

# Legislative Brief

## The Registration of Marriage of Non-Resident Indian Bill, 2019

The Bill was introduced in Rajya Sabha on February 11, 2019, by the Minister of External Affairs, Ms. Sushma Swaraj and was referred to the Standing Committee on External Affairs. The Committee was scheduled to submit its report in May 2019.

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### Mandira Kala

mandira@prsindia.org

### Vinayak Krishnan

vinayak@prsindia.org

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### Highlights of the Bill

- ◆ Every NRI who marries a citizen of India or another NRI shall register his marriage within 30 days. In case an NRI fails to register the marriage within 30 days, the passport authority may impound his passport.
- ◆ The Bill adds a provision to the Code of Criminal Procedure (CrPC), 1973. If summons could not be served to a person, it may be served by uploading it on a designated website. If the person summoned does not appear before the court, it may upload a warrant for arrest on the website.

### Key Issues and Analysis

- ◆ The Bill does not allow a late registration beyond the 30-day period. Non-registration could result in impounding of passport which may have consequences such as deportation.
- ◆ The Bill amends the CrPC on the process of summons. This amendment is not restricted to offences under the Bill, but will cover all matters under the CrPC.
- ◆ An NRI is defined as an Indian citizen who resides outside of India. Unlike other laws, the Bill does not specify the minimum number of days abroad to qualify as an NRI.

## PART A: HIGHLIGHTS OF THE BILL

### Context

In India, a marriage certificate is proof that two individuals are married to one another and therefore allows them to claim various rights related to the marriage. If the marriage is not registered it may be difficult to prove its validity. All states have passed laws making it compulsory to register marriages that occur within the state.<sup>1</sup> However, there is no central law requiring registration of marriages of NRIs solemnised outside India.

The Standing Committee on the Empowerment of Women (2007) and the Law Commission of India (2009) have recommended that registration of marriage for NRIs be made mandatory.<sup>2,3</sup> They pointed out that failure to register a marriage can affect issues including those related to child custody, divorce proceedings initiated in a foreign country, or to instances where a spouse is previously married.<sup>2</sup>

The Registration of Marriage of Non-Resident Indian Bill, 2019 was introduced in Rajya Sabha on February 11, 2019. It was referred to the Standing Committee on External Affairs and the Committee was scheduled to submit its report in May 2019.

### Key Features

- **Registration of marriage:** An NRI is defined as an Indian citizen who resides outside the country. Every NRI who marries a citizen of India or another NRI must get his marriage registered within 30 days. 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.
- **Impounding of passport:** The Bill amends the Passports Act, 1967 to state that in case an NRI fails to register the marriage within 30 days, the passport authority may impound or revoke his/her passport.
- **Issue of summons and warrants:** Currently, the Code of Criminal Procedure, 1973 (CrPC) provides for a process for issuing summons and warrants. The Bill adds a section to the CrPC to state that regardless of

other provisions in the CrPC, if a court is satisfied that summons could not be served to a person, it may upload the summons on the designated website of the Ministry of External Affairs. This would serve as evidence of the summons being served against the person. If the person summoned does not appear before court, it may issue and upload a warrant for arrest on the same website. If the person does not appear before the court after this, the court may pronounce him a proclaimed offender, and upload a declaration to that effect on the website.

- If an individual does not appear after a proclamation has been uploaded, the court may issue a written statement that the proclamation has been uploaded. This statement will be conclusive evidence that the warrant has been issued and served. Further, the court may order attachment of the property of the proclaimed offender.

## PART B: KEY ISSUES AND ANALYSIS

### No extension period in cases of delay in registering of marriage

Clause 4 The Bill states that any NRI who marries an Indian citizen or another NRI, either within or outside India, must get their marriage registered within 30 days. In case the marriage is not registered within 30 days, the passport of the NRI may be impounded. However, the Bill does not provide any extension of time to the NRI in case he is unable to register the marriage within the 30-day period.

Note that, various states have enacted laws for compulsory registration of marriage. While states such as Karnataka and Gujarat provide for a 30 day time limit, they allow late registration on payment of late fees.<sup>4</sup> There may be cases where NRIs are unable to register the marriage due to legitimate reasons within the 30 day limit. The Bill does not envisage redressal for such persons. Note that the penalty for not registering marriage within the time limit is the impounding of the passport, which may have significant consequences such as deportation or loss of employment abroad.

### Amendment to the Code of Criminal Procedure not restricted to the Bill

Clause 5 The Bill adds a section to the CrPC that specifies procedures for uploading of summons and warrants on a website, if the court is of the opinion that the summons could not be served to an individual. This provision is not restricted to registration of marriages by NRIs; it applies to all matters under the CrPC. For example: this provision would address summons and warrants issued for other offences such as theft, embezzlement, domestic violence, and traffic violations. It is unclear why this provision is part of the current Bill.

### Definition of Non-Resident Indian is unclear

Clause 2 The Bill defines a Non-Resident Indian as an Indian citizen who resides out of India. However, it does not specify the number of days that an individual must stay outside India to be designated an NRI. Therefore, it is unclear who the Bill would apply to. For example, it is not clear whether an Indian citizen who fails to register his marriage during a two-month visit abroad, would face penalties under the Bill. Note that under the Income Tax Act, 1961, the Foreign Exchange Management Act, 1999, and the Aadhaar Act, 2016, non-residents are defined as persons who have been outside India for more than 183 days in a year.<sup>5</sup>

1. Unstarred Question No. 1231, Rajya Sabha, Ministry of Law and Justice, November 26, 2016.

2. "Need for Family Law Legislations for Non-Resident Indians", Law Commission of India, March, 2009, <http://lawcommissionofindia.nic.in/reports/report219.pdf>.

3. "12<sup>th</sup> Report: Plight of Indian Women Deserted by NRI Husbands", Standing Committee on Empowerment of Women, August 2007, [http://164.100.47.193/lsscommittee/Empowerment%20of%20Women/14\\_Empowerment%20of%20Women\\_12.pdf](http://164.100.47.193/lsscommittee/Empowerment%20of%20Women/14_Empowerment%20of%20Women_12.pdf).

4. Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976; Gujarat Registration of Marriages Act, 2006.

5. Section 6, Income Tax Act, 1961; Section 2(v), Foreign Exchange Management Act, 1999; Section 2(v), Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

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