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**Laws on Registration of Marriage and Divorce –
A Proposal for Consolidation and Reform**

Report No. 211

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**LAW COMMISSION OF INDIA
(REPORT NO. 211)**

**Laws on Registration of Marriage and Divorce –
A Proposal for Consolidation and Reform**

Forwarded to Dr. H. R. Bhardwaj, Union Minister for Law and Justice, Ministry of Law and Justice, Government of India by Dr. Justice AR. Lakshmanan, Chairman, Law Commission of India, on 17th day of October, 2008.

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17 October, 2008

Dear Dr. Bhardwaj Ji,

Sub: Laws on Registration of Marriage and Divorce –
A Proposal for Consolidation and Reform

I am forwarding herewith the 211th Report of the Law Commission of India on the above subject.

The subject has been taken up *suo motu* in the light of the directions of the Supreme Court dated 14.2.2006 in *Seema v. Ashwani Kumar* [2006 (2) SCC 578] that all marriages shall be compulsorily registered and that the State Governments shall initiate action for rule-making in this regard. There is a great diversity in respect of laws for registration of marriages.

Although we have a 122 year old Central Act, viz., the Births, Deaths and Marriages Registration Act, 1886 which states that “Births and Deaths” are to be registered under the Act by the Registrars of Births and Deaths appointed by the State but there is no provision for registration of marriages and hence the title of the Act is somewhat misleading. Under the Act, Registrar-General of Births, Deaths and Marriages is only to keep proper Indexes of the certified copies of Marriage Registers received by him under the provisions of the Special Marriage Act, 1954, Indian Christian Marriage Act, 1872 and Parsi Marriage and Divorce Act, 1936.

Then we have few other State laws on Marriage Registration in Bombay, Andhra Pradesh, West Bengal but nowhere failure to register a marriage which is otherwise compulsory, affects the validity of marriage in any way. The administrative machinery for registration of marriages is not regulated everywhere by one and the same law. In different parts of the country it is regulated either by one of the three central laws – the Births, Deaths and Marriages Registration Act, 1886, the Registration Act, 1908 and Registration of Births and Deaths Act, 1969 – or by a local law, or a combination of both. This creates a lot of confusion with registration officials as well as people wanting or required to register their marriages. There was a tremendous diversity of laws relating to registration of marriages making it complicated and confusing.

Similarly for registration of divorces, the laws which provide for any kind of registration of divorce is that of Muslims and Parsis but provisions of the State laws are dormant and hardly in practice and thus leave abundant room for misuse of law and cause great hardship to women.

In view of the above, the Law Commission recommends enactment of a “Marriage and Divorce Registration Act” to be made applicable in the whole of India and to all citizens irrespective of their religion and personal law and without any exceptions or exemptions.

The proposed law should deal only with registration of marriages and divorces and not with any substantive aspect now governed by various matrimonial laws – general and community - specific. Accordingly, the Births, Deaths and Marriages Registration Act, 1886 be repealed and Births and Deaths Registration Act, 1969 be re-named as “Births, Deaths and Marriages Registration Act” with a provision that officials working and records maintained under the former Act shall be deemed to be working and maintained under the latter Act.

The recommendations, if accepted and implemented, will hopefully address the concern of the Supreme Court lying behind the Court’s repeated directive to the State Governments to ensure compulsory registration of all marriages in the country.

I acknowledge the extensive contribution made by Prof. Dr. Tahir Mahmood, Full-time Member, in preparing this Report.

With kind regards,

Yours sincerely,

(Dr. Justice AR. Lakshmanan)

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CHAPTER I

Introduction

Since February 2006 the Supreme Court has in *Seema v. Ashwani Kumar* directed the State governments thrice to frame Rules for compulsory registration of all marriages irrespective of the religion and personal law of the parties. The States are now in the process of implementing these directives in various ways.

Technically, rules having the effect of law can be framed by any government only under an authority delegated to it by proper legislation. We have, therefore, to examine for this purpose provisions relating to marriage registration under various central and local laws in force in the country.

As is well known, our country has a dual system of matrimonial laws. Various communities or groups of communities are ordinarily governed by their personal laws, codified or uncoded, while at the same time individuals can opt out of the community-specific family-law regime and voluntarily subject themselves to the national laws on civil marriages. Provisions for registration of marriages, optional or mandatory, are found under most of these laws.

Provisions are found in some but not all matrimonial laws for registration of divorces with State-appointed officials. There is more legal diversity in this respect than in regard to registration of marriages.

It is high time we took a second look at the entire gamut of Central and State laws on registration of marriages and divorces to assess if a uniform regime of marriage and divorce registration laws is feasible in the country at this stage of social development and, if not, what necessary legal reforms may be introduced for streamlining and improving upon the present system.

