LAW COMMISSION OF INDIA

TWENTY-THIRD REPORT

(THE LAW OF FOREIGN MARRIAGES)

AUGUST, 1962

GOVERNMENT OF INDIA : MINISTRY OF LAW

REPORT ON THE LAW OF FOREIGN MARRIAGES

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APPENDICES

CHAIRMAN,
LAW COMMISSION.
5, Jorbagh, New Delhi—3,
the 8th August, 1962.

Shri Asoke Kumar Sen,
Minister of Law,
New Delhi.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Twenty-Third Report of the Law Commission on the subject of Foreign Marriages.

2. The subject was referred by the Government to the previous Law Commission and entrusted to Mr. P. S. Rao, Member. Certain preliminary points raised in a note prepared by Mr. Rao were discussed in the 33rd meeting of the Commission held on the 18th February, 1961. In conformity with the decisions taken on those points at the meeting, a draft Report was prepared together with a Bill in the form of amendments to the Special Marriage Act, 1954. The draft Report was discussed at the 35th meeting of the Commission held on the 22nd September, 1961. It was decided at that meeting that instead of amending the Special Marriage Act, 1954 there should be independent legislation on the subject.

3. On the reconstitution of the Commission in December, 1961, the matter was re-examined. The draft Report and the draft Bill, as revised in the light of the decisions taken at the 35th meeting, were circulated to State Governments, High Courts, Bar Associations, etc. The comments received on the draft Report were considered by this Commission at the 38th meeting held on the 5th May, 1962, and the draft Report and the Bill were revised in accordance with the decisions taken at that meeting.

4. My colleagues and I wish to record our appreciation of the help given and labour put in by our Joint Secretary Mr. S. K. Hiranandani and by our Additional Draftsman Mr. P. M. Bakshi in the preparation of the Bill and the notes attached thereto.

Yours sincerely,
MR. JUSTICE J. L. KAPUR.

REPORT ON THE LAW OF FOREIGN MARRIAGES

Genesis of reference.

1. The reference on which this report is presented can be traced to the Special Marriage Act, 1954. Laying down the conditions relating to solemnisation of marriages under the Act, section 4(e) provides that where the marriage is solemnised outside the territories to which the Act extends, both parties should be citizens of India domiciled in the said territories. When that legislation was before Parliament, a suggestion was made that it should apply to marriages solemnised outside India even where one of the parties thereto was an Indian citizen. The then Law Minister Shri C. C. Biswas, gave an assurance in the course of the debates that suitable legislation on the subject of foreign marriages would be undertaken after a careful examination. He observed:

> "Then comes sub-clause 4(f)[1] which says, 'where the marriage is solemnised outside the territories to which this Act extends, both parties are citizens of India domiciled in the said territories'. It was suggested that this is not enough and that we should also make provision in this Bill for cases where one of the parties who is abroad is an Indian national or an Indian citizen domiciled there and the other party to the marriage is a foreigner professing another religion and so on. Well, Sir, that ought to be the subject-matter of a separate Bill, may be on the lines of the Foreign Marriage Act in the U.K. I have already told the Select Committee that Government have under consideration a measure of that kind, but that would not be quite appropriate in this Bill and therefore that has been left out of this Bill. That does not mean that the matter will not be dealt with, but it requires very careful consideration, and we may have to modify the English Foreign Marriage Act of 1892, a great deal to suit our requirements."[2]

The matter has since been referred to this Commission.

Scope of marriages outside India—analysis.

2. The object of the proposed legislation is thus to regulate marriages performed outside India when either of the parties thereto is a citizen of India,[3] thereby filling a gap in the Special Marriage Act, which is limited in its application to marriages between Indian citizens. Before determining the true scope of the proposed legislation it will be useful to analyse the different types of marriages

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[1]This corresponds to s. 4 (*e*) as enacted.

[2]Parliamentary Debates (Council of States) Vol. VI, No. 35, 29th April, 1954, cols. 4563-4564.

[3]See Appendix I, clause 4.

which could conceivably be entered into abroad by parties one or both of whom are citizens of India:

(a) A citizen of India may marry a British subject in France in accordance with the law of France. The validity of such a marriage will be governed by the *lex loci celebrationis*, that is, the French law, and such a marriage should stand unaffected by the proposed legislation.[1]

(b) A citizen of India may marry a British subject in France in accordance with the law of England, for example, the Foreign Marriage Act, 1892, that is to say, in accordance with a law which is not the one in force either in India or in the country where the marriage is actually solemnized, that is, France. Such a marriage should also stand unaffected by the proposed legislation.[1]

(c) Two citizens of India may marry in a foreign country in accordance with the personal law of India applicable to such a marriage, for example, when a marriage between two Hindus is solemnized in accordance with the provisions of the Hindu Marriage Act, 1955. Such a marriage should also stand unaffected by the proposed legislation.

In the result, the proposed legislation should only apply to marriages where the parties, one or both of whom is or are citizens of India, choose to get their marriages solemnized under its provisions.[2] It would be convenient if the proposed law is made an exhaustive code relating to such marriages, that is to say, to that extent it should replace the provisions contained in the Special Marriage Act, 1954, relating to extra-territorial marriages.[3]

Scope of proposed legislation-marriage and matrimonial causes.

3. As will presently be explained,[4] the object of the proposed legislation is not merely to provide for solemnisation of marriages outside India where at least one of the parties thereto is a citizen of India, but also to enable the parties thereto to obtain, under its provisions, appropriate matrimonial reliefs, such as dissolution of marriage and so forth. The legislation will thus provide a form of marriage which can be availed of by an Indian citizen who wishes to marry abroad, and which will ensure beyond doubt the

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[1]Although the validity of such marriages would stand unaffected by the proposed legislation, it would be necessary and convenient to confer jurisdiction on Indian courts to grant appropriate matrimonial reliefs in this country in respect of such marriages. This matter is further discussed in para. 13, *infra*.

[2]See Appendix I, clause 4.

[3]See Appendix II, Notes on Clauses, note at the end relating to suggested amendments to the Special Marriage Act.

[4]Para. 13, *infra*.

validity of the marriage *so far as India is concerned*, and in respect of which it will be possible to obtain appropriate reliefs in Indian courts.[1] While this legislation aims at providing a form of marriage whose validity cannot be questioned in Indian courts, care has been taken[2] to secure conformity with rules of private international law on this subject so as to ensure, as far as possible, that the validity of the marriage might be recognised in other countries besides India.

Legislation in other countries.

4. Coming now to parallel legislation elsewhere, there are the (English) Foreign Marriage Act, 1892, as amended and added to from time to time, and the (Australian) Marriage (Overseas) Act, 1955. It will be useful to refer briefly to the scope of those two enactments.

English Act.

5. (1) The (English) Foreign Marriage Act, 1892, constitutes the culmination of a series of Acts which were passed earlier to "avoid the doubts and uncertainties which sometimes arose when British subjects married"[3] in foreign countries. It provides for a form of marriage which may be availed of where one of the parties is a British subject. Provided that the requirements of the statute are complied with, the marriage will be recognised in English courts as valid as though celebrated in England,[4] whatever view foreign courts may take of its validity.

