



अनुसंधान प्रश्न

“भारत में विशेष विवाह अधिनियम, 1954 के तहत कोर्ट मैरिज कैसे होती है, नोटिस और आपत्ति की अवधि क्या है, पर्सनल लॉ के तहत विवाह पंजीकरण कैसे होता है, और अंतर-धार्मिक तथा अंतर-जातीय जोड़ों के लिए क्या सुरक्षा उपलब्ध है?”

भारत में विशेष विवाह अधिनियम, 1954 के तहत कोर्ट मैरिज की प्रक्रिया, नोटिस एवं आपत्ति की अवधि, पर्सनल लॉ के तहत विवाह पंजीकरण और अंतर-धार्मिक/अंतर-जातीय जोड़ों को प्राप्त विधिक सुरक्षा का विश्लेषण

सारांश

भारत में विशेष विवाह अधिनियम (SMA), 1954 के तहत कोर्ट मैरिज के लिए 30-दिवसीय वैधानिक प्रतीक्षा और जिला विवाह अधिकारी के समक्ष नोटिस प्रस्तुत करने की प्रक्रिया अनिवार्य है, जिसे किसी भी परिस्थिति में माफ नहीं किया जा सकता। सुप्रीम कोर्ट ने *Dolly Rani v. Manish Kumar Chanchal* (2024) में स्थापित किया है कि हिंदू विवाह अधिनियम, 1955 के तहत केवल पंजीकरण (Registration) विवाह को तब तक वैधता नहीं देता जब तक कि धार्मिक अनुष्ठान (जैसे सप्तपदी) वास्तव में संपन्न न किए गए हों, जबकि नागरिक विवाह (Civil Marriage) हेतु विशेष विवाह अधिनियम ही एकमात्र वैधानिक विकल्प है। अंतर-धार्मिक और अंतर-जातीय वयस्क जोड़ों को अपनी इच्छा से विवाह करने पर संविधान के अनुच्छेद 21 के तहत जीवन और व्यक्तिगत स्वतंत्रता का पूर्ण संरक्षण प्राप्त है, और पुलिस प्रशासन उनके विरुद्ध किसी भी उत्पीड़न या धमकी को रोकने के लिए कानूनी रूप से बाध्य है।

सत्यापित मुकदमे	संविधियाँ	नवीनतम निर्णय
25	5	2024
21 उच्च न्यायालय • 4 सर्वोच्च न्यायालय		Supreme Court of India

विषय-सूची

I. विस्तृत विश्लेषण	2
II. सांविधिक प्रावधान	5
III. चर्चित मुकदमे	8
IV. मुकदमे का विवरण	10

Vitark AI द्वारा तैयार • अत्यंत गोपनीय • उपयोग से पहले उद्धरण सत्यापित करें

I. विस्तृत विश्लेषण

मुख्य सिद्धांत

01 कोर्ट मैरिज (SMA, 1954) के तहत अनिवार्य प्रतीक्षा और आवासीय अवधि

विशेष विवाह अधिनियम के तहत विवाह हेतु धारा 5 के अनुसार कम से कम एक पक्ष का उस जिले में 30 दिनों तक निवास करना आवश्यक है, और धारा 7 के तहत आपत्तियां आमंत्रित करने के लिए 30 दिनों की प्रतीक्षा अवधि पूर्णतः अनिवार्य है; इस वैधानिक अवधि को विवाह अधिकारी या न्यायालय द्वारा किसी भी आधार पर माफ नहीं किया जा सकता (*Sharon Francis v. State of Kerala* (2022); *Digin Varghese v. The Marriage Officer* (2020))।

02 निजता का अधिकार और नोटिस भेजने की सीमा

अधिनियम के तहत विवाह के प्रस्तावित नोटिस को केवल विवाह अधिकारी के कार्यालय के सार्वजनिक नोटिस बोर्ड पर ही प्रदर्शित किया जा सकता है। आवेदकों के निजी आवासीय पत्तों पर नोटिस भेजना या पुलिस के माध्यम से भौतिक सत्यापन कराना निजता के अधिकार का गंभीर उल्लंघन है और इसे पूरी तरह प्रतिबंधित किया गया है (*Pranav Kumar Mishra v. Govt. of NCT of Delhi* (2009))।

