GOVERNMENT OF INDIA

LAW COMMISSION OF INDIA

LAW ON MATRIMONIAL ISSUES RELATING TO NON-RESIDENT INDIANS AND OVERSEAS CITIZENS OF INDIA

Report No. 287

February, 2024

The 22nd Law Commission was constituted by Gazette Notification for a period of three years vide Order No. F No. 45021/1/2018-Admn-III(LA) dated 21st February, 2020 issued by the Government of India, Ministry of Law and Justice, Department of Legal Affairs, New Delhi. The term of the 22nd Law Commission was extended vide Order No. FA No. 60011/225/2022-Admn.III(LA) dated 22nd February, 2023.

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Justice Ritu Raj Awasthi
(Former Chief Justice of High Court of Karnataka)
Chairperson
22nd Law Commission of India

न्यायमूर्ति ऋतु राज अवस्थी
(सेवानिवृत मुख्य न्यायधीश, कर्नाटक उच्च न्यायलय)
अध्यक्ष
भारत के 22वें विधि आयोग

D.O. No. 6(3) 335/2023-LC(LS) **Date:** 15th February, 2024

Hon'ble Sri Arjun Ram Meghwalji.
Namaskar!

I am pleased to forward you **Report No. 287** of the Law Commission of India on **"Law on Matrimonial Issues Relating to Non-Resident Indians and Overseas Citizens of India"**.

Over the course of past few centuries, millions of Indians have moved and settled abroad. Despite not permanently residing in India, a significant number of these people still hold Indian citizenship. On the other hand, a large number of these migrants have become foreign citizens. While vastly enriching the social and economic life of the countries in which they are residing, they continue to maintain blood and marital relationships with people here in India. As a consequence of such inter-country marriages taking place between the non-resident Indians and the foreign citizens of Indian origin on one hand and the Indian citizens on the other, there has been a rapid rise in the legal issues arising out of such relationships.

The rising occurrence of fraudulent marriages involving Non-Resident Indians (NRIs) marrying Indian partners is a worrisome trend. Several reports highlight an increasing pattern where these marriages turn out to be deceptive, putting Indian spouses, especially women, in precarious situations. Deceptive practices like false assurances, misrepresentation, and abandonment are commonly associated with these fraudulent unions, causing distress to the Indian partners. The inter-country nature of these marriages further intensifies the vulnerability, making it challenging for affected individuals to pursue legal remedies and support. Challenges such as financial exploitation and the complex legal aspects across multiple jurisdictions contribute to the hardships faced by those involved in such marriages.

In order to deal with the emerging situation, the Registration of Marriage of Non-Resident Indians Bill, 2019, was introduced by the Government in the Rajya Sabha on 11th February, 2019. Initially, the Sixteenth Lok Sabha referred the Bill to the Committee on External Affairs (2018-2019). Subsequently, the same Bill was again referred to the Committee on External Affairs (2019-2020) after the Seventeenth Lok Sabha was constituted, for further examination and report submission. In furtherance of the deliberations being held, the Law Commission received a reference on the NRI Bill, 2019 from the Ministry of External Affairs, conveyed through the Ministry of Law and Justice *vide* letter dated 10th April, 2023.

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भारत के 22वें विधि आयोग

सत्यमेव जयते

आज़ादी का अमृत महोत्सव

Having conducted an in-depth study of the law concerning the instant subject-matter, including the NRI Bill, 2019 and the practical difficulties relating to the issue, the Commission is of the considered opinion that the proposed central legislation should be comprehensive enough to cater to all facets involving marriages of NRIs as well as foreign citizens of Indian origin with that of Indian citizens. Such a legislation should be made applicable not only to the NRIs but also to those individuals who come within the definition of 'Overseas Citizens of India' (OCIs) as laid down under Section 7A of the Citizenship Act, 1955. It is further recommended that all marriages between the NRIs/OCIs and Indian citizens should be made compulsorily registered in India. The said comprehensive central legislation should also include provisions on divorce, maintenance of spouse, custody and maintenance of children, serving of summons, warrants, or judicial documents on the NRIs/OCIs, etc. Further, it is recommended that requisite amendments need to be introduced in the Passports Act, 1967 in order to mandate the declaration of marital status, the linking of a spouse's passport with the other and mentioning of the Marriage Registration Number on the passports of both the spouses. Furthermore, the Government, in collaboration with the National Commission for Women and the State Commissions for Women in India and the NGOs and Indian associations abroad, should conduct awareness programs for women and their families who are about to enter into marital relationship with NRIs/OCIs. Accordingly, this Report is being submitted for your kind perusal.

With warmest regards,

Yours sincerely,

15.2.2024

(Justice Ritu Raj Awasthi)

Shri Arjun Ram Meghwal
Hon'ble Minister of State (Independent Charge)
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ACKNOWLEDGEMENT

The Commission wishes to extend its deepest gratitude to all those who have generously contributed to finalising this Report on "Law on Matrimonial Issues Relating to Non-Resident Indians and Overseas Citizens of India".

We would like to thank the Ministry of External Affairs for enhancing the Commission's understanding of the subject-matter. We specifically acknowledge the contribution of Shri Amit Kumar Mishra, Director, and Ms. Reba Alba Rajan, Legal Consultant of the Ministry, who dedicated their valuable time to provide comments and submissions on the relevant subject.

The Commission also recognizes the diligent efforts of Mr. Rishi Mishra, Mr. Gaurav Yadav, Ms. Diksha Kalson, Mr. Kumar Abhishek, Ms. Shivangi Shukla, and Ms. Swikriti Mahajan, serving as Legal Consultants. We commend their significant inputs in conducting thorough research and drafting of this Report. We express our sincere appreciation for their hard work and meticulous efforts that have brought this Report to fruition.

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1. INTRODUCTION

A. Problems Relating to Marriage of Non-Resident Indians

1.1. A significant number of Indians have settled abroad in the last couple of centuries. This Indian Diaspora is spread across various countries, contributing to the cultural, economic, and social fabric of the nations in which they are residing. According to the official data of the Ministry of External Affairs, 3,22,85,425 people are settled overseas as on 5th October, 2023. Out of this figure, 1,36,01,780 are Non-Resident Indians (NRI) and 1,86,83,645 are Persons of Indian Origin (PIO).[1] Whether in North America, Europe, the Middle East, or other parts of the world, the Indian Diaspora continues to make valuable contributions to their host countries while maintaining strong ties with their motherland. Indeed, the Indian Diaspora, especially NRIs, often establish marital relationships that transcend borders. Many individuals within this community form connections and marriages with people from diverse cultural backgrounds. With this increasing trend of inter-country marriages within the Indian Diaspora, there has been a concurrent rise in legal issues associated with these unions.

1.2. The increasing incidents of fraudulent matrimony with respect to NRIs marrying Indian spouses has become a concerning trend. Various reports have indicated that there is an increasing trend of such marriages turning out to be fraudulent, leaving Indian spouses, particularly women,

[1] *See,* https://www.mea.gov.in/population-of-overseas-indians.htm (last visited on February 10, 2024).

vulnerable to challenging situations.[2] These fraudulent marriages often involve deceitful practices, such as false promises, misrepresentation, and abandonment, leaving the Indian partners in distress. The vulnerability in such situations is exacerbated by the inter-country nature of these marriages, making it challenging for them to seek legal recourse and assistance. Issues such as abandonment, financial exploitation, and the legal complexities of navigating multiple jurisdictions contribute to the difficulties faced by individuals in such marriages.

1.3. A study conducted by the National Institute of Public Cooperation and Child Development on the desertion of married women by NRIs in the states of Punjab and Andhra Pradesh has underscored the prevalence and concerns associated with fraudulent marriages involving NRIs marrying Indian partners. According to the findings of the Report, 60% of such marriages in Punjab were not registered primarily due to factors such as lack of awareness about the importance of marriage registration, time constraints faced by NRIs, and concerns related to the legality of a second marriage of the husband.[3] The study has also highlighted that in Andhra Pradesh, 23% of such marriages were not registered. The primary reason behind this issue, the Report highlights, is that the registration of marriage makes subsequent marriages, solemnized or contracted without obtaining the decree of divorce, *non-est* in the eyes of the law.[4] A peculiar sociological aspect pointed out by the Report is that these cases are predominantly observed within the Muslim community, which generally lacks a comprehensive registration system.[5]

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[2] National Commission for Women, Report on Problems Relating to NRI Marriages Legal and Other Interventions on NRI Marriages, National Commission for Women, New Delhi (2011). The Report is prepared in collaboration with Ministry of Overseas Indian Affairs.

[3] National Institute of Public Cooperation and Child Development, "A Study on Desertion of Married Women by Non-Resident Indians in Punjab and Andhra Pradesh", at 46 (New Delhi, 2007).

[4] *Ibid.*

[5] *Id* at 47.

1.4. In these unions, individuals often anticipate greater social security, along with enhanced educational and professional opportunities. However, in their quest for a better future, the parties to such marriages often overlook proper precautions and thorough verification of facts. Unlike traditional marriages that usually involve due diligence, marriages with NRIs may occur hastily without adequate verification of important details such as antecedents, marital status, profession, workplace, and income. Many are arranged without proper verification of the NRI's background, and some transpire without even registering the marriage. This oversight exposes individuals to various risks, including abandonment, domestic violence, extra-marital relations, delays in visa or immigration processes, and even *ex-parte* decrees of divorce.[6]

1.5. The challenges escalate for women who find themselves alone in a foreign country, facing linguistic barriers and lacking a support network of friends and family. In such vulnerable situations, women may endure physical and mental abuse, confinement, malnutrition, and ill-treatment at the hands of their husbands and relatives. Isolation becomes another form of violence, as these women are restricted from contacting their parents and accessing their mailboxes. Fear of this isolation often silences victims, preventing them from speaking out. Upon arrival in a foreign country, some women discover that their husbands provided false information about their immigration status, job, property, marital status, and other crucial details. Manipulative tactics may involve bringing the woman back to India under false pretexts, where she is then deprived of her passport and essential documents, rendering her helpless. A particularly challenging scenario arises in cases of *ex-parte* divorces initiated by an NRI husband in a foreign court without the knowledge and consent of his defenceless spouse. Such

[6] Ministry of External Affairs, "Marriages to Overseas Indians: A Guidance Booklet", at 9-10 (2019).

divorces may be based on false information and fake documents, adding to the complexities faced by women in these distressing situations.

1.6. Desertion of married women by their NRI husbands, thus, is a major social problem. Spouses are abandoned in foreign countries with absolutely no support or means of sustenance and without even a visa to stay in the country. While going to court for maintenance or divorce, they find legal obstacles related to its court jurisdiction, service of notice or orders, or enforcement of orders. In numerous instances, the NRI husbands deliberately do not get the marriage registered. This deliberate omission becomes a significant hurdle when a spouse seeks to apply for a visa to join his/her spouse abroad, as the lack of a marriage certificate renders their application incomplete. Complicating matters further, the spouse abroad sometimes also denies the occurrence of the marriage altogether. This trend has raised considerable concerns due to the increasing prevalence of such unregistered marriages among NRIs.

1.7. Answering a question about the number of cases reported regarding the desertion of Indian women by their NRI spouses, Gen. (Dr.) V. K. Singh (Retd.), the then Minister of State in the Ministry of External Affairs, stated that the Ministry received 1022 petitions in the year 2017 compared to 1510 in 2016 & 796 in 2015. Between January, 2018 and 30th July, 2018, the Ministry has received and redressed 765 complaints.[7] For the effective redressal of their grievances, the parties have often turned to state authorities. Police stations across many states in India receive a surge of complaints regarding fraudulent actions by non-resident Indian husbands. Surprisingly, there are significant delays in police intervention. Even after the filing of First Information Reports (FIRs), there's often an unreasonable

[7] Lok Sabha Unstarred Question No. 3623 (August 8, 2018).

delay in proceeding with the legal process, which adds to the challenges faced by the victims. Unfortunately, the insensitivity to these issues leaves victims even more vulnerable. Under certain pressures, the names of accused NRIs are occasionally removed from the complaints. Additionally, when accused NRI husbands or their parents, named in FIRs, visit their hometowns, authorities often fail to take action to arrest them or impound their passports. Delays in issuing lookout notices to immigration authorities further enable the accused individuals to escape abroad.

1.8. Desertion of married women by NRIs and victims of domestic violence in other countries is, thus, a serious problem. They often endure financial and physical exploitation by their NRI spouses, and yet ironically, in the absence of a dedicated legal framework, victims have no legal protection. Additionally, they encounter numerous legal hurdles concerning private international law, including jurisdictional matters, service of notice, and enforcement of orders and decrees. Unfortunately, there is a lack of effective legal recourse for women in marriages involving NRIs.

1.9. The four major communities *viz.*, Hindus, Muslims, Christians and Parsis have their own personal laws, either codified or uncodified, governing marriage and other ancillary issues. In addition to these laws, there is the Special Marriage Act, 1954. However, there is no uniform marriage law in India equally applicable to all. Most of the states in the country have enacted legislation for compulsory registration of marriage. However, rules regarding marriage registration vary in some States. In the wake of problems faced by the abandoned brides, the matter relating to the registration of marriage of NRIs has been considered by different bodies of the Government of India.

