REGISTRATION OF MARRIAGES

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Marriage is a formal as well as a sacred union in which two parties, not necessarily of same sexes, make permanent and exclusive commitment to accept the other person as their companion for life and wilfully agree to bear upon themselves all the duties and obligations that arises from such a relationship. Marriage confers a status of lawful husband and wife on the parties and the society appraises them as a single unit that will cohabit, consummate, produce and rear offsprings, enjoy sexual intimacy as and when they please and devote themselves to loving and caring their partner and children. Marriages in India can be a contract, if parties are muslims and married under Muslim personal laws; a sacrament, if parties are hindus and are married under Hindu Marriage Act, 1955 or a civil contract, if parties irrespective of their religion are married under secular laws of the country namely Special Marriage Act,1954 or Foreign Marriage Act,1969.

The issue discussed in this paper is concerned with one significant aspect of marriages, their registration. The issue in hand is not only prominent but also directly relevant to our present day concerns. The first part of this paper will be a brief introduction about registration of marriages and different people who can issue marriage certificate under different personal laws. The second part of this paper will focus on question of compulsory registration of marriage. The paper will then discuss why registration of marriages is necessary if not compulsory. This will be followed by my own critical analysis on the issue in hand.

What is registration of marriage?

Registration of marriage refers to the act of getting a marriage recorded to any authority such as a marriage registrar, officiating priest, clergyman, minister of religion, Kazis who are required to keep a record of such marriages and has been permitted by the government to issue marriage certificate. Registration of marriage provides evidence of marriage having taken place and a rebuttable presumption that marriage has been solemnized between the

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parties[3]. Registration in itself is not a proof of a valid marriage and is not a determinative factor in determining validity of marriage, yet it acts as a documentary evidence and proof that the parties have been married to each other.

Who can register marriages ?

For registration of marriages solemnized under Hindu Marriage Act, 1955 parties are required to submit an application to the Sub-District Magistrate in whose jurisdiction any one or both the spouses have been residing[4]. In case of Christian marriages solemnized under The Indian Christian Marriage Act, 1872, marriage certificate can be issued by different persons depending on by whom the marriage has been solemnized. If a marriage has been solemnized in Church of Scotland, then the parties can get their marriage registered with the Clergyman of the Church of Scotland[5]. Similarly if a marriage has been solemnized in Church of England or Church of Rome, the marriage certificate can be issued by Clergyman of the respective churches. Churches of England, Rome, Scotland refers to the Churches which are within our Indian territory but are guided not by the rules, rites, ceremonies, customs and laws of Indian Churches but by the laws, customs, practices which are laid down for Churches established in England, Rome, Scotland. Minister of religion licensed by the state government to solemnize a marriage and Marriage registrar appointed under this act can also register a Christian marriage and issue a marriage certificate for the same[6]. The state government can also grant a license to any christian either by name or as holding any office for the time being, authorizing him to grant certificates of marriage to Indian Christians[7]. Parsi marriages solemnized under The Parsi Marriage and Divorce Act, 1936 are registered by the Marriage registrar of the place at which such a marriage is solemnized. Once a Parsi Marriage is solemnized, the officiating priest certifies the marriage by issuing a certificate and send this certificate after getting it duly signed by the parties and the witnesses to the marriage registrar of the place. The marriage registrar then enters the certificate in his register thus registering the marriage[8]. In case of Special Marriage Act, 1954 parties irrespective of

3Seema v. Ashwani Kumar, (2008) 7 SCC 509

4 MARRIAGE CERTIFCATE AND REGISTRATIONDEPARTMENT OF SOCIAL WELFARE, http://delhi.gov.in/wps/wcm/connect/DoIT/delhigovt/community/marriagecertificate and registration (last visited Jan 21, 2019)

5Sec 31; The Indian Christian Marriage Act, 1872

6Sec 54; The Indian Christian Marriage Act, 1872

7Sec 9; The Indian Christian Marriage Act, 1872

8Sec 6, The Parsi Marriage and Divorce Act, 1936

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whether they are married under their personal laws or under Special Marriage Act can get their marriage registered by submitting an application for registration of their marriage to the marriage officer in whose jurisdiction they are residing[9]. The marriage officer after making sure that all the conditions for registration are met issues the marriage certificate. Marriages which are solemnized under the Foreign Marriage Act, 1969 are registered by a Marriage officer appointed by the Central government by a notification in its official Gazette. The marriage officer registers the marriage once he is satisfied that the marriage has been solemnized by adhering to the laws of the country in which it is so solemnized[10].

