

FIFTY-SECOND REPORT

COMMITTEE ON PETITIONS

(SIXTEENTH LOK SABHA)

MINISTRY OF EXTERNAL AFFAIRS

AND

MINISTRY OF HOME AFFAIRS

(Presented to Lok Sabha on 3.8.2018)



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(i)

**COMPOSITION OF THE COMMITTEE ON PETITIONS
(2017-2018)**

Shri Bhagat Singh Koshyari -*Chairperson*

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SECRETARIAT

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4. Shri Harish Kumar Sethi	-	Senior Executive Assistant

FIFTY-SECOND REPORT OF THE COMMITTEE ON PETITIONS

(SIXTEENTH LOK SABHA)

INTRODUCTION

I, the Chairperson, Committee on Petitions, having been authorised by the Committee to present the Report on their behalf, present this Fifty-Second Report (Sixteenth Lok Sabha) of the Committee to the House on the Representation received from Shri T.K. Kaul, father of Ms. Parul Kaul regarding inordinate delay in extradition of Shri Rajnesh Kaul, husband of Ms. Parul Kaul for subjecting her to cruelty, criminal breach of trust, acts done in furtherance of common intention.

2. The Committee considered and adopted the draft Fifty-Second Report at their sitting held on 6 July, 2018.
3. The observations/recommendations of the Committee on the above matters have been included in the Report.

NEW DELHI;
6 July, 2018
15 Ashadha, 1940 (Saka)

BHAGAT SINGH KOSHYARI,
Chairperson,
Committee on Petitions.

REPORT

REPRESENTATION RECEIVED FROM SHRI T. K. KAUL, FATHER OF MS. PARUL KAUL REGARDING INORDINATE DELAY ON EXTRADITION OF SHRI RAJNESH KAUL, HUSBAND OF MS. PARUL KAUL FOR SUBJECTING HER TO CRUELTY, CRIMINAL BREACH OF TRUST, ACTS DONE IN FURTHERANCE OF COMMON INTENTION.

Shri T. K. Kaul forwarded a Representation dated 10.05.2016 before the Committee regarding inordinate delay on extradition of Shri Rajnesh Kaul, husband of Ms. Parul Kaul for subjecting her to cruelty, criminal breach of trust, acts done in furtherance of common intention (Annexure-I).

2. Shri T. K. Kaul, in his Representation, *inter-alia* stated that his daughter, Ms. Parul Kaul is involved in a litigation with Shri Rajnesh Kaul - husband of Ms. Parul Kaul, who resides in Australia and has been charged with various offences, such as domestic violence, etc. The Hon'ble Courts after taking cognizance of the heinous crimes committed by the offender in the first few initial hearings were pleased to confiscate the passports of his parents because of their culpability and connivance and also to ensure that the offender is brought back and tried as per the law of the land. During subsequent hearings, the Hon'ble Courts have pronounced him a proclaimed offender and even revoked his passport and directed the Government of India, *viz.*, the Ministry of External Affairs and the Ministry of Home Affairs to carry out the directions of the Hon'ble Courts without any delay.
3. The Representationist further stated that due to inaction on the part of a few officials in the Government, there has been a deliberate delay and attempt to stall action to deport Shri Rajnesh Kaul from Australia. The Representationist, therefore, requested the Committee to look into the matter and do the needful.
4. The Committee on Petitions took up the Representation for examination under Direction 95 of the Directions by the Speaker, Lok Sabha. Accordingly, the Representation received from Shri T. K. Kaul was forwarded to the Ministry of External Affairs and the Ministry of Home Affairs for furnishing their comments on the issues raised therein.
5. In response thereto, the Ministry of Home Affairs *vide* their communication dated 10 June, 2016 furnished the following comments:-

"It has been informed by the Delhi Police that on the complaint of Ms. Parul Kaul D/o Shri T. K. Kaul against her husband Shri Rajesh Kaul and his other family members, a case was registered on 07.09.2012 vide FIR No.118/12 u/s 498A/406/34 PC at Police Station Crime Women Cell, Nanakpura, New Delhi. During the course of investigation, the accused Shri Rajesh Kaul was declared proclaimed offender by the Ld. Court of Ms. Tyagita Singh, Metropolitan Magistrate, Dwarka Court, New Delhi. After the completion of the investigation, the charge-sheet of the case had been filed in the concerned court on 29.08.2013. During trial, the Ld. Court of Ms. Richa Gusain Solanki, Metropolitan Magistrate, Dwarka has ordered, vide its order dated 28.05.2016, to issue the Blue Corner Notice against the accused. Necessary action is being initiated by the Delhi Police to issue Blue Corner Notice through CBI/Interpol."

6. The Ministry of External Affairs *vide* their communication dated 29.08.2016 furnished the following comments:-

"Shri Rajesh Kaul S/o Shri Bal Krishan Kaul is wanted to face trial in connection with the case FIR No.118/12, registered by PS Crime (Women Cell), New Delhi under Sections 498-A, 406 and 34 of Indian Penal Code and the criminal case, 'Parul Kaul vs. Rajesh Kaul & ors' is pending before the Hon'ble Court of Metropolitan, Magistrate, Mahila Court, Dwarka, New Delhi. The said Court has declared Shri Rajesh Kaul, a proclaimed offender under Section 82 of the Cr. PC as the Warrant of Arrest issued against him could not be executed.

