

Laws on Registration of Marriages in India and its Utility

Mr. Divyam Desai¹

Abstract

India is a country of diverse customs and traditions. Marriage is a concept which is largely driven by the customs prevalent in the country and because of this there are several legislations on marriage and divorce. The paper will examine how compulsory registration of marriage with uniform procedures can play an important role in avoiding vexatious matrimonial conflicts and other social evils like child marriage etc. The existing laws on registration of marriages and state legislation on compulsory registration after Supreme Court's guidelines will be closely analyzed. The effectiveness and utility of each law will be analyzed from the bare reading of the law and with the help of case laws.

Keywords: *Marriages, Registration, Customs, Traditions, Personal Laws*

Introduction

Registration of marriages under Special Marriage Act, 1954:

The SMA, 1954 can help parties solemnise their marriage who opts to not solemnise under their personal law. Under SMA you are allowed to marry according to your customs if you would like to, but you are compulsorily bound to register the same which is not in the case of personal laws. Under chapter III of SMA, 1954², marriages solemnized under this act should be registered by the marriage officer within 30 days of marriage. The effect of non-registration of marriage under Section 15, SMA is that the marriage will not be a valid marriage under this act. Kerela High Court in the case of *Grace v. P.K. Vaidian*³ held that unless the marriage of the parties is not registered as prescribe by SMA, the marriage will not be governed by SMA and is not a valid marriage in the eyes of SMA and the wife's petition for divorce under Section 27 was not maintained. This view was referred and affirmed recently by Delhi High Court in the case of *M v. A*⁴ and the court observed:

“10.5. The unique feature of the Special Marriage Act, 1954 is compulsory registration of marriage under the Act which protects the interest of the parties and the children born out of wedlock.

10.6. The Registration Certificate of the marriage between the parties is conclusive evidence of the fact that their marriage was solemnised under the Special Marriage Act. There can be no issue that the Special Marriage Act would apply.”

Further the most important clarification made by the Delhi High Court in the present case was that certificate of registration of marriage under SMA is a valid proof of solemnisation and conclusive evidence of marriage which is not open to challenge.

¹ Law Student, BBA.LL.B., Jindal Global Law School, O.P. Jindal Global University.

² The Special Marriage Act, 1954.

³ *Grace Sheela Joseph v. P.K. George Vaidian*, AIR 1989 Ker 234.

⁴ *M v. A*, (2018) SCC OnLine Del 8005.

Registration of marriages under personal laws in India:

Hindu Law:

The Section 8 of Hindu Marriage Act (HMA)⁵ which is a codified personal law for majority of population in the country (Hindus including Jain, Sikhs and Buddhists), talks about registration of Hindu marriages (both the contracting party are Hindu) and the power of the respective state government to maintain a register or to make any rules in that regard. Therefore, HMA does not provide for the compulsory registration of marriage, leaving it at the discretion of the state governments. Also, Section 8(5) of HMA gives blanket protection on validity of marriages of the couples who don't register their marriages which creates hurdles in the court of law where validity of marriages is challenged with ulterior motives.

Parsi Law:

Parsi people have the option to solemnize their marriage under HMA as well as under The Parsi Marriage and Divorce Act, 1936 (PMDA). The registration of the Parsi marriages is compulsory in India according to the Parsi personal law. Section 12⁶ of PMDA puts a responsibility to transmit the records of the marriages solemnized to marriage registrars in order to certify them and upon non-compliance, the priest can be imprisoned up to three months.⁷ The penalties of non-registration of marriages is against the priest in the act.

The question arises is that what are consequences of non-registration of marriages on the parties who are solely married under PMDA and not under HMA because the scheme of PMDA supports compulsory registration. Section 17⁸ says that irregularity or non-registration on the part of the contracting parties will not invalidate their marriage and there are no penalties on the contracting parties in the case of non-registration.

Muslim Law:

Generally, in Muslim marriages Kazis in preparing a document (Nikahnama) which is signed by him, contracting parties and two witnesses for the purpose. These Nikahnama prepared by Kazis can serve as a proof of their marriage. For the purposes of the registration of the Muslim marriages, there is no codified law on registration, registration of marriages is not compulsory and even presences of Kazis and Kazinama are not required⁹ for the valid solemnization of marriages.