(2) It must be emphasised that the effect of solemnisation under the English Act is only to ensure the formal validity of the marriage in English courts, though certain provisions are made in the Act to ensure maximum possible compliance with principles of conflict of laws. Thus, under section 19, the marriage officer may refuse solemnisation of a marriage which would be inconsistent with International Law or the comity of nations.[5] Besides, power is given under section 21 of the Act to the Queen-in-Council to make regulations *inter alia* prohibiting or restricting the exercise by marriage officers of their powers under the Act in cases where the exercise of those powers appears to Her Majesty to be inconsistent with International law or the comity of nations, or in places where sufficient facilities appear to Her Majesty to exist, without the exercise of those powers, for the solemnisation of marriages to which a British subject is a party.

(3) Pursuant to this, it is provided under the English Act that the marriage officer should refuse solemnisation in a foreign country where a marriage under the local law of the foreign country is valid under English Law, unless

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[1] See Appendix I, clause 18.

[2] See Appendix I, clause 11 (2).

[3] Graveson, Conflict of Laws, Third Edn., p. 147.

[4] See s. 1 of the English Act.

[5] A right of appeal to the Secretary of State against an order refusing to solemnise a marriage on this ground is provided under section 19, proviso.

he is satisfied that (a) both the parties are British subjects, or (b) if only one of the parties is a British subject, the other is not a subject or citizen of the foreign country, or (c) if one of the parties is a British subject and the other a citizen or subject of the foreign country, that sufficient facilities do not exist for the solemnisation of the marriage in the foreign country in accordance with the law of that country, or (d) if the man about to be married is a British subject and the woman a subject or citizen of the foreign country, that no objection will be taken by the authorities of the country to the solemnisation of the marriage under the Act.[1] Further, it has been laid down that where it appears to the marriage officer that the woman about to be married is a British subject and the man a foreigner, he must be satisfied (a) that the marriage will be recognised by the law of the country to which the foreigner belongs, or (b) that some other ceremony in addition to that under the Act, has taken place, or is about to take place, and that such other ceremony is recognised by the law of the country to which the foreigner belongs, or (c) that the leave of the Secretary of State has been obtained.[2]

(4) The Act provides for the registration of marriages abroad to which a British subject is a party. Such registration does not confer any validity which the marriage does not possess otherwise,[3] but is merely of evidentiary value.

(5) The Act deals with marriages between the "lines" (armed forces), but this is not of any interest to us.

(6) Lastly, it may be mentioned that the Act does not affect in any way the validity of marriages solemnised otherwise than under the Act,[4] nor does it deal with matrimonial causes.

Australian Act.

6. (1) The Australian Act is the Marriage (Overseas) Act, 1955,[5] which follows largely the English Act and some of the provisions[6] of the Foreign Marriages Order in Council, 1913. Section 9(1) of the Act provides that a marriage between parties *of whom one at least is an Australian citizen* may be solemnised under the Act in an overseas country, whilst section 9 (2) provides that a marriage by a marriage officer under the Act, being a marriage which if it had been solemnised in the Australian Capital Territory and the forms required by the law in force in that territory had been duly observed would, under the law of a State or territory of the Commonwealth, have been a valid marriage is by force of this Act, valid in that State or territory.

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[1]The Foreign Marriages Order in Council, 1913. S.R. & O. 1913 No. 1270, Art. I. See Halsbury, Statutory Instruments, Vol. 10, p. 172.

[2]The Foreign Marriages Order in Council 1913. Gp. Cit. Art. 2.

[3]See section 18 of the English Act.

[4]Section 23 of the English Act.

[5]Act 31 of 1955. Commonwealth Acts, 1955, p. 479.

[6]See para. 5(3), *supra*.

ensure as far as possible the international validity of marriages solemnised thereunder.[1]

(3) A significant feature of the Act is that it provides, unlike its English counterpart, that a marriage shall not be solemnised if the Marriage Officer knows that either party to the marriage has not attained the age of sixteen. Further, a party under 21 years has to obtain the consent of the prescribed persons. Lastly, the parties are required to declare that there is no impediment by consanguinity or affinity or other lawful hindrance.[2]

(4) The Act contains provisions as to registration of marriages[3] and also a saving provision in respect of marriages solemnised otherwise than under the Act.[4]

(5) The Act does not provide for matrimonial causes.

(6) Thus, taken as a whole, the Australian Act is similar in its scope and technique to the English Act.

Features of the English and Australian Acts.

7. The salient features of the two Acts may be summarised as follows:—

(i) the object of the Acts is only to provide for a form of marriage which may be availed of by persons marrying abroad where one at least of the parties to the marriage is a citizen;

(ii) the Acts do not affect the validity of marriages not solemnised under them;

(iii) apart from providing for rules of guidance to marriage officers to ensure the international validity of marriage, the Acts do not deal with the capacity of parties or conditions for the validity of the marriage. In the Australian Act, however, there are some provisions dealing with this matter;

(iv) the Acts do not deal with matrimonial causes or other incidental matters;

(v) the Acts provide for registration of marriages solemnised outside their purview, but such registration has only evidentiary value and no more.

Salient features of proposed legislation.

8. We are of the opinion that the principles on which the English and Australian Acts have been framed can, broadly speaking, be adopted with advantage in the proposed legislation, with such modifications as might be called

[1]See section 23, which corresponds to section 19 of the English Act and sections 20 and 21 which correspond to Articles 1 and 2 of the Order in Council of 1913, issued under the English Act.

[2]See ss. 17 to 19, Australian Act.

[3]See sections 25 and 26 (3), Australian Act. It is made clear that the registration is for evidentiary purposes only.

[4]Section 31, Australian Act.

for under the conditions in this country. In the following paragraphs we briefly indicate the salient features which may be embodied in our legislation on the subject.

Enabling provision.

9. In our view, the proposed legislation should be enabling in character, that is to say, it should not be obligatory on the part of an Indian citizen entering into a marriage outside India to have it solemnised in the mode prescribed by it; it should be open to him or to her to adopt any other mode which might be available if he or she is satisfied that that has the requisite validity under the rules of private international law and is better suited to him or to her. The form prescribed by the proposed legislation is not in supersession of, but in addition to, any other mode that might be permissible. We have accordingly provided[1] that marriages performed in a foreign country otherwise than under this legislation should remain unaffected by it.

Application of legislation.

10. A question which calls for decision at the very threshold is, what should be the criterion or criteria on which persons might be allowed to avail themselves of the proposed legislation. Domicile and citizenship are the two elements which enter into a discussion of the validity of foreign marriages according to rules of private international law. On the basis of these two elements, it is possible to conceive of three alternatives. The law might require that one or both of the parties to the marriage should have (a) Indian citizenship *and* domicile, or (b) Indian domicile, or (c) Indian citizenship. The Special Marriage Act, 1954, has adopted the first of the above alternatives and provides that both parties should be citizens of India domiciled in the territories to which it extends. Section 1(2) of the Hindu Marriage Act, 1955, has adopted the second of the above alternatives and enacts that it applies to Hindus domiciled in the territories to which it extends who are outside the said territories. Being a denominational Act limited in its application to Hindus, it was obviously considered that any fine distinctions turning on citizenship and domicile would be of little practical importance. The English and Australian Acts have adopted the third alternative—citizenship—as the sole criterion for the application of the Acts.[2] It might be that in this they were inspired by the Common Law doctrine that British subjects carry with them, wherever they might go, as much of their law as is necessary. It is also possible that the above provision was made on practical grounds. To a Marriage Officer, citizenship is a more concrete concept and can be proved easily by relevant documents. It might be that to require a marriage officer, who may not be trained in law, to decide complicated questions of domicile (questions which are extremely difficult even for trained lawyers and judges to decide) would be to place upon him an unfair burden. Further, when an English court is called upon by a British

[1] See Appendix I, clause 27.

