

REGISTRATION OF MARRIAGES IN INDIA: LEGAL PERSPECTIVE

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ABSTRACT

Marriage and Divorce in India are governed by the personal law applicable to a party. The personal law is usually determined by the religious community one belongs to. Since India is a land of diverse religious communities, the personal laws are also multiple. The personal laws generally provide for solemnization of a marriage by performing some religious ceremony. The only secular law regarding marriages is the Special Marriage Act 1954 which provides for a civil marriage and a procedure for its registration. Registration of marriage is not made compulsory in India by any Central Statute. It has been left to the State Governments to enact rules providing for compulsory registration of marriages. The Hindu Marriage Act 1955 also provides for registration of marriages solemnized under the Act, but the same is not compulsory under the Act. Moreover the non-registration of marriage does not affect the validity of such marriages. Lately, the hazards of non-registration have been emphasized at various forums. The most important consequence has been the inability of many wives to prove a valid marriage in maintenance suits and thus being unable to establish their identity as a legally wedded wife. The importance of proving the validity of marriages in bigamy cases too cannot be undermined. Another ill effect has been the rise in the fraudulent NRI marriages affecting the rights of many young brides. The child marriages are also rampant as registration is not compulsory in many states.

KEYWORDS: *Marriage, Divorce, Legal Marriage*

INTRODUCTION

The following is the status is-avis registration of marriages under various personal laws:

Hindu Law

Section 7¹ of *Hindu Marriage Act 1955* provides for the performance of necessary religious or customary ceremonies of the marriage for the validity of a marriage. Under Section 8² of the *Hindu Marriage Act 1955*, there exists a

¹ Section 7(2) – where such rites and ceremonies include the saptapadi (that is the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

² Section 8 : Registration of Hindu marriages. (1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any of such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has

provision for registration of marriages. However, it is not mandatory. For facilitating the proof of Hindu marriages, the state government may make rules for the registration of marriages.

Muslim Law

According to the Muslim notion of marriage, the nature of marriage is contractual. A system of private registration of marriages with the Kazis has always prevailed among the Indian Muslims. Though in principle Islamic law does not require a ritual solemnization of marriage, among the Muslims of India, marriages are invariably solemnized by religious officials known as the “Kazi”. The short ceremony performed by the Kazi, known as “nikah”, begins with formally obtaining consent of the parties. The Kazi prepares a nikah-name (marriage certificate) which gives full details of the parties and is signed by both of them, and by two witnesses. The nikah-names issued by the kazis are admissible in evidence.²²

Parsi Law

Parsi marriages are to be solemnized under the Act by the Parsi priests who are required to certify them in a prescribed form to be signed by the priest, the contracting parties, and two witnesses²⁸. The officiating priests are required by the Act to periodically transmit their records to Marriage Registrars appointed under the Act. A priest who neglects either to so certify a marriage or to transmit its copy to the Marriage Registrar will be guilty of an offense punishable with simple imprisonment up to three months, or with fine up to a hundred rupees, or with both.²⁹ Section 3 of Parsi Marriage and Divorce Act, 1936 provided with conditions for the valid marriage. Parsi Marriage and Divorce Act, 1936 makes necessary Registration of Marriages but non – registration does not affect the validity of the marriage.

Christian Law

The Indian Christian Marriage Act 1872 provides for a very complicated procedure for registration of marriages. The Indian Christian Marriage Act 1872 makes a distinction between “Christians”³ and “Indian Christians”⁴. It also makes separate provisions for followers of various Churches – including the Church of England (Anglican Church), Church of Scotland and Church of Rome (Roman Catholic Church). The Act provides separate rules for the solemnization and registration of marriages of Indian Christians and other Christians, and also for the followers of various Churches. Due to this classification and distinctions, the system of registration of marriages provided by the Act is quite complicated

been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

(3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts there from shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(5) Notwithstanding anything contained In this section, the validity of any Hindu marriage shall in no way be affected by the omission to Make the entry.