As per affidavit filed by the accused, he has been residing at 5, Nield Street, Ropes Crossing, NSW-2760, Australia. It may be mentioned that if a person is wanted for trial in India and is presently residing in a foreign country, this process may have the effect of extradition, negotiated on the basis of established international legal principles. There exist an Extradition Treaty between the Government of the Republic of India and the Government of Australia. The Ministry of External Affairs will take appropriate steps when a formal request for extradition is received in respect of the person wanted from Australia for trial in India as per the suggestions for drawing up extradition request in accordance with the procedures laid down in the Extradition Treaty between India and Australia.

As per Article 2(1) of the Extradition Treaty between India and Australia, the offences for which the extradition has been requested, must be extraditable i.e. the offence punishable under the laws of both India and Australia for a period of at least one year (dual criminality). In response to the earlier extradition requests, the Australian authorities have conveyed that the courts in Australia, when considering the 'dual criminality requirement', have determined that it is not essential for each country to

have 'identically defined' offences. Rather, the 'conduct' which amounted to the offence in the requesting country must amount to an offence in Australia. However, the conduct amounting to the relevant Indian offence would need to be 'sufficiently explained' and 'particular details of the conduct' provided so that an Inquiry Magistrate could be satisfied to the extent that the conduct would amount to an offence in Australia.

The extradition requests in respect of fugitive criminals charged with offences under Section 498-A of Indian Penal Code have been denied in some cases on the plea that conduct categorized as offence under Section 498-A (which involves meting out harassment to a woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand), has no equivalent in the jurisprudence of the foreign country concerned, thereby failing the dual criminality requirement. If, however, the specific underlying activities of the offence in question constitute activities that are criminal offences under the law of the foreign country concerned, it is possible that the qualifications of dual criminality would be met. Therefore, among potential offences that could be considered extraditable are assault, murder and fraud showing criminal intent among others. Charges relating to such offences should be specifically brought against the accused by the concerned Law Enforcement Agencies and charged under the appropriate provisions of the Indian Penal Code. The request should not seek extradition based primarily on violation of Section 498-A. The request would also have to fully describe evidence showing the commission of specific activities perpetrated by the offender that led to charges under the Indian Penal Code.

In view of the above, the Committee on Petitions Branch, Lok Sabha is requested to convey through the Petitioner to the concerned investigating agency to submit a formal extradition request prepared as per given suggestions for further necessary action on part of the Ministry of External Affairs."

7. On being asked by the Committee the date on which Shri Rajnesh Kaul was declared as a Proclaimed Offender by the Ld. Court of Ms. Tyagita Singh, Metropolitan Magistrate, Dwarka Court, New Delhi and the action taken by the Law Enforcement Agency via., approaching the Court for appearance before the Court u/s 83 of the Code of Criminal Procedure, 1973, etc. The Ministry of Home Affairs, in a written reply, submitted:-

"As informed by the Delhi Police vide their communication dated 04.11.2016, Shri Rajnesh Kaul was declared as a Proclaimed Offender on 02.05.14 by the Ld. Court of Ms. Tyagita Singh, Metropolitan Magistrate, Dwarka Court, New Delhi. After

declaration of Proclaimed Offender, on 01.09.2014, supplementary charge-Sheet against accused Shri Rajnesh Kaul u/s 498A/406/174A/34 IPC was submitted in the Hon'ble Metropolitan Magistrate, Dwarka Court, New Delhi."

8. On 19 May, 2016, the Court of Ms. Richa Gusain Sonaki, Metropolitan Magistrate, Dwarka ordered exploring the possibility of issuing the 'Red Corner Notice' against Shri Rajnesh Kaul and on 28 May, 2016, i.e., within a short period of 10 days, the same Ld. Court ordered issuing a 'Blue Corner Notice'. In this regard, the Committee desired to know the details of the deliberations/ submissions made by the Law Enforcement Agencies before the Ld. Court of Metropolitan Magistrate, Dwarka between 19-28 May, 2016 leading to issuing of Blue Corner Notice instead of Red Corner Notice against Shri Rajnesh Kaul. The Ministry of Home Affairs, in a written reply, submitted:-

"On 19.5.2016 Hon'ble Court of Ms. Richa Gusain Solanki ordered to explore the possibility to issue the Red Corner Notice and on next date i.e. 28.5.2016, Hon'ble Court ordered to initiate the process of Blue Corner Notice in presence of Shri T. K Kaul. No deliberation/ submissions had been made by the Delhi Police before the Ld. Court of Metropolitan Magistrate, Dwarka between 19 to 28 May, 2016 leading to issuing of Blue Corner Notice instead of Red Corner Notice against Shri Rajnesh Kaul. However, a request letter along-with duly filled proforma of Blue Corner Notice had been forwarded by the Delhi Police to CBI on 8.6.2016."

9. The Committee, thereafter, categorically desired to know the details of the action initiated by the Law Enforcement Agency for issuing the Blue Corner Notice against Shri Rajnesh Kaul. The Ministry of Home Affairs, in a written reply, submitted:-

"In compliance to the Court's order dated 28.05.2016 to issue Blue Corner Notice against the accused, a request letter along-with duly filled proforma of Blue Corner Notice has been forwarded by the Delhi Police to CBI vide letter No.3207/SO/Addl. CP/Crime (DA-VI) Delhi dated 08.06.2016. Further, as informed by the CBI vide letter No.IP-2/55/2016/14 dated 01.11.2016, the publication of INTERPOL Blue Corner Notice against Shri Rajnesh Kaul is pending for want of proper information from Delhi Police. This matter has never been brought to the notice of this Ministry either by CBI or Delhi Police. However, the Delhi Police and CBI have been directed to get the matter of publication of Blue Corner Notice against Shri Rajnesh Kaul resolved immediately under intimation to this Ministry."