Is registration of Marriages compulsory in India?

Our country has plurality of matrimonial laws. Various communities and groups of people are governed by their own system of personal laws and customs governing marriages and their registration. At the same time, every person has autonomy and right to step out of the ambit of their community-specific personal laws and instead subject themselves to national laws on civil marriages. Provision for registration of marriages, be it compulsory or mandatory is found under most of these laws.

In India, there are some states which have passed legislation for compulsory registration of marriages. Initially, there were four states which passed their respective laws making it mandatory to register marriages[11].

Himachal Pradesh was the first state to make it compulsory for all the marriages solemnized within the state to be registered[12]. It passed the *Himachal Pradesh Registration of Marriages act, 1996* in July 9, 1996 providing for compulsory registration of marriages solemnized within the state. *The Bombay Registration of Marriages Act, 1953* applicable to states of Maharashtra and Gujarat explicitly finds it mentioned in section 4 of the act that every marriage which is contracted in an area to which the provision of this act extends will have to be compulsorily registered irrespective of the personal laws under which the parties have married. Karnataka state treading on the same path passed the *Karnataka Marriages (Registration and Miscellaneous Provisions) act*, 1976 providing an expedient and uniform

9Sec 15; The Special Marriage Act, 1954
10Sec 17, The Foreign Marriage Act, 1969
11Paras Diwan, 7th edition 2016; publisher Lexis Nexis (Gurgaon, Haryana)
12 REGISTRATION OF MARRIAGE MANDATORY IN HIMACHALTHE HINDU, http://www.thehindu.com/2004/07/16/stories/2004071608160400.htm(last visited Jan 20, 2019)

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law for compulsory registration of marriages. The Andhra Pradesh Women Commission in wake of married women increasingly falling prey to bigamous relationships and desertion at the hands of their husbands, proposed enforcement of The Andhra Pradesh Compulsory Registration of Marriages act to provide security and protection to women [13]. The Government after carefully scrutinizing the proposal and act, decided to make registration of marriages with the local authorities compulsory in the State by undertaking a specific legislation. The Andhra Pradesh government therefore enacted the The Andhra Pradesh Compulsory Registration of Marriages Act, 2002 making registration of marriages compulsory in the state.

In 2006, the Supreme Court directed the state governments to frame necessary rules for compulsory registration of marriages irrespective of the religion and personal laws of the parties. In its judgement Seema v. Ashwni Kumar the Supreme Court held that -

"It is evident from narration of facts though most of the States have framed rules regarding registration of marriages, registration of marriage is not compulsory in several States. If the record of marriage is kept, to a large extent, the dispute concerning solemnization of marriages between two persons is avoided. Accordingly, we are of the view that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective States, where the marriage is solemnized"[14].

In Pursuance of the orders of the Supreme Court, several states have enacted necessary laws through their state legislation which provides for compulsory registration of marriages. In 2009, Tamil Nadu after passing its Tamil Nadu Registration of Marriages Act, 2009 became the first state to follow the directive of Supreme Court. In its act, Tamil Nadu government provide for the compulsory registration of all marriages of all persons who are the citizens of India belonging to various religions in the State[15]. Tamil Nadu Registration of Marriages Act, 2009, is a secular law and it makes registration of marriages compulsory irrespective of the religion that a party adheres to[16]. Similarly, the Punjab government by passing *Punjab Compulsory Registration of Marriages Act, 2012* and Delhi government by legislating *The*

13 AP, TS ASKED TO ENSURE COMPULSORY REGISTRATION OF MARRIAGESTHE HINDU, http://www.thehindu.com/news/cities/Hyderabad/ap-ts-asked-to-ensure-compulsory-registration-of-marriages/article6242640.ece(last visited Jan 20, 2019)