03 कोर्ट मैरिज की औपचारिकताएं और वैधता

नागरिक विवाह (Civil Marriage) के लिए किसी धार्मिक रीति-रिवाज या संस्कार की आवश्यकता नहीं होती; यह धारा 12(2) के तहत विवाह अधिकारी और तीन गवाहों की उपस्थिति में केवल एक विनिर्दिष्ट प्रारूप में घोषणा पत्र पर हस्ताक्षर करने और घोषणा को दोहराने मात्र से संपन्न हो जाता है, जिसके बाद नोटिस की तारीख से 3 महीने के भीतर विवाह न होने पर प्रक्रिया निरस्त मान ली जाती है (*Bestha Rajashekhar v. M. Uma Devi* (2024); *Priya Lo J. v. State of Kerala* (2018))।

04 पर्सनल लॉ पंजीकरण बनाम रस्में

व्यक्तिगत कानूनों (जैसे हिंदू विवाह अधिनियम, 1955) के तहत विवाह का पंजीकरण केवल उस विवाह का साक्ष्य प्रस्तुत करता है जो पहले से ही धार्मिक रीति-रिवाजों से संपन्न हो चुका हो। बिना अनिवार्य धार्मिक अनुष्ठानों (जैसे सप्तपदी) के किया गया केवल समझौता या सरकारी पंजीकरण कानून की दृष्टि में विवाह को वैधता प्रदान नहीं करता (*Rathnamma v. Sujathamma* (2019); *B. Sahar Banu v. The Inspector General of Registration* (2022))।

05 अंतर-धार्मिक और अंतर-जातीय जोड़ों को संवैधानिक संरक्षण

वयस्क व्यक्तियों को अपनी पसंद का जीवनसाथी चुनने और विवाह करने का पूर्ण अधिकार संविधान के अनुच्छेद 21 के तहत एक मौलिक अधिकार है। यदि बालिग जोड़ा अपनी सहमति से विवाह करता है, तो प्रशासन और पुलिस उन्हें उनके परिवारों या समाज से मिलने वाली धमकियों के विरुद्ध सुरक्षा और 'सुरक्षित आवास' (Safe House) प्रदान करने के लिए बाध्य हैं (*Simran Choudhary v. State of J&K* (2019); *Purnima Vyas v. State of Rajasthan* (2024))।

न्यायालयों ने इसे कैसे लागू किया

सर्वोच्च न्यायालय का दृष्टिकोण

Gullipilli Sowria Raj v. Bandaru Pavani (2008) के अनुसार, हिंदू विवाह अधिनियम के तहत विवाह केवल दो हिंदुओं के बीच ही हो सकता है, और हिंदू-ईसाई जैसी अंतर-धार्मिक शादियां इस अधिनियम के तहत शून्य हैं जिन्हें पंजीकरण भी वैध नहीं बना सकता। वहीं, *Seema v. Ashwani Kumar* (2006) में सर्वोच्च न्यायालय ने महिलाओं और बच्चों के अधिकारों की रक्षा हेतु सभी धर्मों के नागरिकों के लिए विवाहों के अनिवार्य पंजीकरण के नियम बनाने का निर्देश दिया है।

