



**PARLIAMENT OF INDIA
RAJYA SABHA**

55

**DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON
PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE**

FIFTY FIFTH REPORT

ON

**THE REGISTRATION OF BIRTHS AND DEATHS (AMENDMENT)
BILL, 2012**

**(PRESENTED TO THE RAJYA SABHA ON 27TH FEBRUARY, 2013)
(LAID ON THE TABLE OF THE LOK SABHA ON 27TH FEBRUARY, 2013)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
FEBRUARY, 2013 / PHALGUNA, 1934 (SAKA)**

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NEW DELHI
FEBRUARY, 2013 / PHALGUNA, 1934 (SAKA)**

ACRONYMS

AIR	-	ALL INDIA RADIO
NRI	-	NON RESIDENT INDIAN
CRC	-	CIVIL REGISTRATION CODE
IGR	-	INTEGRATED GENOMICS RESOURCES
UT	-	UNION TERRITORY
SC	-	SUPREME COURT

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* TO BE APPENDED AT PRINTING STAGE.

**COMPOSITION OF THE COMMITTEE
(2011-12)**

1. *Shri Shantaram Naik — *Chairman*

RAJYA SABHA

2. Shri Amar Singh
3. Shri Parimal Nathwani
4. Dr. Bhalchandra Mungekar
5. Shri Ram Jethmalani
6. Shri Sukhendu Sekhar Roy
7. Shri Ram Vilas Paswan
8. Dr. Abhishek Manu Singhvi
9. @Shri Bhupender Yadav
10. Vacant

LOK SABHA

11. Shri Arun Yadav
12. Kumari Meenakshi Natrajan
13. Shri Shailendra Kumar
14. Shri S. Semmalai
15. Shri Anirudhan Sampath
16. Shri Lalu Prasad
17. Shri Prasanta Kumar Majumdar
18. Shri N.S.V. Chitthan
19. Smt. Deepa Dashmunsi
20. Dr. Prabha Kishore Taviad
21. Shri P. T. Thomas (Idukki)
22. Shri Kirti Jha Azad
23. Shri D.B. Chandre Gowda
24. Shri Pinaki Misra
25. Shri Harin Pathak
26. Shri Arjun Ram Meghwal
27. Shri Madhusudan Yadav
28. Shri Vijay Bahadur Singh
29. Smt. Chandresh Kumari
30. Vacant
31. Vacant

* Nominated to be Chairman of the Committee w.e.f. 4th May, 2012 *vice* resignation by Dr. Abhishek Manu Singhvi.

@ Nominated to be the Member of Committee w.e.f. 4th May, 2012.

**COMPOSITION OF THE COMMITTEE
(2012-13)**

1. Shri Shantaram Naik — *Chairman*

RAJYA SABHA

2. Dr. Abhishek Manu Singhvi
3. Shri Jesudas Seelam
4. Shri Ram Jethmalani
5. Shri Bhupender Yadav
6. Shri Ramchandra Prasad Singh
7. Shri Sukhendu Sekhar Roy
8. Shri Ram Vilas Paswan
9. Shri Sanjiv Kumar
10. Shri Parimal Nathwani

LOK SABHA

11. Maulana Badruddin Ajmal
12. Shri P.C. Gaddigoudar
13. Shri D.B. Chandre Gowda
14. Shri Shailendra Kumar
15. Shri Jitender Singh Malik
16. Shri Arjun Ram Meghwal
17. Shri Pinaki Misra
18. Shri S. Semmalai
19. Shri S.D. "Shariq"
20. Smt. Meena Singh
21. Shri Vijay Bahadur Singh
22. Dr. Prabha Kishore Taviad
23. Shri Suresh Kashinath Taware
24. Shri Madhusudan Yadav
25. Vacant@
26. Vacant
27. Vacant
28. Vacant
29. Vacant
30. Vacant
31. Vacant

SECRETARIAT

Shri Deepak Goyal, Joint Secretary

Shri K.P. Singh, Director

Shri Ashok K. Sahoo, Joint Director

Smt. Niangkhannem Guite, Assistant Director

Smt. Catherine John L., Committee Officer

@ Vacancy caused due to induction of Smt. Chandresh Kumari in the Council of Minister w.e.f. 28th October, 2011.

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Fifty Fifth Report on the Registration of Births and Deaths (Amendment) Bill, 2012 (Annexure - I). The Bill seeks to amend the Registration of Births and Deaths Act, 1969 (Annexure - II).

2. In pursuance of the rules relating to the Department Related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha referred* the Bill, as introduced in the Rajya Sabha on the 7th May, 2012 and pending therein, to this Committee on the 9th May, 2012 for examination and report.

