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A Critical Analysis on Compulsory Registration of Marriage and Essentiality upon its Mandate and Adherable Procedure in Indian Context with Special Reference to Other Countries

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ABSTRACT

Marriage life is the most important phase of every people in the world. Marriage is connected with the many legal issues in the society such as inheritance, maintenance, legitimacy of children and their inheritance rights and so on. In India, Marriage is the most important and essential life phase of everyone's life. Due to unregistered marriage, many cases are pending before the court related to many inheritance legal issues. The lack of compulsory registration of marriage causes gender inequality in India, mostly affecting women and children. Women are frequently deprived of the status of wife due to a lack of registration proving a lawful marriage. Compulsory registration of marriage solved many legal issues such as inheritance of property, bigamy marriage, maintenance of the unearned partner and children, gender abuse, child marriage, etc. The Births, Deaths, and Marriages Registration Act of 1886 mandates the designated Registrar-General of Births, Deaths, and Marriages to preserve a proper record of marriage registers received from officials acting under the terms of the three Acts such as The Special Marriage Act, 1954, The Indian Christian Marriage Act, 1872, The Parsi Marriage and Divorce Act, 1936 and the procedure is most easy and friendly nature. However, Under the Hindu Marriage Act, 1955, there is a great lacuna for the friendly and easy procedure for the compulsory registration of marriage. In this research paper, the researcher discusses the compulsory registration of marriage in India and the report of the law commission. Further, discussed the legislative framework of marriage and registration and also analysis the procedure of registration of marriage in various countries such as Australia, New Zealand, the United Kingdom, Pakistan, and Bangladesh. The researcher explains the judicial precedent about the compulsory registration of marriage and the need for compulsory marriage registration. And the final part of the research paper, the researcher comparatively analysing the central legislative framework in India regarding the procedure for registration of marriage and

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also procedure followed for registration of marriage in various countries and suggest the best and possible framework for the compulsory registration in India particularly for Hindu and Muslim who not comes under the preview of the compulsory registration of marriage.

Keywords: *Compulsory registration of marriage, marriage registration in India, The Indian Christian Marriage Act, 1872, The Hindu Marriage Act, 1955, The Parsi Marriage and Divorce Act, 1936, The Special Marriage Act, 1954.*

I. INTRODUCTION

Numerous initiatives have been launched since independence to tackle the concerns of gender inequality in India. To a significant extent, reform measures have been successful; nonetheless, despite legislation outlawing and penalising such practises, child marriages, bigamy, and gender abuse continue to exist in our culture. Several court cases are pending concerning the parties' matrimonial status. Women are frequently deprived the status of wife owing to a lack of registration and documentation proving a lawful marriage. The courts have often highlighted the importance of making marriage registration mandatory in order to preclude refusal of status to women and children born out of wedlock². Women are tricked into marrying without fulfilling the prerequisites of a lawful marriage in the lack of required registration. Women are thus denied public respect and legal security. Such false weddings are on the rise, particularly among NRI's. Compulsory registration can be used to ensure that the prerequisites of a legitimate marriage have indeed been met.

II. COMPULSORY REGISTRATION OF MARRIAGE - INDIA

Although the Births, Deaths and Marriages Registration Act, 1886, was enacted to include marriage registration, it did not apply to all residents. These revisions only pertained to the Christian community, Parsi community, marriage under the special marriage act, and it fell short into becoming national laws once more³.

On 30 June 1980, India adopted the Convention on the Elimination of All Forms of Discrimination Against Women, which it ratified on 9 July 1993. Following that, India had to send its assessment to the Committee on the Elimination of Discrimination Against Women (CEDAW). In 1998, the first report was submitted. In 2012, the combined fourth and fifth periodic reports were submitted. In its final conclusions on this report in 2014, para 39, the Committee encouraged India to quickly pass laws requiring compulsory registration of all

² Kanagavalli v. Saroja, AIR 2002 Mad 73.

³ Section 6 of the Births, Deaths and Marriages Registration Act, 1886, No. 6, Acts of Parliament, 1880 (India).

marriages while also requesting that India reconsider withdrawing its declaration to Article 16 (2) of the Convention. It was said as follows: "It is not practical in a vast country like India with its variety of customs, religions and level of literacy' and has expressed reservation to this very clause to make registration of marriage compulsory".⁴ By drafting the Compulsory Registration of Marriage Bill, 2005, the National Commission of Women proposed a specific solution to a multitude of issues originating from non-registration of marriages⁵. Based on the NCW Bill, the Committee on the Empowerment of Women concluded in 2007 that marriage registration should be made mandatory regardless of religion⁶. The study put special emphasis on the suffering of Indian women whose husbands, in numerous cases, refused to recognize their wedding before entering into a second marriage, or left their former spouses entirely and declined to pay support, and so on. As a result, the Committee requested that the government implement marriage registration mandatory, making the process easier, more inexpensive, and more inclusive.

