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NEED FOR A UNIFORM LAW ON COMPULSORY REGISTRATION OF MARRIAGE IN INDIA

Dr. Ashu Dhiman¹ and Ms. Saloni Anand²

¹Assistant Professor, Gitarattan International Business School, Rohini, Delhi.

² Assistant Professor, Gitarattan International Business School, Rohini, Delhi.

ABSTRACT:

Marriage in India acts as a basic rule of social organization, being a sacrament it holds a compelling and imperative character. It lays out legal as well as spiritual responsibility on two individuals entering a sacred union by performing certain rituals according to their religions. India is a country of diversities, being a secular state it does not follow any particular religion and constitution of India provides for right to profess any religion to all the citizens, so every religion has its own rituals for marriage. In our country, marriage has been considered as a sacrament and its registration has no significance at all, as nobody can disregard

a religious sacrament. Therefore, no uniform law related to Compulsory registration has been framed so far. But as it is evident that change is the Law of nature & due to changes in society it has been noticed that there is a need for a uniform Law on compulsory registration of marriage. Increase in fraudulent, forceful, and unlawful marriage practices has threatened the safety of a woman & children born out of such marriage. Due to non registration of marriage, one carries no legal proof of marriage; it leads to increased cases of polygamy. Not only the Law commission of India but Supreme Court also emphasized on importance of registration of marriage.

Initially, this paper throws light on importance of registration of Marriage and its status in India & Abroad. The authors also highlight the problems in framing a uniform Law on compulsory registration of Marriage and raise some questions like: Can compulsory registration of marriage help in achieving justice? Is it possible to implement such law in a state carrying such diversities like India? Will a law for compulsory registration compatible with present laws prevailing in India?

KEYWORDS: Registration, Marriage, Uniform, Diversity, Religion.

INTRODUCTION

India being the boiling pot of various cultures, languages, religions, it is governed via different rules, regulations, usages, customs and so on. No uniform laws are followed under the same ambit. Marriage being a sacred and an indissoluble union,

registration is merely considered as an insignificant and an arduous, avoidable procedure of law. But as the society and awareness among people of the society is increasing with time, various instances can be observed where society feels the need of accepting this new notion in their old tradition.

Registration of marriage in India is still a relatively new concept for Indians. Where some people not being able to understand the

need for it, some are just too laid back to follow this procedure of law. In India, marriage is a spiritual bond between two individuals which is made for not only this life but the next lives to come. People feel that no purpose will be served by documenting such a sacrosanct union. India being a country which is essentially governed by staunch rituals, value and importance of such document is diminished. Thus,

it results in several marriages going unregistered in India. It is generally observed that more than the husband, the wife suffers more from not registering the marriage in seeking various matrimonial reliefs such as maintenance, inheritance of property and so on.

Hindu Marriage Act, 1955, gives legitimacy to the customary or ritualistic marriages in India.¹ Non registration of such Customary or ritualistic marriages created such problems which the Indians could not foresee. Non-registration of marriages in India creates various legal obstacles for the lawfully wedded couples, specially the wife. She becomes the party who suffers the most in such sacred union. Before the party to the marriage can seek matrimonial reliefs, they have to go through the arduous unnecessary step of first proving the validity of their marriage which could have been easily omitted by merely registration of marriage.

Couples who have not registered their marriage have found various other ways to circumvent such bureaucracy.² By using such overriding methods, they do not feel the necessity to follow the meticulous process of registering the marriage.

Even though India has taken steps towards making registration as a part of our normal day to day legal procedure by making it a compulsory legal obligation to register the marriage, it is made merely discretionary rather than a compulsion on the State Government.

NEED FOR COMPULSORY REGISTRATION OF MARRIAGE

Marriage has been considered as a religious sacrament in India and a religious ceremony is enough to call a marriage "legal". However, getting a marriage registered provides a married couple a legal proof of Marriage in the form of Marriage certificate, which can be produced in the court of law whenever required. The presence of such diversity is a tricky issue to deal with as it is creating hurdles in making a uniform law relating to compulsory registration of marriage.

The Law commission of India through its 270th report and various judgments of the Honorable Supreme Court of India express that there must be a legislation relating to compulsory registration of marriage. Motive of the Law Commission of India and the Honorable Supreme court of India behind pushing forward the legal provisions for compulsory registration was to preserve the status of women in the society, to prevent harassment of women and matrimonial frauds which are easier to commit due to the absence of matrimonial documents and in turn preserve the status of the children born out of such marriages. With matrimonial documents not in the picture, the women are deceived into marrying without proper ceremonies or with a person who is already married. Not only this, women are deprived from achieving social recognition. Compulsory registration of marriage will work as a proof that the conditions of a valid marriage have been fulfilled and will provide women societal recognition and legal security.