B. Examination of Issues by Other Ministries and Committees

1.10. A discussion on the plight of Indian women deserted by NRI husbands was initiated by the Committee on Empowerment of Women (2006-2007). The Report, presented to the Lok Sabha in 2007, dealt with the scope and limitation of legal intervention along with suggestions for involvement of different bodies, amendments in the Passports Act, 1967, compulsory registration of marriages, and separate cell in the mission abroad.[8]

1.11. Another response was presented by the Parliamentary Standing Committee on External Affairs (2011-2012) to the Lok Sabha in 2012. The Report made a number of recommendations including the need for communication of information to be made by States and Union territories regarding court orders against NRIs to emigration authorities to prevent accused NRIs from leaving India against court orders. Another recommendation was for appointment of nodal officers at district level for a regular monitoring of such cases.[9]

1.12. The Standing Committee on External Affairs (2012-2013) presented its Report to the Lok Sabha in 2013 on action taken by the Government on earlier recommendation of the Standing Committee. A further recommendation was made for a single window timely solution to the problem along with suggestions for directives to embassies and foreign missions to provide meaningful assistance. While an inter-ministerial coordination, consisting of officials from various ministries was

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[8] Committee On Empowerment of Women, "Report on Plight of Indian Women Deserted by NRI Husbands" (2006-2007) 67-68 (Ministry of Overseas Indian Affairs, presented to Lok Sabha on 13th August, 2007).

[9] Standing Committee on External Affairs (2011-2012). "Problems Relating to Overseas Indian Marriages: Schemes for Providing Legal/Financial Assistance/Rehabilitation to Indian Women Deserted by their Overseas Indian Spouses", Recommendation no. 12 and 14, at 32-33, paras 3.34 and 3.36; Lok Sabha Secretariat, New Delhi (June 2012).

constituted on 21st August, 2012, a "NRI Cell" was launched in the National Commission for Women to render assistance to victims of marriages with NRIs.[10]

1.13. On 21st December, 2017, the Indian Parliament was informed that Indian missions abroad had received 3,328 complaints from Indian women about matrimonial disputes with their NRI spouses during 2015-2017. In order to review the legal and regulatory challenges faced by such women and to prevent non-resident Indian husbands abandoning their wives, an Inter-Ministerial Panel was set up in June 2018, which asked the Ministry of Law and Justice to prepare a draft legal amendment to give effect to decisions taken by the Inter-Ministerial Panel.[11]

1.14. The Registration of Marriage of Non-Resident Indians Bill, 2019 (hereinafter, referred to as the "NRI Bill, 2019") was introduced in the Rajya Sabha on 11th February, 2019. The Bill was first referred by the Sixteenth Lok Sabha to the Committee on External Affairs (2018-2019), and the same Bill was re-referred to the Committee on External Affairs (2019-2020) after constitution of the Seventeenth Lok Sabha on 4th October, 2019 for further examination and submission of a report. After consultation with the Ministry of External Affairs, Ministry of Home Affairs and the Ministry of Law and Justice (Department of Legal Affairs), the Bill was approved by the Committee on 12th March, 2020, subject to

[10] Standing Committee on External Affairs, "Action Taken on the Recommendations Contained in the Fifteenth Report (Fifteenth Lok Sabha) on the subject Problems Relating to Overseas Indian Marriages: Schemes for Providing Legal/Financial Assistance/Rehabilitation to Indian Women Deserted by Their Overseas Indian Spouses" (2012-2013), Recommendation No. 2 and 4, at 2-5, paras 5, 6 and 11; Lok Sabha Secretariat, New Delhi (May 2013).

[11] "NRI husbands must now register marriage within a week, update marital status on passport", Hindustan Times, June 14, 2018, https://www.hindustantimes.com/india-news/nri-husbands-will-have-to-register-marriages-within-a-week-update-marital-status-on-passports/story-wbxgisAdXWgCL2hvMhjJrN.html (last visited on February 04, 2024).

appropriate inclusion of suggestions/recommendations made by the Committee in their Bill or through appropriate methods.[12]

C. Reference to the Law Commission

1.15. After discussion on recommendations of the Committee on External Affairs (2019-2020) pertaining to the NRI Bill, 2019, under reference by the Ministry of External Affairs, further inputs/clarification from the concerned stakeholders Ministries/Departments were sought. A reference of the Ministry of External Affairs on the NRI Bill, 2019 was received by the Law Commission of India through the Ministry of Law and Justice *vide* letter dated 10th April, 2023.

1.16. The Law Commission has been asked to give its inputs on the following queries:[13]

> *"(i) Can the Government of India provide for compulsory registration of NRI marriages through its existing legislation? If not, then what kind of legislation can be brought in by the Legislative Department of the Ministry of Law and Justice?*
>
> *(ii) The 17th Lok Sabha Standing Committee [Committee on External Affairs (2019-2020)] in its Third report on "The Registration of Marriage of Non-Resident Indian Bill, 2019" dated 12.03.2020 (Recommendation no.2) opined that a comprehensive legislation may be enacted to tackle the problems relating to NRI marriage,*

[12] Committee on External Affairs (2019-2020), "The Registration of Marriage of Non-Resident Indian Bill, 2019", Resolution No. 9, at 41-42, para 2.48, Lok Sabha Secretariat, New Delhi (March 2020).
[13] Ministry of External Affairs (OIA-II Division), OM No. 01-19013/93/2018-OIA-II, dated April 03, 2023.

including the issues of divorce, maintenance, and child support in such marriages. Have such issues been dealt with by the Ministry of Law and Justice/Ministry of Women and Child Development in its pre-existing legislation. If not, then what kind of legislation can be brought in by the Ministry of Law and Justice/ Ministry of Women and Child Development?

(iii) The Registration of Marriage of Non-Resident Indian Bill, 2019 seeks to amend the Passports Act, 1967. What are the existing provisions of the Passports Act, 1967 that are requiring to be amended? Will there be addition of new clause / sections for making such corresponding amendment in the Passports Act, 1967?

(iv)The Registration of Marriage of Non-Resident Indian Bill, to 2019 seeks to amend the Code of Criminal Procedure, 1973. What are the existing provisions of Code of Criminal Procedure, 1973 that are requiring to be amended? Will there be addition of new clause / sections for making such corresponding amendment in the Code of Criminal Procedure, 1973?

(v)The Registration of Marriage of Non-Resident Indian Bill, 2019 seeks to amend the Passport Act, 1967 which empowers the passport authority to impound / revoke the Passport of the NRI for enforcement purpose. How can this amendment be brought about and what will be the mechanism to ensure the registration of marriage, if and when made compulsory?

(vi) What are the legislative means to protect a woman who marries an NRI and is either abandoned or is unable to access her marital

rights. Are there any corresponding provisions in existing legislation. If not, then what kind of legislation can be brought in by the Ministry of Law and Justice/ Ministry of Women and Child Development?

(vii) Is there any alternate mode of service of summons/process of criminal courts as prescribed under Chapter V of 'The Registration of Marriage of Non-Resident Indian Bill, 2019'. Can issues of process be effective through WhatsApp/E-mail of the NRI spouse or through his employer, as in the practice in India? Can such alternate mode of service of summons/process be affected in countries where data privacy laws are in place?

(viii) What is the procedure for registration of marriage under The Registration of Marriage of Non- Resident Indian Bill 2019, where the applicant NRI is governed by the Muslim Personal laws and may have more than one spouse?"

D. Earlier Reports of the Law Commission

1.17. The above-mentioned eight queries under reference are concerned with the problems of compulsory registration marriages of non-resident Indians; comprehensive legislation; amendments in the Passport Act, 1967; amendments in the Code of Criminal Procedure, 1973; procedure of summons and divorce; and desertion of Indian spouses. The Law Commission had considered in 1976, 2008, 2009 and 2018 some of the problems such as compulsory registration of marriage and foreign decree of divorce.

1.18. The 65th Report (1976) of the Commission dealt with the question of recognition of foreign decree of divorces and judicial separation in India. The Report pointed out that the law to recognise foreign divorces and related matters has not been codified. The Report highlighted that a decree pronounced *in absentem* by a foreign court, to the jurisdiction of which the defendant has not in any way submitted himself, is by international law an absolute nullity. The Law Commission quoted with approval the observation of the Supreme Court in *Smt. Satya* v. *Teja Singh,* that:

> *"...any such law shall also have to provide for the non-recognition of foreign decrees procured by fraud bearing on jurisdictional facts, as also for the non-recognition of decrees, the recognition of which would be contrary to our public policy. Until then, the courts shall have to exercise a residual discretion to avoid flagrant injustice, for no rule of private international law could compel a wife to submit to a decree procured by the husband by trickery. Such decrees offend against our notions of substantial justice".* [14]

The Commission recommended that recognition may be granted by an Indian law to a foreign divorce based on the domicile, habitual residence or nationality of one of the parties and the ancillary orders of foreign courts should not be treated as binding by our courts.

1.19. While dealing with certain issues relating to child marriage, the 205th Report (2008) of the Law Commission also made a recommendation on compulsory registration of marriage in India as under:

[14] Law Commission of India, 65th Report (1976), *Recognition of Foreign Divorces*, at para 1.8.

"Registration of marriage within a stipulated period, of all the communities, viz., Hindu, Muslim, Christians, etc., should be made mandatory by the Government".[15]

1.20. The 211th Report (2008) of the Law Commission dealt with the great diversity in respect of laws on registration of marriage and divorce prevalent in different religious communities in India. It recommended that Parliament should enact a law for registration of marriage to be made applicable to the whole of India and to all citizens irrespective of their religion and personal law and without any exception or exemptions. A parliamentary legislation on compulsory registration of marriages is not only possible but also highly desirable. This will bring country-wide uniformity in the substantive law relating to marriage registration and will be helpful in effectively achieving the desired goal. Rules under the proposed legislation may be made by the State Governments, and this will take care of the local social variations. This should be given an overriding effect on all other laws through a *non obstante* clause duly inserted in it.[16]

1.21. The 212th Report (2008) of the Law Commission of India suggested the need for enacting a law to resolve conflicts between various family laws rather than directly addressing registration of marriages. It recommended that both the Special Marriage Act, 1954 and the Foreign Marriage Act, 1969 to make registration of marriage compulsory without compromising on religious practices and personal laws. The Law Commission also suggested that the word "Special" in the Special Marriage Act, 1954 be reconsidered in the light of inter-community marriages and requiring all

[15] Law Commission of India, 205th Report (2008), *Proposal to Amend the Prohibition of Child Marriage Act, 2006 and other Allied Law*, at 44.

[16] Law Commission of India, 211th Report (2008), *Laws on Recognition of Marriage and Divorce - A Proposal for Consideration and Reform*, at 34-39.

marriage to be registered under the Special Marriage Act, 1954, except for those between Hindus, Sikhs, Buddhists and Jains. However, the Law Commission was disinclined towards expanding the scope of the Special Marriage Act, 1954, as it would require a revision of provisions related to prohibited degrees of marriage.[17]

1.22. The 219th Report (2009) of the Law Commission held the view that Clause (a) of Section 13 of the Code a Civil Procedure, 1908 *"... should be interpreted to mean than only that court will be a court of competent jurisdiction which the Act or the law under which the parties are married recognises as a court of competent jurisdiction to entertain the matrimonial dispute. Any other court should be held to be a court without jurisdiction unless both parties voluntarily and unconditionally subject themselves to the jurisdiction of that court. The expression "competent court" in section 41 of the Indian Evidence Act has also to be construed likewise."*[18]

1.23. In its 270th Report (2018), the Law Commission took note of the absence of comprehensive legislation dealing with compulsory registration. It suggested certain amendments to the Registration of Births and Deaths Act, 1886 to provide for compulsory registration of marriage. Without adhering to the substantive aspects of family law governed by various matrimonial laws, the Law Commission of India focused only on compulsory registration of marriage.[19]

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[17] Law Commission of India, 212th Report (2008), *Laws of Civil Marriages in India - A Proposal to Resolve Certain Conflicts.*

[18] Law Commission of India, 219th Report (2009), *Need for Family Law Registration for Non-Resident Indians*, at 15.

[19] Law Commission of India, 270th Report (2017), *Compulsory Registration of Marriages.*

E. Consultation by the Law Commission

1.24. The Law Commission of India noted that intensive discussion on the various aspects related with the NRI Bill, 2019 were undertaken from the year 2006 to 2022 by the Committee on the Empowerment of Women, Inter- Ministerial Panel, the Parliamentary Standing Committees on External Affairs, Ministry of Home Affairs, Ministry of External Affairs, Ministry of Women and Child Development and the Ministry of Law and Justice. Their reports and recommendations, sent to the Law Commission were studied in the preparation of the present Report.

1.25. With those materials in hand, the Law Commission held a consultation with Shri Amit Kumar Mishra, Director, Diaspora International Engagement Division, Ministry of External Affairs, the Government of India on 5th January, 2024. The Ministry of External Affairs submitted its response to certain queries raised by the Commission *vide* letter dated 24th January, 2024.[20] As to the specific query of the scope of the definition of NRI under Indian Law, the Ministry of External Affairs in its response, answered that there is no scope for the universal definition of NRI under the Indian Law. The Ministry of External Affairs suggested amending the definition of NRI under the Registration of Marriage of Non-Resident Indian Bill, 2019, to include any person who holds an Indian passport and resides outside of India/ is not ordinarily resident in India, temporarily or permanently, for a period more than hundred and eighty-two days (per Section 6(1) of the Income Tax Act, 1961). The Ministry further suggested that the NRI Bill should apply not only to NRIs but also to PIOs. PIO may be defined in the Act as, "A person of Indian Origin (PIO) means a foreign citizen (except a

[20] Letter I.D. Note No. Q/DE /9013/93/2018 dated January 24, 2024, to the Law Commission of India.

national of Pakistan, Afghanistan, Bangladesh, China, Iran, Bhutan, Sri Lanka and Nepal) who at any time held an Indian passport or who or either of their parents/grandparents/great-grandparents were born and permanently resided in India as defined in Government of India Act, 1935 and other territories that became part of India thereafter provided neither was at any time a citizen of any of the aforesaid countries (as referred above)." With regard to the second query as to whether it is plausible to make registration of NRI marriage compulsory, the Ministry answered that registration for NRI marriages should be made mandatory. Since the subject matter of "Marriage and Divorce" is mentioned as Entry No. 5 of the Concurrent List, both Parliament and the State Assemblies have the concurrent jurisdiction to legislate on this subject matter. The Ministry further suggested that there should be a specially designated portal for registration of marriage governed by the Ministry of Home Affairs, with access to the Ministry of External Affairs. In all Indian passports there is a column for the name of the spouse, a separate column may be specified therein for the Marriage Registration Number.

