1956, when he himself has not yet attained the age of majority.

6.9 The question then arises that when it comes to compulsory registration of marriage should the law encourage this tacit compliance of child marriage by allowing these “valid marriages” under various personal laws to get registered, or should the law not register these marriages, where turning a blind eye and not compulsorily registering the marriage would actually let the activity continue unregulated. This was highlighted in *Lajja Devi*:³³

“... registration of marriages has still not been made compulsory. Compulsory registration mandates that the age of the girl and the boy getting married have to be mentioned. If implemented properly, it would discourage parents from marrying off their minor children since a written document of their ages would prove the illegality of such marriages. This would probably be able to tackle the sensitive issue of minor marriages upheld by personal laws.”

6.10 **Conflict of laws:** However, in the absence of a clear status for child marriages - be it void, voidable or valid – the required age for registration is a question that needs to be decided and answered by comparing the freedom and protection given to age relaxations under all personal law and the social responsibility of bringing reform through law.

6.11 Medical Termination of Pregnancy Act 1971 provides that a pregnancy of a woman, who has not attained the age of 18 years shall not be terminated except with the consent in writing of her guardian. Similarly, Dowry Prohibition Act 1961 also acknowledges that marriages do in fact, despite the Child Marriages Restraint Act, take

³³ *Ibid.*

place even when parties are under the age of 18. The Dowry Prohibition Act provides that if the dowry was received when the bride was a minor, the dowry should be held in trust by her guardian pending the transfer when she attains the age of 18. Further, even under Criminal law while sections 375, 376 Indian Penal Code 1861, consider sexual intercourse with a minor as rape, they also contain the exception that 'Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape'.

6.12 Thus, age of consent is 16, age for marriage is 18, however, if married, consent for sexual intercourse is deemed at 15. Under the Age of Consent Act, 1891, the age of consent for sexual intercourse for all girls, married or unmarried was raised from ten to twelve years in all jurisdictions and its violation was subject to criminal prosecution as rape. The Protection of children from sexual offences, Act 2012 defines child as below 18 years of age. The Juvenile Justice (Amendment) Act, 2015, section 2(14) (xii) stipulates that a child 'who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage' is a child in need of care and protection.

6.13 The Majority Act, 1875 makes it clear that the said Act does not apply in case of marriages, etc. So far as the Islamic Law is concerned, there have been conflicting views regarding the marriage of parties below 18 years of age. Under the Muslim Personal Law, it is provided that if a Mohammedan who has attained puberty and is of sound mind can enter into contract of marriage. "Puberty"³⁴ and majority are one and the same in the Muslim Law. The presumption is that a person attains majority at 15 but the Hedaya lays down that the earliest period for a boy is 12 years and a girl is 9 years. Majority is presumed among the Hanafis on the completion of the fifteen years, in

³⁴I. Mulla, *Commentary on Mohammedan Law* (Dwivedi Law Agency, Allahabad, 2013).

the case of both males and females, unless there is any evidence to show that puberty was attained earlier. In the case of a Shia female, the age of puberty begins with menstruation. Their Lordships of Privy Council also held in *Nabad Sadiq Ali Khan v. Jai Kishori* ³⁵, (a case related to a Shia girl) that the age of Puberty for a girl is 9 years. But, according to Hedaya, :

The puberty of a boy is established by his becoming subject to nocturnal emission, his impregnating a woman or emitting in the act of condition; and if none of these be known to exist, his puberty is not established until he have (sic. has) completed his eighteenth year. The puberty of a girl is established by menstruation, nocturnal emission, or pregnancy; and if none of these have taken place, her puberty is established on the completion of her seventeenth year.”

6.14 Thus, the conflict of laws is not simply between different personal laws but also various other enactments relating to child marriage, dowry prohibition and medical termination of pregnancy among others. Thus while Bill does not aim at eliminating the diversity of personal laws, or regional differences seeking merely the registration of marriages regardless of the law under which the marriages are recognised or solemnised, it recommends that these various overlapping and contradicting legislations be borne in mind while framing the rules of registration.