The 18th Law Commission of India suggested in its 205th Report titled "Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws" in February 2008 that the Union Government implement registration of marriages within a time frame compulsory for all groups⁷. In its 211th Report, the Commission proposed enacting a "Marriage and Divorce Registration Act" that would be likely to apply throughout India and to every resident. As a result, it proposed repealing the Births and Deaths Registration Act of 1886 and renaming the Births and Deaths Registration Act of 1969 as the "Births, Deaths, and Marriages Registration Act of 2012"⁸.

In 2012, a bill was presented to change the Registration of Births and Deaths Act of 1969 to mandate the registration of marriages regardless of the religious beliefs of the participants. On August 13, 2013, Rajya Sabha passed the Amendment Bill of 2012. However, the stated Bill was unable to be debated in the Lok Sabha and on Feb 21, 2014. It lapsed with the dissolution of the 15th Lok Sabha⁹.

⁴ Seema v. Ashwani Kumar 2006 (2) SCC 578.

⁵ National Commission for Women, Draft on the Compulsory Registration of Marriages Bill, 2005, available at: <http://ncw.nic.in/pdf/files/compmarriagebill.pdf> (last visited on Nov 15, 2022).

⁶ Committee on Empowerment of Women (2006-2007), Ministry of Overseas Indian Affairs and Ministry of External Affairs (Fourteenth Lok Sabha) "Twelfth Report on the Plight of Indian Women deserted by NRI Husbands" (Aug. 2007).

⁷ Law Commission of India, "205th Report on Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws" (February 2008).

⁸ Law Commission of India, "211th Report on Laws on Registration of Marriage and Divorce – A proposal for Consolidation and Reform" (Oct., 2008).

⁹ <https://prsindia.org/billtrack/the-registration-of-births-and-deaths-amendment-bill-2012>, (last visited on Nov 15, 2022).

In July 2017, under chairmanship of justice B.S. Chauhan suggested in its 270th Report titled “Compulsory Registration of Marriages” that amend the Registration of Births and Deaths Act, 1969 for the compulsory registration of marriages to include marriage solemnized between parties to the marriage belong to any religion, any caste or any tribe¹⁰.

III. MARRIAGE REGISTRATION - VARIOUS COUNTRIES

1. Australia

As per Australian Marriage Act, 1961, an authorised celebrant must solemnized the marriage between the parties. Section 3 of the Act, explain the who are consider as authorised celebrant in Australia.

- 1) a minister of religion¹¹ registered under Part IV(Division 1)(Subdivision A) of the act, authorised celebrant¹² under Part IV (Division 1)(Subdivision B) of the act, a marriage celebrant¹³ under Part IV (Division 1)(Subdivision C) of the act and a religious marriage celebrant under Part IV (Division 1)(Subdivision D) of the act in relation to a marriage proposed to be solemnized in Australia.
- 2) a chaplain, an officer (within the meaning of the Defence Act 1903), other than a chaplain, authorised by the Chief of the Defence Force under section 71A to solemnize marriages under that Division in relation to a marriage proposed to be solemnized in accordance with Division 3 of Part V.¹⁴

Under Section 50 of the Australian Marriage Act, 1961, an authorised celebrant solemnized the marriage between the Australian citizen reside in Australia and prepare a two official certificate of the marriage in accordance with regulation and forward the official certificate along with all documents to the appropriate registering authority of a State or Territory¹⁵. Under Section 58 of the Australian Marriage Act, 1961, Every marriage between non-citizens of Australia solemnization in Australia by or in the presence of a foreign diplomatic or consular officer shall register in the Registrar of Australia¹⁶. As per Section 80 of the Australian Marriage Act, 1961, an authorised celebrant solemnized the marriage of members of the Defence Force in an overseas country and prepare a two official certificate of the marriage in accordance with regulation and forward the official certificate to the Registrar¹⁷. As per Section 101 of the

¹⁰ Law Commission of India, "205th Report on Compulsory Registration of Marriages" (July 2017).

¹¹ The Australian Marriage Act, 1961 (Cth) s 32 (Austl.).

¹² The Australian Marriage Act, 1961 (Cth) s 41 (Austl.).

¹³ The Australian Marriage Act, 1961 (Cth) s 39F (Austl.).

¹⁴ The Australian Marriage Act, 1961 (Cth) s 3 (Austl.).

¹⁵ The Australian Marriage Act, 1961 (Cth) s 50(4) (Austl.).

¹⁶ The Australian Marriage Act, 1961 (Cth) s 58 (Austl.).