1.26. Another query which was posed to the Ministry of External Affairs was with respect to the jurisdiction that shall prevail over the conflicting jurisdictions that may arise. The Ministry answered, "Orders issued by the Courts in India cannot be enforced in foreign countries or compulsorily mirrored by foreign courts. Likewise, orders issued by foreign courts may not be mirrored by courts in India. However, in certain cases, upon the discretion of Courts and in the interests of justice, Indian Courts may mirror orders issued by foreign courts, especially where MLATs or any bilateral agreements are signed with the said country. We may specify in the Act that the Indian Courts shall have jurisdiction in those cases where the marriage is registered within the territory of India or with Indian

authorities." The Commission further sought a specific response from the Ministry for strengthening the legal framework for securing the presence of NRI in Indian Courts. As to this, the Ministry of External Affairs responded that if the accused person/party to the case fails to cooperate with the Court proceedings, the Indian Court may attach the property of the accused person/party to the case to ensure an appearance before the Court.

1.27. The Ministry of External Affairs in its response further stated that the Ministry through the Indian Missions/Posts abroad also create awareness amongst the Indian Diaspora in the respective foreign countries through its community events and regular interaction with members of Indian communities, associations, Non-Governmental Organisation ("NGOs") in the area of their jurisdiction. With regard to the specific query as to whether the issue of NRI marriages should be seen from a purely feminist perspective, the Ministry responded that although the majority of complaints are initiated by women, the question should not be considered only from a feminist perspective.

2. LEGAL ISSUES AND POLICY CONSIDERATIONS

2.1. The eight issues under reference, though related with each other, are conveniently identified as (i) compulsory registration of marriage, (ii) comprehensive legislation; (iii) amendment in the Passports Act, 1967, (iv) revocation of Passport, (v) amendment in the Code of Criminal Procedure, 1973, (vi) abandonment of Indian spouse, (vii) service of summons and warrant, and (viii) registration of non- resident Indian's marriage and Muslim personal law.

A. Compulsory Registration of Marriage

2.2. The first query under reference is: *Can the Government of India provide for compulsory registration of NRI marriages through its existing legislation? If not, then what kind of legislation can be brought in by the Legislative Department of the Ministry of Law and Justice?* The question as to whether compulsory registration of non-resident Indians can be provided by the Central Government through existing legislation involves the following issues:

a) Which of the lists in the Seventh Schedule of the Constitution of India deals with the power of the Union Government to make laws with regard to "non-resident Indian" and "marriage";

b) If a Central legislation on the subject is enacted, what should be its substantive and procedural framework to ensure compulsory registration of marriage;

c) Can registration of marriage be included in the existing laws?

(i) Legislative Competence

2.3. As to **Issue no. (a)** of the first question, "non-resident Indian" as an entry doesn't find mention in any of the lists in the Seventh Schedule. If a particular entry is not included in any of the three lists, Parliament has the legislative competence to enact on such subject matter. The Constitution framers had tried to cover all the societal aspects while making a comprehensive Constitution which was to govern this diverse nation. Having considered the dynamic nature of society, where new situations may arise which had not existed at the time of framing of the Constitution, a new Entry in the Union List was thought of to empower the Parliament to legislate in case of contingencies. Prof. Shibban Lal Saxena had observed in the Constituent Assembly that:

> *"... In fact Dr. Ambedkar has said that if there is anything left, it will be included in this item 91 [of the Draft Constitution]. I therefore think that it is a very important entry.... This entry will strengthen the Centre and weld our nation into one single nation behind a strong Centre.... This entry gives power to the Centre to have legislation on any subject which has escaped the scrutiny of the House."*[21]

2.4 The issue regarding "non-resident Indian" is one such contingency which requires the attention of the Government of India. Article 248 of the Constitution of India read with Entry 97 (i.e., Entry 91 of the Draft Constitution) of the List I, authorizes the Parliament to legislate on any such subject which does not form part of any of the three Lists.[22]

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[21] Constituent Assembly Debates, Book 4, Vol. IX, (30 July 1949 to 18 September 1949), at 856 (Sixth Reprint, Lok Sabha Secretariat, 2014, New Delhi).

[22] Constitution of India: Article 248 states as follows:

2.5 Thus, on a combined reading of both the provisions, the Parliament may legislate on a subject which does not form part of any of the Lists mentioned in the Seventh Schedule of the Constitution of India. The Supreme Court has observed in *Union of India v. H.S. Dhillon*[23] that:

> *"...Notwithstanding the fact that the residuary power has been vested in the Central Legislature under Article 248 and its consequence translated in Entry 97 in List I, there can be no gain saying that the idea was to assign such residuary power over matters which at the time of framing three Lists could not be thought of or contemplated."*

2.6. At present, there is no central legislation prescribing for compulsory registration of marriages. In the similar vein, there exists no special law governing NRI marriages. As previously said, the number of Indians abroad has increased manifold. Thus, the matrimonial and other ancillary issues are still left to be resolved by the conventional Indian legislation which has proved to be insufficient. Against this background, it is also to be pointed that the Supreme Court in *Seema v. Ashwani Kumar*[24] had directed the State Governments that the marriages of all persons who are citizens of India belonging to various religious denominations, should be made compulsorily registrable in their respective States where such marriages are solemnized.

"Residuary powers of Legislation: (1) Subject to article 248A, Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.
(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists."
Entry 97 of List I in the Seventh Schedule includes:
"Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

[23] AIR 1972 SC 1061 : 1972 SCR (2) 33.

[24] AIR 2006 SC 1158.

2.7. In the context of NRIs, the Law Commission of India, in its 219th Report (2009), mooted some suggestions for resolving the existing family law problems posed daily before NRIs and faced by affected people resident in India when they come in conflict with them. One of such suggestions gave priority consideration to compulsory registration of marriage of NRIs.[25]

2.8. The Law Commission of India, in its 211th Report (2008), had pointed out that various communities are governed by their respective personal laws while at the same time, individuals can also opt out of the community-specific family law regime and voluntarily subject themselves to the national laws on civil marriages. Provision for registration of marriages, optional or mandatory, are found under most of these laws. There is a need to look at the entire gamut of Central and State laws on registration of marriage to assess the feasibility of a uniform regime for marriage registration laws in the country.[26]

2.9. Under the constitutional scheme, the subject of "marriage" finds mention in the Entry 5 of the List III of the Seventh Schedule. Thus, States as well as the Union have concurrent legislative competence to legislate on the matters relating to marriages. This gives rise to two further questions: *first*, in case of conflict between State laws and the Central law, which law will prevail; and *second*, can both the State laws and Central law exist independently. In this connection, the doctrine of repugnancy is stipulated under Article 254 of the Constitution of India that when Entries are made in the Concurrent List, both the Union and the State Governments have commensurate powers. However, in the case of conflict between the

[25] Law Commission, 219th Report, *Supra* note 18, at 23, para 5.3A.
[26] Law Commission, 211th Report, *Supra* note 16, at 10.

Central and State laws, the Union law shall prevail. This repugnancy is resolved by Article 254 of the Constitution of India.[27]

2.10. The Supreme Court laid down certain guidelines in the case of *M. Karunanidhi v. Union of India*[28] , to revoke the repugnancy with respect to matters in the Concurrent List:

> *"1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.*
>
> *2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.*
>
> *3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the*

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[27] *Constitution of India*: Article 254 states –

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

[28] AIR 1979 SC 898 : SCR (3) 254.

constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act in concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254."

2.11 Thus, even if existing law on registration of marriages in States and Union introduces registration of marriage for non-resident Indians, both may subsist independently if they do not entrench upon each other. In case of direct conflict, the Union law shall prevail subject to exceptions given in the Supreme Court guidelines. A central legislation on compulsory registration of marriage of non-resident Indians is, therefore, not only possible but also desirable. This will bring country-wide uniformity in substantive law relating to marriage registration and will be helpful in effectively achieving the desired goal. Rules and procedures relating to compulsory registration of marriage may be made by the State Governments in consonance with the Central law on the subject.

2.12 A new law on registration of NRIs will not be in derogation of any provision of any existing legislations dealing with compulsory registration of marriages because in view of provisions of Article 254 of the Constitution, any law enacted by a State which is in force on the date of commencement of the new law, if it is passed to become an Act and is not in consonance and in conformity with this Act, shall be void to that extent.

(ii) Scope of Applicability of the Proposed Legislation

2.13 India has a very wide, vibrant and participative Diaspora, which continues to be connected to its roots in India. It was due to the proactive demands from multiple sections of overseas individuals of Indian origin that the Parliament amended the Citizenship Act, 1955 to insert Sections 7A to 7D under the head of Overseas Citizenship in 2004.[29] The scheme laid down therein provides for registration as Overseas Citizen of India (OCI) of all Persons of Indian Origin (PIOs) who were citizens of India on 26th January, 1950 or thereafter or were eligible to become citizens of India on 26th January, 1950 except who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify.[30]

2.14 Prior to OCI coming into existence, the only similarly recognized category of Indian Diaspora was PIO, which was defined by the Central Government under notification no. 26011/4/98 F.I., dated 19th August, 2002. While the concept of OCI has a statutory recognition,[31] PIOs had no such recognition. Both the categories continued to exist simultaneously after OCI came into

[29] Inserted by Act 6 of 2004, sec. 7 (w.e.f. 3-12-2004).
[30] Citizenship Act, 1955, sec. 7A.
[31] *Ibid.*

picture. However, in 2015, the Government of India decided to merge the two categories.

2.15 Despite the fact that PIOs and OCIs have legally recognised status, they continue to be foreign citizens and are in no way to be confused with Indian citizens abroad. Therefore, while NRIs are Indian citizens living abroad, OCIs and PIOs are foreign citizens whose Indian origin is legally recognized, and by virtue of which certain privileges are extended to them.

2.16 This Indian Diaspora is very significant in numbers,[32] and they continue to have marital and familial relationships with Indians in India. When either of the parties to a marriage is an Indian citizen and the marriage takes place in India, then it is governed by the Special Marriage Act, 1954; while if the same takes place in a foreign country, the same is governed in accordance with the provisions of the Foreign Marriage Act, 1969.

2.17 It is pertinent to note that a significant number of marital grievances arising in the foreign countries is involving not just the NRIs, who are Indian citizens, but also foreign citizens recognised as OCI or PIO. When the case is involving the NRIs, there are actions that can be ensured against them on account of their being Indian citizens. Such actions are, however, even tougher and involve more complexities when an OCI or PIO is the accused. The suffering spouse is in a more hapless situation then. Therefore, the new legislation should be applicable to this category of persons too apart from the NRIs. The provisions of the new legislation, thus, need to be accordingly drafted taking into account the different dimensions involved.

[32] The number of PIOs is 1,86,83,645. *See Supra* note 1.

(iii) Need for a Robust Procedure

2.18 As to the ***Issue no. (b)*** of the first query, it must be stated that registration of marriage of non-resident Indians must be made compulsory, and a failure to register such a marriage should be an offence punishable with heavy fines and in default of payment of fine, with imprisonment for a prescribed period. No judicial relief will be granted in a disputed matter if the concerned marriage is not duly registered under the new law. The law will be given an overriding effect on all other laws through a *non-obstante* clause duly inserted in it.

2.19 At present, there is a great diversity in respect of laws for registration of marriage. The administrative machinery for registration of marriage is not regulated everywhere by one and the same law. This has created substantial amount of confusion. A parliamentary legislation should deal in particular with registration of marriage of NRIs and must not affect any change in the substantive aspect of the various matrimonial laws. Further, a common and proper machinery for marriage registration should be provided under a new law, along with amendments in the matrimonial laws for giving effect to the new law.

2.20 The relevant provisions in the Central legislations and personal laws on compulsory registration of marriage may be found in the Hindu, Christian, Sikh and Parsis communities as well as in the Special Marriage Act, 1954 and the Foreign Marriage Act, 1969. Section 8 of the Hindu Marriage Act, 1954 lays down provision for registration of Hindu marriages. Further, marriages are registered under Section 15 of the Special Marriage Act, 1954 by the Marriage Officer specially appointed for the purpose. Similarly, the Anand Marriage Act, 1909 also contains provisions for

marriage registration. On the one hand, Part IV of the Indian Christian Marriage Act, 1872 (Sections 27-37) contains provisions for marriage registration by Ministers and Clergymen; Part V of the Act (Sections 38-59), on the other hand, provides rules for solemnization-cum-registration of marriages directly by Marriage Registrars appointed under the Act. Under Sections 6 to 9 of the Parsi Marriage and Divorce Act, 1936, the Marriage Registrars are 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 3 of the Foreign Marriage Act, 1969, Marriage Officers are to be appointed by the Central Government for this purpose in its diplomatic missions abroad. Section 4 of the Act provides conditions relating to solemnization of foreign marriages and Section 17 of the Act provides for registration of foreign marriages solemnized under other laws. However, it is unfortunate that registration of marriages of NRIs is not covered in any of the above laws.

2.21 Through compulsory registration of marriages of NRIs with an Indian spouse solemnized in India or abroad, the details of the travel documents or passport as well as visa or permanent resident card and permanent resident address in the foreign country of the NRIs shall be included, which would help create a database of the NRIs marriages for better enforcement of rights under various family laws that grant and provide to protect the various rights of the deserted spouse within a marriage.[33] In marriages with NRIs, such registration will not only help a woman fight her case if deserted but would also enable the Embassy to have full information about the marriage while keeping a track of the erring NRI spouses. The

[33] Committee on External Affairs (2019-2020), *Supra* note 12, at 18, para 1.42.