Christian Law:

Under Section 37 of the Indian Christian Marriage act, the Christian marriages can be registered by the priest who helped in solemnization by sending the record of the same to the marriage registrar of the district appointed under the act.¹⁰ Section 77(5) of the ICMA states that if the marriage is solemnized as provided under Section 4 and of the act then marriage cannot be held void even if it is not registered before the marriage registrar of the district.¹¹ Therefore, the compulsory registration of marriage is not required in the Christian personal

⁵ The Hindu Marriage Act, 1955.

⁶ The Parsi Marriage and Divorce Act, 1936.

⁷The Parsi Marriage and Divorce Act, 1936

⁸ *Id.*

⁹ The Kazis Act, 1880.

¹⁰ The Indian Christian Marriage Act, 1872.

¹¹ *Id.*

laws but the competent persons under the act like clergyman, minister of religion etc. who is solemnizing the marriages do follow the practice of registration by updating the record of district registrar of marriages.

Sikh Law:

Generally, Sikh marriages are covered under HMA and SMA. But they have their personal law too i.e., the *Anand Marriage Act, 1909*¹² which was amended in 2012 which has provided for registration of marriages and directed states to make rules for the same. The chief minister of Punjab has announced that from the month of November 2022, the Anand Act will be followed strictly in letters and spirit to give statutory recognition to Sikh marriages. Section 6(3) says that the omission to register a marriage will not affect the validity of the marriage even after the amendment. Therefore, Sikh law also gives blanket protection like HMA on non-registration of marriages.

Importance of Registration of Marriages:

For the first time, in 1962, the need for compulsory registration was identified way back in 1962 at Convention on Consent to marriage, minimum age for marriage and registration of marriages.¹³ India at that time understood that a compulsory registration of marriages can play a very important role for the development of the nation by curbing certain evil practices like child marriage, marriages without consent etc. Different personal laws are often being misused by finding a loophole in them for example, entering in a bigamous relation by conversion and compulsory registration can help prevent them. The only reason behind not signing of this convention was the vast diversity of customs and religions in the nation and fitting everything under one roof of legislation seemed impractical at that point of time.

In *Kanagavalli and ors. vs. Saroja and ors (2002)*¹⁴, the madras high court came down very heavily upon the legislature by suggesting them with strong words to make registration under HMA compulsory as it does not provide for compulsory registration which has made prosecution for bigamy difficult and has landed many women in trouble where her status of wife and recognition in society is withdrawn. Men without any fear enters in a bigamous relation and deserts the first wife. The court also observed that many men are influenced by visual media, movies etc. which has created an impression that exchanging garlands, thali etc. will constitute a valid marriage.

For the first time in 2006, Supreme Court in *Seema v. Ashwani*¹⁵ took the cognizance on this issue and called upon all the state governments and the central government and asked the states to make laws providing for compulsory registration of the marriages which are religion/caste neutral and provides for registration of marriages solemnized by any prevalent customs within the country. One single register throughout the country or throughout the state should be maintained to keep the records of all the marriages solemnized within a country or state. The parties who register their marriage should get a presumption of their marriage being a valid marriage and the presumption of invalid marriage for those who don't register. The Supreme court also underlined the importance of registration as pointed out by national commission for women in their draft bill. The object and intent behind the bill for compulsory registration is: one to prevent child marriages as registration will require a valid

¹² The Anand Marriage Act, 1909.

¹³ B. Sivaramayya, 'Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962, with Special Reference to India' (1966) 8 JILI 402.

¹⁴ *Kanagavalli and ors. v. Saroja and ors.* AIR 2002 Mad 73

¹⁵ *Seema v. Ashwani* (2006) 2 SCC 578.

proof of age, two to prevent bigamous or polygamous marriages by sending notices to the previous wives if any, three to prevent forceful marriages without the consent of the either party and helps protecting the fundamental right of right to marry the person of his/her choice¹⁶, four to deter man from deserting as he would held liable to pay maintenance under Section 125 CrPC when there is a proof of marriage which he can't easily dispute.¹⁷

Sometime marriage certificates can help parties and courts up to a great extent in solving cases easily. The case of *Sangita v. Gurjeet Singh*¹⁸ is a case where the widow filed an accident claim petition of his deceased husband before the Motor Accident Claims Tribunal and her marriage with the deceased was disputed by the tribunal and the high court in the wife's appeal observed that had they registered their marriage this issue of validity could have been solved easily.