3. Keeping in view the importance of the Bill, the Committee decided to issue a press communiqué to solicit views/suggestions from desirous individuals/organisations on the provisions of the Bill. Accordingly, a press communiqué was issued in national and local newspapers and dailies, in response to which memoranda containing suggestions were received, from various organizations / individuals / experts, by the Committee.

4. The Committee heard the presentation of the Secretary, Legislative Department, Ministry of Law and Justice on the provisions of the Bill in its meeting held on 21st June, 2012. The Committee also heard the views of State Government of Goa and non-official witnesses in its meeting held on 12th October, 2012. The Committee had interaction with Governments of Goa and Kerala at Panaji and Kochi on 3rd and 5th January, 2013 respectively and with Government of Odisha and Andaman & Nicobar Islands at Bhubaneswar and Port Blair on 16th and 18th February, 2013 respectively. The Chairperson, Goa State Commission for Women and Members of Bar Association of Maharashtra & Goa, Kerala, Odisha and Union Territory of Andaman & Nicobar Islands also appeared before the Committee.

5. While considering the Bill, the Committee took note of the following documents/information placed before it :-

- (i) Background note on the Bill submitted by the Legislative Department, Ministry of Law and Justice;

* Rajya Sabha Parliamentary Bulletin Part-II (No. 49638) dated the 10th May, 2012.

- (ii) Views/suggestions contained in the memoranda received from various organisations/institutions/individuals/experts on the provisions of the Bill and the comments of the Legislative Department thereon;
 - (iii) Views expressed during the oral evidence tendered before the Committee by the organisations/institutions/individuals such as Shri Gurdip Singh, Shri R.K. Bhatia and Dr. K.L. Madhok and representatives of the Department of Law, State Government of Goa in its meeting held on 12th October, 2012; and
 - (iv) 211 Report of Law Commission of India on Laws on Registration of Marriage and Divorce - A proposal for Consolidation and Reform (October, 2008).
6. The Committee adopted the Report in its meeting held on the 22nd February, 2013.
7. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi;
February 22, 2013

SHANTARAM NAIK
Chairman,
Committee on Personnel,
Public Grievances, Law and Justice

REPORT

The Registration of Births and Deaths (Amendment) Bill, 2012 was introduced in the Rajya Sabha on the 7th May, 2012. It was referred by the Hon'ble Chairman, Rajya Sabha to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on 9th May, 2012 for examination and report.

2. The Bill seeks to amend the Registration of Births and Deaths Act, 1969 in order to make registration of marriage of all citizens compulsory. The amendment proposed to the Registration of Births and Deaths Act, 1969 was in pursuance to judgement of Supreme Court pronounced in the case of Seema Vs. Ashwani Kumar on 14th February, 2006.

3. The Statement of Objects and Reasons to the Bill *inter alia* reads as under:-

“The Registration of Births and Deaths (Amendment) Bill, 2012 seeks to amend the Registration of Births and Deaths Act, 1969 (18 of 1969) so as to provide for registration of marriages irrespective of religion professed and practiced by the parties to the marriage. At present the Registration of Births and Deaths Act, 1969 provides only for the regulation of registration of births and deaths and for matters connected therewith.

The Hon'ble Supreme Court in Seema Vs. Ashwani Kumar (AIR 2006 SC 1158) in its judgment dated 14-02-2006 has directed the Government that marriages of all persons who are citizens of India belonging to various religious denominations should be

made compulsorily registerable in their respective States where such marriages are solemnised and, inter alia, directed that as and when the Central Government enacts a comprehensive statute, the same shall be placed before that Court for scrutiny.

The Committee on Empowerment of Women (2006-2007) in its Twelfth Report (Fourteenth Lok Sabha) on Plight of Indian Women Deserted by Non Resident Indian (NRI) Husbands presented to Lok Sabha on the 13th August, 2007, has, inter alia, expressed the view that all marriages, irrespective of religion should be compulsorily registered and desired that the Government to make registration of all marriages mandatory, making the procedure simpler, affordable and accessible.

The 18th Law Commission of India in its 205th Report titled “Proposal to Amend the Prohibition of Child Marriage Act, 2006 and other Allied Laws”, inter alia, recommended that “registration of marriages within a stipulated period, of all the communities, viz. Hindu, Muslim, Christian, etc., should be made mandatory by the Government”. Further, the 18th Law Commission in its 211th Report titled “Laws on Registration of Marriage and Divorce —A proposal for Consolidation and Reform”, has recommended for Parliamentary legislation on compulsory registration of marriages which will bring country-wide uniformity in the substantive law relating to registration and will be helpful in achieving the desired goal.

