

## **Compulsory Marriage Registration And Its Effect On Hindu Marriage**

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### **Abstract**

Marriage in all the communities world over has been regarded as one of the fundamental institution of the society. Though different communities carry different connotations regarding it, as for Hindus it is a sacrament (Sanskar), for Muslims it is a sanctified contract, for Christians it is a sacrosanct knot but still its importance cannot be denied. It confers status of husband and wife on parties to the marriage and a status of legitimacy on the children of marriage, so it becomes all the more important for a civilized society to recognize its value. The Hindu Marriage Act, 1955 contains the law relating to the Hindu marriage in a simplified manner. Section 5, Sec. 7 & Sec. 8 of Hindu Marriage Act, 1955 details the rules of a Hindu marriage where by Sec 5 states conditions of marriage. Sec. 7 states necessary ceremonies of a marriage and Sec. 8 is related to Registration of a marriage whereas Sec. 5 and Sec 7 presents the requisites for a valid marriage on the other hand Sec 8 facilitates the proof of marriage.

*Keywords : Marriage, Fundamental Institution, Hindus, Sacrament, Registration, Necessary Ceremonies*

### **Registration of a Hindu Marriage**

It is only a valid marriage which changes the status of a person. There are various many consequences that flow from a valid marriage. So, if a marriage is performed in contravention to Sec. 5 and Sec. 7, it becomes an invalid marriage. During the performance of marriage husband and wives vow for each other, yet there have been innumerable cases of betrayals by the spouses. There have been many cases in which in order to avoid the claims arising out of the marriage, the defaulting party denies the very existence of the marriage. In order to do justice the law requires evidence or proof of marriage, so that the claims arising out of a disputed marriage can be settled. Generally Hindu marriages are performed in public, so the proof of marriage 'can be made easily available but there are certain cases like runaway marriages, customary marriages, marriages performed privately or marriage performed in other country where it becomes difficult for the parties to prove their marriage and in such a case the law becomes helpless due to the lack of proof of solemnization of marriage. Hence, the cases of Bigamy, claim of maintenance by the wife and issues related to legitimacy and maintenance of children remain unresolved.

In such cases, registration of marriage comes to an aid. Section 8 of the Hindu Marriage Act, 1955 provides for the registration of a Hindu marriage. However, even after incorporation of Sec. 8 in the Hindu marriage act, 1955, registration of Hindu marriage has not been made compulsory! mandatory. The reason is that the Hindu Marriages are generally performed in public with wide publicity and are entered into genealogical books.

#### **Sec. 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 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-sec. (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 particular 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 contracts there from small, on application, be given by the registrar on payment to win 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.

Sec. 8 of the Hindu Marriage Act empowers the State Government to make rules for the purpose of registration of marriages. However, Sec. 80) and (2) clearly depicts, that it is left to the opinion of the State Government to make registration of marriage compulsory. Though in sub-section(2) prescribing the punishment, the words “any person” are used, where the State makes it compulsory to make entries in the register, both the spouses will be liable for punishment if entries are not made. Even if the entries are made at the instance of one of the spouse only, the other spouse will not be liable for punishment. Sub-section (4) provides that the marriage register is a public document within

the meaning of section 74 of the evidence act which can be produced in proof of the contents of the register Sec 8(5) states that the validity of any Hindu marriage shall, in no way, be affected by the omission to make the entry in the marriage register.. For a valid marriage the prerequisites of section 5 and 7 of the Hindu marriage act. 1955 have to be met'. Thus, where the marriage is not valid, mere registration will not confer the status of husband and wife on the parties.<sup>2</sup>

It is only the Hindu Marriage Act, 1955 which has not made registration compulsory whereas it is compulsory under the Special Marriage Act, 1954, the Indian Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936 and even at the Muslim Marriage, the Qazi registers the marriage. In a country like India where most of the women are dependent on their husbands, the compulsory registration of marriage would bring relief to the deserted wives, who were not able to prove the solemnization of marriage. The National Commission for Women (NCW) has also been demanding for making the registration mandatory

### **Effect of Registration**

The National Commission for Women in its report stated that the non-registration of marriages affects women the most and hence has since its inception supported the proposal for legislation on compulsory registration of marriages. Such a law would be of critical importance to various women related issue 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 illegal 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 and 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 selling daughters/young girls to any person including a foreigner, under the grab of marriage.

The Convention on Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the United Nations General Assembly. India signed and ratified the convention on 9 July, 1993 with two declarations and one reservation. Article 16 of the convention deals with the rights of a woman related to the marriage and family, parents rights and duties including guardianship. Article 16(2) provides for the compulsory registration of marriage. With regard to Article 16 (2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and level of literacy.”