¹⁷ The Australian Marriage Act, 1961 (Cth) s 80 (Austl.).

Australian Marriage Act, 1961, if any marriage solemnized by unauthorized person, is punishable with simple imprisonment for 6 months or 5 penalty unit¹⁸.

2. New Zealand

As per section 23 of the Marriage Act, 1955, an intent person to marry in New Zealand must give notice to the Registrar in a manner specified by the Registrar-General¹⁹. As per section 24 of the act, a Registrar may issue a marriage licence²⁰. Under Section 30(1) of the act, A marriage cannot be solemnized by a marriage celebrant before the marriage licence is presented to him or her. As per section 30(2) of the act, A marriage may not be solemnized more than three months after the date of the marriage licence was issued²¹.

The Births, Deaths, Marriages, and Relationships Registration Act 1995 deals with respect to registration of marriage in New Zealand. From section 53 to 62 of Part VII of the Births, Deaths, Marriages, and Relationships Registration Act 1995 elaborately provide procedure for registration of Marriage in New Zealand. Section 53 of the act deals about the registration of marriage solemnized in New Zealand, Section 54 of the act deals about the registration of marriage solemnized outside of New Zealand, under Section 56 of the act the dissolution of marriage also recorded in the registrar and also under section 60 of the act, Registrar-General record an information relating to the bigamous or coerced marriage which sent by the registrar of court under section 60(2) of the act. As per Section 55(1) of the Act, A celebrant must give, send, or post the other form to a Registrar within 10 days of the wedding. As per Section 55(2) of the Act, If a Quaker marriage is performed, each spouse must absolutely assure that 1 form is given, sent, or posted to the Society of Friends' registering officer immediately after the ceremony. The registering officer of the Society of Friends must give, send, or post it to a Registrar. As per section 55(3) of the Act, A person who performs a service marriage must transmit or post a copy to the Registrar-General as soon as possible following the ceremony²². As per Section 56(1)(b) of the act, A Registrar who registers a marriage must provide the relevant information to the Registrar-General or a Registrar designated by the Registrar-General²³.

3. United Kingdom

In England, the marriage solemnized in the presence of clergyman a) after the publication of

¹⁸ The Australian Marriage Act, 1961 (Cth) s 101 (Austl.).

¹⁹ The Marriage Act, 1955, s 23 (N.Z.).

²⁰ The Marriage Act, 1955, s 24 (N.Z.).

²¹ The Marriage Act, 1955, s 30 (N.Z.).

²² The Births, Deaths, Marriages, and Relationships Registration Act, 1995, s 55(N.Z.).

²³ The Births, Deaths, Marriages, and Relationships Registration Act, 1995, s 56(N.Z.).

banns or b) on the authority of a special licence, or c) on the authority of a common licence or in the presence of the specified person on the authority of a marriage schedule²⁴. Before 26th March 2021, The Marriage Act, 1949, deals with respect to registration of marriage in England. From Section 53 to 67 of part IV of the Marriage Act, 1949 elaborately provide procedure for registration of Marriage in England. The Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 make provision for the registration of marriage in England. The Secretary of State make The Registration of Marriages Regulations 2021 under the Civil Partnerships Marriages and Deaths (Registration etc) Act 2019. Under the Registration of Marriages Regulations 2021, Section 53 to 62 were omitted and inserted new provision Section 53A to 53E in the Marriage Act, 1949. From Section 53A to 53E of the Marriage Act, 1949 elaborately provide procedure for the Registration of Marriage in England. Section 53A of the act deals about the marriage register, Section 53B of the act deals about the signing of a marriage document, section 53C of the act deals about the signing of the marriage schedule, Section 53D about the registration procedure of marriage and Section 53E of the Act explain the procedure in the circumstance of marriage documentation lost or destroyed.

As per section 53D(2) of the act, in the presence of clergyman a marriage solemnized and signed in accordance with section 53B of the act, the clergyman should assure that the marital document is submitted to a registrar in the registration district where the marriage was solemnized within 21 days after the signing of the marriage document²⁵. As per section 53D(3) of the act, in the presence or approval of a specified person a marriage solemnized and signed in accordance with section 53C of the act, The specified person should assure that the marital document is submitted to a registrar in the registration district where the marriage was solemnized within 21 days of the signing of the marriage schedule²⁶. Section 76 of the Act states that if any person refuses or without reasonable cause omits to register a marriage shall be liable on fine not exceeding level 3 on the standard scale²⁷.

4. Pakistan

Under Muslim law, Each wedding performed is mandatory to be registered in accordance with the Muslim Family Law Ordinance, 1961. Under section 5 of the Muslim Family Law Ordinance, 1961, All the marriage between the Muslim parties performed by the Nikah Registrar²⁸ who granted licence by the Union Council and contravenes is punishable with simple

²⁴ The Marriage Act 1949, 12, 13 & 14 Geo 6 c 76, § 5 (Eng.).