In the case of *Vikram Aditya Singh*, it was held that refusal to register a marriage is bad in the eyes of law when you deny registration on the grounds of unnecessary technicalities like in the present case registration was denied because the parents of a contracting party were residing outside the jurisdiction of the marriage registrar.¹⁹ Similarly, in case of *Jatinder Singh v. State of Punjab*,²⁰ high court ordered the marriage registrar to register the marriage of two adults who married against the wish of their parents which according to the court should not be a hurdle in registration of a valid marriage and registrar cannot deny registration. The right to marry the person of one's choice can be safeguarded by registration.

The registration also helps in resolving the issues relating to the succession and in one such case i.e. *Sushma v. Malti* Bombay High Court held that a marriage certificate can become a strong proof for the validity of the marriage when the same is disputed because Section 8, HMA begins with the words, "for the purpose of facilitating the proof of Hindu marriages."²¹ Although the certificate of marriage cannot be said to be a conclusive proof of marriage and can always be challenged but it can make your case stronger if you are arguing for a marriage to be held valid. It can also help to prevent unscrupulous third parties/relatives who with ulterior motives comes and challenge the validity of a marriage.

Registration: A Way Forward To UCC:

Compulsory registration can help to move a step forward in achieving the Uniform Civil Code dream of the framers of constitution. Compulsory registration should seek to introduce a legislation which has a uniform legal and formal procedures and at the same time it does not prevent the parties to celebrate their customs and traditions.²² If UCC is introduced then the complexity in the matrimonial litigation will reduce as there will be only one codified law for marriage, divorce, maintenance, succession etc. UCC will not dump the customs and beliefs of the people regarding the solemnisation of the marriages, but the compulsory registration procedures should be developed in such a way that the registration certificate stands as a conclusive proof of a valid marriage. And by making such registration compulsory where a formal and uniform procedure is followed, petitions challenging the validity of the marriages can be reduced to a great extent.

¹⁶ National Commission for Women Draft on THE COMPULSORY REGISTRATION OF MARRIAGES BILL, 2005

¹⁷ K.N. Chandrasekharan Pillai, 'Regulating Marriage and Divorce – Need for a Comprehensive Legislation' (2006) 48 Journal of the Indian Law Institute 106.

¹⁸ *Sangita v. Gurjeet Singh*, (2010) SCC OnLine P&H 9538.

¹⁹ *Vikram Aditya Singh v. UOI* AIR 2007 Delhi 101.

²⁰ *Jatinder Singh v. State of Punjab*, (2014) SCC OnLine P&H 8261.

²¹ *Sow. Sushma v. Smt. Malti* (2009) SCC OnLine Bom 1267.

²² Ritu M. Eshwar, 'Model Uniform Civil Code' (2019) 14 *Supremo Amicus* 216.

Laws On Registration of Child Marriages:

In India as laid down in *Pinninti Venkataramana & Anr. Vs State of Andhra Pradesh*²³, child marriage is voidable at the option of contracting party, but it is not *void ab initio* once a valid ceremony is concluded (Doctrine of *factum valet*). Due to diverse customs and traditions, the parliament has not yet prohibited child marriages. Even after the introduction of Prevention of Child Marriages Act, 2004, the position with respect to the validity of the child is the same. Karnataka has amended this position and made child marriages *void ab initio* in the state.

No step to encourage child marriage is taken by the government and therefore all the laws on registration of marriages have the condition that the parties contracting should be major. One of the objectives behind the registration of marriages is to prevent and check the practices of child marriages and it was also observed by the Supreme Court.

Recently Rajasthan government introduced a bill against which there was a lot of backlashes, and a petition was also filed in the supreme court which was disposed of by the court saying that the bill has not been successfully passed yet. Rajasthan Compulsory Registration of Marriages (Amendment) Bill, 2021 sought for allowing the registration of the child marriages of which contracting parties are below the age of 21 years (husband) and 18 years (wife). As on today the bill is not yet passed by the legislature.

Following *Seema v. Ashwani*:

After the Supreme Courts directions in *Seema* case, instead of making a central legislation all the states decided to come up with their state legislations on compulsory registration of the marriages. Now, the paper will try to closely analyse and identify **whether these state legislations satisfy the letter and spirit of the *ratio*** laid down in the above-mentioned case. Some other **positives-negatives** of the legislation will also be examined. For example, whether they provide for registration of marriage of transgender couples or not, the case of *Arun kumar vs. Inspector General of registration*²⁴, Madras high court has held that under HMA, a trans couple professing Hindu religion should be denied registration of their marriage by considering the progressive decisions of the Supreme court in *NALSA v. UOI* and in *Navtej Singh Johar v. UOI*.