उच्च न्यायालय की भिन्नताएँ

- **वीडियो कॉन्फ्रेंसिंग/ऑनलाइन विवाह:** केरल उच्च न्यायालय ने *Sherin Suni Antony v. State of Kerala* (2021) और *Sarath C.P. v. State of Kerala* (2022) में असाधारण परिस्थितियों (जैसे यात्रा प्रतिबंध या विदेशों में नौकरी) के कारण शर्तों के साथ वीडियो कॉन्फ्रेंसिंग के जरिए विवाह संपन्न करने की अनुमति दी है। हालांकि, *Shitha V.K. v. The District Registrar (General)* (2021) और *Ajmal Asharaf M. v. State of Kerala* (2021) में यह स्पष्ट किया गया कि ऐसी ऑनलाइन प्रक्रियाओं में भी 30 दिनों की अनिवार्य नोटिस अवधि तथा गवाहों की प्रत्यक्ष उपस्थिति से किसी प्रकार का समझौता या शिथिलता नहीं दी जा सकती।
- **विदेशी नागरिकों का विवाह पंजीकरण:** *Ashwani Sharad Pendese v. Registrar of Hindu Marriage* (2023) में राजस्थान उच्च न्यायालय ने माना कि यदि विवाह भारत में धार्मिक रीति-रिवाजों के अनुसार वैध रूप से संपन्न हुआ है, तो केवल एक पक्ष के विदेशी नागरिक होने के आधार पर पंजीकरण से इनकार नहीं किया जा सकता।
- **पंजीकरण की अनिवार्य पूर्व-शर्त:** *Shruti Agnihotri v. Anand Kumar Srivastava* (2024) में इलाहाबाद उच्च न्यायालय ने माना कि विवाह का पंजीकरण केवल साक्ष्य को सुगम बनाता है, परंतु वास्तविक अनुष्ठान की अनुपस्थिति में पंजीकरण शून्य है। इसके अलावा, *T. Sasikala v. State of Andhra Pradesh* (2022) में विवाह संपन्न कराने (अध्याय II) और पूर्व-संपन्न विवाह के पंजीकरण (अध्याय III) की प्रक्रियाओं के सूक्ष्म विधिक अंतर को रेखांकित किया गया। इसी प्रकार, *Surya Vetrakondan v. State of Tamilnadu* (2018) में स्पष्ट किया गया कि पर्सनल लॉ के तहत विवाहों का पंजीकरण वैकल्पिक और साक्ष्य स्वरूप है, न कि विवाह की आंतरिक वैधता की अनिवार्य शर्त।

हाल का विकास

इलाहाबाद उच्च न्यायालय ने *Mayra Alias Vaishnvi Vilas Shirshikar v. State of U.P.* (2021) में यह चिंता व्यक्त की कि विशेष विवाह अधिनियम की जटिल और लंबी नोटिस प्रक्रिया जोड़ों को सार्वजनिक प्रताड़ना और निजता के हनन के डर से त्वरित धर्म परिवर्तन और व्यक्तिगत कानूनों के तहत विवाह करने के लिए अनैच्छिक रूप से विवश करती है।

अनिर्णीत क्षेत्र या चेतावनियाँ

अवैध संबंधों में सुरक्षा की सीमा

इलाहाबाद उच्च न्यायालय ने *Meera Gautam v. State of U.P.* (2023) में स्पष्ट किया कि यदि लिव-इन संबंध या विवाह किसी पूर्व जीवित पति/पत्नी के रहते हुए (बिना वैध तलाक के) किया जा रहा है, तो वह कानूनन द्विविवाह (Bigamy) के दायरे में आएगा और ऐसे जोड़ों को सुरक्षात्मक निर्देश जारी नहीं किए जा सकते।

पारिवारिक हस्तक्षेप की विधिक सीमा

जम्मू-कश्मीर उच्च न्यायालय ने *Meena Kumari v. State of J&K* (2019), *Mohd. Pervaiz v. Union Territory of J&K* (2020) और *Lehar Singh v. State* (2018) में बार-बार चेतावनी दी है कि वयस्क जोड़ों के चयन में समाज या परिवार का कोई हस्तक्षेप स्वीकार्य नहीं है; यदि माता-पिता विवाह को स्वीकार नहीं करते, तो वे अधिकतम सामाजिक संबंध तोड़ सकते हैं, परंतु उन्हें डराने-धमकाने या प्रताड़ित करने का कोई विधिक अधिकार नहीं है।

II. सांविधिक प्रावधान 5 प्रावधान

SECTION 7, SPECIAL MARRIAGE ACT, 1954 — OBJECTION TO MARRIAGE

Allows any person to object to an intended marriage within thirty days of the publication of the marriage notice on the grounds that it violates the specified statutory conditions.