²⁵ The Marriage Act 1949, 12, 13 & 14 Geo 6 c 76, § 53(D)(2) (Eng.).

²⁶ The Marriage Act 1949, 12, 13 & 14 Geo 6 c 76, § 53(D)(3) (Eng.).

²⁷ The Marriage Act 1949, 12, 13 & 14 Geo 6 c 76, § 76 (Eng.).

²⁸ Section 5(3), Muslim Family Law Ordinance, 1961, No:VIII (Pakistan).

imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.²⁹ Nikah Registrars must maintain the register form of nikahnama and records to be kept by Union Councils³⁰.

Under Hindu Marriage Act, 2017, All the marriage solemnization between the two Hindu shall be registered as per section 6 and 7 of the Act.³¹ The marriage parties shall give the marriage particular to the marriage registrar or authorized person appointed as per law for the purpose of entry the form of Shaadiparat within fifteen days of their marriage³².

5. Bangladesh

Under Muslim law, Each wedding performed is mandatory to be registered in accordance with the Muslim Marriages and Divorce Registration Act of 1974. Under section 5 of the Muslim Marriages and Divorce Registration Act of 1974, All the marriage between the muslim parties performed by the Nikah Registrar or in the event of absence of Nikah Registrar, within thirty days the bridegroom of the marriage must report to the Nikah Registrar of the jurisdiction³³ who granted licence by the Government.³⁴ Each Nikah Registrar shall keep distinct registers of marriages and divorces in the forms and manner prescribed by the law³⁵.

IV. EXISTING CENTRAL LEGISLATION ON REGISTRATION

1. The Hindu Marriage Act, 1955

A Marriage registration for Hindu governs under section 8 of the Hindu Marriage Act, 1955. The purpose of registration under this Act is to make it easier for a person to get evidence of marriages by registration,³⁶ and the registration is not compulsory. The Provincial Government has now been given the authority to establish rules for marriage registration. No person is appointing as per the act for reporting the marriage for the purpose of register the marriage.

2. The Special Marriage Act, 1954

The Special Marriage Act of 1954³⁷, which was initially created to allow cross-community weddings, is available to everyone Indian citizens, regardless of their faith. Under the Special Marriage act, 1954, the marriage registration is most important and essential condition. As per

²⁹ Section 5(4), Muslim Family Law Ordinance, 1961, No:VIII (Pakistan).

³⁰ Section 5(5), Muslim Family Law Ordinance, 1961, No:VIII (Pakistan).

³¹ The Hindu Marriage Act, 2017, No: VII (Pakistan).

³² Section 7, The Hindu Marriage Act, 2017, No: VII (Pakistan).

³³ Section 5, Muslim Marriages and Divorce Registration Act, 1974, No: LII (Bangladesh).

³⁴ Section 4, Muslim Marriages and Divorce Registration Act, 1974, No: LII (Bangladesh).

³⁵ Section 8, Muslim Marriages and Divorce Registration Act, 1974, No: LII (Bangladesh).

³⁶ Section 8, The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

³⁷ The Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

section 5 of the act, if parties intended to marry under this act, then parties to the marriage must give notice to the marriage register in writing as per the form in the Second Schedule of the act. Under Section 11 and 15 of the Act, Marriages are recorded by the Marriage officer appointed under section 3 of the act. As per section 48 and 49 of the act, Marriage records are sent to the Registrar-General of Births, Deaths, and Marriages on a regular basis by all Marriage Officers. Under section 50 of the act, the Central Government or State Government frames a rule for effective enforcement of the act.

3. The Parsi Marriage and Divorce Act, 1936

As per Section 3(1)(b) of the act, No marriage shall be legal unless it is solemnized by a priest in the presence of two Parsi witnesses other than the priest in the Parsi form of ceremony known as "Ashirvad." Section 6 of the Act requires priests to send the certificate of marriage as prescribed in the Second schedule of the act to the Registrars appointed under the Act on a regular basis which certify by officiating priest immediately on the solemnization of marriage³⁸. On the contrary of Section 6 is punishable offence with simple imprisonment up to three months, or with fine up to a hundred rupees, or with both under Section 12 of the Act³⁹. The Provincial Government will appoint Registrars for various locations, and they will be obligated by Section 9 of the Act to transfer all the certificate records by him to the Registrar General of Births, Deaths, and Marriages. As per the Parsi Marriage and Divorce Act, 1936, marriage is compulsory registered.