CHAPTER II

Registration of Civil Marriages

A. Old Special Marriage Act 1872

The first law of civil marriages of India was the Special Marriage Act 1872. It was enacted on the recommendation of the First Law Commission set up during the British rule. Mainly meant to facilitate inter-religious marriages, initially it could be availed only by those who did not claim to profess any of the established religions. Later, by an amendment effected in 1923 it was made available – as an alternative to personal law – also to marriages both parties to which belonged to the Hindu, Buddhist, Jain or Sikh religious faiths.

Under this Act the processes of solemnization and registration of marriage were combined into the same transaction. Marriage Registrars, independent or *ex officio*, were to be appointed under its provisions by the Local Government for various territories under its administration (Section 3); and they would play the key role in the solemnization of marriages under the Act. The process would begin with a notice of the intended marriage to be given to the Marriage Registrar in the prescribed form, and end with its solemnization in his presence (Sections 4, 12). After solemnization of a marriage, the Marriage Registrar would “enter a certificate thereof” in the prescribed form in his Marriage Certificate Book, signed by the parties and three witnesses (Section 13).

Every Marriage Registrar acting under the Act was required to send, at prescribed intervals, certified true copies of all entries in his Marriage Certificate Book to the Registrar-General of Births, Deaths and Marriages of the region (Section 13-A). The Marriage Certificate Book would “at all reasonable times be open for inspection and shall be admissible as evidence of the truth of the

statements therein contained” and its copies would be provided to the applicants (Section 14).

The Special Marriage Act 1872 remained in force until after independence and was eventually repealed by and replaced with the new Special Marriage Act 1954. Its provisions on solemnization-cum-registration of marriages were, however, more or less retained under the new Act.

B. New Special Marriage Act 1954

The new Special Marriage Act 1954 also combines solemnization and registration of civil marriages into the same transaction. It enables the State governments to appoint one or more Marriage Officers for its purposes for various administrative units. The Act does not apply in the State of Jammu and Kashmir but provides for the appointment of Marriage Officers there for the people domiciled outside but living within the State (Section 3).

The procedure for civil marriages under this Act is more or less the same as under the first Special Marriage Act of 1872 – beginning with a notice of an intended marriage to be given in the prescribed form to the Marriage Officer of the district in which at least one party has lived for at least 30 days (Section 5) and ending with its solemnization in his presence (Sections 11-12). The provision of the old Act of 1872 for a Marriage Certificate Book to be maintained by the Marriage Officers is retained in the new Act which also provides that the marriage certificate “shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and all formalities respecting the signatures of witnesses have been complied with.” (Section 13)

By a new provision not found in the old Special Marriage Act of 1872 the

new Special Marriage Act of 1954 provides the facility of converting an existing religious marriage into a civil marriage by its registration under its provisions (Section 15). The procedure for this is the same as for marriages to be originally solemnized under the Act, including the issuance of a marriage certificate.

The provision for periodical transmission of marriage records by all Marriage Officers to the Registrar-General of Births, Deaths and Marriages is retained in the new Act, periodicity and forms for which are to be prescribed by the State governments under the Rules to be framed for carrying out purposes of the Act (Sections 48-50).

C. Foreign Marriage Act 1969

The Foreign Marriage Act was enacted to facilitate solemnization of civil marriages by Indian citizens in foreign countries. Marriage Officers are to be appointed by the Central Government for this purpose in its Diplomatic Missions abroad (Section 3). Under this Act an Indian citizen may marry another Indian or a foreigner (Section 4).

Like in the Special Marriage Act 1954, under this Act too solemnization and registration of marriages are parts of the same transaction. The procedure for solemnization and registration of such marriages is more or less the same as under the Special Marriage Act 1954 (Sections 5-13). Marriage Certificate Books are to be maintained in all Diplomatic Missions. There is no provision in this Act for transmission of records to any general registry of the country.

Besides solemnization of new marriages, this Act also makes a provision for registration of pre-existing marriages solemnized in foreign countries under the laws of those countries (Section 17).

CHAPTER III

Registration of Hindu, Buddhist, Jain and Sikh Marriages

A. Hindu Marriage Act 1955

Hindu law was first codified in the princely state of Baroda under the title “Baroda Hindu Nibandh 1937”. Before that the Mysore State had enacted a Hindu Law (Women’s Rights) Act 1933.

In what was called ‘British India’ a number of laws were enacted one after the other to reform certain aspects of the Hindu law of marriage.

None of the local and central laws referred to above contained any requirement for registration of marriages with the State authorities. The first law making a provision for registration of Hindu, Buddhist, Jain and Sikh marriages was the Hindu Marriage Act 1955 enacted after Independence.