14Seema v. Ashwani Kumar; (2008) 7 SCC 509

15Tamil Nadu Registration of Marriages Act, 2009

16S. BalakrishnanPandiyan&Anr. V. Superintendent of Police &Anr., 2014 SCC OnLine Mad 8815

Delhi (Compulsory Registration of Marriage) order, 2014 complied with the directions given by the Supreme Court. The Punjab Compulsory Registration of Marriages Act, 2012 has provided for compulsory registration of marriages solemnized under personal laws of the parties irrespective of their caste, creed, religion and nationality[17]. The Delhi (Compulsory Registration of Marriage) order, 2014 in section 2 lays down the requirements for mandatory registration of marriages. In Uttar Pradesh, the state government has made it mandatory for the parties to register their marriages with the Panchayat.

Despite the Supreme Court's order of compulsory registration of marriages in Seema v. Ashwani Kumar, most of the states except the states named above have failed to pass any laws in this regard.

Marriages can also be registered under the personal laws of the parties. Hindu Marriage Act, 1955 contains provision for registration of marriages. Sec 8 of Hindu Marriage Act deals with registration of marriages. Under Hindu Marriage Act registration of marriages is not compulsory but is left to the discretion of the parties. Parties can get their marriage registered if they are willing, however non-registration of marriage will not affect the validity of a Hindu marriage in any way. Section 8 (2) of the act notwithstanding anything contained in section 8 (1) provides that any state government can make rules for compulsory registration of marriages. State government can issue orders for making registration of Hindu marriages compulsory if it finds it necessary or expedient to do so. Section 8 (5) of the act specifically lays down that failure to register a Hindu marriage shall, in no way affect its validity. Even when registration of marriages has been made compulsory by a state government, non-registration of such marriages will not affect the validity of marriage but will merely entail a fine which may extend upto twenty-five rupees[18]. It must be noted that under Hindu Marriage Act, 1955 only marriage between two Hindus can be registered. Marriage between a Hindu and a Muslim or a Hindu and a Christian can not be registered[19]. One of the essential condition of a valid Hindu marriage is that the marriage must be solemnized in accordance with necessary requisite ceremonies such as Saptapadi. Any marriage which is not in accordance with valid ceremonies will be void. Any marriage which has been registered under the Hindu Marriage Act but no proof or evidence of performance of necessary ceremonies is available for the same, in such cases registration will be deemed to have no

17Preamble. Short title and commencement. The Punjab Compulsory Registration of Marriages Act, 2012
18Paras Diwan, 7th edition 2016; publisher Lexis Nexis (Gurgaon, Haryana), pg 144
19Margaret Palai v. SavitriPalai, AIR 2010 Ori 45

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effect[20]. Registration can not be a conclusive proof of a valid marriage. It is a proof of solemnization of marriage. Whether the marriage is valid or invalid, it will depend on facts or circumstances of the cases.

Like Hindu marriages, registration of Muslim marriages is not compulsory[21]. Muslim law does not require registration of marriages. Under Muslim personal laws, registration of a marriage is not an essential condition of a valid marriage[22]. Very few states in India have statutes for even voluntary registration of Muslim marriages. The Earliest statute in this regard is The Bengal Mohammedan Marriages and Divorce Registration Act passed in the year 1935. This Act is now applicable in the states of Bihar and West Bengal[23]. Assam Muslim Marriages and Divorce Act, 1935 and Orissa Mohammedan Marriage and Divorce registration Act, 1947 passed in the states of Assam and Orissa provides for voluntary registration of Islamic marriages. Muslim marriages can be proved by direct evidence of solemnization of marriage. In case, of absence of any direct evidence, marriage can be proved by the man acknowledging the paternity of his child or acknowledging that a particular women is his wife[24]. Muslim marriages are in nature of a contract. Though marriages among Muslims are solemnized with recitation of certain verses from Koran, Islam does not recognize any ceremonies, rituals or any other sort of religious service as essential for solemnization of marriage[25]. In Muslim marriages parties are required to sign a Nikahnama and this Nikahnama acts a valid proof of solemnization of marriage.