Government should make registration of marriage mandatory, making the procedure simpler, affordable and accessible.[34]

2.22 Since one of the purposes of compulsory registration of marriage of NRIs is to locate and bring the culprit NRI spouse to face the court in India, marriages solemnized in India should be registered as per a uniform proforma for registration containing information of social security number, passport particulars, ID card/Labour Card etc. to build a proper identification and tracking system. A proforma for registration of NRI marriages and a Central NRI Marriage Registry with the facility of uploading online the exhaustive uniform proforma incorporating all details and provision for updation needs to be provided for.

2.23 The Standing Committee on External Affairs (2019-2020) in its Third Report on the NRI Bill, 2019 had noted that the Ministry of Women and Child Development had developed a Marriage Registration Proforma and a separate website portal for registration of marriages of non-resident Indians to be linked to all the Registrars of Marriages in India. The existing format of marriage registration should provide complete details of non-resident Indian grooms and brides, provision of updation of information particularly about residential address. The proforma must be made as a schedule to a new law for the said purpose. Similarly, it may be thought of that a website of the Ministry of External Affairs may also be updated accordingly to facilitate monitoring of compliance by all non-resident Indians who marry after the enactment of a new law.[35]

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[34] Committee on Empowerment of Women, *Supra* note 8, at 20.

[35] Department of Legal Affairs, Ministry of Law and Justice, Dy. No. 358242/JS and LA(ARR)/2020, dated July 01, 2020, para 6; Lok Sabha Secretariat, *Press Release* (March 13, 2020), Recommendation No. 6, at 4-5, para 6.

2.24 The NRI Bill, 2019 proposes that marriage be registered within 30 days of marriage in India or abroad. It is to apply to every NRI who marries a citizen of India or another NRI. If the marriage occurs outside India, it must be registered with a Marriage Officer, who will be appointed from among the diplomatic officers in a foreign country. The NRI Bill, 2019 does not allow any extension of time limit to the non- resident Indians in case he is unable to register the marriage within the 30-days period. There may be cases where non-resident Indians are unable to register the marriage due to legitimate reasons within the 30-days limit and it even does not envisage redressal for such persons.[36] The idea of a blanket 30-days limit after marriage for its registration is not sufficient. The time limit, thus, should be reasonable.

(iv) Substance of Marriage Certificate

2.25 In India, a marriage certificate is evidence that two individuals married to one another are entitled to various rights relating to marriage. The validity of a marriage is difficult to be proved in the absence of registration. All Indian States have made it compulsory to register marriages that take place in India. But there is no Central law for registration of marriage of NRIs solemnized outside India.

2.26 Certificate of the marriage of NRIs issued by the Registrar must include the security number of the foreign home of the non-resident Indian spouses along with the passport number and brief relevant details. The photocopy of the valid passport of the NRI spouses should be pasted in the marriage register maintained with the Registrar before marriage certificate is

[36] Karnataka Marriage (Registration and Miscellaneous Provisions) Act, 1976, sec. 6; Gujarat Registration of Marriage Act, 2006, sec. 6.

actually issued to the parties. The pasting of mandatory certificate of marriage on the spouse's passport will certainly provide a documentary evidence and proof of his or her marriage on being abandoned. It should also be ensured that no marriage of NRIs is registered without the presence of both the bride and the bridegroom.[37]

(v) Possibility under the NRI Bill, 2019

2.27 As to the ***Issue no. (c)*** of the first query, the Inter-Ministerial Panel had decided in its meeting in July, 2018 to make it mandatory for the NRIs to register their marriages with Registrars. For this purpose, it was suggested to incorporate the necessary provision by amending the Registration of Birth and Deaths Act, 1969.[38] The Standing Committee on External Affairs (2012-2013) was pleased to note that in view of direction of the Supreme Court and on the recommendation of the Committee on Empowerment of Women and the Law Commission of India "The Registration of Births and Deaths (Amendment) Bill, 2012" was introduced in the Rajya Sabha.[39] But the said Bill could not be passed. Even the Registration of Births and Deaths (Amendment) Act, 2023, did not incorporate any provision for registration of marriage.

2.28 There are two other central legislations, namely the Special Marriage Act, 1954 and the Foreign Marriage Act, 1969, which comprise provisions

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[37] Committee on External Affairs (2019-2020), *Supra* note 12, at 15-16, para. 1.32; Standing Committee on External Affairs (2011-2012), *Supra* note 9, at 73-74, para 5.13.

[38] *Supra* note 11.

[39] Standing Committee on External Affairs (2012-2013), *Supra* note 10, Recommendation No. 26, at 22, para. 64. It may be noted that the Births, Deaths and Marriages Registration Act was enacted by the Central Legislature in 1886. The title of this Act was somewhat misleading as it did not require voluntary or compulsory registration of marriage under its provisions. There was, however, no provision for the appointment of Marriage Registrars; Law Commission, 211th Report, *Supra* note 16, at 25.

relating to compulsory registration of marriage. Chapter II of the Special Marriage Act, 1954 on "Solemnization of Special Marriages" (Sections 4 to 14) and Chapter III on the "Registration of Marriages Celebrated in Other Forms" (Sections 15 to 18) are related with compulsory registration. The 212th Report (2008) of the Law Commission had recommended for all marriages to be registered under the Special Marriage Act, 1954, except for those between Hindus, Sikhs, Buddhists and Jains. However, it may be difficult to expand the scope of the Special Marriage Act, 1954, to include the marriage of non-resident Indians because of the provision in the Act relating to the degrees of prohibited relationship.

2.29 The other central legislation, i.e., the Foreign Marriage Act, 1969, which is modelled on the Special Marriage Act, 1954, carries most of the provisions of the Special Marriage Act, 1954 on solemnization of marriages and registration of already celebrated marriages; however, both legislations are not applicable in the case of marriage of non-resident Indians. If the Special Marriage Act, 1954, provides, on the one hand, "a special form of marriage in certain cases, for the registration of such and certain other marriages…", the Foreign Marriage Act, 1969, on the other hand gives "provision relating to marriage of citizens of India outside India". It is to be noted that marriage of a non-resident Indian with an Indian spouse solemnized in India is not covered under these central legislations, despite the provision on compulsory registration existing thereunder.

2.30 In pursuance of directives of the Supreme Court in *Smt. Seema v. Ashwini Kumar,*[40] most states in India have made registration of marriage mandatory. So far as the existing personal laws are concerned, registration

[40] *Supra* note 24.

of marriage is not compulsory in all the religious communities in India. It seems better, therefore, that the provision regarding compulsory registration of marriage in the proposed NRI Bill, 2019 be expanded with the inclusion of detailed procedure relating to compulsory registration of marriage on the model of the concerned provisions of the Special Marriage Act, 1954.

B. Comprehensive Legislation

2.31 The second query under reference is as follows: *"The 17th Lok Sabha Standing Committee [Committee on External Affairs (2019-2020)] in its third Report on "The Registration of Marriage of Non-Resident Indian Bill, 2019" dated 12.03.2020 (Recommendation no.2) has opined that a comprehensive legislation may be enacted to tackle the problems relating to NRI marriage, including the issues of divorce, maintenance, and child support in such marriages. Have such issues been dealt with by the Ministry of Law and Justice/Ministry of Women and Child Development in its pre-existing legislation. If not, then what kind of legislation can be brought in by the Ministry of Law and Justice/Ministry of Women and Child Development?"*

2.32 The question relating to the need for comprehensive legislation on marriages of non-resident Indians involves the following issues:

(a) whether the NRI Bill, 2019 be enlarged to cover the problem of divorce, maintenance, and child support;

(b) whether the NRI Bill, 2019, instead of incorporating detailed provisions on the above-mentioned subjects, should merely refer to provisions of various personal laws;

(c) whether a comprehensive legislation on marriages of non-resident Indians can have an overriding effect on personal laws?

(i) Broadening of Contents

2.33 As to the ***Issue no. (a)*** of the second query, it is to be noted that the NRI Bill, 2019, did not come to the expectations of the Expert Committee, the Fifteenth Report of the Standing Committee on External Affairs (2011-2012), the 155th Report of Rajya Sabha and directions of the Supreme Court regarding registration of marriage in states for the reason that the Bill had envisioned the registration of marriage of non-resident Indians, amendments in the Passports Act, 1967, and amendments in the Code of Criminal Procedure, 1973 with the limited purpose of creating pressure on the accused non-resident spouse to appear before a court in India. The NRI Bill, 2019 was, thus, aimed to overcome legal and procedural shortcomings, bilateral hurdles apart from the regulatory mechanism in order to restore the proliferation of the menace.[41]

2.34 The Standing Committee on External Affairs (2012-2013) was of the view that marriages of non-resident Indians were governed not only by the Indian legal system, but also by the private international law. It was proposed that after getting the whereabouts of the accused non-resident Indian, the legal provisions in Chapter 4 of the Consular Manual (1983) on marriage, divorce, maintenance, child custody and provisions in the Foreign Marriage Act, 1969 can address the issues of marriage, divorce, maintenance, and child custody. If it was not possible to apply the Consular Manual (1983) and the Foreign Marriage Act, 1969 on those issues, the Committee had strongly recommended for a special matrimonial law for

[41] Dy. No. 358242/JS&LA/2020, *Supra* note 35, para 2; Press Release, at 2, para 3.

the NRIs to comprehensively address all issues relating to such fraudulent marriages including divorce, maintenance, child custody. This was suggested by the Standing Committee on External Affairs as remedial armour to the distressed and abandoned women in reclaiming their rights to property, equality in marriage, the protection of family freedom or degrading treatment and above all their dignity.[42]

2.35 The NRI Bill, 2019 primarily focuses on the issue of compulsory registration of marriage of NRIs, but it does not deal with matters pertaining to divorce, maintenance, and child support. In the absence of registration of marriage of NRIs, these issues become complicated. Generally, it is too difficult to prove that an NRI has married an Indian spouse in India and this fact turns a marriage into a fraudulent marriage, aiding the NRI to divorce the Indian spouse, in denying maintenance and also taking custody of the child. In such cases, the NRIs avoid registration on one pretext or the other, so that they can take undue advantage of non-registration of marriage. An attempt to enact a comprehensive legislation on problems relating to non-resident Indians, covering issues of marriage, divorce, maintenance and child support, may serve the purpose. Those issues may be tackled to a great extent only when there is a robust procedure of compulsory registration coupled with a strong system to bring the NRI to appear before the court of law in India. For the purpose of comprehensive legislation on registration marriages of NRIs, a broadening of contents of the NRI Bill, 2019 can be thought of by including provisions on divorce, maintenance, and child support.

[42] Standing Committee on External Affairs (2012-2013), *Supra* note 10, Recommendation No. 25, at 21, para.61; Dy. No. 358242/JS & LA/2020, para 2.

2.36 As regards the ***Issue no. (b)*** of the second query, it may be stated that there is no need of reference to the personal laws in comprehensive legislation on registration of marriage of non-resident Indians. Since a Central legislation on the subject is likely to be a secular law, there is no requirement of reference to the personal laws-based provisions on divorce, maintenance, and child support. The purpose of comprehensive legislation can be served by the NRI Bill, 2019 with a robust procedure of compulsory registration of marriage and along with inclusion of secular provisions on divorce, maintenance, and child support without any reference to the existing personal laws.

(ii) Overriding Effect

2.37 As to the ***Issue no. (c)*** of the second query, a comprehensive central legislation on non-resident Indian's marriage will have an overriding effect on the existing personal laws. In this connection, the legal maxim *"generalia specialibus non derogant"* is to be considered relevant. Accordingly, if two laws govern the same factual situation, a law governing a specific subject matter *(lex specialis)* overrides a law governing only general matters *(lex generalis)*. Hence, the comprehensive legislation in the form of the NRI Bill, 2019 will not be in derogation of provisions of marriage, divorces, maintenance, and child support as existing in the personal laws.

C. Amendment in the Passports Act, 1967

2.38 The third query under reference is as follows: *"The Registration of Marriage of Non-Resident Indian Bill, 2019 seeks to amend the Passports*

Act, 1967. What are the existing provisions of the Passports Act, 1967 that are required to be amended? Will there be addition of new clause/sections for making such corresponding amendments in the Passports Act, 1967?"

2.39 The question relating to amendment in the Passports Act, 1967 involves the following issues:

a) Can the Passports Act, 1967 be amended by a provision under the NRI Bill, 2019 for the purpose of enforcing compulsory registration of marriage of non-resident Indians; and
b) Which provisions of the Passports Act, 1967 require amendment for such an enforcement purpose.

2.40 As to the ***Issue no. (a)*** of the third query, it is to be stated that an amendment in any legislation may be brought either by an amending Act, or even by a provision under another general Act. Hence, the Passports Act, 1967 can be amended by the NRI Bill, 2019. Alternatively, the requisite amendments can be introduced in the Passports Act, 1967 as well to bring about the desired objective.

2.41 As to the ***Issue no. (b)*** of the third query, it is to be noted that the NRI Bill, 2019 has the major objective to locate the erring NRI spouse and to bring him back to the country to face justice. If it is brought to the knowledge of the passport authority that the non-resident Indian has not registered his marriage within the stipulated time, it will help the passport authority in preventing the erring spouse from leaving the country or suspending the passport if he has already travelled abroad as the first step toward having him repatriated. In order to provide ultimate relief and justice to the deserted spouse, it is also important that the NRI spouse should face legal

consequences.[43] The NRI Bill, 2019 may be broadened to include provisions relating to revocation or impounding of passport as a result of the failure of the non-resident Indians to update/upload the marital status. Thus, there will be no need of suggesting amendments in the Passports Act, 1967 itself.