The Hindu Marriage Act 1955 does not apply in the State of Goa and the Union Territory of Daman and Diu. In Puducherry it does not apply to the ‘Renoncants’ (those who opted for the local Franco-Indian law at the time of the assimilation of the territory into the Indian Union in 1954).

The State of Jammu and Kashmir has got its own Hindu Marriage Act enacted on the pattern of the central Act.

“For the purpose of facilitating the proof of Hindu marriages” Section 8 of the Hindu Marriage Act 1955 enabled the State governments to make Rules for optional registration of marriages, “in such manner and subject to such conditions as may be prescribed,” by getting their particulars entered in a Hindu Marriage

Register kept for the purpose. Such Registers “shall at all reasonable times be open for inspection and shall be admissible as evidence of statements therein contained.” Certified copies of entries in the Register would be provided on payment of a fee.

The Act further empowered the State Governments to issue a “direction” to make registration of marriages compulsory “if it is of opinion that it is necessary or expedient so to do.” The Government could take such an action either for the whole State or for any part thereof and could also decide whether registration will be compulsory “in all cases or in such cases as may be specified.” If a State Government issued such a direction for compulsory registration of marriages, its violation would be punishable with a fine of Rs. 25. Non-registration of a marriage in any case will not, however, affect the validity of any marriage. .

As ordinarily the Hindu Marriage Act does not apply to the Scheduled Tribes, tribal marriages remained outside the scope of Section 8 of the Act and the Rules framed thereunder by the State Governments.

B. Hindu Marriage Registration Rules

The States of Rajasthan and Madhya Pradesh were the first to make Rules under Section 8 of the Hindu Marriage Act, both in 1956. The latter State replaced its Rules by new Rules made in 1984. Gradually almost all States made the required Rules, but provisions of the various State Rules have not been uniform.

The Assam Hindu Marriage Rules 1961, for instance, provided that “notwithstanding anything contained in the Act and these Rules, registration of Hindu marriages in Assam, excepting those areas where the Registration Act 1908 does not apply, shall be optional” (Rule 19).

The Kerala Hindu Marriage Registration Rule 1957 classified various regions in the State into “Compulsory Registration Areas” (where the Government can make registration of all marriages compulsory) and “other areas” (where registration is optional).

Registration of marriages was kept optional under the Rules made by most of the other States including the West Bengal Hindu Marriage Registration Rules 1958, Andhra Pradesh Hindu Marriage Registration Rules 1965, Karnataka Registration of Hindu Marriages Rules 1966, and Uttar Pradesh Hindu Marriage Registration Rules 1973.

In later years some States but not all provided rules for compulsory registration, or selectively compulsory, governed by the Hindu Marriage Act 1955. It was only after the Supreme Court directive of 2006 that the remaining State Governments began initiating action in this regard.

The Rules made under the Hindu Marriage Act generally mention the Registrar-General of Births, Deaths and Marriages appointed and working under the Births, Deaths and Marriages Registration Act 1886 as the supervisory and appellate authority in respect of Marriage Officers in the State. Some of these laws require Marriage Officers to transmit their records to the Registrar-General at prescribed intervals.

C. Special and Local Laws

The Anand Marriage Act 1909, still in force, was passed to recognize Sikh marriages performed by the religious rites known as “*Anandkaraj*.” It, however, contained no provision for registration of any such marriage. Recently some Sikh leaders have demanded that the 1909 Act should be enlarged into a full-fledged

“Sikh Marriage Act” and registration of all Sikh marriages should be made under that law.

The Arya Marriage Validation Act 1937 was passed to recognize inter-caste and inter-sect marriages among the Hindus. Strangely, this Act which remains in force said nothing about the well-established *Arya Samaj* system of certification of marriages.

Marriages governed by both these Acts can, of course, be registered under Section 8 of the Hindu Marriage Act 1955 and the State Rules made under that provision. So can the marriages among the *Brahmosamajis* who also have their own system of certification of marriages. Both the *Aryasamajis* and the *Brahmosamajis* are specifically described by the Hindu Marriage Act 1955 as “forms” or “developments” of the Hindu religion -- while the Act applies, besides the Hindus, also to the Buddhists, Jains and Sikhs (Section 2).

In Jammu and Kashmir the local Hindu Marriage Act 1980 dittoed almost all provisions of the central Hindu Marriage Act 1955 as originally enacted. Section 8 of the State Act literally reproduced Section 8 of the central Act relating to registration of marriages. The State Government has not provided for compulsory registration of any marriage governed by the local Hindu Marriage Act.