4. The Kazis Act 1880

Marriages are performed by religious leaders known as "kazi" amongst Indian Muslims. The Act permits governments to designate kazis to aid Muslims with marriage ceremonies, amongst other things. As per section 2 of the act, Kazi appointed by the state government for any local area after consulting with the Muhammadan resident of the local area⁴⁰. Under section 3 of the act, Kazi can appoint the Naib Kazi to act in his place. Section 4 of the Act states that the participation of a State-appointed kazi is not required for any Muslim marriage. The kazi drafts a nikah nama, which contain specific details of the marriage parties and is signed by both of them and two witnesses, before or shortly after the "nikah" ceremony. The "nikah-nama" is authenticated by the kazi's signature and seal, and protect a copy in their records. It is not mandatory under the act, for sending the record of marriage by the kazi to the Registrar General

³⁸ Section 6, The Parsi Marriage and Divorce Act, 1936, No. 3, Acts of Parliament, 1936 (India).

³⁹ Section 12, The Parsi Marriage and Divorce Act, 1936, No. 3, Acts of Parliament, 1936 (India).

⁴⁰ Section 2 The Ka'zi's Act, 1880, No. 12, Acts of Parliament, 1880 (India).

of Births, Deaths, and Marriages.

5. The Indian Christian Marriage Act, 1872

Under Section 5 of the act, the marriage shall be solemnized by the one the following person such as “(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister; (2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland; (3) by any Minister of Religion licensed under this Act to solemnize marriages; (4) by, or in the presence of, a Marriage Registrar appointed under this Act; (5) by any person licensed under this Act to grant certificates of marriage between 4[Indian Christians].⁴¹”

Under Sections 27-37 of Part IV of the Act has detailed provisions for registering marriages performed by Ministers and Clergymen. As per section 29 of the act, each marriage solemnized by a Clergyman of the Church of England shall send one copy of the return of entries to the Registrar General of Births, Deaths and Marriages⁴². As per section 30 of the act, Each marriage solemnized by a Clergyman of the Church of Rome shall send one copy of the return of entries to the Registrar General of Births, Deaths and Marriages⁴³

As per section 31 of the act, Each marriage solemnized by a Clergyman of the Church of Scotland shall send one copy of the return of entries to the Registrar General of Births, Deaths and Marriages⁴⁴ As per section 34, Each marriage solemnized by any person who has received episcopal ordination, other than a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act shall submit a marriage certificate to the senior marriage registrar who shall send all the certificate to the Registrar General of Births, Deaths and Marriages⁴⁵.

Under Section 38-59 of Part V of, the Act makes provision for the both solemnization and registration of marriages by Marriage Registrars designated under the Act. As Per section 55 of the act, each marriage solemnized in the presence of the Marriage Registrar shall send the certificate to the Registrar General of Births, Deaths and Marriages⁴⁶.

Under Section 60-65 of Part VI of the act addresses marriages of "Indian Christians" and registration and procedure for grant of certificate. Under Section 62 of the act, each marriage

⁴¹ Section 5, The Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament, 1872 (India).

⁴² Section 29, The Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament, 1872 (India).

⁴³ Section 30, The Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament, 1872 (India).

⁴⁴ Section 31, The Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament, 1872 (India).

⁴⁵ Section 34, The Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament, 1872 (India).

⁴⁶ Section 55, The Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament, 1872 (India).

solemnized in the presence of a person licensed under section 9 of the act shall send the marriage entries prescribed by the act to the Registrar General of Births, Deaths and Marriages⁴⁷. The Act has distinct registration rules and procedure for weddings of Christians in general and Indian or Native Christians and the Act contains numerous provisions for transmitting registration records of various categories of marriage to the Registrar-General of Births, Deaths, and Marriages.

6. The Foreign Marriage Act 1969

This Act was passed to make it easier for Indian nationals to marry in foreign countries. Marriage Officers are to be designated by the Central Government from its Diplomatic Offices overseas for this function, according to Section 3 of the Act. According to the Act, an Indian citizen can be marrying another Indian citizen or a foreign citizen. As with the Special Marriage Act of 1954, the solemnization and registration of marriages are part of the same procedure under this Act⁴⁸. The procedure for solemnizing and registering such marriages is similar to that outlined in the Special Marriage Act of 1954. All Diplomatic Missions must preserve marriage certificate books. This Act makes no framework for the transmission of records to the country's national registry. However, the registration of marriage is compulsory in the presence of the Marriage Officer⁴⁹.