D. Amendment in the Code of Criminal Procedure, 1973

2.42 The fourth query under reference is as follows: "*The Registration of Marriages of Non-Resident Indians Bill, 2019 seeks to amend the Code of Criminal Procedure, 1973. What are the existing provisions of the Code of Criminal Procedure, 1973 that are required to be amended? Will there be addition of new clause/sections for making such corresponding amendment in the Code of Criminal Procedure, 1973?*"

(i) Old Scheme of Criminal Procedure

2.43 The criminal procedure, as incorporated under the Code of Criminal Procedure, 1973, was examined by the Committee on Empowerment of Women, Inter-Ministerial Panel, the Parliamentary Standing Committees on External Affairs, Ministry of External Affairs, Ministry of Home Affairs, Ministry of Women and Child Development and the Ministry of Law and Justice, from 2006 to 2022. Their main concern was as to how far and to what extent the existing Code of Criminal Procedure, 1973 could be amended to ensure that NRI spouse living outside the territory of India may be compelled to appear before the court of law in India.

[43] Standing Committee on External Affairs (2019-2020), *Supra* note 12, Recommendation No. 2, at 22-23, para 1.50.

2.44 The Code of Criminal Procedure, 1973 has now been replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023. While there is no need to talk about amendment to the Code of Criminal Procedure, 1973, it is, however, more pertinent to focus on two issues:

a) what substantive ideas were suggested by different bodies to be included in the Code of Criminal Procedure, 1973 with regard to the accused NRIs abroad; and,

b) whether provisions in the Bharatiya Nagarik Suraksha Sanhita, 2023 are sufficient to address the procedural matters with regard to the NRIs.

2.45 As to the ***Issue no. (a)*** of the fourth query, it may be stated that serving judicial summons or warrant on NRIs abroad is a challenge for Indian Missions as in most cases, either because the foreign address given is incorrect, and whereabouts of the addressee is not known or the accused NRI has deliberately moved residence to another place. Further, even after court summons or a show cause notice is issued, the non-resident Indian spouse does not appear in the court in India and refuses to respond. The existing practice has been that once a woman lodges a complaint, the police write to the Indian Missions abroad, which sends the summons.

2.46 The Inter-Ministerial Panel decided to allow the Ministry of External Affairs to put up summons issued to NRIs who have not responded to earlier summons on its website. In this connection, it was suggested that criminal procedural law must empower courts for issuing of summons, or warrant through specially designed website of the Ministry of External Affairs, which would be considered as conclusive evidence and deemed to have been served upon the person, thus forcing the non-resident Indian spouse to attend the court process.

2.47 The Committee had observed that if the accused person fails to appear before the court after serving of summons, then the Court may issue a warrant of arrest for offender on the website of the Ministry of External Affairs and thereafter, the process of impounding of passport can also be initiated. If the person does not appear even after the issue of warrant of arrest, then a declaration will be uploaded on the designated website that the warrant has been issued and served.[44]

2.48 Another suggestion was made for attachment of properties belonging to NRI, if he does not appear before the court and is declared a proclaimed offender by the court. This would put pressure on the family members and the individual non-resident Indian to come back to India to face the legal consequences of his overt and covert acts.[45] However, the Committee had also considered that the provision of attachment of property after issue of proclamation is not only a stringent step but lies in the domain of court, which is seized of the concerned matter. Hence, it is important to confine only to the point of facilitating service of summons and court orders. The punitive measures that follow ought to be left to be determined by the concerned court on a case-to-case basis.[46]

(ii) New Regime of Bharatiya Nagarik Suraksha Sanhita, 2023

2.49 As to the ***Issue no. (b)*** of the fourth query, it may be observed that the Section 62 of the Code of Criminal Procedure, 1973 did not provide for service of summons by electronic communication. Chapter VI of the Bharatiya Nagarik Suraksha Sanhita, 2023, prescribes on the other hand, manner in which the court may compel appearance before the court.

[44] Dy. No. 358242/JS & LA(ARR)/2020, *Supra* note 35, para 8.
[45] Standing Committee on External Affairs (2019-2020), *Supra* note 12, at 18-19, para 1.43
[46] Dy. No. 358242/JS & LA(ARR)/2020, *Supra* note 35, para 8.

Sections 63 and 64 provide procedures for serving of summons. These provisions are majorly based upon the provisions of the Code of Criminal Procedure except in the electronic mode of service of summons. According to Section 63(ii) of the Bharatiya Nagarik Suraksha Sanhita, 2023, the court is allowed to issue summons *"in an encrypted or any other form of electronic communication and shall bear the image of the seal of the court or digital signature."*[47]

2.50 A new provision under Section 86 has been included in the Bharatiya Nagarik Suraksha Sanhita, 2023 with regard to attachment of property of proclaimed offender. There was no corresponding provision in the Code of Criminal Procedure, 1973. According to Section 86 of the new Sanhita, the court may, on the written request from police officer not below the rank of the Superintendent of Police or Commissioner of Police, initiate process of requesting assistance from a court or an authority in the contracting state for, identification, attachment and forfeiture of property belonging to a proclaimed person in accordance with the procedure provided in Chapter VIII.

2.51 Even though the Bharatiya Nagarika Suraksha Sanhita, 2023 has replaced the old Code of Criminal Procedure, 1973, the criminal procedures relating to service of summons, warrant or judicial documents in the particular case of the non-resident Indians living abroad out of the territory of India has not been addressed. It includes, therefore, a need for additional provision in the NRI Bill, 2019 with regard to ensuring appearance of the defaulting

[47] Bharatiya Nagarik Suraksha Sanhita, 2023: Section 2(1)(i) –
"electronic communication" means the communication of any written, verbal, pictorial information or video content transmitted or transferred (whether from one person to another or from one device to another or from a person to a device or from a device to a person) by means of an electronic device including a telephone, mobile phone, or other wireless telecommunication device, or a computer, or audio-video player or camera or any other electronic device or electronic form as may be specified by notification, by the Central Government".

non-resident Indian before the court of law in India in matrimonial matters relating to his marriage with an Indian spouse solemnized in India.

E. Revocation of Passport

2.52 The fifth query under reference is as follows: *"The Registration of Marriage of Non-Resident Indian Bill, 2019 seeks to amend the Passports Act, 1967, which empowers the passport authority to impound/ revoke the passport of the NRI for enforcement purpose. How can this amendment be brought about and what will be the mechanism to ensure the registration of marriage, if and when made compulsory?"*

2.53 There is already a provision in the Passports Act, 1967 to impound or revoke a passport under various conditions when the passport authority is satisfied that a wrongful act has been committed by an individual or when it is brought to the notice of the authority that summons for the appearance or a warrant of arrest of the holder of passport has been issued by a court under any law or any order prohibiting the departure from India has been issued by the court. Sub-section (3) of the Section 10 of the Passports Act, 1967 mentions the following conditions, under which the passport may be impounded or a passport be revoked:

> *"(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;*
> *(b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf:*

Provided that if the holder of such passport obtains another passport, the passport authority shall also impound or cause to be impounded or revoke such other passport.

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) 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;

(e) 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;

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for 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."

2.54 Thus, the Passports Act, 1967 does not provide revocation or impounding of a passport specifically for matrimonial offence. It is, therefore, proposed that a comprehensive legislation on non-resident Indians must consist of a provision allowing the passport authority to impound or revoke the passport of the erring NRI on failure of registration of marriage within 30 days of marriage. With the provision of such a nature in the comprehensive legislation, the passport authorities will be authorized *suo motu* or on the basis of any complaint, to take action without determining whether marriage has been solemnized or not as the same can be decided by the concerned competent authority only. If the marriage is registered, a passport authority may not take any such action without instructions of the court.[48]

2.55 If it is brought to the notice of the passport authority that a non-resident Indian has not registered his marriage within 30 days of his marriage with a citizen of India or a non-resident Indian, his passport will be revoked or impounded directly. A provision relating to impounding or revocation of passport of a non-resident Indian on his failure to compulsorily register his marriage with an Indian spouse seems to be preventive in nature, it is however quite stringent upon the defaulting non-resident Indian. Even though such a provision has a deterrent effect, it lacks any preliminary measures before directly impounding the passport. There may be various reasons for failure to register marriage within such short duration, but no regard has been paid to such possibility of hardships. There is a necessity of certain qualifying conditions before directly impounding the passport of non-resident Indian spouse. Thus, prior to impounding of passports, certain

[48] Standing Committee on External Affairs (2019-2020), *Supra* note 12, at 18, para.1.41 and1.42; Committee on Empowerment of Women (2006-2007), *Supra* note 8, at 20.

provision should be made which provides for look-out notice/ show-cause notice/ exemplary fine, etc.

2.56 The Standing Committee on External Affairs (2019-2020), therefore, recommended that a provision should be made for show cause notice, imposition of exemplary fire, issue of a look-out notice, etc. prior to the impounding of passport of a non-resident Indian on failure to register his marriage within the stipulated period.[49] With regard to the look-out notice against an erring non-resident Indian under the proposed NRI Bill, 2019, it may be noted that the Ministry of Home Affairs empowered the Convener of the Integrated Nodal Agency to make a request for opening a look-out notice to the Deputy Director, Bureau of Immigration, in a prescribed proforma, against an individual.[50] It may, however, be noted that recourse to look-out notice is taken in cognizable offences under the criminal law. In case where there is no cognizable offence under the criminal law, the Originating Agency can only request that they be informed about the arrival or departure of the subject.

2.57 Further, the concept of *audi alteram partem* is not alien to the Passports Act, 1967. In *Maneka Gandhi v. Union of India*,[51] the Supreme Court had established that natural justice is inherent in "procedure established by law" that in order to exercise power under the concerned provision of the revised NRI Bill, 2019, a chance of being heard must be given to a person whose passport is being impounded.

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[49] Dy. No. 358242/JS & LA(ARR)/2020, *Supra* note 35, para 7.

[50] Ministry of Home Affairs (OIA-II Division), OM No. 25016/10/2017-Imm(Pt.), dated January 24, 2018; Standing Committee on External Affairs (2019-2020), *Supra* note 12, at 20, para 1.47.

[51] AIR 1978 SC 597 : 1978 SCR (2) 621.

F. Abandonment of Indian Spouse

2.58 The sixth query under reference is as follows *"What are legislative means to protect a woman who marries an NRI and is either abandoned or is unable to access her marital rights? Are there any corresponding provisions in existing legislation? If not, then what kind of legislation can be brought in by the Ministry of Law and Justice / Ministry of Women and Child Development?"*

2.59 It is a persistent problem that Indian spouses are abandoned by means of an *ex parte* decree of divorce obtained by non-resident Indians on unreasonable and fraudulent grounds. They take advantage of lenient grounds of divorce under the foreign legal system through wrongful representation of facts. It is important to note that Indian courts do not recognise such an *ex parte* decree granted under the local laws of the foreign country on the ground that the marriage was solemnized in India. A need is felt about a law to prevent injustice, where an *ex parte* decree of divorce is obtained in courts of foreign jurisdiction without the knowledge of their Indian spouses. The status is that a man stands divorced abroad, but the spouses are still husband and wife in India because an *ex parte* decree of divorce is not recognized in India.[52]

(i) Code of Civil Procedure, 1908

2.60 Section 13 of the Code of Civil Procedure, 1908 lays down exceptional grounds on which a foreign judgment shall be conclusive as to any matter

[52] Standing Committee on External Affairs (2019-2020), *Supra* note 12, at 20, para 1.46; Committee on Empowerment of Woman (2006 - 2007), *Supra* note 8, at 20.

thereby directly adjudicated. If the following grounds exist, a foreign judgment cannot be recognized in India:

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

2.61 This makes it clear that in the case of marriages of the non-resident Indians solemnized in India, the foreign court cannot be considered as a court of competent jurisdiction. Similarly, if an attempt of wrongful representation of facts is made by a non-resident Indian for the purpose of obtaining an *ex parte* decree of divorce, the foreign judgment will not be recognized in India. As per Chapter 4 of the Consular Manual (1983), *"Divorce obtained by persons who are domiciled in India and married according to Indian laws, from any court other than an Indian court will not be recognized in India. A person marrying again after obtaining such a divorce during the lifetime of his wife in India will be liable to prosecution in India."*[53]

2.62 An *ex-parte* decree of divorce, which is valid in the country where it is obtained, may not be recognized in the home country of the parties. This

[53] Standing Committee on External Affairs (2019-2020), *Supra* note 12.

leads to the controversial status of being married in one country and divorced in another - what is referred to as "limping marriages". The conflict of laws arises when a foreign court assumes jurisdiction under its domestic laws, which may not be recognized under the Indian law. Courts have to balance between private international law rules, respect for foreign decrees and public policy consideration such as the prevention of "limping marriages" on the one hand and prevention of harassment to parties on the other.

2.63 The abandonment or desertion of Indian spouses by non-resident Indian husbands abroad, after solemnization of marriage in India, amounts to economic hardship to the women in foreign land as well as her social stigmatization. Thus, abandonment of Indian spouses without her knowledge and consent on the ground of *ex parte* decree of divorce obtained abroad is a form of cruelty.

(ii) Scope of Bharatiya Nyaya Sanhita, 2023

2.64 As a legislative means to protect a woman, who marries a non-resident Indian and is either abandoned or unable to access her marital rights, Sections 83 and 85 of the Bharatiya Nyaya Sanhita, 2023 may be relevant. According to Section 83 of the Sanhita:

> *"Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term may extend to several years, and shall also be liable to fine."*

Here it may be noted that there are many instances of non-resident Indians, who are already married or living in relationship with other women abroad, undergo marriage solemnized in India with an Indian spouse with a dishonest and fraudulent intention by not following the mandatory registration of the marriage. Such persons may be liable for punishment under Section 83 of the Bharatiya Nyaya Sanhita, 2023.