CHAPTER IV

Registration of Muslim Marriages

A. Certification by the Kazis

A system of private registration of marriages with the kazis has always prevailed among the Indian Muslims.

Though in principle Islamic law does not require a ritual solemnization of marriage, among the Muslims of India marriages are invariably solemnized by religious officials known as the “kazi”. The short ceremony performed by the *kazi*, known as “*nikah*”, begins with formally obtaining consent of the parties – first of the bride and then of the groom – and ends with recitation from the Holy Quran followed by prayers. Before, or immediately after, the ceremony the kazi prepares a *nikah-nama* (marriage certificate) which gives full details of the parties and is signed by both of them, and by two witnesses. The kazi authenticates the *nikah-nama* by putting his signatures and seal on it.

Printed forms of standard *nikah-nama* in Urdu and Hindi are stocked by all kazis who fill in it the details of the marriages they solemnize, issue copies to both parties, and always preserve a copy in their records.

Under the law of India the *nikah-namas* issued by the kazis are admissible in evidence.

B. The Kazis Act 1880

There is an old central law called the Kazis Act 1880 empowering State governments to appoint kazis for the purpose of helping desiring local Muslims

with solemnization of marriages, etc. The Government in British India had inherited the power to appoint kazis from the Mughal rulers but had abdicated it in 1864. On the demand of Muslim leadership led by the great Sir Syed Ahmad Khan, the power was resumed by enacting the Kazis Act 1880.

Under this Act kazis may be appointed by a State Government for various areas under its control. A kazi can also be removed by the appointing authority on the grounds of misconduct, long absence, insolvency or incapability (Section 2). The Act, now in force in most States, makes it clear that presence of a State-appointed kazi will not be mandatory for any marriage (Section 4).

The central Kazis Act does not till now apply to private kazis and contains no provision relating to kazis' function of preparing and preserving records of marriages.

In Maharashtra, however, the Act was amended in 1980 to make it applicable also to private kazis and require all kazis – private and State-appointed – to maintain proper records of marriages which they may be invited to solemnize.

C. Local Muslim Marriage and Divorce Registration Acts

There are Muslim Marriage and Divorce Registration Acts in force in six States providing for voluntary registration of marriages and divorces among the local Muslims. These States are as follows:

- (i) West Bengal
- (ii) Bihar
- (iii) Jharkhand
- (iv) Assam

- (v) Orissa
- (vi) Meghalaya

The parent law among these is the old Bengal Mohammedan Marriage and Divorce Registration Act 1876 which is now in force in the first three of the above-named States.

The Orissa legislature re-enacted in 1949, with some changes, the old Bengal law of 1876 referred to above. Titled Orissa Mohammedan Marriage and Divorce Registration Act 1949, it extends to the whole State.

The Assam legislature had enacted a similar law in 1935 – the Assam Moslem Marriage and Divorce Registration Act. The newly created State of Meghalaya locally re-enacted this law in 1974 with no substantive change.

All these Acts empower the local governments to license suitable persons in various areas authorizing them to register marriages and divorces among the local Muslims. These persons, to be known as “Mohammedan Marriage Registrars”, have to act as per the procedure laid down at length in the Acts. All the Acts also prescribe various forms for registration of marriages and different forms of divorce, including *talaq* (divorce by husband) and *khula* (divorce at the instance of wife).

The position of the Mohammedan Marriage Registrars appointed under these Acts is akin to the kazis appointed under the central Kazis Act 1880. Like the latter, all these local Acts also clarify that the presence of a State-appointed Mohammedan Marriage Registrar will not be obligatory for any marriage, and also that neither non-registration would affect the validity of any marriage nor will mere registration validate a marriage which is otherwise invalid under Muslim

law. Registration under these Acts is thus a mere facility provided by law.

All the Mohammedan Registrars licensed under these Acts have to function under the general superintendence of District Registrars functioning under the Registration Act 1908 and are required to transmit to them their registration records every month. The Inspector-General of Registration functioning in the State under that Act has to exercise control on all Mohammedan Marriage Registrars and issue regulations for their guidance.

All these Acts empower the State Government to make Rules for carrying out their purposes, and such Rules have been made and amended from time to time.

Under the Rules framed under the Bengal law of 1876 a Permanent Committee headed by the Inspector-General of Registrar oversees appointments, suspension and removal of Mohammedan Registrars. With the approval of the Government the Committee can also examine from time to time their knowledge of Muslim law.

In some of the States where such Acts are in force the Rules made thereunder have been made applicable also to the kazis functioning under the central Kazis Act 1880 (detailed above). These Rules are, however, not being followed in practice for fear of resentment by the clerics who do have a strong hold upon the society.