Indian Christian Marriage Act, 1872 has made registration of marriages compulsory. Under the act, entries are made in the marriage register of the church soon after a marriage is solemnized along with the signatures of bride, bridegroom, officiating priest and witnesses[26]. Section 6 of the The Parsi Marriage and Divorce Act, also makes registration of marriages solemnized under this act compulsory[27]. Section 15 of The Special Marriage Act, 1954 deals with registration of marriages. The Special Marriage Act combines the act of solemnization and registration of civil marriages in one transaction[28]. Therefore all the marriages which are

20Sanjai v. Eveline Jabe, AIR 1993 MP 54
21Paras Diwan, 7th edition 2016; publisher Lexis Nexis (Gurgaon, Haryana), pg 152
22M. Jainoon v. M. Ammanulla Khan &Ors., 2000 Indlaw MAD 518
23Paras Diwan, 7th edition 2016; publisher Lexis Nexis (Gurgaon, Haryana)
24Supra
25Abdul Kadir v. Salima, (1886) ILR 8 All 149
26Seema v. Aswani Kumar (2008) 7 SCC 509
27Supra
28Law commission report 211, Registration of Marriages

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solemnized under this act are automatically registered. Under Special Marriage Act, any marriage which has been solemnized under personal laws of the parties and not under the Special Marriage act can also be registered. However registration of such marriages celebrated in due form is not compulsory. A new provision of Special Marriage Act, 1954 not found in The Old Special Marriage Act, 1872 is that registration of any marriage solemnized in accordance with the personal laws of the party under the Special Marriage Act will convert the nature of the marriage from a religious marriage to a civil marriage.

Foreign Marriage Act, 1969 facilitates solemnization of civil marriages by Indian citizens who are residing in some foreign country. Registration of marriages under the Foreign Marriage Act is not compulsory. However registration of marriages will be beneficial to the parties as once registered, all the matrimonial reliefs available under the Special Marriage Act, 1954 will accrue to the parties[29]. Any marriage which has been solemnized either under the Foreign Marriage Act or under the personal laws of any other country and in which at least one of the prospective bride or bridegroom is an Indian national can be registered under the Foreign Marriage Act. Once registered parties to such a marriage will be entitled to matrimonial reliefs available under the Special Marriage Act. Just like in Special Marriage Act, solemnization and registration of marriages under this act are also a part of the same transaction. This act also provides for registration of pre-existing marriages which has been solemnized in some other country under personal laws of that country.

Why registration of marriages is necessary even if it is not compulsory? Why should parties register their marriages

Most of the women face enormous economic and social hardships in proving their marriages when they have no evidence of their marriage having taken place. National Commission for Women realizing the difficulties faced by most of the married women who do not register their marriages, submitted a draft *Compulsory Registration of Marriages Bill, 2005* wherein it proposed the central government to make provisions for making registration of marriages celebrated in their states, union territories, or elsewhere compulsory. In the Bill, the commission pointed out how a woman, who has given herself physically, emotionally and otherwise, gains nothing but stands to lose everything if the marriage is denied by the man. Although the Bill was never passed by the Parliament but the grounds on which the

29Sec 18,The Foreign Marriage Act, 1969

commission argued for compulsory registration of marriage is worth mentioning.

The Practice of non-registration of marriages has been a boon for fraudulent husbands who contract a second marriage despite their first wife living and alive at the time of such second marriage. In a suit for bigamy the first wife can be asked to prove her marriage. Failure to do so, there can be no conviction for bigamy. "In a divorce proceeding or in a proceeding under the Bigamy Prevention Act, the Hindu male can admit or deny the first or the second marriage depending on his whim and fancy[30]."

In 1985, The Bombay High Court in a proceeding overturned the conviction of a husband by the trial court accused of bigamy and acquitted him on the grounds that no evidence of solemnization of his first marriage was available. The husband had himself admitted that the second marriage was solemnized in the subsistence of the first marriage. However the High Court ruled that the first marriage could not be proved merely by the admission of the husband and the prosecution should prove solemnization of the first marriage[31].

Registration of marriages deters men from getting into bigamous relationships as availability of proof of first marriage can lead to their easy conviction notwithstanding other factors and circumstances that may differ from case to case. The children born out of this union will not have to go to Courts and seek declaration of their paternity. It also reduce the chances of a woman losing her case of bigamy due to her failure to establish her first marriage.