³ Section3: “Christians”.—the expression “Christians” means persons professing the Christian religion;

⁴ Section 3: “Indian Christians”.—[and the expression “Indian Christians” includes the Christian descendants of natives of India converted to Christianity, as well as such converts;]

and Marriages may, according to the Act, be solemnized by different persons.⁵

The Special Marriage Act 1954

Under the Special Marriage Act, 1954 any 'two persons' can perform a marriage. The inter-religious marriages are possible in India only under the Special Marriage Act, 1954. Under the Act, a marriage has to be in a civil marriage form, though parties are free to perform any other additional ritual or religious ceremonies if they want to.⁶ Parties who intend to get married under the Special Marriage Act shall give a notice in writing in the specified form 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.⁷ The Marriage Officer is required to keep all the notices with the record of his office and to enter a true copy of every such notice in Marriage Notice Book and the Book is open to all for inspection⁸. The notice of marriage is also to be published by the Marriage Officer.⁹ Before the expiration of thirty days from the date on which the notice has published any person can object to the marriage that it would contravene any of the conditions mentioned in section 4 of the act.¹⁰ After the expiry of thirty days from the date on which the notice was published the marriage may be solemnized. Before the marriage is solemnized the parties and three witnesses shall sign a declaration in the form give below, and the declaration shall be countersigned by the Marriage Officer.¹¹ Thus the marriage is solemnized after completing all the steps mentioned above. Section 13¹² of the Special Marriage Act, 1954 provides compulsory registration of the marriage without which a marriage cannot be regarded as valid. Section 15 provides registration of marriages celebrated in other forms. For registration of marriage, the parties have completed the age of twenty-one years at the time of registration.¹³ The unique feature of the Special Marriage Act, 1954 is that any marriage solemnized in any other form under any other law, Indian or foreigner, between any two persons, may be registered under

⁵ *The Indian Christian Marriage Act 1872*, Section 5: Persons by whom marriages may be solemnized.—Marriages may be solemnized in 3 [India]— (1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister; (2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland; (3) by any Minister of Religion licensed under this Act to solemnize marriages; (4) by, or in the presence of, a Marriage Registrar appointed under this Act; (5) by any person licensed under this Act to grant certificates of marriage between 4 [Indian Christians].

⁶ The Special Marriage Act, 1954, Section 12(2)

⁷ The Special Marriage Act, 1954, Section 5

⁸ The Special Marriage Act, 1954, Section 6(1)

⁹ The Special Marriage Act, 1954, Section 6(2)

¹⁰ The Special Marriage Act, 1954, Section 7

¹¹ The Special Marriage Act, 1954, Section 11

¹² Certificate of marriage.—(1) When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified in the Fourth 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 signatures of witnesses have been complied with.

¹³ The Special Marriage Act, 1954, Section 15(d)

the Act on the fulfillment of certain conditions¹⁴

Need for Compulsory Registration of Marriages

Lack of provision for compulsory registration of marriages and standard of strict proof regarding the performance of ceremonies of marriage to establish a valid marriage under Hindu Marriage Act has made the position of women vulnerable. In *Bhaurao Shankar Lokhande v. the State of Maharashtra*¹⁵ the Apex Court held that unless the marriage is celebrated or performed with proper ceremonies and due form, it cannot be said to be 'solemnized'. Merely going through certain ceremonies with the intention that the parties be taken to be married, will not make the ceremonies prescribed by law or approved by any established customs. In *A.N. Mukherjee v. State*¹⁶, the court held that the due performance of necessary ceremonies of marriage is essential for the prosecution of bigamy. The Supreme Court in the case of *Smt Priya Bala Ghosh v. Suresh Chandra Ghosh*¹⁷, held that even an admission of marriage by an accused is no evidence of marriage for the purpose of proving an offense of bigamy or adultery as the witnesses have not proved that the essential ceremonies had been performed. Thus, the non-performance of necessary ceremonies and consequent non-registration of marriages renders the innocent wives extremely vulnerable

The Supreme Court in the case of *Seema v. Ashwani Kumar*¹⁸ gave directions to the Government to provide rules for compulsory registration of marriages. The Court observed that compulsory registration would enable women to claim the inheritance and other benefits and privileges which they were entitled to after the death of their husband and would

¹⁴ The Special Marriage Act, 1954, Section 15: Registration of marriages celebrated in other forms.—Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (III of 1872) or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:—

(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;

(b) neither party has at the time of registration more than one spouse living;

(c) neither party is an idiot or a lunatic at the time of registration;

(d) the parties have completed the age of twenty-one years at the time of registration;

(e) the parties are not within the degrees of prohibited relationship: Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

¹⁵ AIR 1965 SC 1564

¹⁶ AIR 1969 All 489.

