

Observations on Registration of Births and Deaths (Amendment) Bill, 2012

New section No.	<i>Proposed amendment and observations</i>
1A(3))	<p>Proposal:</p> <p>After section 1 of the principal Act, the following section shall be inserted, namely :-</p> <p style="padding-left: 40px;">“1A. (1) Every person shall get his marriage registered under this Act or the Anand Marriage Act, 1909 or under any other law for the time being in force (including State Act).</p> <p style="padding-left: 40px;">(2) 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 (including State Act).</p> <p style="padding-left: 40px;">(3) The provisions of this Act 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.”.</p> <p>Observations:</p> <p>This provision says that marriages registered under some other law need not be registered under this Act. The Registrar's function as per the proposed subsection (2)(A) to Section 7 of the principal act includes the clause <i>“he shall also take steps to inform himself carefully of every marriage which takes place in his jurisdiction and to ascertain and register the particulars required to be registered”</i>. So, if a Registrar comes to know of a marriage, he has to find out details for registration. If it has been registered under some other law, he does not have to register the same. But he may record the fact that it has been registered elsewhere (provided he has some document for that purpose) so that a successor noticing the same unregistered marriage does not have to go through the same process. Such recording is also necessary so that if someone comes for a certificate, the search would reveal that it is registered elsewhere. This would mean that the particulars have to be recorded in a register or some document though it is not to be called registration. It is as good as duplicating the work done elsewhere. It is easy to provide one common place for registration and certification. This should include the marriages under the Special Marriages Act, 1954.</p> <p>The present provision can also create problems for certificates of registration of marriages. Many of the other laws under which registration is done may not have a provision for issue of certificates. People may have to register under this act for certificates and that will happen only when they need certificates resulting in delayed registrations. It is also difficult for those who use the certificates to find out whether they are valid when they come from different sources. One single source – Registrar of Birth, Marriages and Deaths – for certificates would be better, for which all marriages would have to be</p>

	compulsorily registered under this Law.
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7(2)(A))	<p>Proposal:</p> <p>In section 7 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely: —</p> <p style="padding-left: 40px;">“(2A) Every Registrar shall, on payment of prescribed fees, enter in the register maintained for the purpose, all information given to him under section 8 or section 8A or section 9 and shall also take steps to inform himself carefully of every marriage which takes place in his jurisdiction and to ascertain and register the particulars required to be registered.”.</p> <p>Observations:</p> <p>Why specify a fee for marriage registration when birth and death registrations are free? Once the law says specified fee, it cannot be waived, though it can be made nominal (This is Law Ministry's interpretation in case of late fee). It would complicate the administrative process as many registrars are already having to collect small sums and account for them for certificates and late/delayed registrations. He would have to keep a lot of accounts, if at some stage someone wants to know the amounts collected as fee, fine, etc for different types of registrations (birth/death/marriage) and purpose (late fee, registration fee, search fee, certificate fee, etc.).</p> <p>Collecting a fee for registering marriages amount to collecting a fee from almost everyone as only a small proportion of the people remain unmarried. In such a situation, marriage registration should be a public funded activity.</p> <p>This section deals with the appointment of Registrars and provide that an employee of the Panchayat, Municipality, etc. can be appointed as the Registrar for the local area. It may be noted that in many states, staff of Health Centres have been appointed as the Registrar of Births and Deaths. While this arrangement works fine for births and deaths, it may not work so for marriages as the health centres have nothing much to do with marriages.</p>
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Proposal:

8. After section 8 of the principal Act, the following section shall be inserted, namely :—

“8A. (1) For the purposes of facilitating the proof of marriages, the parties to the marriages, who intend to get their marriage registered under this Act shall, either themselves, or from the persons specified below, give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information and requisite documents and fees to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under sub-section (1) of section 16,

(a) in respect of marriage in a house, whether residential or non-residential, not being any place referred to in clauses (b) and (c), the head of the house, and in the absence of any such person, the oldest adult male person present therein during the said period;

(b) in respect of marriage in a temple, church, mosque, synagogue or such other religious place, the priest or such other person, by whatever name called, officiating such marriage or the trustee or any other person in charge thereof;

(c) in respect of marriage in a place specifically used for conducting marriages, including marriage halls, choultry, chattram, hotels or such other place, the person in charge thereof;



(d) in respect of marriage in an open place or field or ground, the headman or other corresponding officer in the case of a village and the officer in charge of the local police station elsewhere;

(e) in any other place, such person as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the State Government, having regard to the conditions obtaining in a registration division, may, by order, require that for such period as may be specified in the order, any person specified by the State Government by designation in this behalf, shall give or cause to be given information regarding marriages in a house referred to in clause (a) of subsection (1) instead of the persons specified in that clause. (3) Without prejudice to the provisions contained in this Act, the State Government may make rules providing that the parties to a marriage may have particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed.

