

Smt. Seema vs Ashwani Kumar on 14 February, 2006

Equivalent citations: AIR 2006 SUPREME COURT 1158, 2006 (2) AIR BOM R 783, 2006 (2) AIR KANT HCR 402, (2006) 2 SUPREME 66, (2006) 1 KER LT 791, (2006) 2 PAT LJR 116, (2006) 3 SCJ 101, (2006) 1 RECCIVR 643, (2006) 2 ICC 475, (2006) 2 ALL WC 1599, (2006) 2 CAL HN 191, (2006) 39 ALLINDCAS 46 (SC), (2006) 127 DLT 282, (2006) 33 OCR 640, (2006) 1 PUN LR 834, (2006) 2 KANT LJ 481, (2006) MATLR 256, (2006) 62 ALL LR 794, 2006 BLJR 1 356, (2006) 2 CHANDCRIC 68, 2007 HRR 2 575, (2006) 101 CUT LT 639, (2006) 2 ALLMR 11 (SC), (2006) 4 CIVLJ 57, (2006) 1 CURCC 205, (2006) 2 BOM CR 497, 2006 (2) AIR KAR R 402

Author: Arijit Pasayat

Bench: Arijit Pasayat, S.H. Kapadia

CASE NO.:

Transfer Petition (civil) 291 of 2005

PETITIONER:

Smt. Seema

RESPONDENT:

Ashwani Kumar

DATE OF JUDGMENT: 14/02/2006

BENCH:

ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:

J U D G M E N T ARIJIT PASAYAT, J.

The origin of marriage amongst Aryans in India, as noted in Mayne's Hindu Law and Usage, as amongst other ancient peoples is a matter for the Science of anthropology. From the very commencement of the Rigvedic age, marriage was a well- established institution, and the Aryans ideal of marriage was very high.

The Convention on the Elimination of All Forms of Discrimination Against Women (in short 'CEDAW') was adopted in 1979 by the United Nations General Assembly. India was a signatory to the Convention on 30th July, 1980 and ratified on 9th July, 1993 with two Declaratory Statements and one Reservation. Article 16(2) of the Convention says "though India agreed on principle that compulsory registration of marriages is highly desirable, 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".

While a transfer petition was being heard it was noted with concern that in large number of cases some unscrupulous persons are denying the existence of marriage taking advantage of the situation that in most of the States there is no official record of the marriage. Notice was issued to various States and Union Territories and learned Solicitor General and Mr. Ranjit Kumar, learned senior counsel were requested to act as Amicus Curiae to assist the Court in laying down guidelines in the matter of registration of marriages. Without exception, all the States and the Union Territories indicated their stand to the effect that registration of marriages is highly desirable.

It has been pointed out that compulsory registration of marriages would be a step in the right direction for the prevention of child marriages still prevalent in many parts of the country. In the Constitution of India, 1950 (in short the 'Constitution') List III (the Concurrent List) of the Seventh Schedule provides in Entries 5 and 30 as follows:

"5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

30. Vital statistics including registration of births and deaths."

It is to be noted that vital statistics including registration of deaths and births is covered by Entry 30. The registration of marriages would come within the ambit of the expression 'vital statistics'.

From the compilation of relevant legislations in respect of registration of marriages, it appears that there are four Statutes which provide for compulsory registration of marriages. They are: (1) The Bombay Registration of Marriages Act, 1953 (applicable to Maharashtra and Gujarat), (2) The Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976, (3) The Himachal Pradesh Registration of Marriages Act, 1996, and (4) The Andhra Pradesh Compulsory Registration of Marriages Act, 2002. In five States provisions appear to have been made for voluntary registration of Muslim marriages. These are Assam, Bihar, West Bengal, Orissa and Meghalaya. The "Assam Moslem Marriages and Divorce Registration Act, 1935," the "Orissa Muhammadan Marriages and Divorce Registration Act, 1949" and the "Bengal Muhammadan Marriages and Divorce Registration Act, 1876"

are the relevant statutes. In Uttar Pradesh also it appears that the State Government has announced a policy providing for compulsory registration of marriages by the Panchayats and maintenance of its records relating to births and deaths. Under the Special Marriage Act, 1954 which applies to Indian citizens irrespective of religion each marriage is registered by the Marriage Officer specially appointed for the purpose. The registration of marriage is compulsory under the Indian Christian