7. Compulsory Registration of Marriages law in States

- i. Bihar Marriage Registration Rules, 2006,
- ii. Compulsory Marriage Registration Rules, Chhattisgarh, 2006,
- iii. Madhya Pradesh Compulsory Marriage Registration Rules, 2008,
- iv. The Andhra Pradesh Compulsory Registration of Marriages Act, 2002,
- v. The Delhi (Compulsory Registration of Marriage) Order, 2014,
- vi. The Haryana Compulsory Registration of Marriages Act 2008,
- vii. The Kerala Registration of Marriages (Common) Rules, 2008,
- viii. The Meghalaya Compulsory Registration of Marriages Act 2012,
- ix. The Mizoram Compulsory Registration of Marriages Act, 2007,
- x. the Odisha Hindu Marriage Registration Rules, 1960 (Amendment 2006),

⁴⁷ Section 62 The Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament, 1872 (India).

⁴⁸ Section 5, The Foreign Marriage Act, 1969, No. 33, Acts of Parliament, 1969 (India).

⁴⁹ Section 13, The Foreign Marriage Act, 1969, No. 33, Acts of Parliament, 1969 (India)

- xi. the Odisha Mohammedan Marriages & Divorces Registration Rules, 1976 (Amendment 2006),
- xii. The Punjab Compulsory Registration of Marriages Act, 2012,
- xiii. the Rajasthan Compulsory Registration of Marriages Act, 2009,
- xiv. The Tamil Nadu Registration of Marriages Act, 2009,
- xv. The Tripura Recording of Marriage Act, 2003,
- xvi. The Uttarakhand Compulsory Registration of Marriage Act, 2010,
- xvii. U.P. Compulsory Marriage Registration Rules, 2014.

V. JUDICIAL PRONOUNCEMENTS

The Supreme Court and the High Courts have often emphasized the importance of mandatory marriage registration. In *Kanagavalli v. Saroja*⁵⁰ The Madras High Court emphasized the significance of marriage registration in ensuring women's welfare. It was suggested that if registration was made mandatory, prosecution for bigamy would be simplified. If a Hindu person enters a second wedding and registers it, at least the second spouse will get the certificate proving that the wedding between her and the man was recorded.

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."

The most noteworthy judgement was in *Seema v. Ashwani Kumar*⁵¹, which dealt with the issue(s) of weddings as follows: "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.

Thus, the Court directed that the States and the Central Governments to take the following steps:

(i) The procedure for registration should be notified by 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 members of 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

⁵⁰ *Supra* note 1.

⁵¹ *Supra* note 3.

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 to 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”.

*Baljit Kaur & Anr v. State of Punjab & Anr*⁵² The Punjab and Haryana High Court reaffirmed its decision in the Seema case, concluding that implementing marriage registration mandatory will lessen disputes over marriage ceremonies. *Deepu Dev v. State of Kerala*⁵³ The Kerala Court has ruled that an order that marriages solemnized between people of different religions are not registrable underneath the Common Rules adopted in response to the Supreme Court's judgement in the Seema Case is derogatory and contradictory to the clause of the Laws. *S. Balakrishnan Pandiyan v. The Superintendent of Police*⁵⁴ The high court made clear that the Tamil Nadu Registration of Marriages Act, 2009 is a secular statute that requires marriages undertaken by all religious beliefs to be registered. It further decided that Registrars in the state of Tamil Nadu shall register marriages without the presence of both parties in only rare situations and for explanations that must be documented in written.

*Sushma W/o Hemantrao Bodas v. Malti W/o Madhukar Machile*⁵⁵ The Bombay High Court ruled in favour of a legitimate marriage based on the marriage certificate. The court also stated that marriage registration aids evidence of marriage in inheritance and other issues. These decisions show that not registering a marriage can cause problems, especially when matrimonial conflicts develop. To reduce incidences of fraud, the National Commission on Women urged that women insist on recording weddings. In light of these cases, mandatory marriage registration appears to be a rational solution against many issues.

VI. NEED FOR COMPULSORY REGISTRATION OF MARRIAGE

Prior to actually issuing orders for marriage registration in *Seema v. Ashwani Kumar*⁵⁶, the

⁵² *Baljit Kaur & Anr v. State of Punjab & Anr*, (2008) 151 PLR 326.

⁵³ *Deepu Dev v. State of Kerala*, AIR 2013 Ker 51.

⁵⁴ *S. Balakrishnan Pandiyan v. The Superintendent of Police*, (2014) 7 MLJ 651.

⁵⁵ *Sushma W/o Hemantrao Bodas v. Malti W/o Madhukar Machile*, 2009 (111) Bom LR 3974.

⁵⁶ *Supra* note 3

Supreme Court stated that such a legislation would indeed be important to several situations 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”.

Furthermore, the Supreme Court clarified that, whereas registration would not be an evidence of a lawful marriage in and of itself, and it is not the major consideration in the legitimacy of a marriage, it has a high evidential value in questions of custody of offspring, privilege of kids born from its marriage of the two individuals whose wedding is certified, and the age of the bride and the groom. As a result, it might be in the best interests of everyone if wedding registration became mandatory.