The Law Commission of India felt that the personal laws need not be disturbed but the same matter was highlighted via 2006 ruling of the Apex Court in *Seema v. Ashwani Kumar*.³ It emphasized that every citizen of India, irrespective of their religion should register their marriage in their own state compulsorily. The court in this case said:

"We are of the view that marriage of all persons who are citizens of India belonging to various religions should be made compulsorily registered in their respective states, where the marriage is solemnized."

Several High courts in India have also emphasized on the need for compulsory registration of Marriage as in *Kanagavalli v. Saroja*⁴, the Madras High Court focused on the importance of registration

1 Available at: <https://scroll.in/article/843571/should-marriage-registration-be-mandatory-only-if-the-process-is-simplified-say-couples>

2 Hussain, S. Jaffer, "Hindu Marriage Act, 1955: Fraud as a ground for annulment", 11, *Journal of the Indian Law Institute*, p. 521.

3 2006 (2) SCC 578

4 AIR 2002 Mad 73

in providing security to Indian women. The court was of the view that, it will be easier to prosecute someone for bigamy if registration of marriage will be made compulsory. It remarked:

*“non-registration of marriages has landed many women in a relationship which while extracting from her, all the duties of a wife, leaves her with neither the right under law, nor the recognition in society. In addition, the Hindu male is able to contract a second marriage without any fear.”*⁵

Compulsory registration of marriage is a pragmatic solution for the innumerable problems faced by the women, children and in exceptional cases men. The Law commission in its 270th report underlined the Honorable Supreme Court’s observation in *Seema v. Ashwani* that the law relating to compulsory registration would be of great importance to various issues such as:

- (a) Prevention of child marriages and to ensure minimum age of marriage.
- (b) Prevention of marriages without the consent of the parties.
- (c) Check bigamy/polygamy
- (d) Enabling married women to claim their right to live in the matrimonial house, maintenance, etc.
- (e) Enabling widows to claim their inheritance rights, other benefits and privileges which they are entitled to after the death of their husband.
- (f) Deterring men from deserting women after marriage.
- (g) Deterring parents/guardians from indulging in trafficking of women to any person including a foreigner, under the garb of marriage.⁶

STATUS IN INDIA: EXISTING LAWS, PERSONAL LAWS, CASE LAWS

The ideology behind the recommendations of the Law Commission of India was to uplift the status of women who were not competent enough understand the pros of such notion. “In a report submitted to the Centre, the commission headed by former Supreme Court judge, Justice B.S. Chauhan, said that the lack of provisions for compulsory registration of marriages had proven disastrous for women and deprived them of societal recognition and legal security. The Commission also recommended that *“fraudulent marriages are on the rise especially among non-resident Indians. Compulsory registration can serve as a means to ensure that conditions of a valid marriage have been performed.”*⁷

Along with stating the necessity of registration, the Law Commission also acknowledges the problem that our country faces due to extensive population, customary matrimonial practices and diversity. However, while acknowledging the same never has the Commission denied the merits of such legal provisions, for which a way can be paved via various civil and criminal laws. The Commission on the same said, *“it would provide citizens, not new rights but better enforcement of existing rights under various family laws that grant and provide to protect many rights of spouses within a marriage”*⁸

People who want to marry their partner belonging to a different religion but does not want to give up on their own religion can marry according to the procedure provided under the Special Marriage Act, 1954. Under the Special Marriage Act, 1954, the marriages are by default registered by the marriage officers. Parties to the marriage need to be present after submission of the documents so that public notice can be issued for inviting objections, of which one copy is published on the notice board of the office and copy of same is further provided to both the parties through registered post.

5 Available at: <https://taxguru.in/corporate-law/report-on-compulsory-registration-of-marriages.html>

6 Available at: <https://nlrd.org/registration-of-marriage-made-mandatory-smt-seema-vs-ashwani-kumar-transfer-petition-civil-291-of-2005-supreme-court/>

7 “Make registration of marriages compulsory” *The Hindu*, July 04, 2017.

8 Available at: <https://www.ndtv.com/india-news/compulsory-registration-of-marriages-a-necessary-reform-law-panel-1720670>

Registration of marriage is done 30 days after the date of notice after deciding any objection that may have been received during that period by the Magistrate.⁹ Three witnesses and the parties are required by law to be present on the date of registration.

Not only this, compulsory registration is prescribed under several personal laws as well, such as, under the Christian personal laws, in India, marriages are registered as per Part IV of The Indian Christian Marriage Act, 1872. An application is made for registration to the concerned authority in whose jurisdiction either of the party to the marriage has been residing. The marriage is registered in the marriage register of the Church by the Registrar who was present and performed the marriage ceremony. Similarly, registration of marriages is an essential requirement under the Parsi Marriage and Divorce Act, 1936. Marriage under this Act is registered in the Office of the District Registrar under whose jurisdiction the matrimonial union had taken place. Section 12 of the Act imposes a duty on the priests to periodically transmit the matrimonial records to marriage registrars who are appointed under the same Act, avoidance of which can lead to imprisonment.