"Section 7. Objection to marriage

(1) Any person may, before the expiration of thirty days from the date on which any such notice has been published under sub-section (2) of section 6, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 4.

(2) After the expiration of thirty days from the date on which notice of an intended marriage has been published under sub-section (2) of section 6, the marriage may be solemnized, unless it has been previously objected to under sub-section (1).

(3) The nature of the objection shall be recorded in writing by the Marriage Officer in the Marriage Notice Book, be read over and explained if necessary, to the person making the objection and shall be signed by him or on his behalf."

SECTION 6, SPECIAL MARRIAGE ACT, 1954 — MARRIAGE NOTICE BOOK AND PUBLICATION

Mandates the Marriage Officer to keep records of marriage notices in a Marriage Notice Book and publish them conspicuously in the office.

"6. Marriage Notice Book and publication .—(1) The Marriage Officer shall keep all notices given under section 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.

(2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office.

(3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under section 5, the Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office." उद्धृत: Priya Lo J. v. State of Kerala, Sarath C.P. v. State of Kerala, Sherin Suni Antony v. State of Kerala, Purnima Vyas v. State of Rajasthan

SECTION 5, SPECIAL MARRIAGE ACT, 1954 — NOTICE OF INTENDED MARRIAGE

Requires parties intending to marry to give a written notice to the Marriage Officer of the district where at least one party has resided for at least thirty days.

"Section 5. Notice of intended marriage

When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given." उद्धृत: Priya Lo J. v. State of Kerala, Purnima Vyas v. State of Rajasthan

SECTION 8, SPECIAL MARRIAGE ACT, 1954 — PROCEDURE ON RECEIPT OF OBJECTION

Specifies that the Marriage Officer must investigate any marriage objection within thirty days and details the appeal process to the district court if the marriage is refused.

"Section 8. Procedure on receipt of objection

(1) If an objection is made under section 7 to an intended marriage, the Marriage Officer shall not solemnize the marriage until he has inquired into the matter of the objection and is satisfied that it ought not to prevent the solemnization of the marriage or the objection is withdrawn by the person making it; but the Marriage Officer shall not take more than thirty days from the date of the objection for the purpose of inquiring into the matter of the objection and arriving at a decision.

(2) If the Marriage Officer upholds the objection and refuses to solemnize the marriage, either party to the intended marriage may, within a period of thirty days from the date of such refusal, prefer an appeal to the district court within the local limits of whose jurisdiction the Marriage Officer has his office, and the decision of the district court on such appeal shall be final, and the Marriage Officer shall act in conformity with the decision of the court."

SECTION 4, SPECIAL MARRIAGE ACT, 1954 — CONDITIONS RELATING TO SOLEMNIZATION OF SPECIAL MARRIAGES

Lays down the essential conditions for solemnizing a special marriage, including age limits, mental capacity, and restrictions on prohibited relationships.

"Section 4. Conditions relating to solemnization of special marriages

Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:--

- (a) neither party has a spouse living;
- (b) neither party--
 - (i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - (iii) has been subject to recurrent attacks of insanity;
- (c) the male has completed the age of twenty-one years and the female the age of eighteen years;
- (d) the parties are not within the degrees of prohibited relationship:

Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and

- (e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends."