State Legislations with the Object of 'Compulsory Registration':

Most of these state legislations are religion neutral and applies to all the citizens whose marriages are solemnised in the jurisdiction of that state or union territory.

Tamil Nadu:

Section 3 of The Tamil Nadu Registration of Marriages Act, 2009²⁵ do provide for compulsory registration but does not punish the parties or levies any fine on them in the event of non-registration which again defeat the purpose of the legislation as laid down by the apex court.

The positive aspect of the act is that it provides importance to the customs and traditions for the valid solemnisation of marriage which helps in reduction of cases where the registration of marriage is challenged unnecessarily with an ulterior motive on the ground of fraud. If the

²³ Pinninti Venkataramana & Anr. V. State of Andhra Pradesh AIR 1977 AP 43.

²⁴ Arunkumar v. Inspector General of registration W.P. (MD) NO. 4125 OF 2019 AND W.M.P. (MD) NO. 3220 OF 2019.

²⁵ The Tamil Nadu Registration of Marriages Act, 2009.

party has entered the marriage by way of valid prevalent custom, they cannot then challenge the validity of the registration of marriage by alleging fraud etc. Madras High Court in the case of *S. Balakrishnan Pandiyan*²⁶ where multiple petitions were clubbed pertaining to the same issue, and it was held marriages secretly solemnised in bar room or in an advocate's office does not amount to valid solemnisation and no customs in the country allows a ceremony to be conducted by an "advocate-cum priest".

Rajasthan:

Rajasthan Compulsory Registration of Marriages Act, 2009 was brought for the compulsory registration of marriages in the state which says that non-registration will not invalidate the marriage. Therefore, in the eyes of law the unregistered marriage will not be void. In the case of *Kartik Tak v. State of Rajasthan*²⁷, state government denied an appointment to a government employment post because of non-registration of marriage under the Rajasthan Compulsory Registration of Marriages Act, 2009 even though he was a married. The court set aside this condition and directed the government to appoint the petitioner as there are no consequences of non-registration of marriages under the act.

Mizoram:

In the case of *Lalmuanawma v. State of Mizoram*²⁸, Petitioner was denied family pension as his wife died who was a government employee. The state said that they have not registered their marriage and thus cannot be said to be valid marriage. The court while allowing the petition observed that:

"The Mizoram Compulsory Registration of Marriages Act, 2007 (herein after referred to as the 2007 Act) requires that every marriage in the State is to be compulsorily registered in terms of the 2007 Act. There is nothing provided in the 2007 Act, to the effect that a marriage which has not been registered under the 2007 Act, is void or invalid." Therefore, the scheme of the legislations is compulsory registrations, but no consequences follow in case of non-compliance.

GOA, DAMAN, And DIU:

Following the guidelines of the Supreme Court, PORTUGUESE CIVIL CODE, 1867 was extended to Daman and Diu. Under this code registration is not compulsory from the plain reading of it but marriage solemnised under this code are generally registered as per the affidavit filed by government before the Supreme Court of India.

Bihar:

Bihar Marriage Registration Rules, 2006 provides for compulsory registration of marriages but the maximum penalty in the event of non-registration of marriages is one thousand rupees. Section 4²⁹ of the rules says that certificate of marriage is not a proof of marriage, and it will always be open to challenge. Therefore, there will be no advantage to the parties registering marriage in the state of Bihar.

²⁶ *Balakrishnan Pandiyan v. The Superintendent of Police* (2014) SCC OnLine Mad 8815.

²⁷ *Kartik Tak v. State of Rajasthan*, (2016) SCC OnLine Raj 3291.

²⁸ *Lalmuanawma v. State of Mizoram*, (2022) SCC OnLine Gau 988.

²⁹ Bihar Marriage Registration Rules, 2006.

Punjab:

Section 3 of Punjab Compulsory Registration of Marriages Act, 2012³⁰ provides for compulsory registration of marriages solemnized in the state irrespective of caste creed and nationality of the parties but it is not a good piece of legislation as *Section 8* of the said act provides protection to the couple who don't register their marriage as non-registration would not invalidate their marriage and it also does not provide for any deter. Another flaw is that it does not provide for any minimum age of marriage and thus don't help in preventing child marriages.

Delhi:

Section 2 of the Delhi (Compulsory Registration of Marriage) order-2014³¹ provides for compulsory registration of marriages. The couples who fail to register their marriage within the period of 60 days from solemnisation will be subjected to the penalty of One Thousand Rupees each. Child marriages are not allowed to get registered.