Foreign Marriage Act, 1969 prescribes solemnization of a matrimonial union by Indian citizens in foreign territories. Indian citizen can marry another Indian or a foreigner. Solemnization and registration of such a marriage is similar as under the Special Marriage Act.

Under Muslim personal law also, it is upon the Qazi to record the terms of the matrimonial union in the Nikahnama which is then further provided to the married couple. Unlike Hindu Marriage Act which merely supports registration of marriages but does not make it a compulsory requirement of law under it.¹⁰ Although, it is the discretion of the parties to the marriage to either solemnize the marriage before the sub-registrar or register it after the matrimonial ceremonies.

Various states of India such as Goa, Karnataka, Himachal Pradesh, Gujarat, Andhra Pradesh and so on have already taken the necessary steps and thus, have succeeded in enacting the legal procedures for compulsory registration of marriages which are uniform in nature. Marriage Certificate not only gives legal sanctity to the marriage but also is a significant piece of evidence which prevent a party to the marriage to defraud the other party and compels them to perform various matrimonial duties and thus, prevents them to make a joke of such a sacred institution.

It can be further observed that non-registration of marriage does not render the sacred matrimonial union as void. Although under some personal laws, minor liabilities are attracted for non-registration of marriage so that people are encouraged to follow the necessary requirement.

9 Available at: <https://economictimes.indiatimes.com/et-personal/getting-married-check-out-the-laws/articleshow/1317831.cms?from=mdr>

10 Hindu Marriage Act, 1955, Section 8:

"1. For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any 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 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 therefrom 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."

No doubt there has been a rise in number of people registering their marriage in India but the same cannot be said to be a norm. Most people get married according to the rituals of their religion without getting it followed by a legal procedure of registering with the local court or municipal authority that would obtain them government-backed marriage certificate.

The need for compulsory registration has been felt by the judicial authorities of India as well, which can be observed via various judicial pronouncements. The need was acknowledged in the case of *Seema v. Ashwani Kumar*, which was followed by various cases such as, in *Najma v. Registrar General of Marriages & Anr*¹¹, the court observed that matrimonial disputes will significantly reduce if the marriage is registered.

Similarly, in the case of *Sushma W/o Hemantrao Bodas v. Malti W/o Madhukar Machile*¹², marriage was recognized as valid on the basis of the marriage certificate. The Bombay High Court also emphasized that registration of marriage facilitates validity of marriage in succession and matrimonial disputes.

STATUS IN OTHER COUNTRIES

While registration of marriage is not made a compulsion in many countries but they do acknowledge the necessity for the same. "In many countries the official recognition of one's status or of family-related events such as marriage is only granted when all such events have been reported and registered in the family or civil register."¹³The same can be observed through Japanese civil registration system, where Japanese citizens are required to maintain an official document called 'Koseki'. A matrimonial union is only given legal validity if the same is recorded in the Koseki.

While in other countries, like in India, non-registration of marriages does not affect the validity of the marriage. South Africa is also governed as per the same rule under the Marriage Act, 1961 which deals with the matrimonial issues and makes it a requirement to register the marriage. The same can be done postnuptially. Similarly, in Bangladesh, the Muslim Marriages and Divorce Registration Act, 1974, prescribes procedures for registration of marriage, non observance of which is an offence punishable with simple imprisonment which may extend up to two years, or fine up to 3000 Taka, or with both.¹⁴

Compulsory marriage is also a requirement in countries like Pakistan, where the same is provided under the Muslim Family Law Ordinance, 1961. Similarly, in Indonesia, where Article 2 of the Marriage Law, 1974, provides for compulsory registration of marriage. The significance of compulsory registration is recognized in Sri Lanka, as it makes it a compulsion to register a marriage as provided under Muslim Marriage and Divorce Act, 1951

Significance of compulsory registration has been recognized by international organs as well. Article 16 (2) of the Convention on the Elimination of Discrimination against Women, 1979, (of which India is a signatory), prescribes compulsory registration of marriage but due to the various rituals,

11 2012 (1) KHC 655

12 2009 (111) Bom LR 3974

13 Law Commission of India, 270th Report on Compulsory Registration of Marriages, July 2017

14 Muslim Marriages and Divorce Registration Act, 1974, Section 5:

"(1) Where a marriage is solemnized by the Nikah Registrar himself, he shall register the marriage at once.

(2) Where a marriage is solemnized by a person other than the Nikah Registrar, the bridegroom of the marriage shall report it to the concerned Nikah Registrar within thirty days from the date of such solemnization.

