NECESSITY OF REGISTRATION OF MARRIAGE

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Marriages are made in heaven but performed on earth. In India, a marriage is an important sacred event- in a fact a turning point –in ones life. A marriage fosters two families for life time. It is regarded as a social institution and rightly not as a legal contract.

Issues like marriages and divorce cannot be discussed purely in the framework of religious injunctions. They concern civil rights and common laws that codify them are necessary in a modern society. But uniform civil code has always been a contentious issue in India. Ideally, the legislature should take the lead and created a consensus in the society towards a uniform civil code. Its failure to do so has allowed courts to step in and direct the executive to have laws than reduce the influence of social and religious institution in matters of civil rights. The legislature should take a cue from the Supreme Court.

"Under the Constitution, family matters are in the concurrent jurisdiction of the Centre and States."Parliament legislation on compulsory registration of marriage is, therefore, not only possible but also highly desirable. This will bring country wide uniformity in the substantive law relating to marriage registration and will be helpful in effectively achieving the desired goal. Rules under the proposed Act may be made by the State governments, and this will take care of local social variations". The Compulsory registration would be of critical importance to prevent child Marriages without the consent of the parties: Checking illegal bigamy polygamy; domestic, violence, ensuring the minimum age of marriage and enabling married women to claim their rights to live in their matrimonial homes.

The courts have expressed the view that a party to the bigamous marriage could be punished only upon the proof of the prior marriage having been solemnized according to religious ceremonies and customs.[1]The Registration would enable women to claim, their inheritance rights and other benefits and privilege; they are entitle after the death of their husbands, deter men form deserting women after marriage and prevent parents and guardians

[1] Varalata v. Suresh, 1971 SC 1153

form selling daughters/young girls to any person including a foreigner, under the garb of marriage.

India is a signatory to the convention on Elimination of All forms of Discrimination against Women which was adopted by U.N. General Assembly in 1979 and ratified on July 9th, 1993. Under this convention India agreed in principal that Compulsory Registration of Marriages was highly desirable, nevertheless, she expressed reservation by stating that to go in for compulsory registration like India with its variety of customs, religions and level of literacy.

Notwithstanding this expressed reservation the Supreme Court in ***Seema v. Ashwin Kumar*** has "*noted with concern that in large number of cases some unscrupulous persons are denying the exercise of marriage by taking advantage of the situation that in most of the States there is no official records of the marriage*". To meet this malady the Supreme Court has invoked with concept of vital statistics as reflected in entry 30 read with entry 5 list III (concurrent list) of the Seventh schedule of the constitution. The Court sees the provisions of registration of births and deaths and on this conduct the legislature both at the levels of centre and State is empowered to enact laws for promoting the legislature to move in this direction, the court has wished to evolve certain broad guidelines.

However for laying down the suitable guidelines in the matter of registration of marriage on the basis of ground realities, notice was issued. By the Supreme Court to the various States and Union territories and to the Solicitor General of India with two fold objectives. One for electing their views on the desirability of compulsory registration of marriages, and two, for getting the status report about the hitherto adopted legislative and administrative measures in the direction of registration of marriages.

On the issue of desirability the Supreme Court has noted the response to the effect that "without exception all the states and the Union Territories indicated their stand to the effect that registration of marriages however, the Supreme court has further noted that in the opinion of the State and the Union Territories such a measure" would be a step in the right direction for the prevention of child marriages still prevalent in many parts of the country.

From the compilation of the information received in respect of relevant legislation hitherto enacted by the states and Union territories, the picture presented before the Supreme Court in as under, most of the States have framed rules regarding registration of marriages but with varying degree of emphasis. The States of Andhra –Pradesh, Himachal-Pradesh, Karnataka

and Gujarat provide for compulsory registration of marriages for all within their respective State territories.

Pursuant to the provision of the Section 8 of the Hindu Marriage Act of 1955, the state of U.P has framed the UP Hindu Marriage Registration Rules, 1973 and since then marriages are being registered under those Rules, However according to the affidavit filed before the Supreme Court, the State government has announced a policy of Compulsory Registration of Marriages by the Panchayats and maintenance of such records along with the records births and deaths.

Some Acts regulating marriages of the members of certain communities like Christians and Parsis provide for compulsory registration of marriage. The Indian Christian Marriage Act, 1972 makes it compulsory for the registration of marriages that are performed under the provisions of this Act. For instance, under this Act the relevant entries are made in the marriage register of the concerned church soon after the marriage and the signature are appended by the bride and the bridegroom, the official priest and the witnesses as a token of correctness of those entries. Likewise, the Parsee Marriage and Divorce Act, 1936, make registration of marriages compulsory for all Parsis. In the Territories of Goa, Daman and Diu registration of marriages continues to be compulsory under the old Law of Marriages that came into effect way back in the year 1911. On all India bases, the special Marriage Act, 1954 which applies to Indian citizens irrespective of religion, makes the registration of all marriages compulsory that are performed under this Act.

The States of Assam, Bihar, West Bengal, Orissa and Meghalaya appear to provide for voluntary registration of Muslim marriages. Registration of Marriages of the Hindus that are solemnized under the Hindu Marriage Act of 1955 is optional or voluntary, because the provision contained in Section 8 of the Act dealing with registration clearly provides that non registration of marriage will not affect the validity in any way. However, subsection (2) of Section 8 empowers the State Governments to make with regard to registration of marriages. If the State government is of view that such registration should be compulsory, it can so provided. In the event, the person contravening any rule shall be punishable.