[2] Section 1, English Act ; section 9 Australian Act.

subject to decide on the validity of a marriage contracted by him or her in a foreign country, it would be unrealistic to enter into subtle questions of domicile. We have given anxious thought to the question whether we should depart from the scheme of the English and Australian Acts and require domicile as a condition for the application of this law. We have come to the conclusion that we should, on the pattern of the English and Australian Acts, provide for citizenship alone being the sole criterion. These Acts have been in force for quite a long period, and no inconvenience has resulted from them. To introduce the element of domicile, in addition to or in substitution of citizenship, as a criterion, will result in needless complications in the law. Having regard to the above precedents, as also considerations of convenience, we recommend[1] that the proposed legislation should have application when one of the parties to the marriage is a citizen of India, without any further question as to domicile.

Rules as to capacity and essential validity.

11. (a) We have given anxious thought to the question whether the proposed legislation should contain rules in respect of capacity and conditions of validity. The English Act does not contain any such rules, while the Australian Act lays down a rule regarding the age of marriage and requires the consent of the 'prescribed person' where a party to the marriage is under 21 years. Of the English Act it has been said by an eminent authority[2] that "the intention seems to have been that no marriage should be celebrated under the Act which could not have been effectively celebrated in England and, therefore, the English prohibitions on grounds of consanguinity and affinity must be respected". Notwithstanding the absence of a statutory provision, it was held in *Pugh* v. *Pugh*[3] that the Age of Marriage Act, 1929, would be applicable to determine the validity of a foreign marriage to which an Englishman was a party. That Act was construed as having extra-territorial application so as to affect the capacity of all persons domiciled in England, to contract marriages wherever the marriage may be celebrated. In this connection, we may also refer to sub-section (3) of section 18 of the Matrimonial Causes Act, 1950, which reads as follows:—

> "In any proceedings in which the court has jurisdiction by virtue of this section, the issues shall be determined in accordance with the law which would be applicable thereto if both parties were domiciled in England at the time of the proceedings.".

Presumably, the above provision will apply in respect of marriages performed under the Foreign Marriages Act, 1892. On the other hand, our attention was drawn to sub-section (3) of section 25 of the (Australian) Matrimonial Causes Act, 1959, which reads as follows:—

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[1] See Appendix I, clause 4.

[2] Westlake, Private International Law, 4th Edition, p. 64.

[3] 1951, p. 482.

"Where it would be in accordance with the common law rules of private international law to apply the laws of any country or place (including a State or a Territory of the Commonwealth), the court shall apply the laws of that country or place.".

It may be contended that in respect of marriages involving a foreign element, it would not be proper to apply our law as regards capacity and essential validity and that the choice of law should be determined by the rules of private international law. Broadly, the rules of private international law lay down that as regards the form of marriage, it is the law of the country where the marriage takes place which applies (*lex loci celebrationis*); but in matters relating to capacity and essential validity, it is the law of the domicile of the parties which applies (*lex domicile*).[1] However, the theory of intended matrimonial domicile discussed by Cheshire[2] has already made inroads into the rules of private international law based on domicile. The rules of private international law cannot, therefore, be said to be well-established. In fact, the case-law on the subject in England, which has been discussed in our report[3] on the law relating to Marriage and Divorce among Christians in India, is in a confused state. No single uniform principle can be gleaned from these cases. If the theory regarding the intended matrimonial domicile propounded by Cheshire is correct, the domicile of persons who marry under the proposed law may well be regarded as Indian. Moreover, the proposed law would be an enabling one and persons marrying thereunder may well be deemed to have submitted themselves to our law.[4] We must also take notice of the fact that we have nothing like a *lex loci* in this country, prescribing the conditions of validity of all marriages. In view of the uncertainty of the rules of private international law, and the absence of a *lex loci* in our country, doubts will always arise regarding the validity of marriages solemnized under the proposed law if it remains silent on this question. In the circumstances we think it highly desirable that the proposed law should contain rules regarding capacity and essential validity. Since one of the parties to the marriage would be a citizen of India, we can with propriety make provisions in respect of these matters. And in view of the saving provisions proposed as to international law and local law,[5] the position of the non-Indian party to the marriage can be regarded as adequately safeguarded. Further, public policy demands that capacity of any of our citizens to marry abroad should be determined by our law on the basis of the social and

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[1]Dicey, Conflict of Laws, 7th Edn., p. 231.

[2]Cheshire, Private International Law, 5th Edn., p. 324.

[3]See the Fifteenth Report, para. 5.

[4]*Cf.* the observations in *Lazerewicz* v. *Lazerewicz*, (1962) 2 W.L.R. 940 (Phillimore J.).

[5]**See para. 12, *infra*.**

moral standards prevailing in our country. But, in order to avoid, as far as possible, conflict with other laws we propose to restrict the provisions regarding capacity and essential validity to the basic and fundamental requirements.

(b) We are of the view that the provisions of the Special Marriage Act, 1954, as to capacity and essential validity embodied in section 4 of that Act, which already apply to a foreign marriage when both the parties are citizens of India, are suitable for adoption in the proposed law. We recommend accordingly.[1]

Saving provisions as to international law and local law.

12. (a) We have come to the conclusion that the proposed legislation should ensure that marriages solemnised thereunder have a high degree of international validity. This can be achieved by authorising the Marriage Officer[2] to refuse to solemnise a marriage which appears to him to be in contravention of international law.

We do not, however, consider it necessary to enact in the Bill detailed provisions of the nature contained on the subject in the Australian Act or in the English Act, read with the Orders in Council issued thereunder.[3] In our view, such provisions, if enacted in the statute, would make it too cumbersome and would render the task of the Marriage Officer difficult. Instead of imposing any rigid limitations and enacting hard and fast rules on a matter which does not admit of codification at present, we would prefer to insert in the proposed law guiding principles to be kept in mind by the Marriage Officer.

(b) We also consider that, apart from private international law, some importance has to be attached to the law of the place of celebration of the marriage; for the proposed legislation constitutes an inroad into it. We therefore, recommend[4] that a specific provision should be introduced to the effect that, before solemnising any marriage care should be taken to see that the intended marriage is not prohibited by the local law. This is necessary in the interests of good relations between India and the foreign country concerned.

Matrimonial causes.

13. As already stated,[5] we do not have in this country what may be called a *lex loci* dealing generally with matrimonial jurisdiction, and if suitable provisions are not made in this behalf in respect of marriages solemnised under the proposed legislation, there will be a lacuna in the law. We have, therefore, to depart in this respect from the English and Australian Acts.

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[1]See Appendix I, clause 4.

[2]See Appendix I, clause 11 (2).

[3]See paras. 5(3) and 6(2), *supra*.

[4]See Appendix I, clause 11(1).

[5]Para. 11(*a*), *supra*.