Haryana:

The Haryana Compulsory Registration of marriages Act, 2008 provides for registration of marriages but Section 13³² says no marriage can be invalidated solely on the fact that the marriage was not registered. The very purpose of the legislation gets defeated, and the word 'compulsory' just remains a word without any bearing.

Meghalaya:

Meghalaya Compulsory Registration of Marriage Rules, 2015 tried to ensure that every marriage solemnised in the state is compulsorily registered. Section 8 of the rules³³ provides for penalty of one hundred rupees for each month's delay in registration up to maximum penalty of one thousand rupees. The practice of child marriage is very prevalent in Meghalaya being a huge tribal population state. The rules also do not provide for minimum age of marriage and no case is found in which marriage registrar has refused to register a child marriage. Thus, registration of child marriages is not invalid in Meghalaya.

Kerala:

Section 15³⁴ of THE KERALA REGISTRATION OF MARRIAGES (COMMON) RULES, 2008 provides for consequences for non-registration of marriages under this rule. It says that after the enactment of these rules, the Government will not consider certificates of marriages to be valid one which are issued by some other authority not empowered under the rules or under other non-repealed statutory provisions. Such provisions help in ensuring that the marriage certificate is issued by the authorised person and the body. Sometime NGOs, religious organisation like Arya Samaj etc. issues certificate which cannot be considered as the as valid proof of marriage. VISA authorities, passport authorities or for that matter any other government authority will not consider it as a proof of marriage among parties.

³⁰ The Punjab Compulsory Registration of Marriages Act, 2012.

³¹ The Delhi (Compulsory Registration of Marriage) order, 2014.

³² The Haryana Compulsory Registration of marriages Act, 2008.

³³ The Meghalaya Compulsory Registration of Marriage Rules, 2015.

³⁴ THE KERALA REGISTRATION OF MARRIAGES (COMMON) RULES, 2008.

Similar Positions in Rest of The States:

Other than the above state there are states like Himachal Pradesh, Andhra Pradesh, Tripura, Karnataka where they already have a law on registration before the guidelines provided by the apex court but the problem with the laws is that no law has severe or consequences on non-registration of marriage. This has been the problem even after the apex court's guidelines where there are no significant backdrops for the parties not registering. Examples of this are the legislations analysed above and legislations of Uttarakhand, Madhya Pradesh, Rajasthan, Chandigarh etc. While the state of Jammu and Kashmir has no religion neutral legislation for registration till date and the legislation for Muslim is in place but not yet enforced.

Findings and Suggestions:

Majority of the Indian population is Hindu and therefore, the fundamental issue which needs the consideration of the parliament is to *amend Section 8 of HMA* because it gives a blanket protection to all the parties not registering their marriages and it will have an overriding effect on all other legislations created by various states following *Seema v. Ashwani*. All these state legislations, rules etc. will have no bearing on the Hindu marriages as at the end of the day Hindu couple can claim that they got married under HMA where there is no compulsory requirement of registration but only of a valid ceremony.

The other problem with the registration of marriages is that it is not a conclusive proof of marriage, and its validity can always be challenged on various ground such as fraud, no valid ceremony for solemnisation etc. This issue is with all the legislations on registration discussed above including HMA. The problem can be solved if the ceremony of a marriage and procedures for registration are completely independent from each other like in Special Marriage Act. While in HMA and other legislations once marriage ceremony is concluded, registration is done based on that. Recently Madras High Court in a case where certificate of registration and validity of the marriage was being challenged on the ground that the ceremony was not valid. The issue before the division bench of their lordships was: Whether certificate of marriage under Section 8 HMA is a conclusive proof of marriage?

The court held that,

³⁵“19. *Section 8 of the Hindu Marriage Act provides registration of Hindu Marriage. Registration has been introduced for the purpose of facilitating the proof of Hindu marriage. Registration itself is not a proof of the marriage and there must be a valid marriage observing all customary rights as per Section 7 of the Hindu Marriage Act.* “

Also, almost all the laws have no penal consequences or a hefty fine or any severe consequences for that matter on non-registration despite legislations are named as 'compulsory registration' after the guidelines of the apex court. The guidelines of the apex court are not said to be followed at the best in its letter and spirit when there are such big loopholes in every legislation and the utility and effectiveness of such legislations is near to zero.

³⁵ Mr.S.Karunakaran v. Ms.Srileka, C.M.P.No.10093 of 2019, Appeal Suit No.292 of 2019.