¹⁷ AIR 1971 SC 1153

¹⁸ I (2006) DMC 327 SC; AIR 2006 SC 1158 also available at <http://www.indiankanoon.org/doc/1037437/> (visited on 22.12.15)

deter men from deserting their wives after marriage.¹⁹

This Compulsory registration of marriages would help in the following:

- To prevent duping of women into marrying without the performance of conditions of a valid marriage
- To prevent marriage frauds and bigamy
- To prevent child marriages
- To facilitate proof of valid marriage and help women claim rights like maintenance and claims regarding property
- Effective enforcement of social legislation

Initiatives in Favor of Compulsory Registration of Marriages

The National Commission for Women drafted *The Compulsory Registration of Marriages Bill 2005*. The main object of the bill was to prevent child marriages, polygamy, the practice where men desert women after performing the marriage, including acting as a deterrent to the practice of selling daughters to any person including a foreigner under the garb of marriage. It also aimed to enable married women, including the women married to NRI/ foreigners to claim her right to shelter and maintenance and also to ensure a minimum age of marriage²⁰

The bill covered all marriages irrespective of religion. The term marriage was defined as follows:

Marriage means and includes all marriages solemnized or contracted between a male and a female, irrespective of the religion or caste of either party to the marriage, and also includes marriages performed as per law, custom, practice or any tradition of either party to the marriage and includes a remarriage.²¹

The bill did not provide for solemnization of marriage, but only provided for the procedure for getting the marriage registered within 30 days of its solemnization.²² The law was supposed to be in addition to other laws for registration of marriages and the validity of the marriage was not to be affected by the failure to register. However, the proposed bill provided that marriage certificate would be the conclusive proof of marriage.

¹⁹ *Id.*, p 1160-1161 para 13

²⁰ Statement of Objects and Reasons, *The Compulsory Registration of Marriages Bill 2005*, draft prepared by The National Commission for Women, available at <http://ncw.nic.in/pdf/files/compmarriagebill.pdf> (visited on 9.12.15)

²¹ *The Compulsory Registration of Marriages Bill 2005*, Section 3 (1) (a), draft prepared by The National Commission for Women, available at <http://ncw.nic.in/pdf/files/compmarriagebill.pdf> (visited on 9.12.15)

²² *Id.*, Section 12: “Compulsory registration of marriages.-(1) After the commencement of this Act, every marriage solemnized or contracted between citizens of India or where at least one of them is citizen of India, performed in the country or elsewhere, under any law or custom governing such marriages, shall be compulsorily registered with the appropriate Registrar of Marriages.

Provided that a marriage registered under any other enactment relating to registration of marriages for the time being in force, need not be registered under this Act. Provided further that nothing contained in any other Act or law shall preclude the parties to a marriage from registering their marriage under the provisions of this Act.”

The Law Commission of India²³, too, had taken up this issue and in its report no.211 of 2008, the Commission has recommended the enactment of a “*Marriage and Divorce Registration Act*” to be made applicable to the whole of India and to all citizens irrespective of their religion and personal law and without any exceptions or exemptions. The Law Commission further recommended that the proposed law should deal only with the registration of marriages and divorces and not with any substantive aspect now governed by various matrimonial laws – general and community - specific. Accordingly, the Births, Deaths, and Marriages Registration Act, 1886 is repealed and Births and Deaths Registration Act, 1969 be re-named as “Births, Deaths, and Marriages Registration Act” with a provision that officials working and records maintained under the former Act shall be deemed to be working and maintained under the latter Act.²⁴