In our opinion the proposed law should contain an express provision regarding matrimonial causes. Further, it has been brought to our notice that difficulties are experienced by citizens of India who choose to marry abroad not under our laws but under foreign laws, in obtaining the appropriate matrimonial relief in our country in case the marriage unfortunately turns out to be a failure. In a recent case,[1] the Rajasthan High Court has held that where a person domiciled in India has contracted a marriage in England with an English woman (presumably under the English Law) he can obtain a divorce under the Special Marriage Act, 1954, on the ground that that Act is the general law of divorce in force in this country. Without entering into any discussion as to its correctness, we think that the decision emphasises the need for making the position clear by a statutory provision. We are, therefore, of the opinion that the provision about matrimonial reliefs to be included in the proposed legislation should also apply to a marriage performed in a foreign country under a foreign law where one of the parties to the marriage is a citizen of India.[2] At the same time, care has to be taken to ensure[3] that a marriage in a foreign country between parties, only one of whom is a citizen of India, not solemnized under the provisions of the proposed law, is not held to be void on the ground that it contravenes one or the other of the conditions for a valid marriage under this law, that is to say, if any such marriage is to be challenged on the ground that it is *ab initio* void, the ordinary rule relating to choice of law should apply rather than the provisions proposed in the new law. Subject to this reservation, any other matrimonial relief available to a party who is married under this law should also be available to a citizen of India marrying a foreigner abroad under a foreign law.

Jurisdiction.

14. The conditions on which a court in India can exercise jurisdiction in proceedings for dissolution of marriage, for nullity or for any other matrimonial relief have been already discussed exhaustively in our Report on the law relating to marriage and divorce amongst Christians in India,[4] and we recommend the inclusion[5] of substantially similar conditions for determining jurisdiction.[6]

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[1] *Neelkantan* v. *Mrs. Anne Neelkantan*, A.I.R., 1959 Raj. 133.

[2] See Appendix I, clause 18 (1).

[3] See Appendix I, clause 18 (3), Expln. 1.

[4] See 15th Report, para. 69—73.

[5] See Appendix I, clause 18 (2).

[6] The view taken in that report that our Courts should have jurisdiction not only on the ground of domicile, but in certain cases on the ground of residence receives support from the observations of Lord Reid in a case recently decided by the House of Lords, *Ross* v. *Ross*, (1962) 2. W.L.R. 390:

> "It is not for me to consider whether Parliament was right, but I may be permitted to say that I see much to commend these extensions of jurisdiction in spite of the fact that they can create 'limping marriages'—marriages held invalid or dissolved in England, though held valid by the law of the parties' domicile.".

15. There are provisions in the English and Australian Acts for registration of marriages solemnized outside the purview of the respective Acts. Such registration has, as noted by us earlier,[1] only a restricted object. Under sections 15 and 18(1) of the Special Marriage Act, 1954, a marriage registered under the Act has substantially been assimilated to marriages solemnised under the Act. This scheme has been found to be productive of beneficial results. We see no reason why similar provisions should not be made in respect of marriages solemnised outside India. We recommend accordingly.[2] Registration.

16. Section 34(c) of the Australian Act authorises the Governor-General to make regulations providing for the recognition in Australia of marriages solemnised under a law in force outside Australia if that law contains a provision recognising a marriage solemnised under the Australian Act. In our opinion, this provision for the recognition of foreign marriages under a reciprocity of arrangements is a very useful one, as that will secure, for marriages performed under our Act, recognition abroad. This device has been already adopted in giving recognition to foreign judgments. More recently, the decisions of the English Courts have followed it in recognising foreign decrees of divorce.[3] We recommended that a provision similar to section 34(c) of the Australian Act be made in the proposed legislation.[4] Provisions as to reciprocity.

17. We have so far discussed points which call for special mention. We consider that on other matters recourse can usefully be had to the provisions in the Special Marriage Act, 1954. Other provisions.

18. (a) Our recommendation[5] being that we should on the several topics mentioned above draw from the provisions of the Special Marriage Act, 1954, the question naturally arises as to how that could best be done. The proposed legislation can be framed in any one of the following four modes: Form of proposed legislation.

(i) We may draft a *separate* and *self-contained* Act. This will deal both with marriage and with matrimonial causes, not by referring to the Chapters in the Special Marriage Act and the Christian Marriage Bill, but by enacting the provisions therein in full.

(ii) We may draft a separate Act without making it self-contained, and incorporate therein, by reference, the provisions relating to marriage in Chapters IV, V,

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[1]See paras. 5(4) and 6(4), *supra*.

[2]See Appendix I, clause 17(1), (2), (4).

[3]See Dicey, Conflict of Laws (7th Edn.), p. 317, Rule 43, Exception 2, and *Travers* v. *Holley*, (1953) Probate 246 (C.A.) *Arnold*, v. *Arnold*, (1957) Probate 237.

[4]See App. I, clause 23.

[5]See para. 17, *supra*.

VI and VII of the Special Marriage Act, 1954. This will be shorter than No. (i) above.

(iii) We may insert a new Chapter in the Special Marriage Act; the Chapter itself would not be self-contained, but would refer back to the provisions in other Chapters relating to marriage as well as matrimonial causes.

(iv) A fourth course would be to amend section 1(2) and section 4(*e*) of the Special Marriage Act, so as to allow marriage in the *special marriage form* where one party is a citizen of India. This would be shorter than No. (iii) above. Consequential amendments may be required in other sections also.

After careful consideration, we have reached the conclusion that course No. (ii) above[1] is the best. The usual objection to referential legislation—that it often leads to ambiguity—will not apply in this case. For the purposes of matrimonial relief, there is hardly any difference between a foreign marriage solemnized under the proposed law and a marriage solemnized in India under the Special Marriage Act, 1954. This device has the additional advantage of avoiding unnecessary repetition of a major portion of the Special Marriage Act, 1954, in the proposed law.

Appendices.

19. Appendix I contains our proposals as shown in the form of a draft Bill.

The notes on clauses in Appendix II explain briefly, with reference to the clauses in Appendix I, the points that require elucidation.

Appendix III contains a summary of our suggestions in respect of other Acts.

1. MR. JUSTICE J. L. KAPUR—*Chairman.*

2. G. R. RAJAGOPAUL.
3. D. BASU.
4. K. G. DATAR.
5. NIREN DE.
6. T. K. TOPE.

} *Members.*

S. K. HIRANANDANI,
Secretary.

NEW DELHI;
The 4th August, 1962.

[1]Para. 18 (*a*) (*ii*), *Supra.*

INDEX TO APPENDIX I

EXPLANATION OF ABBREVIATIONS USED IN APPENDIX I

Australian Act	The Marriage (Overseas) Act, 1955 (Australia).
C. M. B.	The Christian Marriage and Matrimonial Causes Bill, 1960, being Appendix I to the 15th Report of the Law Commission.
English Act	The Foreign Marriage Act, 1892.
H. M. A.	The Hindu Marriage Act, 1955.
S. M. A.	The Special Marriage Act, 1954.

APPENDIX I

PROPOSALS AS SHOWN IN THE FORM OF A DRAFT BILL

(This is a tentative draft only)

THE FOREIGN MARRIAGE BILL, 1962

A

BILL

to make provision relating to marriages of citizens of India outside India.

BE it enacted by Parliament in the Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title.