The Registration of Births and Deaths Act, 1969, inter alia, provides for Registration establishments consisting of Registrar-General, Chief Registrar and registration division, District Registrars and Registrars. It also provides procedures for registration of births and deaths and for maintenance of records and statistics. Further, by virtue of the powers conferred under section 30 of the aforesaid Act, rules for compulsory registration of births and deaths have been framed by the State Governments and Union territory Administrations. Therefore, it is proposed to amend the aforesaid Act suitably to include registration of marriages as well within its scope so that the existing administrative machinery would also be able to carry out registration of marriages in accordance with the specified procedures and be able to maintain necessary records and statistics for registration of marriages also.

Having regard to the aforesaid directions of the Supreme Court, report of the Committee on Empowerment of Women and recommendations of the Law Commission referred to in the foregoing paragraphs, it is proposed to amend the Registration of Births and Deaths Act, 1969 to provide for compulsory registration of marriages without affecting in any manner the State law making provisions for compulsory registration of marriages in their respective States. For this purpose, suitable provisions are incorporated in the Bill to avoid any duplication of registration of marriages under the proposed Central law and the State law. It is also proposed to provide in the Bill that the Registration of Births

and Deaths Act, 1969 (after the enactment of proposed amendments) shall not apply to any person who has registered his marriage under any other law for the time being in force including a State Act providing for registration of marriages or with any other authority under that law and nothing contained in this Act shall affect the validity of the marriages registered under that law. Further, the parties to the marriage, whose marriage has been registered under this Act shall not be required to get their marriage registered under the Anand Marriage Act, 1909 or any other law for the time being in force. Moreover, the registration of marriages thereunder shall not affect any right recognised or acquired by any party to marriage under any law, custom or usage.

The proposed Bill will provide for registration of marriages of all persons who are citizens of India belonging to various religious denominations and be beneficial to women, as the registration certificate would provide evidentiary value in matrimonial and maintenance cases and prevent unnecessary harassment meted out to them. It will also provide evidentiary value in the matters of age of parties, custody of children and the right of children born out of such marriages’.

4. Clause 6 of the Bill which seeks to amend Section 2 of the Registration of Births and Deaths Act, 1969 defines the term “marriage” as follows:-

“marriage” means and includes a marriage solemnized between a male and female belonging to any caste or

religion or tribe under any law for the time being in force and includes marriages solemnized under any custom or usage in any form or manner recognized by law or the marriage registered under any law for the time being in force and also includes remarriage”.

As per the provisions of the Bill, the parties to the marriage who intend to get their marriage registered may send the requisite document and fee to the Registrar for the purpose of registration within the time prescribed. Clause 8 of the Bill casts responsibility upon the following persons to transmit information of marriage solemnised by them or occurring in the area of which that person is the incharge, to the Registrar of marriage:-

- a) Head of the house in respect of marriage solemnised in that house;
- b) Religious Priest, Trustee or Incharge of the religions place which includes temple, church, mosque, synagogue in case marriage solemnised in the religious place;
- c) Person incharge of choultry, chattram, hotel, etc. where marriages are solemnised; and
- d) Head man of village or office Incharge of local Police Station in case marriage is solemnised in open field.

Under the Bill the aforesaid persons could be held liable to a fine up to Rs. 50/- for their failure to transmit information and requisite documents to the appropriate authority for registration of marriage of parties willing for the registration. The Bill, however, in Clause 10 provides for registration of marriage after the expiry of prescribed time period on payment of late fees.

5. The Secretary, Legislative Department in his deposition before the Committee on 21st June, 2012 mentioned that on the basis of

direction/observations of Supreme Court, the Reports of the Law Commission and Report of the Committee on Empowerment of Women, the Legislative Department is of the view that the Registration of Births and Deaths Act, 1969 may be amended to provide for:-

- i) Compulsory registration of marriage without affecting the State Laws providing for compulsory registration of marriage in their respective States;
- ii) Avoid duplication of registration of marriages both under the proposed Central Legislation and State Laws;
- iii) The registration of marriages under the proposed Bill not to effect any rights recognised or acquired by any party to marriage under any law, custom or usage; and
- iv) Registration of marriage to provide evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and also as regards the age of the parties to the marriage.

5.1. Elaborating further on the Bill, the Secretary, Legislative Department stated that in the Bill, it is proposed that the parties to the marriage whose marriage has been registered under this Act after its enactment shall not be required to get their marriage registered under any other law in force including the State Act or Rules. Furthermore, provisions of this Act shall not apply to any person who has already registered his or her marriage under any extant law including a State Act providing for registration of marriages with any other authority under that law. The Secretary, Legislative Department mentioned that compulsory registration of marriage is a measure to save women being victims of bigamy/polygamy relationship, desertion,

matrimonial dispute, property disputes, etc. It would also empower a woman to secure her maintenance rights during the subsistence of marriage and even after its dissolution. The registration of marriage will also help in checking the child marriages and forced marriages or marriages without consent. It would also prevent exploitation and trafficking of women by NRI husbands and foreigners under the guise of marriage. It would also provide evidentiary value in the matter of custody of children and age of parties to marriage.