³⁵(1928) 30 Bom LR 1346.

CHAPTER VII

Feasibility of Information Technology-Enabled Registration

7.1 The object of the proposed amendment of the Registration of Births and Deaths Act, 1969 would be to create a central civil registration portal that consists of records of birth, marriage and death and to provide convenient access to the documents. In the present era of technology, manual registration may be very tedious and time consuming. Some State Governments already provide the facilities of compulsory registration of marriages online. Accordingly, registration of marriages should be made possible online as far as possible, in other states as well.

7.2 Online facilities are being provided for several government services. For example, the Ministry of External Affairs launched the Passport Seva Project in May, 2010 to improve the issuance of the passport and related services. Citizens may submit their passport applications and seek appointment on payment of passport fee online at their convenience. A multi-lingual call centre operates in 17 languages which enables citizens to obtain passport services related information and receive updates about their passport applications, round the clock, seven days a week. Under this program, the sovereign functions like verification, granting and issuing of passport; and the control of data / information, have been retained by Ministry of External Affairs.

7.3 Similarly online birth registration services are also being provided in India. A similar procedure may be followed for registration of marriages as well.

7.4 Some States already provide web portals for online registration of marriages, but it would be desirable to have a centralised national portal for maintenance of records such registration. The Commission

is of the opinion that availability of forms and documents in vernacular languages must be ensured to make the said portal easily accessible to all citizens.

7.5 Also, if registration of marriage is linked to the unique identification number (UID), it would be possible to achieve universal tracing of records.

CHAPTER – VIII

Conclusions and Recommendations

8.1 The merits of registration of marriages have been discussed at length earlier in the report. A large number of countries have made registration of marriages compulsory. In India, because of its size, population and the sheer diversity of customary forms of marriages, it has often been canvassed that such an endeavour to register all marriages would be difficult. However, the difficulty in implementation does not overshadow the merits of such an enactment.

8.2 Once enacted, the amended law would enable better implementation of many other civil as well as criminal laws. It would provide citizens, not new rights but better enforcement of existing rights under various family laws that grant and provide to protect many rights of spouses within a marriage. Registration of a marriage under any of the prevailing marriage Acts e.g. the Indian Christian Marriages Act, 1872; the Kazis Act, 1880; the Anand Marriage Act, 1909; the Parsi Marriage and Divorce Act, 1936; the Sharia Application Act, 1937; Special Marriage Act, 1954; Hindu Marriage Act, 1955; any other custom or personal law relating to marriage will be acceptable and a separate standalone legislation may not be required so long as an amendment is made to the Births, Deaths Registration Act to include Marriages.

8.3 Under the scheme of the Constitution the power to make laws governing marriage and divorce falls under entry 5 of the Concurrent List.³⁶ In view of the provisions of article 254 of the Constitution any law enacted by a State, which is in force on the date of commencement of this Act (Bill of 2015), if not in consonance and in conformity with this Act (Bill) shall be void to that extent. This Bill will not be in derogation of any provision of any existing Act dealing with compulsory

³⁶ Seventh schedule, Constitution of India.

registration of marriages, provided the existing law provides for stringent consequences for non-registration of marriages or provides a better mechanism for such a registration.

8.4 This Bill would supplement the domain of family laws that already exist and is not aimed at removing, abolishing or amending specific religious/ cultural practices and laws that are accepted under personal laws prevailing in India. The subject of personal laws is wide and complex, and this report is not aimed at creating conditions for introducing family law reforms except the simple procedural change that Compulsory Registration of Marriages will entail.

8.5 Since, entry 5 of the Concurrent List of the Seventh Schedule to the Constitution, contains most matters of family law, allowing for the States to legislate on these matters, the recommended Bill would only serve as a guiding principle which would apply across the country but specific amendments to the scheme can be added by the States bearing in mind that there may be more effective ways for such registration of marriages depending on the context and particularities of different States. These differences may merely be procedural and not substantive. The above proposals shall be in addition to the other existing laws and will not affect any rights recognised under any other law or custom.