Observations:

The information for marriages needs to be differently viewed compared to births and deaths. As a mother who delivered cannot be expected to be visiting the Registrar's office, there should be someone else to report. The child born or the person who died are out of question as informants. This is not the case with marriage. The responsibility to report a marriage for registration should be with the couple. The certificates from the place where marriage was solemnized can be proof of marriage, in the absence of which witnesses should be asked for. It is not necessary to ask for the head of the household to be a witness. The wording '*oldest adult male*' used in section 8A(1)(a) is gender discriminatory especially in case of marriage registration. Any adult person irrespective of sex should be accepted as a witness.

Unlike births and deaths, a marriage involves two households. In several cultures, the marriage function is in two halves – one performed in the bride's place and the other at the groom's. It is necessary to define the place which would be considered as the place where the marriage was conducted. Otherwise, there can be information reaching two different registrars regarding the same marriage unnecessarily increasing the work, though only one of them may finally register the event. This is important for section 8A.(2) also.

It is difficult to imagine police keeping track of marriages taking place in open grounds and reporting to the municipal authorities. (In most states, they are not reporting deaths due to accidents, etc., but are asking the relatives to report them) Treating reporting of marriages like the birth of an unclaimed child is not sensible at all. Instead, these should be treated like marriages in households with some attendees as witnesses considering that marriages taking place in open areas are almost always near to the residence of the bride or groom.

The section should put the responsibility squarely on the couple to get the marriage registered (exceptions may be made for those who are physically challenged and those cases where one or both of the couple died before the marriage was registered). Instead of Section 8A saying "*who intend to get their marriage registered under this Act shall, either themselves, or from the persons*

	<p><i>specified below</i>”, it may be changed as “<i>who intend to get their marriage registered under this Act shall</i>” and provide the others only as parties who give evidence of the marriage. In case of marriages solemnized at place mentioned in sub-sections 8A(1) (b) and (c), the persons who have been made responsible to</p>
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	<p>report the marriages to the registrar, may be made responsible to issue a certificate to the couple for submitting to the Registrar. This can also be done through the rules.</p> <p>Section 8A(2) does not appear useful. In the past village chowkidars were made responsible to report births and deaths under the similar provision. This was found unsatisfactory. Marriages being of a different category altogether, we should avoid such a provision.</p>
8B	<p>Proposals:</p> <p>“8B. The Registrar shall not refuse to register any marriage for which a duly filled up and signed form has been received by him except on such grounds as may be prescribed:</p> <p>Provided that different grounds may be specified by rules for different class or classes of persons to marriage.”.</p> <p>Observations:</p> <p>May specifically include a provision to refuse to register marriages that are not valid under the law, like child marriages.</p>
13(3)	<p>Proposal:</p> <p>The proposal is to make the entire section applicable to births, marriages and deaths</p> <p>Observations:</p> <p>In section 13(3), the word '<i>registered</i>' should be replaced by '<i>reported</i>' so that it is consistent with the previous sub-sections. Else the events reported before one year but not registered within one year would go into section 13(3). In manual system of working this may not be a problem as registration may be done with a back date by the registrars. However, with computerization catching on, it is difficult to prepare a software logic consistent with sections 13(2) and 13(3). The RBD Act of 1969 had this error that was termed as a legislative error or oversight.</p>

15	<p>Proposal:</p> <p>For section 15 of the principal Act, the following section shall be substituted, namely: —</p> <p>“15. If it is proved to the satisfaction of the Registrar that any entry of a birth or marriage or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation.”.</p> <p>Observations:</p> <p>Unlike births and deaths, marriages can be undone either through divorce or through annulment. These are not cancellation of the registration or corrections, but are later events. There should be provisions for recording these. This would align the law with the international recommendations that suggest registering divorces and separations and linking them to the marriage registration entry. If</p>
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	<p>marriage registrations are linked to the Aadhaar number of the person; it can also be used to prevent fraudulent marriages.</p> <p>The provision <i>“correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation.”</i> should be suitably amended, considering the shifting of registration to electronic documentation rather than paper documents.</p>
29	<p>Proposal:</p> <p>After section 29 of the principal Act, the following section shall inserted, namely:—</p> <p>“29A. The provisions of this Act relating to registration of marriage shall be in addition to, and not in derogation of, any other law for the time being in force and the registration of marriages of the parties under this Act shall not be deemed to affect any right recognised or acquired by any such party under any law, custom or usage.</p> <p>Observation:</p> <p>As indicated earlier, allowing for registrations under more than one law would lead to complications in implementation of the proposed law. It is better to provide for abolition of the provision for registration of marriages under any other law. The marriages under the Special Marriage Act are referred to as ‘Registered marriages’ by the public. There should be a system of registering these also under the registration law.</p>