1. This Act may be called the Foreign Marriage Act, 1962.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "degrees of prohibited relationship" shall have the same meaning as in the Special Marriage Act, 1954; 43 of 1954.

(*b*) "district", in relation to a marriage officer, means the area within which the duties of his office are to be discharged; Cf. s. 2(d) S. M. A.

(*c*) "foreign country" means a country or place outside India, and includes a ship which is for the time being in the territorial waters of such a country or place;

(*d*) "marriage officer" means a person appointed under section 3 to be a marriage officer;

(*e*) "official house", in relation to a marriage officer, means— Cf. s. 4, Australian Act, and s. 24, English Act.

(*i*) the official house of residence of the officer;

(*ii*) the office in which the business of the officer is transacted;

(*iii*) a prescribed place; and

(*f*) "prescribed" means prescribed by rules made under this Act.

Marriage officers.

3. For the purposes of this Act, the Central Government may, by notification in the Official Gazette, appoint such of its diplomatic or consular officers as it may think fit to be marriage officers for any foreign country. Cf. s. 3, S. M. A.

Explanation:—In this section, "diplomatic officer" means an ambassador, envoy, minister, charge d'affaires, high commissioner, commissioner or other diplomatic representa-

tive or a counsellor or secretary of an embassy, legation or high commission.

CHAPTER II

SOLEMNIZATION OF FOREIGN MARRIAGES

Conditions relating to solemnization of foreign marriages.

4. A marriage between parties one of whom at least is a citizen of India may be solemnized under this Act by or before a marriage officer in a foreign country, if, at the time of the marriage, the following conditions are fulfilled, namely—

Cf. s. 1, English Act.

(*a*) neither party has a spouse living,

(*b*) neither party is an idiot or a lunatic,

S. 9 (1), Australian Act, and s. 4, S.M.A.

(*c*) the bridegroom has completed the age of twenty-one years and the bride the age of eighteen years at the time of the marriage, and

(*d*) the parties are not within the degrees of prohibited relationship.

Notice of intended marriage.

5. When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the First Schedule to the marriage officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given, and the notice shall state that the party has so resided.

Cf. s. 5, S. M. A.

Marriage Notice Book.

6. The marriage officer shall keep all notices given under section 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the 'Marriage Notice Book'.

Cf. s. 6, S. M. A.

Publication of notice.

7. Where a notice under section 5 is given to the marriage officer, he shall cause it to be published—

(*a*) by affixing a copy thereof to a conspicuous place in his own office, and

Cf. s. 6 (2), S. M.A.

(*b*) also in the prescribed manner in India and in the country or countries in which the parties are ordinarily resident.

Objections to marriage.

8. (*1*) Any person may, before the expiration of thirty days from the date of publication of the notice under section 7, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 4.

Cf. s. 7 (1) and 7 (3), S. M. A.

Explanation:—Where the publication of the notice by affixation under clause (*a*) of section 7 and in the prescribed manner under clause (*b*) of that section is on different

dates, the period of thirty days shall, for the purposes of this sub-section, be computed from the later date.

(2) Every such objection shall be in writing signed by the person making it or by any person duly authorised to sign on his behalf, and shall state the ground of objection: and the marriage officer shall record the nature of the objection in his Marriage Notice Book.

Procedure on receipt of objection.

9. (1) If an objection is made under section 8 to an intended marriage, the marriage officer shall not solemnize the marriage, until he has inquired into the matter of the objection in such manner as he thinks fit and is satisfied that it ought not to prevent the solemnization of the marriage or the objection is withdrawn by the person making it. Cf. s. 10, S. M. A.

(2) Where a marriage officer after making any such inquiry entertains a doubt in respect of any objection, he shall transmit the record with such statement respecting the matter as he thinks fit to the Central Government; and the Central Government, after making such further inquiry into the matter and after obtaining such advice as it thinks fit, shall give its decision thereon in writing to the marriage officer, who shall act in conformity with the decision of the Central Government.

When marriage may be solemnized.

10. After the expiration of thirty days from the date of publication of the notice of an intended marriage under section 7, the period of thirty days being calculated, wherever necessary, in the manner specified in the Explanation to sub-section (1) of section 8, the marriage may be solemnized unless it has been previously objected to under section 8. Cf. s. 7 (2), S. M. A.

Marriage not to be in contravention of local laws.

11. (1) The marriage officer shall not solemnise a marriage under this Act if the intended marriage is prohibited by any law in force in the foreign country where it is to be solemnized.

(2) The marriage officer may refuse to solemnize a marriage under this Act on the ground that in his opinion, the solemnization of the marriage would be inconsistent with international law or the comity of nations. Cf. s. 19, English Act and s. 23, Australian Act.

(3) Where a marriage officer refuses to solemnize a marriage under this section, any party to the intended marriage may appeal to the Central Government in the prescribed manner within a period of thirty days from the date of such refusal: and the marriage officer shall act in conformity with the decision of the Central Government on such appeal.

Declaration by parties and witnesses.

12. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the marriage officer, sign a declaration in the form specified in the Second Schedule, and the declaration shall be countersigned by the marriage officer. Cf. s. 11, S. M. A.

Cf. s. 12, S. M. A. Cf. s. 8 (2), English Act.

Place and form of solemnisation.

13. (*1*) A marriage by or before a marriage officer under this Act shall be solemnized at the official house of the marriage officer with open doors between the prescribed hours in the presence of at least three witnesses.

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

Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the marriage officer and the three witnesses and in any language understood by the parties,—"I, (A), take thee (B), to be my lawful wife (or husband)".

Cf. s. 13, S. M. A.

Certificate of marriage.

14. (*1*) Whenever a marriage is solemnized under this Act, the marriage officer shall enter a certificate thereof in the form specified in the Third Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book, and such certificate shall be signed by the parties to the marriage and the three witnesses.

(2) On a certificate being entered in the marriage certificate book by the marriage officer, the certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized, and that all formalities respecting the residence of the party concerned previous to the marriage and the signatures of witnesses have been complied with.

Validity of foreign marriages in India.

15. Subject to the other provisions contained in this Act, a marriage solemnized in the manner provided in this Act shall be recognised by courts in India as a valid marriage.

Cf, s. 9 (2), Australian Act and s. 1, English Act.

Cf. s. 14, S. M. A.

New notice when marriage not solemnized within three months.

16. Whenever a marriage is not solemnized within three months from the date on which notice thereof has been given to the marriage officer as required by section 5 or, where the record of a case has been transmitted to the Central Government under section 9, within three months from the date of decision of the Central Government, the notice and all other proceedings arising therefrom shall be deemed to have lapsed and no marriage officer shall solemnize the marriage until a new notice has been given in the manner laid down in this Act.

CHAPTER III

REGISTRATION OF FOREIGN MARRIAGES SOLEMNIZED UNDER OTHER LAWS

Cf. s. 26. Australian Act.

Registration of foreign marriages.

17. (*1*) Where—

(*a*) a marriage officer is satisfied that a marriage has been duly solemnized in a foreign country in accordance with the law of that country between parties of whom one at least was a citizen of India; and

(*b*) a party to the marriage informs the marriage officer in writing that he or she desires the marriage to be registered under this section,

the marriage officer may, upon payment of the prescribed fee, register the marriage.