2.65 Section 85 of the Bharatiya Nyaya Sanhita, 2023, which is an improvement upon the old Section 498A of the Indian Penal Code, 1860, provides that:

> *"Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."*

Thus, these provisions of the Bharatiya Nyaya Sanhita, 2023 are appropriate to be invoked against the non-resident Indians, who have subjected the Indian spouse to cruelty by abandoning them in foreign land.

2.66 According to Section 1(5) of the Bharatiya Nyaya Sanhita, 2023, the provisions of this Sanhita shall apply to any offence committed by any citizen of India in any place without and beyond India. Here the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Sanhita. Further, Section 1(4) of the Sanhita states that "*Any person liable, by any law for the time being in force in India, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Sanhita for any act committed beyond India in the same manner as if such act had been committed within India.*" Sections 1(4) and 1(5) of the Bharatiya Nyaya Sanhita, 2023 are

also to be read with Section 208 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to old Section 188 of the Code of Criminal Procedure, 1973). It is provided therein that when an offence is committed outside India by a citizen, whether on the high seas or elsewhere, he-

> *"...may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found or where the offence is registered in India:*
>
> *Provided that notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."*

2.67 After abandonment by the NRI, the victim spouse may reach the Indian High Commission for free legal aid and advice as *pro bono* services to be provided by various non-governmental organizations abroad. In India, authorities like the National Legal Services Authority (NALSA) and State Legal Services Authority (SALSA) may be directed to help such abandoned women.

G. Service of Summons or Warrant

2.68 The seventh query under reference is as follows: *"Is there any alternate mode of service of summons/process of criminal courts as prescribed under Chapter V of 'The Registration of Marriage of Non-Resident Indian Bill, 2019'? Can issues of process be effective through WhatsApp/ E-mail of the NRI spouse or through his employer, as is the practice of India? Can such alternate mode of service of summons/process be affected in countries where data privacy laws are in place?"*

(i) Electronic Communication

2.69 The Code of Criminal Procedure, 1973 had dealt with the mode of service of summons, but not through WhatsApp or any other electronic mode. The Indian courts have been time and again reiterating the need for interpretation of laws according to the changing world of technology. In *Indian Bank Association v. Union of India*[54], the Supreme Court alerted the judicial officers about the need to adopt a pragmatic and realistic approach while issuing the process and had directed to issue summons by post as well as by email. In a *suo moto* case, the Supreme Court had observed by taking cognizance for extension of limitation and held that the service of notices and summons may be done by email, fax, commonly used instant messaging services, such as WhatsApp, Telegram, and Signal etc.[55] The Bombay High Court had also taken a step further to set a precedent that the service of legal notices, pleadings and summons done via WhatsApp message would *prima facie* show that the notice or summons has been delivered. It has become very common to send and service legal notices and such similar correspondence electronically. Thus, the procedure as to upholding of summons and warrant on the designated website of the Ministry of External Affairs is possible in this age of technology. The service of summons by putting it on website should thus hold parity with the service of summons via publishing in newspapers.

2.70 In the case that summons or warrant cannot be served physically if the defaulting non-resident Indian spouse is beyond the territory of India, the problem can be dealt under:

(i) Section 110 of the Bharatiya Nagarik Suraksha Sanhita, 2013;

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[54] (2014) 5 SCC 590.

[55] *In re, Cognizance for Extension of Limitation*, Order dated July 10, 2020, Suo Moto Writ Petition (C) no. 3 of 2020.

(ii) The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, 1965 (hereinafter, referred to as the "Hague Convention"); and,

(iii) Mutual Legal Assistance Treaty (hereinafter, referred to as "MLAT").

2.71 Section 110 of the Bharatiya Nagarik Suraksha Sanhita, 2023 provides for reciprocal arrangements to be made by the Central Government with a foreign country with regard to the service of summons, warrant or judicial process. Section 110(1)(ii) of the Sanhita reads that a summons or a warrant for arrest issued by a court in India shall be served:

> *"(ii) in any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place for service or execution of summons or warrant in relation to criminal matters..., it may send such summons or warrant in duplicate in such form, directed to such Court, Judge or Magistrate, and send to such authority for transmission, as the Central Government may, by notification, specify in this behalf."*

(ii) The Hague Convention, 1965

2.72 The Hague Convention, 1965 (entered into force on 1st August, 2007)[56] provides a method of serving the summons and other judicial documents in other countries, which would help in reducing delays in such cases. While

[56] The Hague Convention on Private International Law, Convention on the Service Abroad of Judicial and Extrajudicial Documents on Civil or Commercial Matters, November 15, 1965.

the Hague Convention is general in nature and deals with civil procedures, though not particularly relating to issues relating marriage, it will facilitate speedy delivery of judicial documents and service of summons on NRI spouse not present before the Indian courts.[57]

2.73 India being a party to this Hague Convention, which was adopted "to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in different time", had also desired to improve the organization of mutual judicial assistance for that purpose by simplifying and expediting the procedure. According to its Article 1, the Hague Convention applies in all cases in civil and commercial matters. Article 19 of the Convention provides that *"To the extent that the internal law of a Contracting State permits methods of transmission, other than those provided for in the preceding Articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions."*

2.74 Section 110 of the Bharatiya Nagarik Suraksha Sanhita, 2023 empowers the courts in India the to compel presence of an accused who is outside India through reciprocal arrangements with foreign countries. Articles 3 to 6 of the Hague Convention provide for Central Authority within both the contracting State parties to regulate the serving process.[58]

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[57] Committee on Empowerment of Women (2006-2007), *Supra* note 8, at 20.

[58] The Hague Convention, 1965: Article 15-

"Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment should not be given until it is established that -

a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

2.75 The Parliamentary Standing Committee on External Affairs (2012-2013) strongly recommended that efforts must be intensified to establish better consideration with the Member countries of the Hague Convention to take up the issue of the non-resident's marital disputes during bilateral meetings and consular dialogue with foreign countries. It was noted that once India has become a party to the Hague Convention, it will facilitate to bridge the two legal systems to which the NRI husband and wife belonged so as to provide for appropriate civil procedure applicable to both jurisdictions.[59]

2.76 The main channel of transmission under the Hague Convention is where an authority or judicial officer competent in one Contracting Party transmits a request for service to the Central Authority of the Contracting Party in which service in to be affected. The request must conform to the Model Form annexed to the Hague Convention. The Central Authority of the Requested Contracting Party shall, under its own law, serve the document or arrange for its service by a competent authority. However, the Requesting Contracting Party may request that a particular procedure be used, to the extent that it is not incompatible with the law of the Requested Contracting Party. The authority executing the request must complete the certificate as annexed to the Hague Convention, stating that service was affected and the reasons that prevented service.[60]

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled-

a) the document was transmitted by one of the methods provided for in this Convention,

b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,

c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures."

[59] Standing Committee on External Affairs (2012-2013), *Supra* note 10, Recommendation no. 27, at 22-23, para. 67.

[60] The Department of Legislative Affairs, Ministry of Law and Justice had the opinion that the Hague Convention would get attracted where service of summons are to be affected by a foreign court and or judicial authority on any individual currently residing in India or in cases where Indian judicial authority orders for service of

(iii) Mutual Legal Assistance Treaty

2.77 It is generally observed that service of notices, summons or warrant against non-resident Indians residing abroad may be part of the bilateral agreements like the MLAT[61] with such countries where the problem in matrimonial matters is acute. India has entered into MLAT with 42 countries. In respect of other countries, the Central Government attempts to send the judicial papers by giving an assurance of reciprocity. However, despite the best efforts, the summons and other judicial process get delayed for various reasons.[62]

2.78 In the case of MLAT countries, the mode of communication is laid down in MLAT and can either directly by the Ministry of Home Affairs and the Central Authority in other country or can be through the diplomatic channel. The designated authority, after considering the request, directs its agency to serve the document on the concerned person and it is so received through the same chain. This is broadly the system in most countries.[63] However, in some countries, private companies and non-governmental organizations have also been entrusted with the service of judicial papers. It may be noted that it is the discretion of the requested country to serve the

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summons on a foreign national, such foreign country being party to the Hague Convention. Thus, the Hague Convention provides for a procedure for transmission of judicial and extrajudicial documents from one signatory country to other signatory country in accordance with steps contemplated under the Convention; Dy No 358242/ JS & LA (ARR)/2020, *Supra* note 35, at 3, para. 3.

[61] Mutual Legal Assistance is a mechanism whereby countries cooperate with one another in order to provide and obtain formal assistance to ensure that one does not escape or sabotage the due process of law for want of evidence in different countries. India provides mutual legal assistance in criminal matters through bilateral treaties, agreements, multilateral treaties, or international conventions on the basis of assurance of reciprocity.

[62] With a view to streamline the procedure, a Comprehensive Guidelines have been prepared by the Central Government for service of summons, notice, judicial process on persons residing abroad. Ministry of Home Affairs, F.No. 25016/17/2007- Legal Cell, dated February 11, 2009; Ministry of Home Affairs, F.No. 25016/52/2019-LC, dated December 04, 2019.

[63] No. 25016/17/2007-Legal Cell, *Ibid.*, para. 2.

documents and any time-frame for a positive response cannot be predicted.[64]

H. Registration of Non-Resident Indian's Marriage and Muslim Personal Law

2.79 The eighth query under reference is as follows: *"What is the procedure for registration for marriage under the Registration of Marriage of Non-Resident Indian Bill, 2019, where the applicant NRI is governed by the Muslim personal laws and may have more than one spouse?"*

2.80 The NRI Bill, 2019 is a secular law, which states the process of registration of marriage of an individual who is a non-resident Indian and does not delve into the aspect of religion of the individual. It is quite obvious that there is no procedure for registration of marriage of a non-resident Indian Muslim who has more than one spouse. A question arises as to whether the NRI Bill, 2019 can mandate a non-resident Indian Muslim to compulsorily register his marriage where as per his personal law, he cannot be forced to register their marriage, especially when under Muslim personal law in India, polygamy is allowed for Muslim men and they can marry up to four wives.

2.81 For the purpose of the present enquiry, it is necessary to delve into the procedure of registration of marriage under the Muslim law. The Kazis Act, 1880 empowers the State Government to appoint Kazis for assisting Muslims with solemnization of marriages. Kazis are the religious officials required at the celebration of marriages and for the performance of certain

[64] It may be noted that the responsibility of the Ministry of Home Affairs, as the Central Authority of India, is to serve the summons only in criminal matters.

other rites and ceremonies. However, Section 4 of the Kazis Act, 1880 provides that the presence of a Kazi is not necessary at the celebration of marriage and does not confer any judicial or administrative power on a Kazis. The *Nikah-nama* issued by Kazi can serve as proof of marriage for the purpose of registration of marriage.

2.82 The Kazis Act, 1880 does not apply to private Kazis and contains no provision relating to preparation and preservation of records of marriages. In some states, the Act was amended to make it applicable to private Kazis and to require all the private and state-appointed Kazis to maintain proper records of marriages which they may be invited to solemnize. The Muslim Marriage and Divorce Registration Acts prevalent in Bihar, Jharkhand, Meghalaya, Odisha and West Bengal provide for voluntary registration of marriage among the local Muslims.[65]

2.83 The Mohammedan Marriage Registrars appointed under these Acts have to act according to procedure laid down there and to register marriage among the local Muslims. The position of the Mohammedan Marriage Registrar is akin to the Kazis under the Kazis Act, 1880. All the local laws also clarify that presence of a state-appointed Mohammedan Marriage Registrar will not be obligatory for any marriage, and also that neither non-registration would affect the validity of any marriage nor will mere registration validate a marriage which is thereon invalid under the Muslim law. All the Mohammedan Marriage Registrars have to function under the general superintendence of District Registrars functioning under the Registration Act, 1908 and are required to transmit to them their registration records

[65] Law Commission of India, 211th Report (2008). *Supra* note 16, at 18.

every month. The Inspector-General of Registration has to exercise control on all Mohammedan Marriage Registrars.[66]

2.84 Muslim marriage can be registered under the Marriage Registration Act of the state where it is solemnized and parties reside or under the Special Marriage Act, 1954 anywhere in India where the parties to marriage reside for not less than 30 days before the marriage. If a person of any religion marries under the Special Marriage Act, 1954 or the Foreign Marriage Act, 1969 the registration of marriage is mandatory. The Special Marriage Act, 1954 mentions that "a marriage between any two persons may be solemnized", whereas according to the Foreign Marriage Act, 1969, the registration of marriage is done only when marriage has been duly solemnized in a foreign country in accordance with the law of that country between parties of whom at least one is citizen of India.[67]

2.85 A Muslim couple can get their marriage registered under the Special Marriage Act, 1954.[68] Section 15(b) of this Act accords legal recognition of monogamy to be a condition for registration of marriage for a Muslim couple. The legal recognition of monogamy as a preferred form of

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[66] *Ibid.*

[67] The Foreign Marriage Act, 1969 (33 of 1969), sec. 17.

[68] The Special Marriage Act, 1954: Section 15:-

"Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnised under the Special Marriage Act, 1872 (III of 1872), or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely: -

(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;

(b) neither party has at the time of registration more than one spouse living;

(c) neither party is an idiotic or a lunatic at the time of registration;

(d) the parties have completed the age of twenty-one years at the time of registration;

(e) the parties are not within the degree of prohibited relationship:

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage."

relationship is grounded in principles of equality and non-discrimination. Endorsing monogamous unions while prohibiting polygamous relationship is not inherently discriminatory, but a legislative decision aimed at promoting gender equality and safeguarding the rights of all individuals involved. If the contents of section 15 of the Special Marriage Act, 1954 are adopted in the NRI Bill, 2019, implementation of the compulsory registration of marriage irrespective of the religion of the non-resident Indians can be possible. This should be noted that any distinction on the ground of religion would lead to a differential treatment of a particular community of society, which would unreasonably make the law cumbersome.