Marriage Act, 1872. Under the said Act, entries are made in the marriage register of the concerned Church soon after the marriage ceremony along with the signatures of bride and bridegroom, the officiating priest and the witnesses. The Parsi Marriage and Divorce Act, 1936 makes registration of marriages compulsory. Under Section 8 of the Hindu Marriage Act, 1955 (in short the 'Hindu Act') certain provisions exist for registration of marriages. However, it is left to the discretion of the contracting parties to either solemnize the marriage before the Sub-Registrar or register it after performing the marriage ceremony in conformity with the customary beliefs. However, the Act makes it clear that the validity of the marriage in no way will be affected by omission to make the entry in the register. In Goa, the Law of Marriages which is in force in the territories of Goa, Daman and Diu w.e.f. 26.11.1911 continues to be in force. Under Articles 45 to 47 of the Law of Marriages, registration of marriage is compulsory and the proof of marriage is ordinarily by production of Certificate of Marriage procured from the Register maintained by the Civil Registrar and issued by the concerned Civil Registrar appointed for the purpose by the Government. The procedural aspects about registration of marriages are contained in Articles 1075 to 1081 of the Portuguese (Civil) Code which is the common Civil Code in force in the State. It is pointed out in the affidavit filed on behalf of the respondent-State of Goa that the Hindu Act is not in force in the said State since it has not been extended to the State either by the Goa, Daman and Diu Laws Regulations, 1962 or by the Goa, Daman and Diu Laws No.2 Regulations, 1963 by which Central Acts have been extended to the State after the liberation of the State. Procedure for marriages is also provided in Code of Civil Registration (Portuguese) which is in force in the State. The Foreign Marriage Act, 1969 also provides for registration of marriages.

As noted above, the Hindu Act enables the State Government to make rules with regard to the registration of marriages. Under Sub-section (2) of Section 8 if the State Government is of the opinion that such registration should be compulsory it can so provide. In that event, the person contravening any rule made in this regard shall be punishable with fine.

In various States different marriage Acts are in operation e.g. in Jammu and Kashmir, Jammu and Kashmir Hindu Marriage Act, 1980 empowers the Government to make rules to provide that the parties (Hindus) shall have their particulars relating to marriages entered in such a manner as may be prescribed for facilitating proof of such marriages. Admittedly, no rules have been framed. As regards Muslims, Section 3 of the Jammu and Kashmir Muslim Marriages Registration Act, 1981 provides that marriage contracted between Muslims after the commencement of the Act shall be registered in the manner provided therein within 30 days from the date of conclusion of Nikah ceremony. However, the Act has not been enforced. So far as Christians are concerned, the Jammu and Kashmir Christian Marriage and Divorce Act, 1957 provides for registration of marriages in terms of Sections 26 and 37 for registration of marriages solemnized by Minister of Religion and marriages solemnized by, or in

the presence of a Marriage Registrar respectively.

In exercise of powers conferred by Section 8 of the Hindu Act the State of U.P. has framed U.P. Hindu Marriage Registration Rules, 1973 which have been notified in 1973. In the affidavit filed by the State Government it is stated that the marriages are being registered after enactment of the Rules.

In Pondicherry, the Pondicherry Hindu Marriage (Registration) Rules, 1969 have come into force w.e.f. 7th April, 1969. All Sub-Registrars of Pondicherry have been appointed under Section 6 of the Indian Registration Act, 1908 (in short the 'Registration Act') as Marriage Registrars for the purposes of registering marriages. In the State of Haryana, the Haryana Hindu Marriage Registration Rules, 2001 under Section 8 of the Hindu Act have been notified. In the State of West Bengal, Hindu Marriage Registration Rules, 1958 have been notified.

From the affidavit filed on behalf of the State of Tripura, it appears that the said State has introduced rules called Tripura Hindu Marriage Registration Rules, 1957. It has also introduced Tripura Special Marriage Rules, 1989 under the Special Marriage Act, 1954. So far as the State of Karnataka is concerned, it appears that Registration of Hindu Marriages (Karnataka) Rules, 1966 have been framed. It further appears that Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976 has been introduced. Section 3 of the Act requires compulsory registration of all marriages contracted in the State.

So far as the Union Territory of Chandigarh is concerned, Hindu Marriage Registration Rules, 1966 have been framed.

In the affidavit filed on behalf of the National Commission for Women (in short the 'National Commission') it has been indicated as follows:

"That the Commission is of the opinion that non-registration of marriages affects 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 issues 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 garb of marriage."

As noted supra, except four statutes applicable to States of Maharashtra, Gujarat, Karnataka, Himachal Pradesh and Andhra Pradesh registration of marriages is not compulsory in any of the other States.

As 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. As rightly contended by the National Commission, in most cases non registration of marriages affects the women to a great measure. If the marriage is registered it also provides evidence of the marriage having taken place and would provide a rebuttable presumption of the marriage having taken place. 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 parties to the marriage. That being so, it would be in the interest of the society if marriages are made compulsorily registrable. The legislative intent in enacting Section 8 of the Hindu Act is apparent from the use of the 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 registration of marriages would be denied to a person whose marriage is not registered.

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.

Accordingly, we direct the States and the Central Government 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 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.

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

The Registry is directed to handover a copy of this order to learned Solicitor General for necessary follow-up action.

We record our appreciation for the valuable assistance rendered by Mr. G.E. Vahanvati, the Solicitor General and Mr. Ranjeet Kumar, senior advocate, who appeared as amicus curiae.