(*2*) No marriage shall be registered under this section unless at the time of registration it satisfies the conditions mentioned in section 4.

(*3*) Registration of a marriage under this section shall be effected by the marriage officer by entering a certificate of the marriage in the prescribed form and in the prescribed manner in the Marriage Certificate Book, and such certificate shall be signed by the parties to the marriage and by three witnesses.

(*4*) A marriage registered under this section shall, as from the date of registration, be deemed to have been solemnized under this Act.

CHAPTER IV

MATRIMONIAL RELIEF IN RESPECT OF FOREIGN MARRIAGES

Matrimonial reliefs to be under special Marriage Act, 1954.

18. (*1*) Subject to the other provisions contained in this section, the provisions of Chapters IV, V, VI and VII of the Special Marriage Act, 1954, shall apply in relation to marriages solemnized under this Act and to any other marriage solemnized in a foreign country between parties of whom one at least is a citizen of India as they apply in relation to marriages solemnized under that Act. 43 of 1954.

(*2*) Every petition for relief under Chapter V or Chapter VI of the Special Marriage Act, 1954, as made applicable to the marriages referred to in sub-section (*1*), shall be presented to the district court within the local limits of whose ordinary civil jurisdiction— 43 of 1954. Cf. s. 31 (1 S. M. A. and clause 36C, 14B

(*a*) the respondent is residing at the time of the presentation of the petition; or

(*b*) the husband and wife last resided together; or

(*c*) the petitioner is residing at the time of the presentation of the petition, provided that the respondent is at that time residing outside India.

(*3*) Nothing contained in this section shall authorise any court—

(*a*) to make any decree of dissolution of marriage, except where—

(*i*) the parties to the marriage are domiciled in India at the time of the presentation of the petition; or

Cf. s. 31 (2), S. M. A.

(*ii*) the petitioner, being the wife, was domiciled in India immediately before the marriage and has been residing in India for a period of not less than three years immediately preceding the presentation of the petition;

(*b*) to make any decree of nullity of marriage, except where—

(*i*) the parties to the marriage are domiciled in India at the time of the presentation of the petition; or

(*ii*) the marriage was solemnized under this Act and the petitioner is either domiciled or residing in India at the time of the presentation of the petition;

(*c*) to grant any other relief under Chapter V or
43 of 1954. Chapter VI of the Special Marriage Act, 1954, except where the petitioner is residing in India at the time of the presentation of the petition.

Explanation I.—In its application to the marriages referred to in sub-section (*1*), section 24 of the Special
43 of 1954. Marriage Act, 1954, shall be subject to the following modifications, namely:—

(*i*) the reference in sub-section (*1*) thereof to clauses (*a*), (*b*), (*c*) and (*d*) of section 4 of that Act shall be construed as a reference to clauses (*a*), (*b*), (*c*) and (*d*) respectively of section 4 of this Act, and

(*ii*) nothing contained in section 24 aforesaid shall apply to any marriage—

(*a*) which is not solemnised under this Act; or

(*b*) which is deemed to be solemnised under this Act by reason of the provisions contained in section 17:

Provided that the registration of any such marriage as is referred to in clause (*b*) may be declared to be of no effect if the registration was in contravention of sub-section (*2*) of section 17.

Explanation II.—In this section, 'district court' has the
43 of 1954. same meaning as in the Special Marriage Act, 1954.

(*4*) Nothing contained in sub-section (*1*) shall authorise any court to grant any relief under this Act in relation to any marriage in a foreign country not solemnized under it, if the grant of relief in respect of such marriage (whether on any of the grounds specified in the Special
43 of 1954. Marriage Act, 1954, or otherwise) is available under any other law for the time being in force.

CHAPTER V

PENALTIES

Punishment for bigamy.

19. (*1*) Any person whose marriage is solemnized under this Act and who, during the subsistence of his marriage, contracts any other marriage in India shall be subject to the penalties provided in section 494 and section 495 of the Indian Penal Code and the marriage so contracted shall be void. Cf. s. 44, S. M. A. 45 of 1860.

(*2*) The provisions of sub-section (*1*) apply also to any such offence committed by any citizen of India without and beyond India.

Punishment for contravention of certain other conditions for marriage.

20. Any citizen of India who procures a marriage of himself or herself to be solemnized under this Act in contravention of the condition specified in clause (*c*) or clause (*d*) of section 4 shall be punishable—

(*a*) in the case of a contravention of the condition specified in clause (*c*) of section 4, with simple imprisonment which may extend to fifteen days or with fine which may extend to one thousand rupees or with both; and Cf. s. 18, H. M. A., and c. 52, C. M. B.

(*b*) in the case of a contravention of the condition specified in clause (*d*) of section 4, with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees or with both.

Penalty for false declaration.

21. If any citizen of India for the purpose of procuring a marriage, intentionally—

(*a*) where a declaration is required by this Act, makes a false declaration; or Cf. c. 53, C. M. B., and Contrast, s. 45, S.M.A.

(*b*) where a notice or certificate is required by this Act, signs a false notice or certificate;

he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Penalty for wrongful section of marriage officer.

22. Any marriage officer who knowingly and wilfully solemnizes a marriage under this Act in contravention of any of the provisions of this Act, shall be punishable with simple imprisonment which may extend to one year or with fine which may extend to five hundred rupees or with both. Cf. s. 46, S. M. A.

CHAPTER VI

MISCELLANEOUS

Recognition of marriages solemnized under law of other countries.

23. If the Central Government is satisfied that the law in force in any foreign country for the solemnization of marriages contains provisions similar to those contained in this Act, it may, by notification in the Official Gazette, Cf. s. 34 (c), Australian Act.

declare that marriages solemnized under the law in force in such foreign country shall be recognized by courts in India as valid.

Certification of documents of marriages solemnised in accordance with local law in a foreign country.

24. (*1*) Where—

(*a*) a marriage is solemnized in any foreign country specified in this behalf by the Central Government, by notification in the Official Gazette, in accordance with the law of that country between parties of whom one at least is a citizen of India; and

Cf. s. 26, Australian Act.

(*b*) a party to the marriage who is such citizen produces to a marriage officer in the country in which the marriage was solemnized—

(*i*) a copy of the entry in respect of the marriage in the marriage register of that country certified by the appropriate authority in that country to be a true copy of that entry; and

(*ii*) if the copy of that entry is not in the English language, a translation into the prescribed language of that copy; and

(*c*) the marriage officer is satisfied that the copy of the entry in the marriage register is a true copy and that the translation, if any, is a true translation;

the marriage officer, upon the payment of the prescribed fee, shall certify upon the copy that he is satisfied that the copy is a true copy of the entry in the marriage register and upon the translation that he is satisfied that the translation is a true translation of the copy and shall issue the copy and the translation to the said party.

(*2*) A document relating to a marriage in a foreign country issued under sub-section (*1*) shall be admitted in evidence in any proceedings as if it were a certificate duly issued by the appropriate authority of that country.

Certified copy of entries to be evidence.

Cf. Cl. 68, M. B.

25. Every certified copy purporting to be signed by the marriage officer of an entry of a marriage in the Marriage Certificate Book shall be received in evidence without production or proof of the original.

Correction of errors.