In the State of Jammu and Kashmir a Muslim Marriage Registration Act was enacted in 1981, providing for compulsory registration, but had to be soon withdrawn due to stiff opposition by community leaders.

CHAPTER V

Registration of Christian, Parsi, Jewish and Bahai Marriages

A. Indian Christian Marriage Act 1872

The Indian Christian Marriage Act 1872 provides that every marriage both parties to which are, or either party to which is, Christian shall be solemnized in accordance with its provisions (Section 4). This provision conflicts with the Special Marriage Act 1954 which is available, like everyone else, also to Christians for marrying within or outside their community. It has, however, not been amended or repealed.

The Indian Christian Marriage Act 1872 is obsolete in so far as it makes a distinction between “Christians” (defined as “persons professing Christian religion”) and “Indian Christians” (defined as “Christians descendants of natives of India converted to Christianity as well as such converts”). It also makes separate provisions for followers of various Churches – including Church of England (also called Anglican Church), Church of Scotland and Church of Rome (also called Roman Catholic Church). The Act provides separate rules for the solemnization and registration of marriages of Indian Christians and other Christians, and also for the followers of various Churches.

Due to the aforesaid classification and distinctions the system of registration of marriages provided by the Act is quite complicated. Marriages may, according to the Act, be solemnized by the following:

- (i) Ministers of Church who have received episcopal ordination;
- (ii) Clergymen of the Church of Scotland;
- (iii) Ministers of Religion licensed under the Act;
- (iv) Marriage Registrars appointed under the Act; and

- (v) Persons licensed under the Act to grant certificates of marriage between “Indian Christians”.

Part IV of the Act (Sections 27-37) contains elaborate provisions for registration of marriages solemnized by Ministers and Clergymen covered by categories (i) to (iii) above. There are in this Part separate registration provisions for marriages of Christians in general and of Indian or Native Christians.

Part V of the Act (Sections 38-59) provides rules for solemnization-cum-registration of marriages directly by Marriage Registrars appointed under the Act.

Part VI (Sections 60-65) relates to marriages of “Indian Christians” solemnized by licensees under the Act and provides rules for certification.

There are different provisions in the Act for the transmission of records of registration of various categories of marriage to the Registrar-General of Births, Deaths and Marriages.

This Act, thus, has a very complicated system of registration of marriages solemnized under this Act and it suffers from a tremendous lack of uniformity.

B. Parsi Marriage and Divorce Act 1936

The Parsi Marriage and Divorce Act was first enacted in 1865 which was replaced by a new Act bearing the same caption in 1936. The new Act was amended in some respects in 1988.

Parsi marriages are to be solemnized under the Act by the Parsi priests who are required to certify them in a prescribed form to be signed by the priest, the contracting parties and two witnesses (Section 6).

The officiating priests are required by the Act to periodically transmit their records to Marriage Registrars appointed under the Act. A priest who neglects either to so certify a marriage or to transmit its copy to the Marriage Registrar will be guilty of an offence punishable with simple imprisonment up to three months, or with fine up to a hundred rupees, or with both (Section 12).

The Marriage Registrars are to be appointed by the State Government for various areas except within the local limits of the ordinary original civil jurisdiction of a High Court for which they are to be appointed by the Chief Justice or a senior Judge of the Court (Section 7).

The Marriage Registrars except those appointed by the High Court are required to periodically transmit copies of their records to the Registrar-General of Births, Deaths and Marriages (Section 9).

C. Bahai and Jewish Marriages

Bahai marriages are solemnized by religious officials of the community which has a system of certification of marriages very similar to the *nikah-namas* issued by the kazis in Muslim marriages (see above).

The Jewish system of solemnization is also similar to that of the Muslims. Jewish priests known as Rabbis solemnize marriages and issue certificates. There is no system among either the Bahais or the Jews of transmission of marriage records to any authority under control of the State.

There is no legal requirement, or practice, of registering the Bahai or the Jewish marriages with the State registry.

CHAPTER VI

Births, Deaths and Marriages Registration Act 1886

A. Limited Scope of the Act

A Births, Deaths and Marriages Registration Act was enacted by the Central Legislature in 1886. It remains in force till this day.

A new Registration of Births and Deaths Act was passed by Parliament in 1969. It had no provision relating to registration of marriages and clarified that its provisions are not “in derogation of” the old Births, Deaths and Marriages Registration Act 1886 (Section 29). The provisions of the old Act of 1886 relating to marriage registration, whatever they are, thus remain in force.

The title of the Births, Deaths and Marriages Registration Act 1886 is somewhat misleading as it does not require registration of marriages – voluntary or compulsory – under its provisions.