5.2. The Committee was further informed that the validity of marriage registered under any other law will not be affected by the enactment of the proposed legislation. The registration of marriages under the proposed law shall not affect any right recognised or acquired by any party to marriages under any law, custom or usage. The provision of registration of marriage under the proposed legislation was in addition to, not derogation of any other law for time being in force.

5.3. The Committee was also informed that the existing establishments consisting of Registrar-General of India, Chief Registrar, District Registrars and other Registrars at local level in States under the Registration of Births and Deaths Act, 1969 would be given additional responsibility of registration of marriage in addition to registration of births and deaths.

Solemnisation and Registration of Marriage under Different Personal Laws

6.0. Marriages are generally solemnised under the personal laws of either of both parties or one of the parties to the marriage. Marriage being under the Entry 5 of List III of Seventh Schedule of Constitution is under

concurrent jurisdiction of Union and State Governments. There is multiplicity of personal laws in our country. Solemnisations of marriage between parties to the marriage who are Hindus are governed by Hindu Marriage Act, 1955. Marriage where one of the parties belong to Christian community is governed by the Indian Christian Marriage Act, 1872. Parsies are governed by Parsi Marriage and Divorce Act, 1936. Marriages of Muslim and Jews are solemnised under their classical religious laws. The vast population of tribals solemnise their marriage in accordance with their unwritten customary law. Besides personal laws, there are general laws which are secular in nature, namely, Special Marriage Act, 1954 and Foreign Marriage Act, 1969 under which any party belonging to any religion or sect can solemnise and register their marriage. There are local laws in the different States which govern marriages in addition to aforesaid personal and general laws. State of Goa, Union Territory of Daman and Diu and renocants (those who opted for the local Franco-Indian Law at the time of assimilation of the territory into Union of India in 1954) of Union Territory of Puducherry are governed by distinct matrimonial legislation in view of their association with Portuguese and French, respectively, in the past.

7.0. The Hindu Marriage Act, 1955 governs marriage between two Hindus (including Buddhists, Sikhs and Jains). It does not apply to Hindus in the State of Goa, Union Territory of Daman and Diu and renocants of Union Territory of Puducherry. It does not extend to State of Jammu and Kashmir. That State has enacted its own Hindu Marriage Act almost on the pattern of the Hindu Marriage Act, 1955.

7.1 Section 7 of Hindu Marriage Act, 1955 prescribes for solemnisation of marriages between Hindus through the religious rites of *Saptpadi*.

Section 8 of the said Act enables the State Government to make rules for registration of marriage. If the State Government make rules for compulsory registration of marriage, violation thereof would attract nominal punishment with a fine of Rs. 25/-. However, non-registration of marriage in that case will not affect validity of that marriage.

8. The Anand Marriage Act, 1909 governs marriages between Sikhs solemnised through their religious rites (*Anand Karaj*). The Arya Marriage Validation Act, 1937 governs inter-caste, inter-sect marriages among Hindus. Marriages under both Acts can be registered under Section 8 of the Hindu Marriage Act, 1955.

9. Registration of marriage is compulsory under the Indian Christian Marriage Act, 1872. Part IV of the Act (Sections 27-37) provides for registration of marriage solemnised by officiating Priest of the Church. Part V of the Sub-Section (Sections 38-59) provides for solemnisation cum registration of marriage directly by Marriage Registrar appointed under the said Act. The Parsi Marriage and Divorce Act, 1936, (Section 6) also provides for compulsory registration of marriage.

10. The marriage in Muslim Personal Law is a contract and registration of marriage is private in nature. The Muslim Marriage and Divorce Registration Act enacted by States (West Bengal, Bihar, Jharkhand, Assam, Odisha, Meghalaya) provides for registration of Marriage which is voluntary in nature. Under the Kazis Act, 1880 State Governments have appointed Kazis who used to solemnise marriages (*Nikah*) between Muslims and issue marriage certificate (*Nikahnama*) which is signed by the Kazi, parties to the

marriage and two witnesses. The registration of marriage with the Kazi is private in nature but is admissible as evidence for all legal purposes.

11. The marriages amongst Jews in India are solemnised by the Jew Priest known as *Rabbis* who issues certificate of marriage to the parties to the marriage.