10. The Committee when asked the Ministry of Home Affairs to furnish the details of the formal request for extradition of Shri Rajnesh Kaul to be made by the Law Enforcement

Agencies to the Ministry of External Affairs on the basis of 'suggestions for drawing up extradition requests' devised by Extradition Section of the Ministry of External Affairs and the likely timeline by which concrete action will be taken by the Law Enforcement Agencies to forward the extradition request of Shri Rajnesh Kaul to the Ministry of External Affairs for facing trial in India. The Ministry of Home Affairs, in a written reply, submitted:-

"No formal request for extradition of Shri Rajnesh Kaul was submitted by the Delhi Police to the Ministry of External Affairs on the basis of 'suggestions for drawing up extradition requests' devised by Extradition Section of the Ministry of External Affairs. The same could not be sent to the Ministry of External Affairs as the address and whereabouts of the accused Shri Rajnesh Kaul could not be traced till date. The extradition procedure cannot be initiated without whereabouts of the accused person."

11. The Committee when asked whether the Ministry of Home Affairs are aware of the fact that 'dual criminality requirement' for execution of A Series -Red Notices and B Series - Blue Notices resulting in extradition requests of fugitive criminals charged with offences under Section 498-A of the Indian Penal Code and also whether the Ministry would advise the Law Enforcement Agency to highlight the specific underlying activities on the offence committed by Shri Rajnesh Kaul that may also constitute activities relating the criminal offences (assault/fraud etc.) under the law of the foreign country concerned. The Ministry of Home Affairs, in a written reply, submitted:-

"Yes, the Ministry of Home Affairs is well aware of the fact of 'dual criminality requirement' for execution of A Series -Red Notices and B Series -Blue Notices resulting in extradition requests of fugitive criminals charged with offences under Section 498-A of the Indian Penal Code. The offences in both the countries are with different names but as stated above, the underlined principal for establishing 'dual criminality' of fugitive criminals to constitute activities relating the criminal offences (assault/fraud etc.) under the law of the foreign country concerned. Yes, this Ministry has been advising Law Enforcement Agencies to highlight the specific activities relating to the criminal offences (assault/ fraud etc.) under the law of the foreign country concerned, however, in the instant case, the comments can only be made on the basis of the facts provided with the request and the conduct of accused in relation to the offences alleged/registered."

12. The Committee when asked to explain the co-relation between the offence punishable under the laws of both India and Australia for a 'period of at least one year' and 'dual criminality'. The Ministry of External Affairs, in a written reply, submitted:-

"Currently, the legal basis for extradition between India and Australia is provided by the bilateral Extradition Treaty of 2008. Under the provisions of this Treaty, (i) the offences for which the extradition of the fugitive is sought by India should also be recognised as offences under the laws of Australia ('dual criminality'); (ii) the offences should be extraditable offences, namely that the offences should be punishable by a prison term of one year or more. Unless these two conditions are met, the dual criminality requirement will not be satisfied. Further, it may be noted that under Section 19 of the Australian Extradition Act, 1988, to determine whether a person is eligible to be surrendered to another country, the Magistrate is required to be satisfied that had the conduct of the accused constituting the offence in requesting State, or equivalent conduct, taken place in the requested State, i.e., Australia, that conduct or that equivalent conduct would have constituted an extradition offence in Australia. The crux of Section 19 of Australian Law is that the conduct which amounted to the offence in India, must amount to an offence in Australia and punishable by more than one year imprisonment. Similar test is applied in India by a Magistrate appointed under Section 5 of the Extradition Act, 1962 to inquire into an extradition request."

13. On this issue, the Ministry of Home Affairs, in a written reply, submitted:-

"The extradition of an accused/fugitive is based on the conduct which is punishable in both the countries because dual criminality is an integral aspect of extradition as mentioned in the Extradition Act, 1962 and the Extradition Treaty. The Extradition Act, 1962 Ws (2) (c) defines Extradition offence "(1) in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State; (ii) in relation to a foreign State other than a treaty State an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India or of a foreign State and includes a composite offence;" The Extradition Treaty between India and Australia came into force in 2011 and under Article-2 extraditable offence has been clarified as an offence which is punishable for imprisonment for a maximum period of at-least 01 year or by a more severe penalty."

14. The Committee when further asked whether the qualifications of 'dual criminality' would be met in the instant case, if the investigating agency makes a formal request for extradition primarily on violation of Section(s) 498-A, 406 and 34 of the Indian Penal Code. The Ministry of External Affairs, in a written reply, submitted:-

"As per the clarification vide letter dated 06 May 2014 received from the Government of Australia: "When considering the 'dual criminality requirement' Australian courts have determined that it is not essential for each country to

have identically defined offences. Rather the conduct which amounted to the offence in the requesting country must amount to an offence in Australia. In practice this means that the wording or names of the offences do not need to be the same in both countries, but the conduct which would amount to an offence in the requesting country must also be criminalised in Australia (and punishable by more than 12 months imprisonment)." Therefore, whether the qualifications of dual criminality would be met in the instant case if the investigating agency makes a formal request for extradition primarily on violations of Sections 498-A, 406 and 34 of IPC, would depend on whether the extradition request sufficiently explain the conduct amounting to the offence and provide particular details of the conduct."

15. On this issue, the Ministry of Home Affairs, in a written reply further submitted:-

"The comments can only be made on the basis of the facts provided with the request and the conduct of accused in relation to the offences alleged/registered. In the instant case, this Ministry has only received notice for service upon Shri Rajnesh Kaul husband of Ms. Parul Kaul and the copy of FIR received from Delhi Police emphasizes upon the dowry demands which make the case all together on weak footing as it may not qualify the dual criminality condition provided in the Extradition Treaty between India and Australia."