B. Transmission of Marriage Records

The Births, Deaths and Marriages Registration Act 1886 provides for the establishment of a “general registry office” in each State under the charge of a “Registrar-General of Births, Deaths and Marriages” (Section 6). It also provides for the appointment of “Registrars of Births and Deaths” by the State Governments (Sections 12-18). There is, however, no provision for the appointment of Marriage Registrars.

The Act requires the Registrar-General of Births, Deaths and Marriages appointed and working under the Act to keep proper indexes of the certified copies

of Marriage Registers received by him from the officials working under the provisions of three old laws, viz.:

- (i) Parsi Marriage and Divorce Act 1865 (now Parsi Marriage and Divorce Act 1936;
- (ii) Indian Christian Marriage Act 1872 (still in force); and
- (iii) Special Marriage Act 1872 (now Special Marriage Act 1954).

The Act adds that these indexes like those of registers of births and deaths, maintained by the Registrar-General, have “at all reasonable times be open to inspection” and copies of entries in them given to applicants for the same are admissible in evidence for the purpose of proving a marriage (Sections 8-9).

CHAPTER VII

General State Laws on Marriage Registration

A. Bombay Registration of Marriages Act 1954

Before the reorganization of States, the legislature of the former State of Bombay had enacted a law for compulsory registration of marriages. Titled as Bombay Registration of Marriages Act 1954, it was made applicable to all marriages other than those solemnized under the following laws all of which had their own provisions for marriage registration:

- (i) Parsi Marriage and Divorce Act 1936,
- (ii) Indian Christian Marriage Act 1872, and
- (iii) Special Marriage Act 1872 (now Special Marriage Act 1954).

After the re-organization of states in 1956 the Bombay Act of 1954 was retained in force, with necessary adaptation, in the present States of Maharashtra and Gujarat. In both States it was later amended in certain respects.

Under this Act the State Government may appoint, by name or *ex officio*, so many persons to act as Registrars of Marriages for such local areas as it may think necessary and prescribe their duties and powers under the Rules to be made thereunder. The Act, read with the Rules made under it, lays down an elaborate procedure for registration of marriages.

Every marriage contracted in the State has to be compulsorily registered as provided by this law. The requirement applies not only to the first but also to all subsequent marriages of any person. Also, it applies in whatever form or manner a marriage may have been contracted or solemnized. This obligation applies from

the date on which the registration law of 1954 is brought in force in any local area, as per the State government's gazette notification.

Failure to register a marriage as required by the law will attract a statutory penalty by way of fine up to two hundred rupees but shall not make the marriage invalid if it is otherwise valid under the law applicable to it.

For the purpose of registration of a marriage a memorandum of marriage is to be prepared and signed by the parties to the marriage. If either party is under the age of eighteen years at the time of marriage the memorandum will be prepared and signed by that party's father or guardian. However, where such party has married without the consent of father or guardian, that party - and not the guardians - will prepare and sign the memorandum. It has to be in a statutory form providing all the details as laid down in the Rules. The officiating priest or whoever else solemnizes a marriage has to sign the memorandum.

Within the prescribed period the memorandum so prepared is to be sent in duplicate and with the prescribed fee by registered post to the Registrar of Marriages of the local area where the marriage takes place. The Registrar will file one copy of the memorandum in his Register of Marriages and send the other copy to the State's Registrar-General of Births, Deaths and Marriages working under the Births, Deaths and Marriages Registration Act 1886.

A penalty of fine of two hundred rupees is prescribed by the law imposable on conviction for:

- (i) willfully omitting or neglecting to deliver or send a memorandum of marriage as required by the law,

- (ii) willfully omitting or neglecting to deliver or send a memorandum of marriage within the prescribed time, and
- (iii) making in such a memorandum any statement which is false in any material particular and which the person making it knows or has reason to believe to be false.

B. *Laws of Other States*

The Bombay Registration of Marriages Act 1954, now applicable in Maharashtra and Gujarat, has been adopted *mutatis mutandis* by local legislation in some other States including Andhra Pradesh and West Bengal.

Nowhere failure to register a marriage, which is otherwise compulsory, affects the validity of marriage in any way. It also does not adversely affect the conjugal or post-divorce rights of either party to marriage or the availability of matrimonial remedies under the law applicable.

In the former Mysore State a Registrar-General of Births, Deaths and Marriages Act was passed in 1956.

The Rajasthan legislature passed a Registration of Births, Deaths and Marriages Act in 1958. This Act provides that the State Government may in its discretion establish a general registry office separately for keeping certified copies of registers of marriages and appoint to the charge of such separate office an officer to be called the Registrar-General of Marriages for the State [Section 4(b)]. It makes the central Births, Deaths and Marriages Registration Act 1886 inapplicable in the merged territories where it was earlier in force [Section 25 (i)]. It also repeals the local Acts on this subject earlier enforced in some such territories [Section 25 (ii) – (vi)].