Even before the Supreme Court's aforesaid orders on the issue, there had been recommendations at the international and domestic levels to require wedding and dissolution registration mandatory in an official registry. i.e., United Nations Organisations⁵⁷; National Human Rights Commission⁵⁸; the Steering Committee on Empowerment of Women and Development of Children⁵⁹; Committee on Empowerment of Women⁶⁰; National Commission for Women⁶¹ Law Commission of India; Parliament Standing Committee; States and Union territories. Furthermore, several statutes establish rights, responsibilities, and duties for parties (man and woman) and children following marriage or divorce. There are different types of rights and issues that occur as a consequence of marriages/divorces such as restitution of conjugal rights, offences relating to marriage, legitimacy of children, dispute relating to custody of children; dispute relating to stridhan or dowry, dispute relating to cruelty and harassments; succession of properties, visit to foreign countries, dispute relating to divorce or separation; dispute relating to maintenance, period for remarriage etc. A vast number of conflicts, including those involving NRI's, are being resolved in several tribunals/courts on such concerns. Women and children

⁵⁷ Article 16(2), Convention on the Elimination of All Forms of Discrimination against Women, A/RES/34/180, (Dec.18, 1979), and CEDAW.

⁵⁸ National Human Rights Commission, “Annual Report” (1995-96) para 4.6, available at http://nhrc.nic.in/ar95_96.html (last visited on Nov 15, 2022).

⁵⁹ Planning Commission of India, “Report of the Steering Committee on Empowerment of Women and Development of Children for the Eleventh Plan” (2006), available at: http://planningcommission.nic.in/aboutus/committee/strgrp11/str11_wcd.pdf (last visited on Nov 15, 2022).

⁶⁰ *Supra* note 5.

⁶¹ *Supra* note 4.

suffer as a result of unregistered marriages, in some case even men. Women are the most common victims of polygamous unions and civil disputes, among other things, and they confront enormous difficulties in proving their marriage. Even in some case, wife filed forged bigamous and cruelty case against the husband and husband faced enormous difficulties while facing criminal trial. As a result, it has become imperative to adopt legislation to protect the right of husband and wife and to prevent child marriages of young girls to anyone, even foreigners, under the guise of marriage and prohibit forged case.

The Compulsory registration prohibited the minor marriage which held in *Lajja Devi v. State NCT of Delhi*⁶² "... registration of marriages has still not been made compulsory. Compulsory registration mandates that the age of the girl and the boy getting married have to be mentioned. If implemented properly, it would discourage parents from marrying off their minor children since a written document of their ages would prove the illegality of such marriages. This would probably be able to tackle the sensitive issue of minor marriages upheld by personal laws."

VII. ANALYSIS

As per 2011 census report, the total population of India distributed as following percentage based on the religion.

Hindu - (79.8%), Muslim - (14.2%); Christian - (2.3%); Sikh - (1.7%); Buddhist - (0.7%); Jain - (0.4%), Other Religions & Persuasions (ORP) - (0.7%) and Religion Not Stated - (0.2%).⁶³

The Births, Deaths, and Marriages Registration Act of 1886 mandates the designated Registrar-General of Births, Deaths, and Marriages to preserve a proper record of marriage registers received from officials acting under the terms of the three Acts listed below such The Indian Christian Marriage Act, 1872, The Special Marriage Act, 1954, The Parsi Marriage and Divorce Act, 1936. As per above discussed, we understand that only around 3.5% of Indian population belong to the compulsory registered of marriage as per central law. The main reason for this registration is mandated by their respective Marriage enactment. Under the Indian Christian Marriage act, 1872, the parties to the marriage not registered their marriage directly in the Registrar General of Births, Death and Marriages. The certificate or record of the marriage sent to the Registrar General of Birth, Death and Marriages by the authorised person for solemnization of marriage under the Indian Christian Marriage act, 1872. So the registration of Marriage is most easy and accessible by the parties of the Marriage and also they solemnized their marriage as per the religious custom and rites. Under the Parsi Marriage and Divorce Act,

⁶² *Lajja Devi v. State NCT of Delhi*, 2013 CriLJ 3458

⁶³ <https://pib.gov.in/newsite/printrelease.aspx?relid=126326>, (last visited on Nov 15, 2022).

1936, the priest must send the record of marriage solemnized by him as per Parsi custom and rites to the Registrars. Later the record maintained by the registrars shall transmit to the Registrar General of Birth, Death and Marriages as per timely basis mentioned in the act. However, such type of procedure not in the Hindu Marriage Act, 1955. In general view, parties to the marriage are more curious to spend the day, so they have no interest to visit the register office. So law make with comfort for the people. No special authorised person appointed by the Hindu Marriage Act, 1955 for the purpose of solemnization of marriage and also no provision for send the marriage details or record to the Registrar General of Birth, Death and Marriages.