12. The Supreme Court in the case of Seema Vs. Ashwani Kumar (2006) directed Government that marriages of all persons who are citizens of India belonging to various religious domination should be made compulsorily registerable in their respective States where such marriages are solemnised. Since 2006, most of the State Governments have framed Rules under different general and personal laws governing marriage to make marriages registerable compulsorily. As per information made available to the Committee by the Legislative Department of Government of India, ten States have enacted legislation for compulsory registration of marriage. These States are Andhra Pradesh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Mizoram, Maharashtra, Rajasthan, Tripura, Uttarakhand (*Annexure-III*). As per information made available to the Committee by the said Department, fourteen State Governments/Union Territories have framed rules for compulsory registration of marriage. These States are Arunachal Pradesh, Bihar, Chattisgarh, Madhya Pradesh, Meghalaya, Odisha, Tamil Nadu, Rajasthan, Lakshadweep, Kerala, Puducherry, Dadra and Nager Haveli, Assam and Tripura (*Annexure-IV*). The Union Government in order to bring uniformity in the registration of marriage has introduced the Registration of Births and Deaths (Amendment) Bill, 2012 in Parliament to make registration of marriage compulsory for all citizens of India irrespective of religion, practiced and professed.

13. *Recommendation of the Law Commission of India*

The issue of registration of marriages came up for consideration before the Law Commission of India also. The Eighteenth Law Commission of India in its 205th Report on “Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other allied Laws” vide paragraph (iv) of the recommendations has *inter alia* recommended that ‘registration of marriages within a stipulated period, of all the communities, viz. Hindu, Muslim, Christians, etc. should be made mandatory by the Government.’ The Law Commission in its 211th report, on “Laws on Registration of Marriage and Divorce – a proposal for consolidation and Reform” vide paragraph (i) of the recommendations has *inter alia* recommended that a ‘Marriage and Divorce Registration Act’ should be enacted by Parliament to be made applicable in the whole of India and to all citizens irrespective of their religion and personal laws and without any exceptions or exemptions”.

14. The Law Commission of India in its 211 Report (October, 2008) mentions that the Births, Deaths and Marriages Registration Act, 1886 which precedes the Births and Deaths Registration Act, 1969, still remains in force. Section 29 of the Act of 1969 mentions that no provision of the said Act shall be in derogation to the provisions of the Act of 1886. The old Act (1886) requires the Registrar-General of Births, Deaths and Marriages appointed under the Act to keep proper record of marriage registers received by him/her from officials working under the provisions of the following three Acts:-

- i) The Indian Christian Marriage Act, 1872;
- ii) The Special Marriage Act, 1954; and

iii) The Parsi Marriage and Divorce Act, 1936

Marriage certificate of parties married under the aforesaid law have to be transmitted to the Registrar-General of Births, Deaths and Marriages of that State. In this context, it is relevant to note that Section 48 of the Special Marriage Act, 1954 and Section 9 of the Parsi Marriage and Divorce Act, 1936 prescribe the procedure for transmission of certificate of marriage to the Registrar-General of Births, Deaths and Marriages.

Registration of Marriage in the State of Goa

15.0. Marriages in the State of Goa are compulsorily registerable irrespective of religion of parties to the marriage without which the spouse is not eligible to inherit fifty percent share of income and property of his/her better half. All marriages solemnised in the State of Goa need to be registered with the Appropriate Authority of the State Government. The process of registration of marriage with the State Government is initiated before its solemnisation under religious rites and ceremonies of the parties to the marriage. The position of registration of marriage in the State of Goa is progressive in view of the fact that it is governed under Civil Registration Code of 1914 which is mostly based on the Portuguese Code of 1867. The Civil Registration Code has been allowed by the Union Government to be in operation in that State after liberation of Goa (the then Union Territory of Goa, Daman, Diu) by virtue of the Goa, Daman and Diu, Regulations of 1962 and 1963. Personal Laws enacted by the Union Government have not been extended to the State of Goa and Union Territory of Daman and Diu.

15.1. The Committee had the opportunity to interact with the Law Secretary and State Registrar of Goa in Delhi as well as at Panaji. They have

explained to the Committee that registration of marriage in the State of Goa is being done on secular basis. Even marriage of Roman Catholics solemnised under canonical law need to be routed through the Civil Registration Office. Marriage of Christian community could only to be solemnised by the Priest of the Church when No Objection Certificate from the Sub Registrar Office is produced before him. It was pointed out to the Committee that application of provisions of the proposed legislation might entail following consequences for which the application of this Act might not to be extended to the State of Goa:-

- i) Two marriage authorities may create overlapping and conflict in practical operation; and
- ii) Interference with protection given to Goa Personal Law at the time of liberation of Goa.

Registration of Marriage in the Union Territory of Puducherry.

16. The Committee was informed by the Government of Puducherry in their written submission that in the Union territory of Puducherry, marriages of various communities are being registered either with the Local Bodies Authorities under Municipal/Commune Panchayat limits under the provisions of the Registration of Marriages by “Decret” dated 24.04.1880 or under the Hindu Marriage Act or the Special Marriage Act by the Sub-Registrars of the Registration Department. Therefore, there will not be any added advantage of introducing the Registration of Births and Deaths (Amendment) Bill, 2012. Previously, the French Civil Code was used for registration of Births, Deaths and Marriages in the Local Bodies of the Union territory of Puducherry. The Registration of Births and Deaths Act,

1969 was implemented in March 1979 for registration of births and deaths and the Registration of Marriages is still under the said French Civil Code.