16. Thereupon, the Committee, in particular, desired to know from the Ministry of External Affairs, the procedure involved and the average time taken for extradition of person(s) wanted for trial in the country after receiving a formal request for extradition from the Ministry of Home Affairs. The Ministry of External Affairs, in a written reply, submitted:-

"An accused person who after committing a crime in India, is found in a foreign State may, upon request, be extradited to India. The extradition request is expected to be prepared by the concerned Law Enforcement Agency in accordance with the Guidelines issued by the Ministry to facilitate preparation of such request. The extradition request is forwarded to the Ministry of External Affairs through the Ministry of Home Affairs. In the Ministry, the CPV Division is the nodal point for processing extradition requests. Once a request is received in the CPV Division, the same is examined, in consultation with the Legal & Treaties Division of the Ministry. Any gross deficiencies noticed are pointed out to the concerned Law Enforcement Agency with a request to resubmit the same after rectifying those deficiencies. Once the revised request is received it is again examined to see whether the deficiencies pointed out have been met. Thereafter, after seeking the approval of Hon'ble External Affairs Minister, the same is forwarded, through Indian Mission, to the requested State for its

consideration. As per the information available in the CPV Division (Extradition Section), no extradition request has been received yet in respect of Shri Rajnesh Kaul's extradition from Australia."

17. On this issue, the Ministry of Home Affairs, in a written reply further submitted:-

"The service of Non-bailable Warrant on a fugitive criminal amounts to the extradition of the individual. If a person wanted for trial and presently residing in a foreign country, the process may have the effect of extradition, negotiated on the basis of established international legal principles. Only Non-bailable Warrant of arrest is not sufficient to make a request for extradition in respect of a person residing in a foreign country. If an accused person is in a foreign country, he/she needs to be extradited/ deported as per legal procedures contained in the Extradition Act, 1962 and the treaty on the issue with the concerned country for securing his presence for trial in India. The detailed procedure of extradition of the person is available at the website of the Ministry of External Affairs under CPV Division who has issued certain Guidelines for the purpose. The average time taken by the respective country after receiving the formal request for Extradition depends upon the judicial process in that country and the diplomatic intent of that particular country. Therefore, no time frame can be fixed as it depends upon case to case and country to country."

18. The Committee desired to know from the Ministry of External Affairs, the time normally taken to extradite the person to face trial in the Court, when a person is charged under Section 498-A of the Indian Penal Code and residing in a country with whom our country has signed Extradition Treaty/Extradition Arrangements. The Ministry of External Affairs, in a written reply, submitted:-

"After receipt of an extradition request by the requested State, the time taken for the final surrender of the fugitive criminal differs in each country and in each case. While in a few cases, a very short time is taken by the requested State, in others this may drag on for years."

19. On this issue, the Ministry of Home Affairs, in a written reply further submitted:-

"India has Extradition Treaties currently in force with 40 countries and Extradition Arrangements with the 10 countries. Under section 498-A of Indian Penal Code generally the documents emphasis upon the dowry as an reason for committing cruelty, therefore, creating a doubt amongst the western countries and making the charge ineligible for Extradition due to lack of dual criminality."

20. The Committee further desired to know the essential elements of describing evidence by the Investigating Agency for showing the commission of specific activities perpetrated by the offender that led to charges under the Indian Penal Code. The Ministry of External Affairs, in a written reply submitted:-

"Each crime has certain elements which need to be proved by prosecution to establish the culpability of the accused in the commission of that crime. Therefore, the investigating agency need to provide facts and evidence to prima facie prove elements of crimes under Sections 498A, 405, 406 & 34 of IPC.

Dowry is not a concept in the legal jurisprudence and not an offence under the laws of most foreign countries, including Australia. It is noticed that generally, the complainant and the Law Enforcement Agencies make the entire case as 'dowry' related. However, neither Section 498A nor 405 & 406, uses the term dowry. Invariably, there is a lack of evidence to support the allegations of subjecting a woman to cruelty by her husband or relatives of husband. Similarly, the facts and evidence generally lack elements necessary to prima facie prove that criminal breach of trust was committed by husband and his relatives. These aspects need to be kept in mind by the concerned Law Enforcement Agencies while submitting an extradition request under these Sections."

21. On this issue, the Ministry of Home Affairs, in a written reply further submitted:-

"While making the formal Extradition request, the role of the accused in fugitive has to be specifically described in the affidavit given by the Officer of Law Enforcement Agency duly countersigned by the Hon'ble Court and supported with documents in the regard. The copy of FIR, Warrant of Arrest and the evidence prima facie establishing the role of the accused in committal of alleged offence are to be made in consonance with the provision of Article-7 of the India-Australia Extradition Treaty."

22. The Committee then specifically desired to know whether the Ministry of Home Affairs are conscious of the fact that delay in making extradition requests to the Ministry of External Affairs may allow the fugitive an opportunity to take measures to avoid getting extradited and the precautionary measures are taken/being taken by the Ministry to obviate delay in making extradition requests. The Ministry of Home Affairs, in a written reply, submitted:-

"Yes, the Ministry of Home Affairs are conscious that the delay in making extradition requests to the Ministry of External Affairs may allow the fugitive an opportunity to take measures to avoid getting extradited. Once the fugitive is traced/his whereabouts are

known immediately the Law Enforcement Agency is requested to send a provisional arrest request and the same is transmitted to the country concerned through the Ministry of External Affairs. Thereafter, the extradition request is sent to the country with a provision prescribed in the treaty. This Ministry has not received any extradition request of the accused Shri Rajnesh Kaul so far from any side. Prompt actions are being taken by this Ministry in examining extradition requests being received from the various State Government or Law Enforcement Agencies for further transmission to the Ministry of External Affairs."