26. (*1*) Any marriage officer who discovers any error in the form or substance of any entry in the Marriage Certificate Book may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other witnesses, correct the error by entry in the margin without any alteration of the original entry and add thereto the date of such correction.

s. 49, M. A., d cl. 63, M. B.

(*2*) Every correction made under this section shall be attested by the witnesses in whose presence it was made.

Act not to affect validity of marriages outside it.

27. Nothing in this Act shall in any way affect the validity of a marriage solemnized in a foreign country otherwise than under this Act.

Power to make rules.

28. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the duties and powers of marriage officers and their districts;

(b) the manner in which a marriage officer may hold any inquiry under this Act;

(c) the manner in which notices of marriage shall be published;

(d) the places in which and the hours between which marriages under this Act may be solemnized;

(e) the form and the manner in which any books required by or under this Act to be kept shall be maintained;

(f) the form and manner in which certificates of marriage may be entered under sub-section (3) of section 17;

(g) the fees that may be levied for the performance of any duty imposed upon a marriage officer under this Act;

(h) the authorities to which, the form in which and the intervals within which copies of entries in the Marriage Certificate Book shall be sent, and, when corrections are made in the Marriage Certificate Book, the manner in which certificates of such corrections shall be sent to the authorities;

(i) the inspection of any books required to be kept under this Act and the furnishing of certified copies of entries therein;

(j) the manner in which and the conditions subject to which any marriage may be recognized under section 23;

(k) any other matter which may be, or requires to be, prescribed.

(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form

or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal. 29. The Indian Foreign Marriage Act, 1903, is hereby repealed.

THE FIRST SCHEDULE

(*See* section 5)

FORM OF NOTICE OF INTENDED MARRIAGE

To

The Marriage Officer

for.....

Cf. Second Schedule, S. M. A. and Second Schedule, C. M. B.

We hereby give you notice that a marriage under the Foreign Marriage Act, ...is intended to be solemnized between us within three months from the date hereof.

Name and father's name.	Condition.	Occupation.	Date of birth.	Dwelling place.	Permanent dwelling place if present dwelling place is not permanent.	Length of residence in the present dwelling place.
A.B.	*Unmarried* *Widower* *Divorcee*					
C.D.	*Unmarried* *Widow* *Divorcee*					

Witness our hands, this.....

day of ..... 19 .....

Sd. A.B.

Sd. C.D.

THE SECOND SCHEDULE

(*See* section 12)

DECLARATION TO BE MADE BY THE BRIDEGROOM

I, A.B., hereby declare as follows:— Cf. Third Schedule, S. M. A.

1. I am at the present time unmarried (or a widower or a divorcee, as the case may be).

2. I have completed.....years of age. Cf. Fourth Schedule, C. M. B.

3. I am not related to C.D. (the bride) within the degrees of prohibited relationship.

4. I am a citizen of .....
(to be filled up)

5. I am aware that, if any statement in this declaration is false, I am liable to imprisonment and also to fine.

Sd. A.B. (the bridegroom)

DECLARATION TO BE MADE BY THE BRIDE

I, C.D., hereby declare as follows:—

1. I am at the present time unmarried (or a widow, or a divorcee, as the case may be).
2. I have completed.....years of age.
3. I am not related to A.B. (the bridegroom) within the degrees of prohibited relationship.
4. I am a citizen of..... (to be filled up).
5. I am aware that, if any statement in this declaration is false, I am liable to imprisonment and also to fine.

Sd. C.D. (the bride)

Signed in our presence by the above named A.B. and C.D. So far as we are aware, there is no lawful impediment to the marriage.

Sd: G.H.
Sd: I.J. } Three witnesses.
Sd: K.L.

(Countersigned) E.F.
Marriage Officer.

Dated the.....day of.....19....

THE THIRD SCHEDULE

(*See* section 14)

FORM OF CERTIFICATE OF MARRIAGE

Cf. Fourth Schedule, S. M. A. and Fifth Schedule, C. M. B.

I, E.F., hereby certify that on the.....day of..... 19.....A.B. and C.D.....[1]appeared before me and that the declaration required by section .....* of the Foreign Marriage Act, 19.... was duly made, and that a marriage under that Act was solemnized between them in my presence and in the presence of three witnesses who have signed hereunder.

Sd: E.F.
Marriage Officer.

Sd: A.B. (bridegroom)
Sd: C.D. (bride)

Sd: G.H.
Sd: I.J. } Three witnesses.
Sd: K.L.

Dated the.....day of.....19....

[1]Herein give particulars of the parties.

*To be entered.

APPENDIX II

NOTES ON CLAUSES

Clause 1

This does not need any comment, as it is of a formal nature.

Clause 2

"district"—follows the Special Marriage Act, with some verbal changes.[1]

"foreign country"—This will be useful as the expression occurs at several places.[2]

As regards ships in the territorial waters of foreign countries, they will be deemed to be foreign countries, so that the celebration of a marriage on such a ship will be facilitated. The definition will be applicable in each of the following three situations, namely, where—

(i) the ship is an Indian ship (in foreign waters);

(ii) the ship belongs to the very foreign country, within whose territorial waters it is; and

(iii) the ship belongs to another foreign country.

Thus, if the foreign country in question is, say, Japan, the ship may be Indian, Japanese or American; the definition will cover all the three cases.

"official house"—follows the English and Australian Acts.

Other definitions—need no comments.

Clause 3

This provides for the appointment of marriage officers and follows the Special Marriage Act. (Section 3).

Clause 4

This is the operative clause relating to solemnization of marriages outside India under the Act, and contains the important condition that at least one of the parties must be a citizen of India[3].

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[1]"Districts" of marriage officers will be defined by rules under clause 28(2)(*a*).

[2]See, for example, clauses 4, 17, 24, etc.

[3]As regards the condition relating to citizenship see the detailed discussion in the body of the Report, para. 10.

It also deals with the essential conditions of a marriage and follows in that respect mainly the corresponding provisions in the Special Marriage Act.

Clauses 5 and 6

These follow sections 5 and 6 of the Special Marriage Act, in substance.

Clause 7

This follows sections 7(1) and 7(3) of the Special Marriage Act, but, as the marriage would take place outside India and one of the parties would be an Indian citizen, it has been provided that the notice shall be published in India as well as in the country or countries of residence.

Clause 8

This follows section 10 of the Special Marriage Act. The Explanation is intended to define the date of publication.

Clause 9

This follows section 7(2) of the Special Marriage Act, and indicates precisely the procedure to be followed by the marriage officer.

Clause 10

This follows the Special Marriage Act.

Clause 11(1)

This requires that the foreign marriage must not be in violation of the local law of the foreign country[1]. The provision would be useful. Thus, the laws of some foreign countries (*e.g.* Kenya) provide that no marriage shall be solemnised in those countries except under the laws in force therein.

Clause 11(2)

This provides that the marriage officer should not solemnize a marriage in contravention of the rules of international law. The matter has been discussed elsewhere.[2]

Clause 11(3)

A right of appeal is provided.

Clause 12

This follows section 11 of the Special Marriage Act.

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[1]For a detailed discussion, see the body of the Report, para. 12(2).

[2]See the body of the Report, para. 12(1).

Clause 13(1)

This follows the English Act. Also compare the main paragraph of rule 10 of the Special Marriage (Diplomatic etc.) Rules, 1955.

Clause 13(2)

Follows section 12 of the Special Marriage Act.