“We cannot allow the dead ‘hand of the past to stifle the growth of the living present. Law cannot stand still, it must change with the changing social concept and values. If the bark that protects the tree fails to grow and expand along with the tree, it will either choke the tree or if it is a living tree it will shed that bark and grow a new living bark for itself Similarly, ([the law fails to respond to the needs of changing society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must, therefore, constantly be on the move adapting itself to the fast changing society and not lag behind It must shake off the inhibiting legacy of its colonials past and assume a dynamic role in the process of social transformation.”

Interestingly, the direction of the Apex Court has come during the course of hearing of a case of divorce petition'. The maintenance suit was filed u/s 125 of Criminal Procedure Code (Crpc) by one Smt. Seema against her husband Ashwini Kumar, who had disputed her marriage with him in the absence of any documentary proof which she failed to produce. Section 125 of the Criminal Procedure Code (Crpc) provide The provision for maintenance of wives, children and parents.

Sec. 18 of the Hindu Maintenance and Adoption Act, 1956 and Sec. 24/25 of Hindu Marriage Act, 1955 also provides for maintenance and alimony to a wife separation or divorce<sup>4</sup>. The main authority on un-codified Hindu Law i.e. Manu, had stated that the father protects a women during her maidenhood, her husband protects her during covertures, Sons protect her during widowhood; a women is never flee. Therefore, it is a welcome move by the Supreme Court. The Supreme Court has given the following directions to the States and the Central Government for the compulsory registration of marriage.

(I) The procedure for registration should be notified by the respective states within three months from today. This can be done by amending the existing rules, if any or by framing new rules. However, objections from the public shall be invited before bringing the said rules into force. In this connection, due publicity shall be given by the States and the matter shall be kept open for objections for a period of one month from the date of advertisement inviting objections. On the expiry of the said period, the states shall issue appropriate notification bringing the rules into force.

(ii) The officer appointed under the said rules of the States shall be duly authorized to register the marriages. The age, marital status (unmarried, divorcee) shall be clearly stated. The Consequence of non-registration of

marriages or for filing false declaration, shall also be provided for in the said rules. Needless to add that the object of the said rules shall be carry out the directions of this court.

(iii) As and when the central government enacts a comprehensive statute, the same shall be placed before this court for scrutiny.

(iv) Learned counsel of various States and Union Territories shall ensure that the directions given herein are carried out immediately.

Though, the registration itself cannot be a proof of valid marriage per se, and would not be the determinative factor regarding validity of a marriage, yet it has a great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and the age of the parties to the marriage. Hence, it would be in the interest of the society, if the registration of marriage is made compulsory. The legislative intent in enacting section 8 of the Hindu Act is apparent from the use of expression “for the purpose of facilitating the proof of Hindu marriages”.

As a natural consequence, the effect of non-registration would be that the presumption which is available from the registration of marriages would be denied to a person whose marriage is not registered. Accordingly, the Supreme Court is of the view that marriages of all the persons who are citizens of India belonging to various religions should be compulsorily registered in their respective states, where the marriage is solemnized.

## **Conclusion**

Hence with the new law coming into force, many unhealthy social problems will be resolved. In Rajasthan. every year thousands of child marriages take place. Compulsory Registration will undoubtedly help in curtailing child

marriages. While filing for registration, the parties are required to mention certain particulars like age, caste, place of marriage etc. hence, Compulsory Registration will serve as an automatic check on child marriages. This has been witnessed in Sri Lanka, where after the registration was made compulsory, a dramatic decrease in child marriage happened.

Certainly, bigamy will also be checked, one that there would remain no discrepancy as to the existence of the first marriage. Second, the registered marriage would leave no scope for the other spouse to deny the existence of a marriage. So, the surety of punishment and the social taboo would certainly deter the parties to indulge in bigamy/polygamy. India which is over populated and a large chunk of people live in poverty, therefore selling of daughters by parents/guardians in the garb of marriage is also very common. Registration would also help in checking such practices. No doubt, it is a breakthrough but what is required that the procedure of registration should be made easy and not cumbersome as it exists today, At present, both the husband and wife have to appear before the Registrar along with two witnesses, who are respectable persons of the society. The couples have to submit the affidavit, normally prepared by lawyers, photographs of marriage and invitation cards etc. as a proof of the marriage. Although, these requisites ensure that actual and correct information is give but the whole process is not hassle -free. So, what is required is a cost-effective and simple to access machinery. The welcome proposal will meet its purpose, if small offices in villages and towns entrusted with the job of registration are opened up. The cost of registration should be nominal. It should serve as a facility and not as a penalty. A vigorous campaign should be launched in order to educate and make people aware of its benefits and the procedure to get it done.



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