III. चर्चित मुकदमे

25 मुकदमे • सारणी

#	मुकदमा	न्यायालय	वर्ष	मुख्य निर्णय
01	<i>Priya Lo J. v. State of Kerala</i> KLHC010867932018	HIGH COURT OF KERALA	2018	विवाह संपन्न करने हेतु धारा 5 के नोटिस के बाद आवश्यक कदम उठाने का निर्देश।
02	<i>T. Sasikala v. State of Andhra Pradesh</i> APHC010489662021	HIGH COURT OF ANDHRA PRADESH	2022	अधिनियम के अध्याय II (संपन्नता) और अध्याय III (पंजीकरण) में स्पष्ट अंतर।
03	<i>Pranav Kumar Mishra v. Govt. of NCT of Delhi</i> DLHC010064102009	HIGH COURT OF DELHI	2009	निजता की रक्षा हेतु आवेदकों के घर पर विवाह नोटिस न भेजने का निर्देश।
04	<i>Dolly Rani v. Manish Kumar Chanchal</i> ESCR010002612024	SUPREME COURT OF INDIA	2024	बिना धार्मिक रीति-रिवाजों के केवल पंजीकरण से हिंदू विवाह को वैधता नहीं मिलती।
05	<i>Purnima Vyas v. State of Rajasthan</i> RJHC020547722024	HIGH COURT OF RAJASTHAN	2024	अंतर-धार्मिक जोड़ों को सुरक्षा और सुरक्षित आवास (Safe House) प्रदान करने का आदेश।
06	<i>Shruti Agnihotri v. Anand Kumar Srivastava</i> UPHC020862192023	ALLAHABAD HIGH COURT	2024	बिना आवश्यक धार्मिक अनुष्ठान (सप्तपदी) के हिंदू विवाह का पंजीकरण अमान्य है।
07	<i>Sarath C.P. v. State of Kerala</i> KLHC010174302022	HIGH COURT OF KERALA	2022	वैधानिक प्रतीक्षा अवधि के बाद वीडियो कॉन्फ्रेंसिंग द्वारा ऑनलाइन विवाह की अनुमति।
08	<i>Seema v. Ashwani Kumar</i> ESCR010000892006	SUPREME COURT OF INDIA	2006	सभी धर्मों के नागरिकों के विवाह का अनिवार्य पंजीकरण सुनिश्चित करने का निर्देश।
09	<i>Sharon Francis v. State of Kerala</i> KLHC010611002022	HIGH COURT OF KERALA	2022	विशेष विवाह अधिनियम के तहत 30 दिनों की आवासीय शर्त अनिवार्य है।
10	<i>Sherin Suni Antony v. State of Kerala</i> KLHC010702502021	HIGH COURT OF KERALA	2021	असाधारण यात्रा प्रतिबंधों के कारण शर्तों के साथ ऑनलाइन विवाह संपन्न करने का निर्देश।
11	<i>Shitha V.K. v. The District Registrar (General)</i> KLHC010096462021	HIGH COURT OF KERALA	2021	गवाहों/पक्षों की भौतिक उपस्थिति और 30-दिवसीय प्रतीक्षा अवधि अनिवार्य है।
12	<i>Digin Varghese v. The Marriage Officer</i> KLHC010013762020	HIGH COURT OF KERALA	2020	विशेष विवाह अधिनियम के तहत 30 दिनों की प्रतीक्षा अवधि को माफ नहीं किया जा सकता।
13	<i>Ashwani Sharad Pendese v. Registrar of Hindu Marriage</i> RJHC020535642010	HIGH COURT OF RAJASTHAN	2023	केवल विदेशी नागरिकता के आधार पर वैध हिंदू विवाह के पंजीकरण से इनकार अमान्य।
14	<i>Surya Vetrikondan v. State of Tamilnadu</i> HCMA010887942018	MADRAS HIGH COURT	2018	पर्सनल लॉ के तहत विवाह पंजीकरण वैकल्पिक है, वैधता हेतु अनिवार्य नहीं।