Law ensuring compulsory registration of marriages will also prevent child marriages and ensure minimum age of marriage[32]. One essential condition of registration of marriage is that parties intending to get their marriage registered must not be a minor at the time of registration of marriage. If registration is made compulsory, any marriage which is solemnized between two parties either one or both of which are minor will be deemed to be invalid in the eyes of law.

Practice of men deserting a women after performing a marriage is a very common one. In my opinion there is no need of any extreme step to curb this problem. A very simple solution in this regard can be ensuring that a marriage is registered. No law, no custom permits a husband deserting his wife without any lawful and reasonable justification. However, in order

30Kanagavalli v. Saroja&Ors. 2001 Indlaw MAD 708.
31Flavia Agnes, Hindu men, monogamy and uniform civil code.
32Compulsory Registration of Marriages Bill, 2005

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to prevent a husband from deserting his wife, it is necessary for the wife to have an evidence of marriage having taken place between them. In absence of any such evidence there is nothing much that an aggrieved wife can do.

Registration of marriage will also deter the act of selling a daughter to some other person in some foreign country under the garb of marriage[33]. Other compelling reason to register a marriage is that it reduces trauma that a child can face in his formative years with his or her paternity in doubt. This assault on child can be easily avoided if there is a certificate of marriage between his mother and father which can bear the testimony that they are his biological parents. Also Registration of marriages have a great evidentiary value in matters pertaining the custody of a child.

Madras High Court in its judgement in Kanagavalli v. Saroja and Others reflected upon the apathy and injustice that women in non-registered marriages face:

"Non-registration of marriages has landed many women in a relationship which while extracting from her, all duties of a wife, leaves her with neither right under law, nor recognition in society". In my opinion this observation is aptly relevant to our present day marriages.

Uses of a marriage certificate is innumerable. If a wife wants to travel abroad, or wants to join her husband who is working abroad at work-permit, then the wife is required to produce her marriage certificate for getting her visa. Wife will not be issued any visa till she provides her marriage certificate. Marriage certificate is among the most essential and vital documents that a wife has to produce to get her share in the property of her deceased spouse. It is required to complete the probation of the will executed by the deceased spouse. A wife is also required to present her marriage certificate while claiming her bank deposits, life insurance policies, mutual funds in case of death of her spouse.

Critical Analysis

Getting ones marriage registered is no herculean task. In almost all the personal laws and the laws passed by different state legislation, there is a provision for registration of marriage. Even if there is no compulsory law making registration of marriage compulsory, it is always open for the parties to voluntarily take initiative and get their marriage registered. In my

33Supra

opinion, first and foremost, it is the duty of both the spouses to realise the importance of getting their marriage registered and *voluntarily take upon themselves the obligation and responsibility of getting a marriage certificate for their marriage*. In the past several years, the institution of marriage in Indian has undergone tremendous changes. Now in most of the cases, parents marry off their children only when their child has reached the marriageable age and when the child is mature and sensible enough to bear upon himself all the responsibilities that marriage brings with it. We can reasonably expect such a mature and sensible person to accord equal importance to the task of registering his or her marriage.

Irrespective of whether registration of marriage is compulsory or not, the parties must make sure that in the euphoria and fanfare of the celebrations of their marriage they do not overlook or skip this important step of registering their marriage. Instead of just depending on the state for passing laws for compulsory registration of marriage, the parties must bear upon them this small responsibility of getting their marriage registered.

Secondly, only few states have implemented the Supreme Court's order in Seema v. Ashwani Kumar by passing legislations making registration of marriages solemnized in their states mandatory. Other states are yet to follow this directive. The other states must act fast and pass similar provisions. A provision for compulsory registration of marriages will not only reduce discrepancies between the parties but it will also strengthen the institution of marriage, give legal status to a wedlock and provide conclusive proof of the evidence of such marriages.

Thirdly, panchayats can be empowered to register marriages. Temples or other religious places where a marriage takes place can be considered by registering authorities to issue certificate of registration.

In the end I will just conclude this paper with one personal thought - Marriage is a sacred union of two souls, every measure possible must be taken to protect its sanctity.

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