Registration of marriages in the State of Kerala

17. In the status note submitted to the Committee, the State Government of Kerala mentioned that Kerala Registration of Marriages (Common) Rules, 2008 stipulate compulsory registration of marriage solemnised in that State, irrespective of the religion of the parties. The Rules were framed in compliance of direction of Supreme Court pronounced on 14.2.2006 in the case of Seema Vs. Ashwani Kumar. The Rules are now being implemented through the Director of Panchayat, who is Chief Registrar of marriage.

Registration of marriages in the State of Odisha

18. The Committee was informed by the Government of Odisha in their written submission that in Odisha, the registration of marriages were regulated under various Acts and Rules; namely, (i) Odisha Mohammedan Marriages and Divorces Registration Act, 1949 and Rules, 1976 for Muslim Community (Section-8 and Rule 2A) (ii) Odisha Hindu Marriage Registration Rules, 1960 (Rules-4, 4A and 4B) (iii) Indian Christian Marriage Act, 1872 (Sections-6 and 9) and (iv) Special Marriage Act, 1954 (Section-3). Pursuant to the judgement of the Hon'ble Supreme Court in Seema-vs-Ashwani Kumar, the Odisha Hindu Marriage Registration Rules, 1960 and the Odisha Mohammedan Marriages & Divorces Registration Rules, 1976 were amended in the year 2006 and registration of marriages to parties of Hindu and Muslim religions are compulsory since then.

18.1. The Committee was further informed that in order to facilitate registration of marriages among Hindus, Additional Block Development

Officers and in their absence Gram Panchayat Extension Officers of the concerned Block, Deputy Commissioners of all Municipal Corporations and in their absence the Establishment officers of the concerned Municipal Corporations and Executive officers of all Municipalities and Notified Area Councils were appointed as Registrar under Rule 3 of the Odisha Hindu Marriages Registration Rules, 1960. Also, under Section 3 of the Special Marriage Act, the Sub-Registrar of the District and the Sub-Registrar of the sub-district were empowered to discharge the functions of the Marriage Officers under the Act. Marriage Registrars appointed under the Christian law and Mohammedan law, shall register the marriages solemnized at their level, being the licensing authorities appointed by the State Government and submit the same information to the IGR, Odisha who is the controlling and supervising authority of the registration of marriages pertaining to the Indian Christian and Mohammedan.

18.2. The representatives of the State Government held the view that single and one setup should be provided for registration of marriages irrespective of the religion to which the parties belong, in order to avoid duplication through different set up of registering establishments and that there must be one system to make compulsory registration of marriages.

Registration of marriages in the Union Territory of Andaman & Nicobar Islands

19. In the written note submitted to the Committee, the UT of Anadaman and Nicobar Islands stated that registration of marriages is being done under the Special Marriage Act, 1954 and that in Nicobar Islands, marriage officers were appointed under provisions of Indian Christian Marriage Act,

1872. The Andaman and Nicobar Registration of Birth & Death Rules, 1982 have been framed under the provisions of Registration of Birth and Death Act, 1969 and it provides for compulsory registration of birth and death.

19.1. The Committee was informed that the Apex Court direction in *Seema-vs-Ashwani* Kumar has been communicated to all Marriage Registration Officers and that nature, and scope, procedure involved, conditionality applicable were varied in respect of registration of birth and death and registration of marriage. In their opinion, a separate legislation and establishment for compulsory registration of marriage was necessary.

Views of Non-Official Witnesses

20. The non-official witnesses appreciated the endeavour of Union Government to make registration of marriage compulsory throughout the country. Some of them however stated that onus of registration should be exclusively on the parties to marriage rather than the officiating Priest of religious places who solemnise the marriage. The Committee during its study visit to Goa and Kochi during 3rd to 5th January, 2013 interacted with religious leaders of Hindu, Muslim, and Christian communities. The non-official witnesses in Goa while explaining the system of registration of marriage in Goa pleaded that extant legal law may not be disturbed as hundred percent registration of marriage is taking place under Civil Registration Court in Goa.

20.1 Some non-official witnesses, particularly, from the Muslim Community objected to Clauses 8 and 14 of the Bill wherein officiating Priest of the religious places such as temple, mosque, church, etc. would be forced to transmit information, document and requisite fee for registration of marriage which has been solemnised under their supervision. The failure on the part

of the officiating Priest of the religious places has been made punishable with a fine which may extent to Rs. 50/-. They suggested that imposition of fine on the officiating Priest of religious places was unjust and the liability may be fixed upon the parties to marriage and not upon the officiating Priest of religious places.