Clause 14

This follows section 13 of the Special Marriage Act, but the certificate of marriage has been made conclusive proof of the formality regarding residence of a party also. This will enhance its utility.

Clause 15

This is intended to provide for the validity of a marriage under this law, so that the marriage solemnized outside India will be recognized as valid by courts in India. The language has been made more concise than that adopted in the English Act.

Clause 16

This follows section 14 of the Special Marriage Act.

Clause 17

This provides for registration of marriages solemnized under the law of a foreign country. The conditions for registration are, in substance, the same as those in the English and Australian Acts, except that the condition of personal attendance of the marriage officer has not been adopted, as being unnecessary.

A marriage will not be registered unless it satisfies the conditions of validity applicable to marriages solemnized under the Act itself. In the absence of such a provision, the substantive requirements of the proposed law might be circumvented by the parties first marrying under the foreign law and then applying for registration under the Bill.

It also provides for the mode of registration. As regards consequences of registration, it is considered desirable to treat such marriages as equivalent to marriages solemnized under the Act[1].

Clause 18(1)

This applies the provisions of Chapters IV to VII of the Special Marriage Act, so as to:—

(i) define the consequences of a marriage under this Act, and

(ii) provide for matrimonial relief.

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[1]See also the body of the Report, para. 15.

Read with sub-clause (4), it covers also foreign marriages under other laws for which matrimonial relief is not available in India under any other law.

Clause 18(2)

This is intended to define the district court which will have jurisdiction. *Cf.* section 31 (1). Special Marriage Act.

Clause 18(3)

This deals with the jurisdiction of Indian Courts to grant matrimonial relief under this law.[1]

As regards marriages solemnized under other laws, care has been taken to ensure that—

(a) their validity is not affected by the provisions of this Bill[2], and

(b) even where such a marriage is registered under this law, its validity is not affected by the said provisions, the only relief available in such a case being cancellation of registration.

Clause 18(4)

See under sub-clause (*1*) above.

Clause 19

This follows section 44 of the Special Marriage Act. In its application to a second marriage taking place outside India, it is confined to citizens of India, as in section 4, I.P.C.

Clause 20

This prescribes the penalty for contravention of certain conditions relating to marriage[3].

Clause 21

This prescribes the penalty for false declaration, etc.[4].

Clause 22

This penalty provision follows section 46 of the Special Marriage Act, in substance.

Clause 23

This, like its Australian counterpart, provides for the recognition of marriages solemnized under the law of any

[1]The clause follows clause 35, Christian Marriage, etc., Bill, annexed to the 15th Report.

[2]See the discussion in the body of the Report, para. 13.

[3]Compare the Hindu Marriage Act, s. 18.

[4]See the Christian Marriage, etc., Bill, appended to the 15th Report.

foreign country which may be notified by the Central Government, provided the law contains provisions similar to those contained in the present Bill. The procedure for such recognition and the manner in which such recognition may be granted will be regulated by rules.[1]

Clause 24

This follows, in substance, the Australian Act, Certification under this clause is given an evidentiary value, so that a document issued by the marriage officer—whether a copy or translation—can be admitted as evidence in India, in the same manner as a certificate issued by a competent authority of this country. Registration,[2] on the other hand, equates the marriage registered with a marriage solemnized under this Act.

Clause 25

This provides that certified copies of entries in certain books shall be evidence.[3]

Clause 26

This provides for correction of errors in marriage registers.

Under sub-clause (3), the corrections are to be communicated to the "prescribed" authority to whom the original entry was sent. The authority is prescribed by rules.[4]

Clause 27

This clause, saving marriages solemnized under other laws, has been inserted by way of abundant caution.[5]

Clause 28

This authorises the making of rules.

Clause 29

This deals with repeal. Strictly speaking, the Indian Foreign Marriage Act, 1903, is not relevant for the present purpose. It was passed to give effect to the Foreign Marriages Order in Council, 1903. The said Order directed that, if a Marriage Officer acting under the (English) Foreign Marriage Act, 1892, was satisfied that such notice

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[1]See clause 28(2)(*j*).

[2]Under clause 17.

[3]*Cf.* the Christian Marriage, etc., Bill, annexed to the 15th Report.

[4]See clause 28(2).

[5]See the body of the Report, para. 9.

of an intended marriage had been given by a party dwelling in India as might be required by any law of the Governor-General in Council of India implementing the Order, the Marriage Officer should regard the notice as sufficient for the purposes of the Foreign Marriage Act, 1892. It would thus be seen, that the Indian Act of 1903 has nothing to do with foreign marriages of Indians, and that it is merely ancillary to the English Act. [*See* the Statement of Objects and Reasons appended to the Indian Foreign Marriage Bill, 1903, Gazette of India, 1903, Part V, page 466]. Its repeal is proposed as it has outlived its utility.

It is considered unnecessary to say anything about the Marriages with Foreigners Act, 1906, as that Act is practically a dead letter. As regards the Foreign Marriage Acts, 1892 to 1947, *see* the British Statutes Application to India (Repeal) Act, 1960 (57 of 1960), Schedule, entries 92 and 258. As regards the Marriage of British Subject (Facilities) Act, 1915 (and the amendment made thereto in 1916), *see* the British Statutes, etc., Repeal Act, 1960 (57 of 1960), Schedule, entries 146 and 152.

THE FIRST SCHEDULE

This follows the Second Schedule to the Special Marriage Act, but the father's name has been included in the particulars to be given.

THE SECOND SCHEDULE

This follows the Third Schedule to the Special Marriage Act.

THE THIRD SCHEDULE

This follows the Fourth Schedule to the Special Marriage Act.

SUGGESTED AMENDMENTS TO THE SPECIAL MARRIAGE ACT, 1954

On the enactment of the proposed Legislation, the provisions in the Special Marriage Act, 1954, relating to marriages of citizens of India, which take place outside India, will become redundant and will have to be deleted. The extra-territorial operation of the Act in relation to Jammu and Kashmir will, of course, continue. The following amendments will, therefore, become necessary in that Act:—

Section 1(2).—For the words "outside the said territories", *substitute* the words "in the State of Jammu and Kashmir"

Section 2(a).—"consular officer"—*omit.*

Section 2(c).—"diplomatic officer"—*omit.*

Section 3(2).—(*i*) *For* the words "outside the said territories", *substitute* the words "in the State of Jammu and Kashmir".

(*ii*) *After* the words "Official Gazette", *add* the words "specify such officers of the Central Government as it may think fit to be Marriage Officers for the State or any part thereof".

(*iii*) *Omit* clauses (*a*) and (*b*).

Section 4(e).—*Substitute* the following for this clause:—

"(*e*) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends."

Section 10.—*For* the words "outside the territories to which this Act extends in respect of an intended marriage outside the said territories", *substitute* "in the State of Jammu and Kashmir in respect of an intended marriage in that State".

Section 50(1).—*Omit* the words "diplomatic and consular officers and other".

APPENDIX III

SUGGESTIONS IN RESPECT OF OTHER ACTS

The Special Marriage Act, 1954

Amendments should be made to the Special Marriage Act, 1954 in respect of provisions dealing with marriages solemnized outside India.[1]

[1]See Appendix II, Notes on Clauses, note relating to suggested amendments to the Special Marriage Act.

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