23. The Committee, thereafter, categorically desired to know whether the Ministry of External Affairs would advise the Law Enforcement Agencies through the Ministry of Home Affairs to modify the formal request for extradition, while making a formal request for extradition of a person to face trial in India, in case, the Law Enforcement Agencies do not 'sufficiently explain' or provide 'particular details of the conduct' which *prima facie* appears that the Inquiry Magistrate may not be satisfied to the extent that the conduct would amount to an offence in the foreign country and the number of cases, such advise had been given by the Ministry of External Affairs during the last three years. The Ministry of External Affairs, in a written reply, submitted:-

"In case of gross deficiencies in the extradition request, the Ministry advises the concerned Law Enforcement Agency to remove those deficiencies and resubmit the request. However, to determine the sufficiency of the explanation or the details of the conduct provided in the extradition request is a matter of judgement for the requested State."

24. On this issue, the Ministry of Home Affairs, in a written reply further submitted:-

*"In cases where Law Enforcement Agencies are forwarding their request for Extradition without due justification mentioned about the particulars/details of the conduct or wherein the *prima facie* case is not made out on the basis of the facts provided by the Law Enforcement Agencies or only a Non Bailable Warrant without any document supporting the charges alleged in said warrant in all such cases, the requests are sent back to the Courts/Law Enforcement Agencies concerned to modify the formal request of Extradition so as to clearly bring out the *prima facie* case made out against the alleged accused. During the last 03 years, 313 numbers of cases have been examined and 242 cases returned to the Courts/Law Enforcement Agencies for modifications/corrections."*

25. On being asked by the Committee about the number of extradition requests of fugitive criminal charged with offences under Section 498-A of the Indian Penal Code, fulfilling the 'dual criminality requirement' have been made to the Ministry of External Affairs by the Delhi Police during the last three years. The Ministry of Home Affairs, in a written reply, submitted:-

"No extradition requests of the fugitive criminal charged with offences under Section 498-A of the Indian Penal Code, fulfilling the 'dual criminality requirement' have been made to the Ministry of External Affairs by the PS — CWC Delhi Police during the last three years."

26. In the matter, the Committee, thereafter, took oral evidence of the representatives of the Ministry of External Affairs and the Ministry of Home Affairs on 12.6.2017. During the evidence, the representatives of the Ministry of External Affairs and the Ministry of Home Affairs deposed before the Committee as under:-

- (i) *The Ministry of External Affairs is the nodal Ministry for handling all the extradition requests received from the concerned agencies all over the country.*
- (ii) *The Ministry of External Affairs have not received any extradition request in this case.*
- (iii) *The Delhi Police, which is under the Ministry of Home Affairs, and, therefore, after the authentication by the Hon'ble Court, will formulate the extradition request.*
- (iv) *As per the orders of Hon'ble Court, the Regional Passport Office, Ghaziabad impounded the passport of Shri Rajnesh Kaul in 2014.*
- (v) *The Ministry of Home Affairs tried to serve the summons to Shri Rajnesh Kaul in the year 2015 through the Consulate Office, Sydney and Attorney General of Australia, but the summons could not be served as they could not locate the actual address.*

27. The Ministry of Home Affairs vide their communication dated 5.12.2017 informed the Committee that after the sitting of the Committee on Petitions held on 12.6.2017, the case is being closely monitored by them. The CBI and Delhi Police were requested to inform them about the current update on fortnightly basis. The Ministry of External Affairs were also requested to provide response of the Australian Authorities on the draft extradition request of

Shri Rajnesh Kaul on 27.11.2017. As per the reports received from CBI, Delhi Police and the Ministry of External Affairs, the present status of the case is as under:-

- (i) *The draft Extradition request of Shri Rajnesh Kaul was forwarded by Delhi Police to the Ministry of External Affairs on 21.7.2017.*
- (ii) *The Ministry of External Affairs forwarded the request to the High Commission of India Australia on 02.08.2017 which on 26.11.2017 conveyed the comments/observations made by the Australian side regarding dual criminality, subjecting women to cruelty and dowry related offences, requirement of further particulars of Shri Rajnesh Kaul, details and location of physical and mental abuse, details of breach of trust and procedure for providing supplementary information. The Ministry of External Affairs requested Delhi Police to prepare extradition request accordingly.*
- (iii) *CBI has informed that Blue Corner Notice against Shri Rajnesh Kaul was published on 25.11.2016 by Interpol HQrs, France and LOC was also got issued. The Blue Corner Notice is still in force. No actionable information about the present whereabouts of the subject has been received so far.*

28. In the related matter, Hon'ble M.P. Shri Shiv Kumar Udas raised his concern on the issue in the Lok Sabha vide his Unstarred Question No.917 as under:-

- (a) *Whether there is increase in the number of fraud cases in NRI marriages and if so, the details thereof;*
- (b) *The details of action taken and assistance rendered to the deserted women caught in fraudulent marriages; and*
- (c) *Whether the Government has recommended a separate legislation to address issues including NRI matrimonial discord, maintenance of spouses and children, child custody and settlement of matrimonial property and if so, the details thereof?*

29. The Minister of State in the Ministry of External Affairs, Gen. (Dr.) V. K. Singh (Retd.) replied as under:-

- (a) *The Ministry has been receiving petitions from Indian women about fraud cases of NRI marriages. In the year 2017 (upto Nov.), it received 1022*

Petitions compared to 1510 in 2016 and 796 in 2015. Most Petitions received from them pertain to:-