3. CONCLUSION

3.1. The number of Indians on foreign shores have increased multifold but the multiple issues coming back to India are still left to be resolved by the Indian legislations like the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973. However, the dynamic, progressive and open-minded Indian judicial system often rescues family law disputes and situations by interpreting the existing laws with a practical application to the new generation problems of the global Indian community residing abroad.

3.2. There is a need to fix problems faced by the Indian wives deserted by their NRI husbands. The Indian Penal Code, 1860 lacked appropriate provisions to deal with such cases. Accordingly, complaints were often filed against NRI husbands under Section 498A of the Indian Penal Code, 1860. However, complaints under Section 498A did not work because requests for sending the NRIs for trial in India were rejected by foreign countries.

3.3. At present, there is no central law to deal with the NRIs. The registration of marriage is dependent on various State laws and personal laws of various communities. The NRI Bill, 2019 envisaged compulsory registration of marriage by NRIs, amendments in the Passports Act, 1967 and the Code of Criminal Procedure, 1973 with a hope to provide safeguards to the legal right of the Indian citizens in foreign countries who are abandoned by the NRI spouses by making the registration of the NRI marriages compulsory and revoking or impounding the passport and legalizing service of e-summons and attachment of property of the delinquent individuals.

3.4. The NRI Bill, 2019 defines an NRI as an Indian who resides outside the Republic of India. However, it does not specify the number of days that an individual must stay outside India to be designated as NRI. As a result, it is not clear as to whom the NRI Bill, 2019 would apply. A too general and ambiguous definition of the NRI would easily help the accused to evade the law and make it difficult to bring him before the courts. As per the Income Tax Act, 1961, an NRI is an Indian citizen who resides in a foreign country for more than 182 days. Accepting this definition might lead to the exclusion of a large number of marital grievances of NRIs where the NRI spouse has been residing abroad for a period of less than 182 days.[69] With a view to ensure the inclusion of the maximum number of people residing overseas under the purview of the law, the Standing Committee on External Affairs (2012-13), had desired that NRIs be defined as "a citizen of India, who resides outside India for any purpose whatsoever, save tourism."[70]

3.5. The purpose of making the registration of marriage mandatory within 30 days of marriage, in India or abroad, is to ensure that the details of travel documents and the permanent residential address in a foreign country of the NRIs. It will help in acquiring the requisite information to trace the NRI to enable legal action to be taken for enforcement of the rights of the abandoned spouse under the various family laws.

3.6. None of the Special Marriage Act, 1954 or the Foreign Marriage Act, 1969 provide for the information of NRI spouses and delivery of summons. The

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[69] Under the Income Tax Act, 1961 (sec. 6), and the Foreign Exchange Management Act, 1999 (sec. 2(v)), NRI is defined as a person who has been outside India for more than 183 days in a year. According to sec. 2(30) of the Income Tax Act, 1961, non-resident is a person who is not a 'resident', and for the purposes of sections 92B, 93 and 168 of the Act, it includes a person who is not ordinarily resident within the meaning of sec. 6(6) of the Act. An individual is said to be resident in India in any previous year, if he is according to sec. 6(6) of the Act, in India in that year for a period amounting to 182 days or more.

[70] Standing Committee on External Affairs (2012-13); *Supra* note 10, Recommendation No. 5, at 3-4, para 5; Dy No. 358242/JS & CA (ARR)/2020, *Supra* note 35, para 6.

Registration Proforma for the NRI marriage should be exhaustive, to incorporate details of travel documents, permanent residence, address in foreign country with proof. There should also be a provision for updating of the address online at any point of time. This can be done after creation of a separate Central NRI Marriage Registry, enabling upload of the uniform proforma for registration of NRI marriage with the facility of updating of address.

3.7. Marriages with NRIs, irrespective of religion, should be compulsorily registered. The Special Marriage Act, 1954 provides procedure for the registration of marriage by Marriage Officer. The parties to the intended marriage have to give notice to the Marriage Officer in whose jurisdiction at least one of the parties has resided for not less than 30 days prior to the date of notice. The notice will be displayed on the notice board of the sub-registrar office. After the expiry of one month, if no objections are received, the marriage will be solemnized. The registration is to take place after solemnization of the marriage. If a marriage has already been celebrated, it can also be registered after giving a public notice of 30 days.

3.8. A marriage certificate is a legal proof of marriage of two individuals with one another. Various matrimonial rights are claimed on the basis of this legal proof. If unregistered, it may be difficult to prove the validity of a marriage. Most of the Indian States have enacted legislations making it mandatory to register marriages that occur within States. There is a need to make the procedure of registration certificate more effective in the case of NRI marriages. The photocopy of the passport of the NRI husband may be pasted in the marriage register maintained with the authority before the marriage certificate is actually issued to the parties. A mandatory pasting

of marriage certificate on the spouse's passport will certainly provide a documentary evidence and a proof of her marriage on being abandoned.[71]

3.9. Areas of family law in which the problem of jurisdiction are occurring frequently relate to dissolution of marriage of NRIs. All helpless, deserted Indian spouses on Indian shores are confronted with the matrimonial litigation of a foreign court, for there is no means available to them, leaving them in despair, frustration and disgust. An Indian spouse may file a case for matrimonial or divorce relief either:

(a) at the place where the spouse habitually resides in the overseas country; or

(b) in India, before a court where the NRI couple last resided preceding filing of the case or before a court within whose jurisdiction, the wife is currently living.

3.10. In the former instance, the spouse could seek the remedy in the foreign country where it would be easy to implement the same. Whereas if the remedy or relief is obtained from a court in India, there are difficulties in enforcement of the decree in the overseas courts and the spouse would have to travel abroad for enforcement of the decree. In the latter case, if the spouse files a suit for divorce or seeks any other relief in India, there is a possibility that the other spouse may not turn up to contest the case, leading thereby to an *ex-parte* decree in favour of the petitioner spouse. The enforcement of such a decree is not difficult in India as the decree becomes final, provided there has been a proper and acceptable mode of service of summons.

[71] Standing Committee on External Affairs (2012-13), *Supra* note 10, Recommendation No. 26, para 22; Standing Committee on External Affairs (2011-2012), *Supra* note 9, at 73-74, para 5.13.

3.11. Private international law confronts two issues of jurisdiction in such scenarios. *First*, to determine whether the court before which a matter is filed possesses jurisdiction to try the case. *Second*, in deciding whether to recognize a foreign judgment, a court will be called to address whether the foreign court that rendered the judgment was a court of competent jurisdiction. A foreign court is considered to possess international jurisdiction under the Indian private international law if the judgment debtor:

i. was a national of a foreign country (i.e., the state of origin) at the time of the commencement of the proceedings;
ii. was resident in the foreign country at the time of the commencement of the proceedings;
iii. had accepted the jurisdiction of the foreign court;
iv. had voluntarily appeared before the court.

3.12. The *lex domicilii* and *lex loci celebrationis* are the Latin terms in the conflict of laws. Conflict of law is the branch of public law regulating all lawsuits involving a foreign law element where the difference in result will occur depending on which laws are applied. When a case comes before a court and all the main features of the case are local, the court will apply the *lex fori*, i.e., the prevailing municipal law to decide the case.[72]

[72] Both of these terms are the choice of law applied to cases on status and capacity of the parties to the case in a common law system. In a civil law system, a test is used of *lex patriae*. The 'residence' of a person as opposed to the 'domicile' at the time of commencement of the proceedings, is relevant in establishing the competency of the foreign Court for the enforcement of its judgment. 'Residence' refers to physical fact, connoting a person's bodily presence as an inhabitant, provided that it is not transitory, fleeting or casual. The domicile, refers to a person's intention to reside permanently in a country, 'not for a mere special or temporary purpose'. In other words, the domicile is of the whole country. Therefore, no one can be without a domicile, and no one can have two domiciles. Although the intention of a person is not relevant in establishing one's residence in a foreign country, it must be voluntary and lawful. Further, it is habitual as opposed to the ordinary residence in the state of origin that is relevant.

3.13. Further, the Foreign Marriage Act, 1969 does not govern the validity of a marriage between two foreigners. It is expected that Indian courts would apply the *lex loci celebrationis* to determine formal validity and the *lex domicilli* to determine the material validity of marriage subject to overriding rule of public policy.

3.14. If an Indian settles abroad, and marries in India, the marriage would be governed by the Indian law under which they have married. A court would apply rules of private international law in a case involving a foreign judgment, where such parties are foreigner, or one of the parties is a foreigner, or a foreign law is involved for the determination of the issues before it.

3.15. In *Neerja Saraph* v. *Jayant Saraph*[73], the Supreme Court of India held that the rule of domicile replacing the rule of nationality in most countries for assumption of jurisdiction and granting relief in matrimonial matters has resulted in a conflict of laws. It has thus suggested for the provision like no marriage between the non-resident Indian and an Indian woman which has taken place in India to be annulled by a foreign court. The decree granted by the Indian court may be made executable in foreign courts both on the principle of comity and by entering into reciprocal agreements.

3.16. Provision to support women in distress, including concessions, visa extension, etc. should be made in MLAT or bilateral treaties with various countries including video conferencing and facilitation of attachment of movable or immovable property of the delinquent husband. The efforts must be intensified to establish better coordination with the member

[73] (1994) 6 SCC 461.

countries of the Hague Convention and to take up the issues of non-resident Indians during bilateral meetings and consular dialogues with foreign countries continually. MLAT is aimed at creating international cooperation between countries and helping minimize crime at the international level. Countries that have signed the MLAT with each other are obliged to provide the assistance sought, whereas non MLAT countries do not carry any obligation. The Government will have to make a request on the basis of an assurance of reciprocity to the concerned foreign government.

3.17. The Code of Criminal Procedure, 1973 discusses reciprocal arrangements between India and foreign jurisdictions. It states that courts would follow arrangements as provided by the Central Government with respect to the service of summons, warrants or judicial processes. The Code of Criminal Procedure, 1973, also states that a letter of request can be made to a competent authority for investigation in a country or place outside India. It further lays down the procedure for addressing a Letter of Request or Letters Rogatory by an Indian criminal court in a manner prescribed by the Central Government. The MLAT would be one of such reciprocal arrangements, and therefore, its procedures must be followed if India and a foreign country have signed it. The Ministry of External Affairs should issue a well-framed practice directions or protocol in conjunction with the Ministry of Overseas Indian Affairs and the Ministry of Women and Child Development, directing the Indian High Commission abroad to provide meaningful consular assistance to such unfortunate abandoned non-resident Indian brides.

4. RECOMMENDATIONS

4.1. In light of the aforesaid discussion, the Law Commission recommends that the definition of NRI under the proposed central legislation dealing with all aspects relating to NRI marriages should be made comprehensive and all encompassing. It has to be considered that the object of such a definition is to protect the deserted spouse in the eyes of law against the erring spouse. Therefore, technical specifications arising out of a constricted definition cannot be allowed to defeat the purpose of what the proposed legislation intends to achieve. The definition in order to include maximum number of people may be, as recommended by the Standing Committee on External Affairs (2012-2013), *"a citizen of India, who resides outside India for any purpose whatsoever, save tourism."*[74] Further, it is imperative that such a comprehensive legislation be applied to all the OCIs as well as the PIOs. The same may be provided for by stating in the legislation that it applies to all the NRIs as well as the OCIs (or PIOs) as defined under Section 7A of the Citizenship Act, 1955. In this regard, it is worthwhile to highlight that since such a legislation shall apply not only to the NRIs but to the OCIs (or PIOs) as well, hence the name of the proposed Act too should be accordingly formulated.

4.2. It is recommended that the registration of marriages by NRIs/OCIs with Indian citizens shall be required to be compulsorily registered. As discussed in the preceding Chapters, registration serves as a valid piece of evidence, while at the same time it helps maintain a record in the form of registry of marriages. If the marriages are compulsorily registered, then all the records pertaining to the spouses would be available with the concerned

[74] Standing Committee on External Affairs (2012-2013), *Supra* note 12, Recommendation No. 5, at 3-4, para 5; Dy. No. 358242/JS & LA (ARR)/2020, *Supra* note 35, para 6.

Government department, preferably, the Ministry of Home Affairs. The information regarding the same shall be accessible by the Ministry of External Affairs and available on an online portal.

4.3. However, there may also be situations where a citizen may become NRI/OCI after his/her marriage. The only difficulty with making registrations compulsory only for NRIs/OCIs is that the earlier marriages of such persons may not be registered because currently there is no comprehensive or uniform law governing registration of marriages in India. Therefore, instead of making registration of marriages compulsory in specific cases, it should be done generally for all cases. Alternatively, it may be provided in the legislation that if any married Indian citizen subsequently becomes an NRI/OCI, it shall be mandatory for him/her to get his marriage registered if he/she has not already done so.

4.4. Further, it is recommended that the proposed comprehensive legislation governing different aspects of NRI/OCI marriages shall deal with all the aspects including custody, rehabilitation, child care etc. of the deserted spouse and shall also incorporate provisions on the jurisdiction of courts, service of summons etc. It is pertinent to note in this regard that Section 63(ii) of the Bharatiya Nagarik Suraksha Sanhita, 2023 allows the courts to issue summons in the electronic mode. Further, a new provision under Section 86 has been included in the Bharatiya Nagarik Suraksha Sanhita, 2023 with regard to attachment of property of a proclaimed offender. While the Bharatiya Nagarika Suraksha Sanhita, 2023 is yet to be implemented to replace the old Code of Criminal Procedure, 1973, the criminal procedures with respect to service of summons, warrants or judicial documents in the specific case of the NRIs/OCIs living abroad has not been addressed. It is, therefore, recommended that additional provisions in the

new legislation dealing with NRIs and OCIs (PIOs) be incorporated with regard to ensuring appearance of the defaulting NRI/OCI before a court in India in matrimonial matters relating to his marriage with an Indian spouse solemnized in India. Such a court appearance can also be facilitated by the Indian Missions abroad through video conferencing so as to ensure digital attendance of the accused if the same is not possible physically due to any reason.