In the State of Jammu & Kashmir, for the Hindus, who are governed by Jammu and Kashmir Hindu Marriage Act, 1980, at present no rules have been framed for registration of their marriages. However, the Act does empower the State government to make rules enabling the parties to have their particulars relating to marriage entered in such a manner as may be

prescribed for facilitating proof of such marriages. As regards the Muslim, Jammu & Kashmir Muslim marriages Registration Act, 1981, provides that marriages contracted between Muslim after the commencement of the Act shall be registered in the manner provided there in within 30 days from the date of conclusion of Nikah ceremony. However, this Act has not been enforced so far. The Christians in the State of Jammu & Kashmir are governed by the Jammu & Kashmir Christian Marriage and Divorce Act, 1957. This Act provides for the Registration of Marriages solemnized by the minister of religion and marriages solemnized by or in the presence of marriage registrar, without stipulating whether or not such a registration is compulsory. The only solution to this complicated and strange is situation is to institutes on registration of all marriages with the ceremonial religious aspects being left to individuals.

The case of Muslims is rather different, as Muslim marriage law has never been codified by an Act that could have made a provision for marriage registration. In 1876, a Mohammedan Marriage and Divorce Registration Act was enforced in the provinces of Bengal and Bihar and Orissa, furnishing the facility of optional registration of marriage and divorces with government appointed 'Mohammedan Marriage Registrars'. The Act, however, clarified that neither non – registration would affect the validity of any marriage nor would mere registration validate a marriage that is otherwise invalid under Muslim Law. This Law remains in force in West Bengal, Bihar, and Jharkhand, while Orissa had enacted it a fresh in 1949. A similar law, called the Muslim marriage and Divorce Registration Act, was enacted by the Assam legislature in 1935, which Meghalaya reenacted after the creation of the State. No such law has ever been enacted in any other State.

There is an old central law called the Kazis Act, 1888, empowering provincial (now State) government to appoint Kazis for the purposes of helping Muslims with the solemnization of marriages, etc. The Act, now in force in most States, makes it clear that the presence of a State appoint Kazi will not be mandatory for any marriage. Under this Act, Kazis are appointed by some, but not all, state governments. In 1978, this act was amended in Maharashtra to make it obligatory for official kazis to maintain proper records of marriages that they may be invited to solemnize by the parties or their guardians in their discretion.

The only Laws under which state governments can framed and notify rules for registration of Muslim marriages are either the central Kazis Act, 1888, or any of the local Mohammedan Marriage and Divorce registration Acts referred to earlier. The present versions of

none of these Acts, however, empower any government to make registration of marriages compulsory. For this, these laws will have to be suitably amended by the competent legislature.

A third nikahnama, from the All India Muslim Women's Personal Low Board, sparks another controversy in the Muslim community. The fact three different nikahnamas have come up in a matter of three years is evidence that there are significant differences in terms of what is considered to be a "proper interpretation" of Muslim marriage laws. Not surprisingly, each Board has claimed its interpretation to be the "right one" and dismissed the other interpretations as "irrelevant". Various sections of the Muslim community have taken sides with these Boards, at times providing intensity to the debate on the nikahnamas and their guiding principles, the Shariat. A common feature in all the discussions on the subject has been construed ad being discriminatory to women. All the three Boards naturally claim that their nikahnamas have tried to address this aspect.

Over a period of time, the Judiciary has noticed certain discrepancies caused by the parallel regimes of Hindu law and the Special Marriage Act, 1954. Most recently, in February 2008, the High Court issued notices to the State Governments of Punjab and Haryana seeking to destroy a few conflicting provisions in the Hindu Marriage Act (1955) and the Special Marriage Act, 1954. One of the conflicting provisions highlighted by the High Court was that under the Special Marriage Act, 1954, a marriage solemnized was void if either of the parties to the parties to the marriage had not attained the requisite age, but such a marriage solemnized under the Hindu Marriage Act would not be void (thought punishable under the Child Marriage Restraint Act). Likewise, after attaining puberty, if a marriage is contract under the Muslim Law then such marriage is also valid and liable to be registered. So therefore if any dispute arises regarding the validity of marriage then the registration is the strongest source to prove that the marriage is valid and Uniform law regarding the registration of marriage will help to prevent the conflicting provisions of different personal Laws regarding Marriage.

Marriage certificate is an important document and everybody must get such certificate issued at the time of marriage only so as to avoid complications and the legal hurdles in issuing the same after around 5 to 7 years of marriage. Registering a marriage provides a legal certification from the Govt. authorities. Since this is compulsory for all married couples in the West for so long, now the same is coming to India and will soon be an order of the law.

"Law has been sometimes compared with a wheel that can be turned. In this sense law is never constant; it keeps on changing with time. There is an element in it that is fixed and

remained constant and this part is emphasized by making the Brahman its nave. Law contains a substance which is immutable and a form which can turn round the fixed nave. The form of Law is indeed determined by its quality of goodness and is attainable by understanding, by reason. Law is intended to achieve what is good, what not is pleasurable according to Kathopnishada."[2]

[2]. Page No. 2 Modern Hindu Law – Dr U.P.D .Kesari