- i) *Harassment and ill-treatment by the husband and his family;*
- ii) *Loss of communication with the spouse after he goes abroad;*
- iii) *Request for assistance in serving judicial summons for Court proceedings in India;*
- iv) *Assistance in obtaining maintenance and child support from the spouse;*
- v) *Request for revoking and impounding passports of the spouse;*
- vi) *Request for repatriation of the spouse to India; and*
- vii) *Child-custody issues.*

(b) *Of 3328 complaints received during the last three years (January, 2015 to November, 2017) from distressed Indian women deserted by their NRI spouses, this Ministry has addressed 3268 complaints by way of providing them counseling, guidance and information about procedures, mechanisms for serving judicial summons on the Overseas Indian husband; filing a case in India, issuing Look Out Circulars; getting access to lawyers and NGOs empanelled with Indian Missions. etc.*

With an aim to provide financial and legal assistance to distressed women married to NRI spouses by all Missions and Posts, the Indian Community Welfare Fund (ICWF) Guidelines were revised in September, 2017. The amount of legal and financial assistance to distressed Indian women has also been increased from US\$3000 to US\$4000 per case and it is applicable to all overseas Indian Missions and Posts. The assistance is released to the empanelled legal counsel of the applicant or Indian Community Association/Women's Organisation/NGO concerned to enable it to take steps to assist the woman in documentation and preparatory work for filing the case. There is also a provision in the revised ICWF Guidelines for maintaining a panel of 3-5 local lawyers/firms proficient in local language and law and who enjoy credibility and have commitment and experience to assist deserving Indian National in distress in Gulf Cooperation Countries (GCC) and top 20 countries with major overseas Indian National population.

- (c) The Government had set up an Expert Committee on NRI Marital Disputes, which presented its Report in August, 2017. Some of its recommendations including constitution of an Integrated Nodal Agency (INA) have been accepted and implemented and some are under further examination.

OBSERVATIONS/RECOMMENDATIONS

FILING OF CHARGE SHEET IN THE CASE OF DISTRESSED WOMEN IN A TIME BOUND MANNER

30. The Committee note from the submissions made by the Ministry of Home Affairs that on the complaint of Ms. Parul Kaul, daughter of Shri T. K. Kaul against her husband Shri Rajnesh Kaul and his other family members, a case was registered on 07.09.2012 *vide* FIR No.118/12 u/s 498A/406/34 PC at Police Station (Crime Women Cell), Nanakpura, New Delhi. During the course of investigation, the accused Shri Rajnesh Kaul was declared Proclaimed Offender by the Ld. Court of Ms. Tyagita Singh, Metropolitan Magistrate, Dwarka Court, New Delhi. The Charge-Sheet of the case had been filed in the concerned court on 29.08.2013. During trial, the Ld. Court of Ms. Richa Gusain Solanki, Metropolitan Magistrate, Dwarka had ordered *vide* its Order dated 28.05.2016 to issue the Blue Corner Notice against the accused.

31. The Committee further note from the submissiond made by the Ministry of External Affairs that as per affidavit filed by Shri Rajnesh Kaul in respect of criminal case 'Parul Kaul vs. Rajnesh Kaul & ors', the accused, Shri Rajnesh Kaul had been residing at 5, Nield Street, Ropes Crossing, NSW-2760, Australia. The Committee also note of the fact that if a person is wanted for trial in India and is presently residing in a foreign country, this process may lead to extradition, negotiated on the basis of established International Legal Principles and there exist an Extradition Treaty between the Government of the Republic of India and the Government of Australia.

32. In this regard, the Committee take note of the fact that on the complaint of Ms. Parul Kaul, daughter of Shri T. K. Kaul, against her husband Shri Rajnesh Kaul and his other family members, a case was registered on 07.09.2012. However, the Charge-Sheet of the case was filed in the concerned Court on 29.08.2013. The accused, Shri Rajnesh Kaul was declared Proclaimed Offender on 02.05.2014 by the Metropolitan

Magistrate, New Delhi. Subsequently, the Metropolitan Magistrate, Dwarka, New Delhi vide its Order dated 28.05.2016 ordered to issue the Blue Corner Notice against the accused. In this regard, the Committee are constrained to note that the Delhi Police took almost one complete year to file Charge Sheet in the Court against the accused which shows the lack of seriousness of the concerned Agencies in the matter. The Committee, therefore, recommend that the Ministry of Home Affairs, in consultation with concerned Agencies, prepare a strategy to deal such special cases of distressed women wherein the submission of Charge Sheet, etc., be filed in the appropriate Court in a time bound manner.

COMPLIANCE OF THE INSTRUCTIONS BY THE AGENCIES CONCERNED

33. The Committee note from the submissions of the Ministry of Home Affairs that in compliance to the Court's order dated 28.05.2016 to issue Blue Corner Notice against the accused, Shri Rajnesh Kaul, a request letter along with duly filled Proforma of Blue Corner Notice was forwarded by the Delhi Police to Central Bureau of Investigation (CBI) on 08.06.2016. Further, the publication of Blue Corner Notice against Shri Rajnesh Kaul by the Law Enforcement Agency, i.e., INTERPOL was pending for the want of proper information from Delhi Police. To add further to the woes of the victim, this matter was never been brought to the notice of the Ministry of Home Affairs either by the CBI or Delhi Police.