(3) Where solemnization of a marriage is reported to a Nikah Registrar under sub-section (2), he shall register the marriage at once.

(4) A person who contravenes any provision of this section commits an offence and he shall be liable to be punished with simple imprisonment for a term which may extend to two years or with fine which may extend to three thousand taka, or with both."

traditions, customs, usages, laws and so on it has become a difficulty to impose such a provision of the convention.

Similarly, the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages emphasizes the need for registration of marriages as they help in creating a legal document which provides a record of a valid legal marriage which can be used for protecting and manifesting rights of the individuals. This leads to formation of a database which holds vital statistics of essential life events.

Problems in framing a uniform Law on compulsory registration of Marriage

A uniform Law on compulsory registration of marriage is a much needed legal reform in India as it has inherent merits in it but in countries like India such reforms are not easy to come into existence due to age old customs of different religions, diverse regions and languages. It is practically impossible to make a uniform law on compulsory registration in India.

1. Diversity in personal laws

India is a land of diversities; there are many religions which are governed by various personal laws. Therefore, there is lack of Uniform civil code, which is creating hurdles in registration of such an important event of life i.e. marriage. Not only personal laws are different but the customs related to marriage are also diverse in different sections of Indian Society which is really a tricky issue to deal with.

2. Lack of Consensus:

Even if the States agree on the need for compulsory registration of the marriages, all states have been unable to produce uniform laws for the same head, varying on either the conditions, procedures and so on. Where states like Punjab, Tamil Nadu & Haryana have succeeded in introducing laws on compulsory registration of marriage, there are states like Madhya Pradesh, Kerala and Bihar which have issued rules for the same.

If we look up to the Centre, then we will find that most of the political parties have failed to arrive at an amicable point on compulsory registration of marriage. The bill related to registration was introduced in Rajya Sabha during the second term of UPA Government, and it passed an amendment to make marriage registration necessary under the Registration of Births and Deaths Act, 1969, which was not passed by Lok Sabha and thus, lapsed later on.

3. Conflict of Laws

As discussed earlier, India is a hub of diversities; therefore, every religion has its own laws and customs. Not only personal laws but laws relating to prohibition of child marriages, dowry prohibition and medical termination of pregnancy are also under conflict with each other on various issues. The conflict among laws is also a hurdle in the way of framing of a uniform policy like compulsory registration of marriage.

CONCLUSION AND SUGGESTIONS

A big hurdle in framing a uniform policy relating to compulsory registration of marriage is conflicts among the existing Laws. The conflict is not only among different personal laws, but also among many other enactments like Prohibition of child marriage Act 2006, Dowry prohibition Act, 1961 and medical termination of pregnancy Act, 1971.

The major conflict is regarding age for registration which needs to be resolved by making a comparison between the liberty and protection given to age relaxations under all the personal laws. Again, there is also a conflict related to rape and marital rape. Indian Penal code, 1860, itself under sections 375 and 376 says that having sexual intercourse with a minor is rape, but on the other hand it provides for an exception that, "*Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape*". When answers of such questions will be presented then only, the policy

makers will be able to make a uniform policy and fulfill their responsibility towards society of bringing reform through Law.

Constituting uniform laws with penalties in our country where there is still lack of legal literacy and awareness makes it highly difficult to adopt the same. Every law has its good and bad. registration increases the duties of the married couple who have to go through all the procedure to get their marriage registered with the authorities. Similarly, compulsory registration may also be proved to be more disadvantageous for marginalized women as it considerably increases the possibility of failure in legal claims due to failure in registering the marriages as it will invalidate the marriage merely on the grounds of procedural defects.

There are many questions which need to be answered in this context like: Can compulsory registration of marriage help in achieving justice? Is it possible to implement such laws in a state like India, which carries such diversities? Will a law for compulsory registration be compatible with present laws prevailing in India? It is really difficult to answer these questions?

Therefore, before framing a uniform policy for the compulsory registration of marriage the policy makers need to go through all the conflicts which may arise due to diversity related to marriage rules under all the personal laws prevailing in India. Enacting a law is easier than enforcing it especially in a secular country like India where the constitution itself protects the rights of every citizen irrespective of any religion.

As observed by the Law commission of India in its 270th report, there are many hurdles in implementing a uniform Law but they cannot overshadow the merits of such an enactment. A better implementation of other civil and criminal laws is possible only if uniform laws on compulsory registration get enacted. The commission further observed that it would not only provide new rights but also better enforcement of existing rights under various family laws that grant and provide to protect many rights of spouses within a marriage.

The rights of women and children can be well protected if uniform laws will be enacted and implemented in India. Undoubtedly, it is difficult in our nation, but not impossible. If such happens, then it will definitely open the doors for uniform civil code in India as its success will be a proof of tolerance among all the religions and it will prove to be a revolutionary reform.