CHAPTER VIII

Registration of Divorces

A. Divorces Obtained Outside the Court

The Hindu Marriage Act 1955 recognizes and protects divorces obtained under customary law (Section 29), but makes no provision for registration of such divorces effected outside the court.

The Muslim Marriage and Divorce Registration Acts applicable in West Bengal, Bihar, Jharkhand, Orissa, Assam and Meghalaya – referred to above – provide for voluntary registration of out-of-court divorces with the Mohammedan Marriage Registrars appointed under those Acts by the State Governments. The following forms of divorce can be so registered in all the States:

- (i) *talaq* (divorce by the husband),
- (ii) *khula* (divorce at the instance of wife), and
- (iii) *mubara'at* (divorce by mutual consent).

Separate forms are prescribed by these Acts for the registration of each of these categories of divorce.

The Orissa Mohammedan Marriage and Divorce Registration Act 1949 provides also for registration of *talaq- tafwiz* (divorce by wife in terms of a stipulation for this purpose in the marriage contract). It prescribes special forms for the registration of such divorces.

Registration of all divorces under all these laws is to be made on a voluntary basis; and non-registration of any divorce does not vitiate its legal validity.

B. Divorces Obtained in Courts

Under the Parsi Marriage and Divorce Act 1936 a divorce can be obtained only through the intervention of a court.

The Act requires the Courts passing a decree of divorce, nullity or dissolution to send a copy of each such decree for registration to the Marriage Registrar within its jurisdiction (Section 10).

There is no such provision for registration of divorces under any of the following laws:

- (i) Indian Christian Marriage Act 1872,
- (ii) Special Marriage Act 1954, and
- (iii) Hindu Marriage Act 1955.

CHAPTER IX

Findings and Recommendations

A. Findings

We now proceed to summarize our findings based on our survey of the existing Central and State laws relating to registration of marriages:

- (i) There has been, and remains, tremendous diversity of laws relating to registration of marriages. The present state of the law on the subject is indeed complicated and confusing.
- (ii) The only laws which provide for any kind of registration of divorces relate to Muslims and Parsis. All other marriage registration laws do not provide for registration of divorces although it is a socially beneficial proposition.
- (iii) Registration of out-of-court divorces among the Hindus, Buddhists, Jains and Sikhs – which the Hindu Marriage Act 1955 recognizes – is extremely desirable.
- (iv) In the Muslim society there is a system of private registration of marriages by the kazis, which needs to be streamlined and linked with registration of marriage with State Registry.
- (v) Among the Muslims divorces are never registered with a kazi. In those cases where a divorce takes place with the intervention of a kazi no record of the divorce is maintained by him. The provisions of the local laws in the Eastern States for registration of divorces among the Muslims are dormant and are hardly used

in practice. Absence of registration of divorces in a community whose personal law allows out-of-court divorce leaves abundant room for misuse of law and often causes great hardship to women.

- (vi) In very few States all marriages irrespective of the law under which these may have been solemnized have to be compulsorily registered. The majority of States have not enacted any general law on marriage registration applicable to all communities.
- (vii) In those States where there are laws for compulsory registration of all marriages, such laws are faulty and ineffective. People generally do not adhere to them, as non-registration entails only fine of a petty amount.
- (viii) The administrative machinery for registration of marriages is not regulated everywhere by one and the same law. This creates a lot of confusion with registration officials as well as people wanting or required to register their marriages.
- (ix) As various communities are still governed by different marriage laws, Rules for compulsory registration of all marriages in all communities cannot obviously be made under any particular community-specific law.
- (x) There is a general confusion in the minds of the people that registration of a marriage solemnized as per religious rites and desired to be governed by the religion-based law of the parties will turn it into a civil marriage to be governed by the general

law of civil marriages. This is a great inhibition against marriage registration which needs to be effectively removed.

- (xi) Advantages of registration of marriage and disadvantages of non-registration are not specified in any law or policy document and therefore there is little clarity in the mind of the people in this respect.

B. Recommendations

Under the Constitution of India family matters are in the concurrent jurisdiction of the Centre and States [List III, Entry 5]. Parliamentary legislation on compulsory registration of marriages 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 of course be made by the State Governments, and this will take care of the local social variations.

We therefore recommend enactment of a central law on the subject. We further recommend consequential changes in all the relevant central and local laws.

Our detailed recommendations are as follows:

- (i) A “Marriage and Divorce Registration Act” [hereinafter referred to as the “proposed law”] should be enacted by Parliament, to be made applicable in the whole of India and to all citizens irrespective of

their religion and personal law and without any exceptions or exemptions.