30(2)	<p>Proposal:</p> <p>After section 30 of the principal Act, the following section shall be inserted, namely:—</p> <p>“30A. (1) The Central Government may, by notification in the Official Gazette, make such provisions for implementation of the provisions of this Act and for carrying out the purposes of this Act.</p> <p>(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—</p> <p>(a) shall not apply to any marriages solemnised under any Act for the time being in force or any customs or usage recognised in law;</p> <p>(b) shall apply to any marriages solemnised under any Act for the time being in force or any customs or usage recognised in law,</p> <p>with such exceptions, modifications and adaptations as may be specified in the notification.”.</p> <p>Observations:</p> <p>30A.(1) As the responsibility for implementation of the Act lies with the state governments it is better if section 3(3) of the Principal Act that provides for the Registrar General issuing directions to the Chief Registrar is strengthened rather than the Central government being empowered to make provisions for implementation of this Act.</p> <p>30A.(2): Once marriage registration has been made compulsory for all marriages, exempting any section would be a backward step. Instead, the Government may be empowered to notify different dates from which registration of marriages</p>
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	solemnised under various Acts may start. In other words, only subsection (b) is required.
31(3)	<p>Proposal:</p> <p>In section 31 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—</p> <p>“(3) Nothing contained in sub-sections (1) and (2) shall apply to any matter or law relating to marriages including the Anand Marriage Act, 1909 or any State law or to any rules or notification or order making provisions for registration of marriages in any State.”.</p> <p>Observations:</p> <p>This is fashioned in the way in which the Births, Deaths and Marriages Registration Act, 1886 was worded. This will allow for several laws with varying provisions to coexist and can lead to confusion.</p>

Important issues in Registration of Births and Deaths Act 1969

1. **Definition of birth:** A birth is defined as “complete expulsion of extraction from its mother of a product of conception” that indirectly defines the person who delivers the child as the mother. With the issue of surrogate motherhood, this definition needs to be revisited so that there is clarity in the law.
2. **Reports of the Chief Registrar to State Government (Section 4(4)):** While the law requires the Chief Registrar to prepare a report on the working of the Act in the state and submit it to the State Government, this is being done just as a formality. There should be some provision in the law, like making it mandatory for the Government to lay the report in the Legislative Assembly with an action taken to ensure that the report is prepared seriously and is acted upon.
3. **Reporting of the events (Section 8):** The form for reporting of births/deaths have to be prescribed (by the State Government). This makes bringing changes in the form a long drawn out process as approval by the State Cabinet is required. Changes in the forms are not frequent but are required to keep the registration process streamlined, consistent with international recommendations and up to date for the changing data requirements and technology. Providing for the forms to be 'notified in the official gazette' by the state Governments is a way out.

Where reporting is to be done by medical institutions, etc., the concerned head of the household may be made responsible to provide the required information to the institution.

4. **Signature of the informant in the register (Section 11):** The provision that informants giving information orally should sign the register is a continuation from the days of manual registers. Now, with different types of reporting forms and possibility of even using the finger print that can be verified from a database, the provision needs to change. With much higher literacy levels oral reporting would be happening only in a very small proportion of the cases.
5. **Extracts (Section 12 and 17):** The extract is to be signed by the registrar (*an extract of the prescribed particulars under his hand*). With the use of internet based certificates and facility to check the veracity of the certificates online, an explicit provision for issue of such certificates may be useful.

The Ministry of Law had indicated in the past that the extract issued under section 12 does not have the same evidentiary value as of an extract issued under section 17. This does not make any sense. Extracts from both the sections should have the same evidentiary value.

6. **Delayed Registration (Section 13):** In sub-section 3 the phrase “Any birth or death which has not been registered within one year” should be changed as “Any birth or death which has not been reported within one year” so that it is consistent with sub sections 1 and 2.

The late fees that were prescribed in the sixties have lost their value due to inflation and needs to be revised upwards.

7. **Name of the Child (Section 14):** There have been numerous instances when parents approached the registrar for changing the name of the child that has already been entered. There has to be a provision for dealing with such requests as it cannot be handled under section 15 dealing with correction of errors as it is not an error.

8. **Maintenance of records (Sec 16):** With electronic maintenance of records, there is a need to amend the section to provide for electronic maintenance of records.

9. **Penalties:** As in case of late fees, the penalties also have lost their penal effect due to inflation and needs to be enhanced.

Penalties for non-reporting by institutions may be increased as they affect several people and can be repeated. Higher penalties for repeated offences by institutions may also be thought of.

10. **Act not to be in derogation of Act 6 of 1886(Section 29):** Since the Births, Deaths and Marriages Registration Act, 1886 has now been repealed, this section is superfluous.

11. **Confidentiality of Information:** Birth and Deaths registration process is recognized as the best method for collecting useful vital statistics. This would mean that some demographic information about the parents of the child or the deceased should be collected for preparing useful statistics as is being done in the country now. The Act should explicitly provide for confidentiality of such personal information other than that appear in the certificates.