Illustration: A and B a Parties to the marriage belong to the Hindu as per the Hindu Marriage act, 1955 where in the presence of their friend and relatives, the marriage solemnized by the priest in the temple as per their custom. Here is the priest who solemnized the marriage has not mandatory by the law to send the marriage record to the registrar but under the Parsi Marriage and Divorce Act, 1936, the priest must send the record of marriage solemnized by him to the Registrar General of Birth, Death and Marriages.

In Islam religion, the marriage details recorded by the kazi appointed under the kazis Act, 1880. But the Marriage records not send to the Registrar General of Birth, Death and Marriages because the procedure is not available in the act.

From the above, the researcher discussed the Registration procedure of Marriage in various countries are much similar to the procedure mentioned in the Parsi Marriage and Divorce Act, 1936 and the Indian Christian Marriage act, 1872 like record of marriage or certificate of marriage sent to the register department by the authorised person who licensed for the purpose solemnization of marriage which is most easy and adhering procedure for the compulsory registration of marriage.

VIII. CONCLUSION

Marriage registration is an important step toward protecting women's security and property rights, as well as putting a stop to bigamist unions. It also protects the women as well as men from the fraudulent marriage. It also protects the men from false allegation of bigamous marriage. The law always for the welfare of the people, so the legislator must enact the law with comfortable and easy procedure for the people. The government must amend the personal law and also the Births, Deaths, and Marriages Registration Act of 1886 or the Registration of Births and Deaths Act 1969. National level maintain of the registration record in blockchain, which is more important in the globalized world for search. As per the analysis of various legislations of India and foreign country, in researcher point of view, the above suggestion for amendment in

the Hindu Marriage Act, 1955 and the Kazis Act, 1880 is the most suitable and easy method for the registration of marriage in India.

Suggestion:

1. Proposed to following amendment in the Hindu Marriage act, 1955.
 - If marriage solemnized by the priest in the temple, the priest or authority of the temple must register the marriage as per the rule for procedure of registration make by the government and send the register certificate to the Registrar General of Birth, Death and Marriages as like manner under the Indian Christian Marriage act, 1872 or any other authority authorised by the government.
 - If marriage solemnized by the priest or in presence of the friends and relative in the Marriage Mahal or Hotel, then the owner or Manger of the Marriage Mahal or Hotel must register the marriage as per the rule for procedure of registration make by the government and send the register certificate to the Registrar General of Birth, Death and Marriages as like manner under the Indian Christian Marriage act, 1872 or any other authority authorised by the government.
 - If the marriage solemnized in some place other than aforesaid manner, the parties to the marriage must give notice about the marriage to the authorised person by the parties to the marriage or their relatives or their friends and then during the day of the marriage, the authorised person appointed under the act for every village or Municipality or town must register the marriage as per the rule for procedure of registration make by the government and send the register certificate to the Registrar General of Birth, Death and Marriages as like manner under the Indian Christian Marriage act, 1872 or any other authority authorised by the government.
2. The Government must amend the Kazis act, 1880 by introduced the provision for transfer the copy of Nikah-nama to the Registrar General of Birth, Death and Marriages or any other authority authorised by the government.
3. The Government must amend the Foreign Marriage Act 1969 by introduced the provision to transfer the copy of Certificate of marriage to the Registrar General of Birth, Death and Marriages or any other authority authorised by the government.
4. If marriage registration is connected to a unique identification number (UID), worldwide record tracing would be achievable, which help to avoid the fraudulent marriage.

5. Government might indeed make special actions to bring in place a procedure in which records are transmitted from different locations of marriage/religious institutions to the Registrar general, ideally digitally or in a hassle-free manner, so that stakeholders to the wedding and the organisations involved in the solemnization of marriage are not burdened with unnecessary procedures.
6. The Marriage registration record stored in the Blockchain and also issued the NFT certificate.
7. The Government has introduced the provision for registration of Divorce as similar procedure mentioned in the Section 10 of the Parsi Marriage and Divorce Act, 1936 by amendment of the related law of the marriage in India.
8. Furthermore, the production of a marriage certificate should indeed be made compulsory whenever anyone writes the name of a spouse in any application for applying for any social benefit on behalf of a husband or wife or applying to government departments or applying for the smart card under the public distribution system or receiving benefits from any welfare schemes such as agricultural loans, education loans, and so on.
9. The government, as soon as possible after the enactment for compulsory registration under various personal law, appoint a special officer in every village, municipality and urban area for the purpose of registered the unregistered marriage.
10. The Government must provide legal awareness about the importance of registration of marriage and also education about the marriage registration.

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