20.2. Some Members of the Committee raised objections on the provisions of Clause 14 of the Bill, which provide for imposition of fine on the priest, etc., or the religious institution on account of their failure to transmit documents of marriage of the intending parties to the Registrar of marriage. They, accordingly, desired that Government should review the provisions of Clauses 8 and 14 of the Bill.

Observation of the Supreme Court in Statement of Objects and Reasons

21. The Committee took note of following observations of Supreme Court Seema Vs. Aswani Kumar also included in the Statement of Objects and Reasons appended to the Bill:-

“xxxxx as and when the Central Government enacts a comprehensive statute, the same shall be placed before the Supreme Court for scrutiny.”

Members raised serious objection to the above as they felt that the observations of the Supreme Court were against the spirit of the Constitution and amounted to encroachment upon the legislative powers of the Parliament. The Secretary, Legislative Department, while responding to this during the course of his deposition before the Committee on 21st June, 2012 stated as follows:-

"श्री वी.के. भसीन : सर, मैं यह submit करना चाहूँगा कि ऐसी कोई प्रथा नहीं थी। इसे Statement of Objects and Reasons में केवल इसलिए mention किया गया, ताकि एक transparency हो और मैं ऑनरेबल लेजिस्लेचर को यह produce करना चाह रहा था कि सुप्रीम कोर्ट ने उसके बारे में यह कहा है"

The Committee, in that context, desired to have the opinion of Attorney General of India on the issue. The Leaned Attorney General of India in his note dated 26th July, 2012 stated as follows :-

“xxxx if it is felt that the legislation should not be placed before the Court then either an Interim Application or an Application for Review should be filed stating out objection in this behalf”.

The Committee pointed that the Government instead of challenging interference of Judiciary in law making power of Parliament has brought to the notice of legislature such aberration. The Government could have filed review application as suggested by the learned Attorney General of India in the first instance.

21.1. The Committee notes that as per the Scheme of the Constitution, there are three organs of the Government i.e., the Legislature, the Executive and the Judiciary and each of these three organs are suppose to function within their demarcated sphere under the Constitution. The Judiciary is well within its rights to examine the constitutionality of an enactment under its power of ‘Judicial Review’ but only when it is questioned in judicial proceedings. The approach of the Supreme Court in the case of Seema Vs. Ashwini Kumar seems to be an interference in the sphere of activity of Legislature. The Committee takes note of the

observations of the learned Attorney General of India and recommends that the Government should take appropriate legal action in consultation with the Attorney General of India for a review of the observations of the Hon'ble Supreme Court of India and the straightening of the records.

Recommendations/ Observations of the Committee

22. The Committee lauds the noble objectives that underline the proposed legislation. It hopes that the Bill would act as a milestone to protect women in matters of maintenance and property rights in addition to putting an effective check on bigamist relationships.

23. The Committee takes note of the fact that the Bill confers an obligation on every person to get his marriage registered. But, at the same time, the Bill does not provide for any significant consequences on account of non-registration of a marriage. As per the Bill, the non-registration of marriage would not affect its validity. The Bill also does not provide for any punishment to the parties to the marriage for non-registration of their marriage after solemnization. The Bill in its Clause 10 provides for delayed registration of marriages on payment of fine. The Bill also *vide* its Clause 8 makes it obligatory and also punishable with a fine to the extent of Rs. 50/- on persons specified in Clauses (a) to (e) of sub-Section (1) of Section 8A, on a request made by the parties to the marriage in order to get their marriage registered under the Act, if they fail to give the necessary information and documents relating to the marriage to the Registrar within the specified period.

24. The Committee is in agreement with the Scheme of the things that have been put in place to the proposed Bill. While the Bill makes registration of marriages compulsory for all, the consequences of non-registration of marriages do not affect the validity of the marriage. The Bill further takes care that parties who are desirous of getting their marriage registered are facilitated and a fine up to Rs. 50/- has been prescribed only in cases where the relevant persons fail to give the necessary information/documents to the Registrar in time. The Bill also put in place a mechanism whereby information about marriages solemnized at all usual places would reach the Registrar Office. The Committee hopes that the Office of the Registrar which is proposed to be entrusted with the work of registration of marriages would be getting necessary details about all the marriages that might take place and the parties which are desirous of having a certificate might obtain the same as well on making a request.

25. Registration of marriage under certain personal laws is voluntary whereas under certain other personal laws it is mandatory but private. The officiating priest of religious places maintains the records of marriage solemnised by them and issue certificate of marriage to the parties to the marriage which has evidentiary value in the Court of Law. The Parsi Personal Law in particular has the provision of transmission of certificate of marriage/register of marriage to the State registry. The Committee understands that all religious institutions where marriages are solemnised need to transmit the certificate of marriage to the State registry under the existing dispensation. In case it is so, the Committee recommends that special efforts may be taken by

Government in order to put in place a system where the records gets transferred from the various places of marriage/religious institutions to the Office of the Registrar ideally electronically, or in a hassle free manner so that the parties to the marriage as well as the institutions engaged in the solemnization of marriage are not burdened with avoidable procedures.