- (ii) The proposed law should deal only with registration of marriages and divorces and must not touch any substantive aspect now governed by various matrimonial laws – general and community-specific.

- (iii) A proper and common machinery for registration of marriages and divorces, including registration offices at the district/sub-district levels should be provided for under the proposed law. The State Governments may set up such offices, appoint Marriage and Divorce Registration Officers by name or *ex officio* at various levels, and prescribe rules to regulate their working.

- (iv) Since in all communities marriages are solemnized with a religious ceremony, the religious officials solemnizing the marriages can play a major role in respect of registration of marriage. The proposed law should make it mandatory for the “officiating priest” of every marriage to prepare and maintain proper records of all marriages in a prescribed form. The term “officiating priest” should for this purpose include the following:

- a) *pundits, purohits* and other Hindu religious officials by whatever name called who officiate at a marriage;
- b) *kazis* and all other Muslim religious officials by whatever name called who solemnize a *nikah*;
- c) Christian pastors and other Church officials who solemnize a Christian marriage;

- d) Parsi, Jewish and Bahai religious leaders who officiate at any marriage among these communities;
- e) clerics of all other religions performing this function; and
- f) any other person, whether religious official or not, who performs religious or customary rites at any marriage.

(v) It should be made mandatory for every “officiating priest” (as defined above) to transmit copies of all their records at regular intervals to the local Marriage and Divorce Registration Officer.

(vi) While transmitting his records to the Marriage and Divorce Registration Officer, the officiating priest should also send a certificate that every marriage included in the record was to the best of his knowledge and belief in accordance with the requirement of the marriage law applicable to parties.

(vii) The proposed law should amend the following Acts to insert in them the requirements stated above at paras (v) and (vi) above:

- a) Indian Christian Marriage Act 1872;
- b) Kazis Act 1880;
- c) Parsi Marriage and Divorce Act 1936; and
- d) Hindu Marriage Act 1955.

(viii) The Kazis Act 1880 should be further amended to make it applicable both to private kazis and to every person who performs the *nikah* ceremony at any Muslim marriage.

- (ix) The Special Marriage Act 1954 should be amended to provide that Marriage Officers working under its provisions shall transmit their records at prescribed intervals to the Marriage and Divorce Registration Officer of the concerned district.
- (x) The Foreign Marriage Act 1969 should be amended to provide that Indian Diplomatic Missions in all countries shall send at prescribed intervals their records to the Ministry of Foreign Affairs in Delhi for onward transmission to the State Registry of the State concerned.
- (xi) The Kazis Act 1880 should be further amended to provide that every divorce among the Muslims, in whatever form it takes place, must be communicated in writing to the kazi of the area within a prescribed time. The kazis should be required to maintain proper records of all such divorces and periodically transmit their records of divorces to the Marriage and Divorce Registration Officer of the area along with marriage records.
- (xii) Section 29 of the Hindu Marriage Act 1955 should be amended to provide that all customary divorces among the Hindus, Buddhists, Jains and Sikhs should be duly registered with the Marriage and Divorce Registration Officers working under the proposed law.
- (xiii) The following Acts should be amended, on the pattern of the provision to this effect found in the Parsi Marriage and Divorce Act 1936, to require the registries of courts granting decrees of

divorce or nullity of marriage to periodically send information about the same in a prescribed form to the local Marriage Registration Office:

- (a) Indian Christian Marriage Act 1872;
- (b) Parsi Marriage and Divorce Act 1936;
- (c) Special Marriage Act 1954; and
- (d) Hindu Marriage Act 1955.

(xiv) The proposed law should declare failure to register a marriage or divorce as required by its provisions to be an offence punishable with heavy fines and, in default of payment of fine, with imprisonment for a prescribed period.

(xv) The proposed law should also provide that no judicial relief will be granted in a disputed matter if the concerned marriage or divorce is not duly registered under its provisions.

(xvi) The proposed law should be given an overriding effect on all other laws through a *non obstante* clause duly inserted in it.

(xvii) The following laws should be repealed with necessary saving provisions:

- a) Births, Deaths and Marriages Registration Act 1886;
- b) All State laws dealing with registration of marriages in general;

- c) Muslim Marriage and Divorce Registration Acts (by whatever name called) in force in West Bengal, Bihar, Jharkhand, Orissa, Assam and Meghalaya; and
- d) Any provision relating to registration of marriages in any pre-existing law which comes in conflict with the provisions of the proposed law (to the extent of such conflict).

(Dr. Justice AR. Lakshmanan)

Chairman

(Professor Dr. Tahir Mahmood)

Member

(Dr. Brahm A. Agrawal)

Member-Secretary