The unique feature of this recommendation is that it provides for registration of divorces also. This becomes very important in the present context wherein, customary divorces are recognized by Hindu Law and there is no record of such divorces as the *Hindu Marriage Act 1955*²⁵ recognizes and protects divorces obtained under customary law, but makes no provision for registration of such divorces effected outside the court. The Law Commission stressed the need for a uniform law countrywide for registration of marriages as it felt that the laws existing in the states were not effective. A need was also felt to streamline the registration by Kazis. It was further recommended that failure to register marriages should be met with a heavy fine and even imprisonment. The law commission gave a significant recommendation that no judicial relief should be granted until marriage or divorce is registered.²⁶

In 2012, the government tabled a bill in Parliament based on the Supreme Court’s observations, but it lapsed at the end of the 15th Lok Sabha in 2014

Ever since the landmark pronouncement by Supreme Court in *Seema v. Ashwani Kumar* many states have enacted laws²⁷ for compulsory registration of marriages, however, the implementation of these laws is not being strictly adhered to in spite of punitive measures being prescribed by some laws. The major drawback is that each state is free to make its own law. This leads to more chaos and confusion. Moreover, many people find the procedure of registration cumbersome and time-consuming. Sometimes, the people are not aware as to the need to register their marriages as they do not face problems in their day to day lives. It is only in case of a matrimonial dispute or while applying for a visa (if married to an NRI) that the need for a certificate of registration of marriages arises. It cannot be doubted that where many of couples choose not to register a marriage despite facing a range of problems, the success of compulsory registration would depend on how easy the procedure is.

²³ Vide Report no. 211 of Law Commission of India, available at <http://lawcommissionofindia.nic.in/reports/report211.pdf> (visited on 9.12.12)

²⁴“*Laws on Registration of Marriage and Divorce –A Proposal for Consolidation and Reform*”, report no. 211 of Law Commission of India, available at <http://lawcommissionofindia.nic.in/reports/report211.pdf> (visited on 9.12.15)

²⁵ Section 29: Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

²⁶ Supra 15

²⁷ Punjab, Delhi, Haryana, Meghalaya, Uttarakhand, and Tamil Nadu

Recently, again the Law Commission²⁸ in its report to the Law Ministry, said in the absence of compulsory registration, women are duped into marrying without the performance of the conditions of a valid marriage. Also, if registration is linked to the unique identification number (UID), it would be possible to achieve universal tracing of records. The panel has recommended amending the Registration of Births and Deaths Act, 1969, to include marriages. The Commission suggested that the time limit to register marriages should be restricted to 30 days, after which a penalty of 5 per day could be imposed.

CONCLUSIONS AND SUGGESTIONS

In my humble submission, the government must act swiftly to enact a law on the basis of the recommendations of the Law Commission of India to end various rights violations that are being perpetrated only because of an absence of effective central legislation in this sphere. The ultimate solution to end this state of confusion is to adopt the procedure for solemnization of the marriage by way of registration of marriage, as provided under the *Special Marriage Act 1956*. The major obstacle that we may face is the factor that marriages in different personal laws are solemnized by performing religious ceremonies. People may not be ready to accept a civil marriage and it may be considered as an encroachment upon personal laws. Hindu marriages are still regarded as sacramental partly. A marriage is considered to be solemnized only upon performance of religious ceremonies. This also given legal sanction by section 7 of *Hindu Marriage Act 1955*. Thus, even though it will be difficult to divert from the old customs, the solution rests in the solemnization of marriages through registration. The parties can freely perform any ceremony after registering their marriages. This could be in fact a step towards a uniform law of marriage for all religions. Even if this goal cannot be achieved, it is very much possible to enact uniform countrywide legislation as proposed by the Law Commission in 2008. It is the need of the hour that whatever law is enacted, the procedure for registration of marriages should be simple. Some penal consequence or making the marriage certificate mandatory for certain things like succession to the property of a spouse or for getting a matrimonial relief from the courts etc is also necessary. Moreover, contradictions within different laws must be removed first like those pertaining to the age of marriage. The suggestion of Law Commission regarding registration of divorces should also be incorporated. However, all these steps would fail to bring the desired result if proper awareness regarding the necessity for registration of marriage and divorce is created among the masses. People must view registration of marriage as necessary as registration of birth or death. Only then can we hope that compulsory registration of marriages will become a reality.

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