4.5. Therefore, it is recommended that the NRI Bill, 2019 be expanded to include provisions relating to the procedure for registration of marriage of NRIs/OCIs as under:

> *"**1. Procedure for registration of marriage.**— (1) When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period not less than 30 days preceding the date on which such notice is given.*
>
> *(2) The Marriage Officer shall keep all such notices with the office records and shall enter a true copy of every such notice in the Marriage Notice Book, which shall be open for inspection by any person without any fee.*
>
> *(3) Such notice shall be published by affixing a copy thereof within 30 days to some conspicuous place in his office for initiating objections to such marriage.*
>
> *(4) If any of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer*

to whom the notice is given, such Marriage Officer shall cause a copy of such notice to be transmitted to the Marriage Officer of the concerned district where such a party is permanently residing for affixing such copy to some conspicuous place in his office.

(5) If an objection is made to an intended marriage, the Marriage Officer shall not solemnize the marriage until he is satisfied that the objection is not valid or the objection is withdrawn by the person making it.

(6) Before the marriage is solemnized the parties and two witnesses shall, in the presence of the Marriage Officer, sign a declaration in such form as may be prescribed and the declaration shall be counter-signed by the Marriage Officer.

(7) The marriage may be solemnized in any form which the parties may choose to adopt.

(8) When the marriage has been solemnized under this Act, the Marriage Officer shall issue a marriage certificate to the parties and keep a copy of the same with him.

(9) The certificate of marriage issued by the Marriage Officer shall include the security number of the foreign home of the NRI/OCI spouse, along with the valid number of the passport, the permanent residential address and brief relevant details.

(10) The certificate of marriage shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized.

(11) Any person aggrieved by any order of a Marriage Officer refusing to register a marriage under this Chapter may within 30 days from the date of the order, appeal against the order to the District Court, Family Court or any such Court so designated by the State Government, within the local limits of whose jurisdiction the marriage has been solemnized and the decision of such a Court on such appeal shall be final."

4.6. It is recommended that the NRI Bill, 2019 be revised with additional provisions relating to divorce as under:

*"**1. Divorce.**— (1) Subject to the provisions of this Act and the rules made thereunder, a petition for divorce may be presented to the District Court, Family Court or any such Court so designated by the State Government, by either of the NRI/OCI spouses on the ground that the respondent:*

a) *has after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or*
b) *has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or*
c) *is undergoing a sentence of imprisonment for seven years or more; or*
d) *has since the solemnization of the marriage treated the petitioner with cruelty; or*

e) has been incurably of unsound mind and has been suffering continuously or intermittently from mental illness of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent; or

f) has been suffering from venereal disease in a communicable form; or

g) has not been heard of as living alive for a period of seven years or more by those persons who would naturally have heard of the respondent if he had been alive.

Explanation.— In this sub-section, the expression 'desertion' means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent of such petitioner or against the wish of such petitioner and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

(2) Without prejudice to the provisions of sub-section (1), a wife of an NRI/OCI may also present a petition for divorce to the District Court, Family Court or any such Court so designated by the State Government on the ground:

i. that the NRI/OCI husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.

ii. that a decree or order has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not resumed for one year or upwards.

(3) Subject to the provisions of this Act and the rules made thereunder, either party to a marriage may present a petition for

divorce to the District Court, Family Court or any such Court so designated by the State Government on the ground:

i. *that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or*

ii. *that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.*

2. Divorce by mutual consent.— *(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the District Court, Family Court or any such Court so designated by the State Government by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together, and that they have mutually agreed that the marriage should be dissolved.*

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

3. Restriction on petitions for divorce during first one year after marriage.— *(1) No petition for divorce shall be presented to the District Court, Family Court or any such Court so designated by the State Government unless on the date of the presentation of the petition, one year has passed since the date of the marriage:*

Provided that the court may allow a petition to be presented before one year has elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of one year from the date of the marriage or may dismiss the petition.

(2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of one year from the date of the marriage, the District Court, Family Court or any such Court so designated by the State Government shall have regard to the interests of any children of the marriage, and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said one year.

4. Decree in proceedings.— *(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that:*

a) any of the grounds for granting relief exists; and

b) when divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence; and

c) there is no other legal ground why relief should not be granted;

then the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties.

(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days, and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceedings have due regard to the report.

(4) In every case where a marriage is dissolved by the decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.

***5. Relief for respondent in divorce and other proceedings.**— In any proceeding for divorce, the respondent may not only oppose the relief sought, on the ground of petitioner's adultery, cruelty or desertion,*

but also make a counterclaim for any relief under this Act on the ground, and if the petitioner's adultery, cruelty or desertion is proved, the court may give to the respondent any relief under this Act to which she would have been entitled if she had presented a petition seeking such relief on that ground."

4.7. It is recommended that the following proposed provisions relating to alimony *pendente-lite*, permanent alimony and maintenance will help the NRI Bill, 2019 in broadening its scope as a comprehensive legislation on NRI marriage:

*"**1. Maintenance pendente lite and expenses of proceedings.**— Where it appears to the District Court, Family Court or any such Court so designated by the State Government that the spouse of the NRI/OCI spouse has no independent income sufficient for her or his support and the necessary expenses of the proceedings, it may, on the application of such spouse, order the respondent to pay to the petitioner the expenses of the proceedings, and weekly or monthly during the proceedings such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:*

Provided that the application for the payment of the expenses of the proceedings and such weekly or monthly sum during the proceedings, as far as possible, be disposed of within sixty days from the date of service of notice on the NRI/OCI spouse.

***2. Permanent alimony and maintenance.**— (1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made*

to it for the purpose, order that the NRI/OCI spouse shall secure to the spouse for her or his maintenance and support, if necessary, by a charge on the NRI/OCI spouse's property such gross sum or such monthly or periodical payment of money for a term not exceeding her or his life, as, having regard to her or his own property, if any, her or his NRI/OCI spouse's property and ability, the conduct of the parties and other circumstances of the case, it may be deemed by the court to be just.

(2) If the District Court, Family Court or any such Court so designated by the State Government is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

(3) If the District Court, Family Court or any such Court so designated by the State Government is satisfied that the spouse in whose favour an order has been made under this Act has remarried or is living in adultery, it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the Court may deem just."

4.8 It is recommended that the NRI Bill, 2019 also requires enumeration of provisions relating to child support, including thereby the custody, maintenance and education of the minor children as under:

*"**1. Custody and maintenance of children.**— In any suit under this Act, the Court may from time to time pass such interim orders*

and make such provisions in the final decree as it may deem just and proper with respect to the custody, maintenance and education of the children under the age of eighteen years, the marriage of whose parents is the subject of such suit, and may, after the final decree upon application, by petition for this purpose, make, revoke, suspend or vary from time to time all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such final decree or by interim orders in case the suit for obtaining such decree were still pending:

Provided that the application with respect to the maintenance and education of the minor children during the proceedings shall be disposed of within sixty days from the date of service of notice on the respondent."

4.9 In order to provide punishment for non-registration of marriage, misrepresentation of facts before the foreign court in order to seek *ex-parte* decree of divorce, desertion of Indian spouse and cruelty and harassment of the Indian spouse, it is recommended that the NRI Bill, 2019 needs incorporation of the following provisions:

1. Suspension of passports or travel documents in certain cases.— *(1) Without prejudice to the generality of the provisions contained in this Act, if any officer designated by the Central Government is satisfied that the passport or travel documents of the NRI/OCI spouse are required to be impounded or revoked, and if it is necessary to do so, he may-*

a) by order, suspend with immediate effect any passport or travel document;

b) pass such other appropriate order, which may have the effect of rendering any passport or travel document invalid for a period not exceeding four weeks:

Provided that the designated officer may, if he considers appropriate, extend by order and for reasons to be recorded in writing, the said period of four weeks till proceedings relating to variation, impounding or revocation of passport or travel document concluded:

Provided further that every holder of the passport or travel document, in respect of whom an order under sub-clause (a) and (b) of this sub-section has been passed, shall be given an opportunity of being heard within a period of not later than eight weeks reckoned from the date of passing of such order and thereupon the Central Government may, if it deems necessary, by order in writing, modify or revoke the order passed under this sub-section.

(2) The designated officer shall immediately communicate the order passed under this sub-section (1) to the concerned authority such as an airport or other point of embarkation or immigration, and to the passport authority.

(3) Every such authority referred to in the Passports Act, 1967 shall, immediately on receipt of the order passed under this sub-section (1), give effect to such order."

4.10 With regard to an effective service of summons or warrant and the attachment of the property of the absconding NRI/OCI, it is recommended

that a provision specific to the NRIs may be included in the NRI Bill, 2019 as under:

> *"**1. Service of summons and warrant.**— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (or the Bharatiya Nagarik Suraksha Sanhita, 2023) or any other law for the time being in force, where an NRI/OCI is summoned by a court under this Act and the court is satisfied that the summons issued could not be served, the court may issue summons along with the substance of the information by uploading it on the specifically designated website of the Ministry of External Affairs of the Government of India and such uploading of the summons shall be conclusive evidence that the summons has been served against such NRI/OCI.*
>
> *(2) Where the NRI/OCI summoned under sub-section (1) fails to appear before the court at the specified place and time required by the summons, either personally or through his or her duly authorized agent, the court may, after making such enquiry as it thinks fit, issue a warrant for arrest of such person and upload the warrant along with the substance of the information against the person to be arrested along with the details of summons issued under sub-section (1) on the specially designated website of the Ministry of External Affairs of the Government of India:*
> *Provided that the court may, on the application of the NRI/OCI summoned by it and on being convinced of the justification provided in the application for the applicant's inability to appear before it physically, allow him or her to appear before it through any digital mode, as it may deem fit.*

(3) Where an NRI/OCI fails to appear before the court on the time and place mentioned in the warrant uploaded on the website under sub-section (2), the court may, after making such enquiry as it thinks fit, pronounce him a proclaimed offender and upload a declaration to that effect on the specially designated website of the Ministry of External Affairs of the Government of India.

(4) After uploading a proclamation under sub-section (3), if the accused fails to appear before the court issuing such proclamation, a statement in writing by the court issuing the proclamation to the effect that the proclamation was duly uploaded on the specially designated website of the Ministry of External Affairs of the Government of India, shall be conclusive evidence that the warrant has been issued against accused person and shall be deemed to have been duly served.

(5) The court issuing a proclamation under sub-section (3) may, for the reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both belonging to the proclaimed offender and the provisions under sections 83 to 86 of the Code of Criminal Procedure, 1973 (or sections 85 to 89 of the Bharatiya Nagarik Suraksha Sanhita, 2023) shall apply in such cases.

(6) Where the property attached under sub-section (5) consists of share or interest of the proclaimed offender in the property jointly belonging to him and other co-owners or co-sharers, such attachment shall have effect only with regard to such share or interest of the proclaimed offender."

4.11. It is further recommended that necessary amendments in the Passports Act, 1967 be introduced to mandate the declaration of marital status and the linking of a spouse's passport with the other. There shall be a separate column provided therein for mentioning their Marriage Registration Number. A separate division within the Ministry of Home Affairs or the Ministry of External Affairs may also be created which will serve as a registry for NRI marriages. All the information available with the registry should also be made available on an online portal.

4.12. The information available on the said online portal shall be open for inspection and the authorities shall allow inspection of relevant information on the said portal upon verifying a duly presented application by an individual which can be filled and submitted online or offline. The reason for not making the portal publicly accessible are manifold, including concerns relating to privacy and the possibility of misuse.

4.13. In cases involving NRI/OCI marriages, it is essential to reiterate that domestic courts shall have the jurisdiction to address and resolve issues emanating from such unions. Disputes arising within such marriages often necessitate the intervention of the local legal system to ensure fair and just resolution of disputes. Granting jurisdiction to domestic courts ensures that matters pertaining to NRI/OCI marriages can be effectively adjudicated within the framework of the country's legal procedures, considering the applicable laws and safeguarding the rights and interests of the involved parties. By doing so, the courts can take into consideration principles of comity and reciprocal agreements, as exemplified by Section 44A of the Code of Civil Procedure, 1908. This provision underscores the court's capacity to treat foreign decrees with the same enforceability as if they were domestically issued.

4.14. No law can ever succeed in fulfilling its aim and objectives unless the people are widely aware of it and abide by it. In order to prevent cases of fraudulent marriages wherein a party to the marriage is an NRI/OCI, the Government should create awareness by engaging with the Indian Diaspora abroad through its community events and regular interaction with the Indian communities and organisations. Such awareness programs can also be organised in conjunction with Indian associations and NGOs working in foreign countries. It is apposite to mention here that the National Commission for Women and the State Commissions for Women have been designated by the Government for conducting awareness programs for women and their families who are about to get into marital relationship with NRIs or OCIs.

The Commission recommends, accordingly.

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15.2.2024

[Justice Ritu Raj Awasthi]

Chairperson

[Justice K.T. Sankaran]

Member

[Prof. (Dr.) Anand Paliwal]

Member

[Prof. D.P. Verma]

Member

[Dr. Reeta Vasishta]

Member Secretary

[Dr. Rajiv Mani]

Member (*Ex-Officio*)

[Mr. M. Karunanithi]

Part-time Member

[Prof. (Dr.) Raka Arya]

Part-time Member