34. The Committee are shocked to find that there has been a systemic failure of communication between the Delhi Police, CBI and the Ministry of Home Affairs. The matter of publication of Blue Corner Notice against Shri Rajnesh Kaul is pending for the want of proper information from Delhi Police caused a loss of precious time, as also it has not been brought to the notice of the Nodal Ministry. The Committee, therefore, recommend that in the cases relating to Distressed Women, the compliance of the Instructions be followed strictly by the agencies concerned in

future and also such kind of failure of communication should not be accepted by the Ministry and the persons/Authority related therewith not only should be held accountable but punitive action as warranted be taken against them without fail. The Ministry of Home Affairs should also formulate and issue Guidelines with regard to strict compliance of the prescribed Rules to all its Departments/Agencies in respect of communicating the Ministry in such type of Special Cases. The Committee would, therefore, like to be apprised the steps taken in this direction within three months of presentation of this Report to the House.

SUFFICIENT EXPLANATION ABOUT THE CONDUCT AND SPECIFIC DETAILS TO AVOID RETURNING OF EXTRADITION REQUEST

35. The Committee note from the submissions of the Ministry of External Affairs regarding '*dual criminality*' that when considering the '*dual criminality requirement*', the Australian Courts have determined that it is not essential for each country to have '*Identically Defined Offences*'. Rather, the conduct which amounted to the offence in the requesting country must amount to an offence in Australia. It implies that the wording or names of the offences do not need to be the same in both the countries, but the conduct which would amount to an offence in the requesting country must also be criminalised in Australia (*and punishable by more than 12 months imprisonment*). The qualifications of Dual Criminality would be met in the instant case if the Investigating Agency makes a formal request for the extradition primarily on violations of Sections 498-A, 406 and 34 of IPC and it would depend on whether the extradition request sufficiently explain the conduct amounting to the offence and provide particular details of the conduct.

36. The Committee further note from the submissions of the Ministry of Home Affairs that this Ministry had only received notice for service upon Shri Rajnesh Kaul, husband of Ms. Parul Kaul and the copy of FIR received from Delhi Police emphasizes

upon the Dowry Demands; which make the case all together on weak footing as it may not qualify the dual criminality condition provided in the Extradition Treaty between India and Australia.

37. The Committee note further with concern that the instant case was on weak footing as it may not qualify the '*dual criminality*' condition provided in the Extradition Treaty between India and Australia. The Committee, therefore, recommend that while forwarding the extradition request by the Agencies concerned of the Ministry of Home Affairs to the Ministry of External Affairs, the Law Enforcement Agencies should sufficiently be explained about the conduct which would amount to an offence in the requesting country must also be a criminal activity in other countries including Australia and to provide them the specific details so as to determine whether a particular case comes under '*Dual Criminality*' or not and also about appropriateness of various Sections of IPC to not to leave any room to get the extradition request return or modify to avoid loss of time. These aspects need to be kept in mind by the Law Enforcement Agencies concerned while submitting an Extradition Request without any discrepancies.

EFFORTS TO INCLUDE 'HARASSMENT FOR DOWRY' CLAUSE IN THE EXTRADITION TREATY

38. The Committee note of the fact that the dowry is not a concept in the legal jurisprudence and not an offence under the laws of most foreign countries, including Australia. However, in India, generally, the Complainant and the Law Enforcement Agencies make the entire case as 'dowry' related, whereas, neither Section 498A nor 405 & 406, uses the term 'dowry'. Invariably, there is a lack of evidence to support the allegations of subjecting a woman to cruelty by her husband or relatives of husband. Similarly, the facts and evidence generally lack

elements necessary to *prima facie* prove that criminal breach of trust was committed by husband and his relatives.

39. The Committee further note with concern that in India, out of all harassment cases, the number of cases of harassment for dowry are the maximum. The reason could be one or the other. The Committee are surprised to know about the law which is offence under the laws in India and are punishable but not a concept in the legal jurisprudence and not an offence under the laws of most foreign countries, including Australia. The Committee, therefore, recommend the Authorities to think seriously on this aspect and concrete steps may be taken to provide relief to the distressed women who marry the NRI spouse. Steps should also be taken to include the 'harassment for dowry' Clause in the Extradition Treaty to justify the cases of dowry harassment in foreign countries as well, including Australia, keeping in view the Indian scenario in mind.

SIMPLIFICATION OF THE PROCESS OF PREPARATION OF EXTRADITION REQUEST

40. The Committee note from the submissions of the Ministry of External Affairs that extradition request for an accused/fugitive can be initiated after the filing of Charge Sheet before an appropriate Court and the Court having taken cognizance of the case has issued orders/directions justifying accused/fugitive's committal for trial on the basis of evidence made available in the charge sheet and has sought presence of the accused/fugitive to face trial in the case. An accused who is in a foreign State may be extradited to India as per the extradition request which has to be prepared by the Law Enforcement Agency concerned in accordance with the Guidelines issued by the Ministry of External Affairs to facilitate preparation of such request and it will be examined in consultation with the Legal and Treaties Division of the Ministry of External Affairs in terms of rectifying deficiency, if any. Thereafter, after seeking the approval of Hon'ble External Affairs Minister, the

same will be forwarded to the requested State, through Indian Mission, for its consideration.

41. The Committee are constrained to note that the process of extradition request is very lengthy and time consuming which starts from the lengthy legal procedure of Court's Orders/Directions justifying accused/fugitive's committal for trial on the basis of evidence made available in the Charge Sheet and has sought presence of the accused/fugitive to face trial in the case to preparation of extradition request by the Law Enforcement Agency and further approval of the Hon'ble External Affair Minister is also to be sought.