8.6 The Registrar who is responsible for the registration of births and deaths shall be responsible for the registration of marriages as well. Clause 8 specifies the people who shall be eligible to submit information to the Registrar in order to register the marriage. The Amendment Bill should provide that if the Birth or Marriage or Death is not registered within the specified time limit, then the Registrar shall on the payment of a late fee, register the death or birth (a) within a period of 30 days (b) within one year, only with the written permission

of the prescribed authority; and (c) after one year, only on an order of a First Class Magistrate. It provides for a penalty of Rs.5 per day in case of delay in registration of 'marriage without a reasonable cause'.

8.7 On line of the Punjab Compulsory Registration Act, 2012, a provision in the Central Act may be considered such that, the Registrar may also, *suo-moto*, or on notice, enter and register any marriage which takes place in his jurisdiction, or if either of the parties have a permanent residence *therein*, in the marriage register maintained under the Act, after calling the parties concerned and ascertaining the facts which are required for such marriage to be registered.

8.8 If the Registrar finds that, any entry of a marriage in the register kept by him under this Act, is erroneous in form or substance or has been fraudulently and improperly got made, he may subject to such rules, as may be made by the State Government with respect to conditions on which and the circumstances in which, such entries may be corrected or cancelled, correct the error or cancel the entry by making a suitable entry in the margin, without any alteration of the original entry, and shall sign and attest such an entry, and also indicate the date of correction and/or cancellation so made. Provided that no such correction or alteration shall be made to the detriment of any person without giving him an opportunity of being heard.

8.9 A provision from the Delhi Act is also worth including in the Central legislation that, in case a marriage is solemnised in any country other than India, then the Registrar of marriage shall satisfy himself/ herself-

- (a) That the marriage has been solemnised in accordance with the laws of that country between parties of whom at least, one is a citizen of India; and,

- (b) That at the time of registration, the marriage satisfies all the conditions laid down in Section 4 of the Foreign Marriages Act, 1969 (33 of 1969).




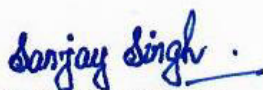
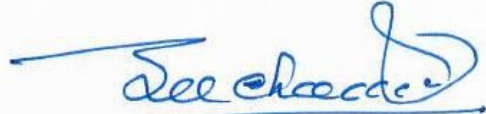
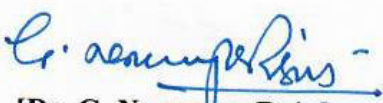
8.10 Village Panchayats, local civil bodies and municipalities should create awareness so as to get register all marriages with the local administration compulsorily. Further, producing of marriage certificate should be made mandatory when anyone writing the name of spouse in any application; for getting any benefit on behalf of husband or wife; for making application to government departments; for getting benefits of any welfare schemes like agricultural loan, education loan etc. Also, a unified database that consists of birth, marriage and death records would allow easy tracing of records.

8.11 The Law Commission of India is of the opinion that compulsory registration of marriages is a necessary reform and recommends the amendment of the Registration of Births and Deaths Act, 1969 suitably to include compulsory registration of marriage as well within its scope so that existing administrative machinery is able to carry out registration. Further, for this purpose i.e. compulsory registration of marriages including births and deaths the Commission recommends adoption of complete automation process by using the process of paperless documentation so the greatest extent possible.

8.12 The Commission is in favour of retaining the provisions in the Registration of Birth and Death (Amendment) Bill, 2015 regarding (i) penalty of rupees five per day in case of non-registration of marriage without a reasonable cause; (ii) providing false information regarding the registration of marriage; and (iii) refusal to furnish certain information, such as name and address.

8.13 However, the penalty so imposed should be made with respect to specific date subject to a maximum of rupees one hundred keeping in view the prevailing conditions in our country.

We recommend accordingly.

		
[Justice Dr. B.S. Chauhan] Chairman		
		
[Justice Ravi R. Tripathi] Member	[Prof. (Dr.) S. Sivakumar] Member	[Dr. Sanjay Singh] Member-Secretary
		
[Suresh Chandra] Ex-officio Member		[Dr. G. Narayana Raju] Ex-officio Member