26. The Committee in particular takes note of the fact that the provisions of the Bill are not going to affect in any manner the laws/rules in operation at present in different States in the country for the purpose of registration of marriages and that the proposed legislation is in addition to, and not in derogation of any other law for the time being in force. This, in Committee's view, should be sufficient to dispel apprehension in the minds of the States/Union Territories regarding replacement of existing set up with the one under the proposed Bill.

27. The Committee recommends that the Bill may be passed after addressing the concerns raised by the Committee.

RECOMMENDATIONS/OBSERVATIONS OF THE COMMITTEE AT A GLANCE

1. The Committee notes that as per the Scheme of the Constitution, there are three organs of the Government i.e., the Legislature, the Executive and the Judiciary and each of these three organs are suppose to function within their demarcated sphere under the Constitution. The Judiciary is well within its rights to examine the constitutionality of an enactment under its power of ‘Judicial Review’ but only when it is questioned in judicial proceedings. The approach of the Supreme Court in the case of Seema Vs. Ashwini Kumar seems to be an interference in the sphere of activity of Legislature. The Committee takes note of the observations of the learned Attorney General of India and recommends that the Government should take appropriate legal action in consultation with the Attorney General of India for a review of the observations of the Hon’ble Supreme Court of India and the straightening of the records. [Para 21.1]

Recommendations/ Observations of the Committee

2. The Committee lauds the noble objectives that underline the proposed legislation. It hopes that the Bill would act as a milestone to protect women in matters of maintenance and property rights in addition to putting an effective check on bigamist relationships. [Para 22]

3. The Committee takes note of the fact that the Bill confers an obligation on every person to get his marriage registered. But, at the

same time, the Bill does not provide for any significant consequences on account of non-registration of a marriage. As per the Bill, the non-registration of marriage would not affect its validity. The Bill also does not provide for any punishment to the parties to the marriage for non-registration of their marriage after solemnization. The Bill in its Clause 10 provides for delayed registration of marriages on payment of fine. The Bill also *vide* its Clause 8 makes it obligatory and also punishable with a fine to the extent of Rs. 50/- on persons specified in Clauses (a) to (e) of sub-Section (1) of Section 8A, on a request made by the parties to the marriage in order to get their marriage registered under the Act, if they fail to give the necessary information and documents relating to the marriage to the Registrar within the specified period. [Para 23]

4. The Committee is in agreement with the Scheme of the things that have been put in place to the proposed Bill. While the Bill makes registration of marriages compulsory for all, the consequences of non-registration of marriages do not affect the validity of the marriage. The Bill further takes care that parties who are desirous of getting their marriage registered are facilitated and a fine up to Rs. 50/- has been prescribed only in cases where the relevant persons fail to give the necessary information/documents to the Registrar in time. The Bill also put in place a mechanism whereby information about marriages solemnized at all usual places would reach the Registrar Office. The Committee hopes that the Office of the Registrar which is proposed to be entrusted with the work of registration of marriages would be getting necessary details about all the marriages that might take place

and the parties which are desirous of having a certificate might obtain the same as well on making a request. [Para 24]

5. Registration of marriage under certain personal laws is voluntary whereas under certain other personal laws it is mandatory but private. The officiating priest of religious places maintains the records of marriage solemnised by them and issue certificate of marriage to the parties to the marriage which has evidentiary value in the Court of Law. The Parsi Personal Law in particular has the provision of transmission of certificate of marriage/register of marriage to the State registry. The Committee understands that all religious institutions where marriages are solemnised need to transmit the certificate of marriage to the State registry under the existing dispensation. In case it is so, the Committee recommends that special efforts may be taken by Government in order to put in place a system where the records gets transferred from the various places of marriage/religious institutions to the Office of the Registrar ideally electronically, or in a hassle free manner so that the parties to the marriage as well as the institutions engaged in the solemnization of marriage are not burdened with avoidable procedures.[Para 25]

6. The Committee in particular takes note of the fact that the provisions of the Bill are not going to affect in any manner the laws/rules in operation at present in different States in the country for the purpose of registration of marriages and that the proposed legislation is in addition to, and not in derogation of any other law for the time being in force. This, in Committee's view, should be sufficient to dispel apprehension in the minds of the States/Union Territories

regarding replacement of existing set up with the one under the proposed Bill. [Para 26]

7. The Committee recommends that the Bill may be passed after addressing the concerns raised by the Committee.[Para 27]