42. Keeping in view the mental and physical state of the Distressed Women, who marry the NRI spouses, the Committee are of the opinion that the process of submitting and forwarding extradition request be simplified which will not only save time but help the distressed women to get justice in time. In the instant case, both the Ministries of External Affairs and Home Affairs are not able to take any concrete steps with respect to initiation of extradition proceedings against Shri Rajnesh Kaul. The Committee, therefore, urge the Ministry of External Affairs and the Ministry of Home Affairs to evolve a short, simple and quick way of preparation, easy submitting and quick forwarding of extradition request to the country concerned for its consideration.

CORRECTION/MODIFICATION OF THE EXTRADITION REQUESTS

43. The Committee note from the submission of the Ministry of Home Affairs that in cases where Law Enforcement Agencies are forwarding their request for Extradition without due justification mentioned about the particulars/details of the conduct or wherein the *prima facie* case is not made out on the basis of the facts provided by the Law Enforcement Agencies or only a Non Bailable Warrant without any document supporting the charges alleged in the said warrant in all such cases, the requests are

sent back to the Courts/Law Enforcement Agencies concerned by the concerned Agencies of the foreign countries to modify the formal request of extradition so as to clearly bring out the *prima facie* case made out against the alleged accused. In this context, the Ministry of Home Affairs have examined 313 number of cases during the last three years; out of which 242 cases returned to the Courts/Law Enforcement Agencies for modifications/corrections.

44. The Committee note that while making a formal request for extradition of a person to face trial in India, the Law Enforcement Agencies do not 'sufficiently explain' or provide 'particular details of the conduct' which causes returning of cases to the Courts/Law Enforcement Agencies for modifications/corrections. The Committee are perturbed to note that in the last three years, the Ministry of Home Affairs had examined 313 number of cases and 242 cases were returned to the Courts/Law Enforcement Agencies for modifications/corrections. The Committee, therefore, strongly recommend that the Ministry of Home Affairs may re-devise their strategy in consultation with their concerned Agencies along with desired information, relevant papers and documents, etc., so that the number of extradition requests forwarded to the Ministry of External Affairs be minimised to avoid loss of time and also helping the victims getting the justice in time. The Committee may be apprised of the action taken in this regard.

REGULAR MEETING WITH CONCERNED AGENCIES FOR EXAMINING EXTRADITION REQUESTS

45. The Committee further note from the submissions of the Ministry of Home Affairs that the delay in making Extradition requests to the Ministry of External Affairs might allow the fugitive to find an escape to avoid getting extradited or to delay the process of extradition. Once the fugitive is traced, his whereabouts are known, immediately the Law Enforcement Agency is requested to send a 'Provisional Arrest Request' and the same is

transmitted to the country concerned through the Ministry of External Affairs. Thereafter, the extradition request is sent to the country with a provision prescribed in the Treaty. The Ministry of Home Affairs has received the Draft Extradition Request of the accused Shri Rajnesh Kaul from Delhi Police on 21.7.2017.

46. The Committee note with concern that there is a lack of communication and understanding between the Ministry of External Affairs, the Ministry of Home Affairs, Law Enforcement Agency and the Delhi Police to deal with such cases of Distressed Women marry the NRI spouses; which resulted in delay in making Extradition requests and further allow the fugitive an opportunity to take measures to avoid getting extradited or to delay the process of Extradition. The Committee, therefore, strongly recommend for creation of an 'error-free' and a speedy network to not only save the time involving in making extradition request but also not to give an opportunity to the offender to take measures to avoid getting extradited or to delay the process of extradition. Further, the Ministry should also initiate steps to monitor such cases of important nature as well as provision of a meeting on a regular interval be fixed with the Agencies concerned, *viz.*, the Ministry of Home Affairs, the Ministry of External Affairs, the Delhi Police, etc. to solve the cases of such important nature and to avoid delay in making and examining extradition requests by the Ministry of External Affairs for further transmission.

TIMELY PROCESSING OF ALL THE EXTRADITION REQUESTS RECEIVED

47. The Ministry of Home Affairs *vide* their communication dated 5.12.2017 informed the Committee on Petitions, Lok Sabha that after the sitting of the Committee on Petitions held on 12.6.2017, on the instant matter under examination, the case is being closely monitored by them. The CBI and Delhi Police were requested to inform them about the current update on fortnightly basis. The draft Extradition request of Shri Rajnesh Kaul was forwarded by the Delhi Police to the Ministry of External Affairs on 21.7.2017. The Ministry of External Affairs forwarded the request to the High

Commission of India Australia on 02.08.2017. The Ministry of External Affairs requested Delhi Police to prepare Extradition Request accordingly.

48. In this regard, the Committee are astonished to observe that the Ministry of Home Affairs get activated only after the intervention of the Committee on Petitions, Lok Sabha, whereas, the overall process should have been automated under the guidance of the Ministry of Home Affairs. The Committee, therefore, recommend that the Ministry of Home Affairs should ensure timely processing of all the Extradition Requests received so that such cases should not arise in future. The Committee would like to be apprised of the measures taken by the Ministry in this regard.

IMPLEMENTATION OF THE RECOMMENDATIONS OF THE EXPERT COMMITTEE ON NRI MARITAL DISPUTES

49. The Committee note that in reply to the Unstarred Question No. 917 raised by Shri Shiv Kumar Udasi, Hon'ble M.P. in Lok Sabha which was replied by the Minister of State in the Ministry of External Affairs, Gen. (Dr.) V. K. Singh (Retd.) that the Government had set up an Expert Committee on NRI Marital Disputes, which presented its Report in August, 2017. Some of its recommendations including constitution of an Integrated Nodal Agency (INA) have been accepted and implemented and some are under further examination.

50. In this regard, the Committee desire to know the status of the implementation of the recommendations of the said Expert Committee on NRI Marital Disputes and also the status of examination of the rest of the recommendations of the said Committee.