#	मुकदमा	न्यायालय	वर्ष	मुख्य निर्णय
15	Mayra Alias Vaishnvi Vilas Shirshikar v. State of U.P. UPHC010935362021	ALLAHABAD HIGH COURT	2021	विशेष विवाह अधिनियम की नोटिस प्रक्रिया निजता और व्यक्तिगत स्वतंत्रता का उल्लंघन है।
16	Rathnamma v. Sujathamma ESCR010003102019	SUPREME COURT OF INDIA	2019	विवाह का केवल पंजीकरण (सप्तपदी या रस्मों के बिना) हिंदू विवाह का प्रमाण नहीं।
17	Ajmal Asharaf M. v. State of Kerala KLHC010081102021	HIGH COURT OF KERALA	2021	कोविड महामारी के दौरान भी अनिवार्य नोटिस अवधि या भौतिक उपस्थिति में पूर्ण छूट नहीं।
18	Meera Gautam v. State of U.P. UPHC011374922023	ALLAHABAD HIGH COURT	2023	बिना तलाक के दूसरी शादी या अवैध लिव-इन संबंध को पुलिस सुरक्षा नहीं दी जा सकती।
19	Bestha Rajashekhar v. M. Uma Devi KAHC010505202017	HIGH COURT OF KARNATAKA	2024	धारा 12(2) के तहत निर्धारित शब्दों के उच्चारण से विवाह संपन्न होना माना जाता है।
20	B. Sahar Banu v. The Inspector General of Registration HCMD010939602015	MADRAS HIGH COURT	2022	बिना किसी विवाह समारोह के किया गया विवाह पंजीकरण पूर्णतः अमान्य है।
21	Simran Choudhary v. State of J&K JKHC020033462019	HIGH COURT OF JAMMU AND KASHMIR	2019	अपनी पसंद से विवाह करने वाले बालिग जोड़ों को सुरक्षा देने का पुलिस को निर्देश।
22	Mohd. Pervaiz v. Union Territory of J&K JKHC020007252020	HIGH COURT OF JAMMU AND KASHMIR	2020	अपनी पसंद से विवाह करना अनुच्छेद 21 के तहत सुरक्षित मौलिक अधिकार है।
23	Gullipilli Sowria Raj v. Bandaru Pavani ESCR010006932008	SUPREME COURT OF INDIA	2008	हिंदू और ईसाई के बीच हिंदू रीति से विवाह शून्य है, पंजीकरण से वैध नहीं होता।
24	Meena Kumari v. State of J&K JKHC020025252019	HIGH COURT OF JAMMU AND KASHMIR	2019	वयस्क व्यक्तियों को अपनी पसंद का जीवन साथी चुनने का पूर्ण संवैधानिक अधिकार है।
25	Lehar Singh v. State JKHC020056902018	HIGH COURT OF JAMMU AND KASHMIR	2018	वयस्क जोड़े की जीवन और स्वतंत्रता की रक्षा करना राज्य का संवैधानिक कर्तव्य है।

IV. मुकदमे का विवरण 25 केस फ़ाइलें

01 Priya Lo J. v. State of Kerala

HIGH COURT OF KERALA • 2018-12-04 • WP(C)/37514/2018

यह मामला Special Marriage Act, 1954 के तहत विवाह पंजीकरण कराने से संबंधित है। याचिकाकर्ताओं ने आरोप लगाया था कि विवाह अधिकारी (Marriage Officer) ने इस आधार पर प्रक्रिया में देरी की कि दूसरे याचिकाकर्ता का स्थायी पता पश्चिम बंगाल में है और इसके लिए अधिनियम की Section 6(3) के तहत प्रक्रिया का पालन करना आवश्यक है। न्यायालय ने Village Officer की रिपोर्ट के माध्यम से यह पाया कि दूसरा याचिकाकर्ता पिछले छह वर्षों से केरल में रह रहा है। तदनुसार, न्यायालय ने माना कि धारा 6(3) के तहत अतिरिक्त प्रक्रिया की कोई आवश्यकता नहीं है। न्यायालय ने प्रतिवादी को निर्देश दिया कि वह विवाह को संपन्न करने के लिए निर्धारित समय सीमा के भीतर आवश्यक कदम उठाए।

निर्णय केरल उच्च न्यायालय ने विवाह अधिकारी को निर्देश दिया कि वे याचिकाकर्ताओं द्वारा धारा 5 के तहत प्रस्तुत नोटिस पर त्वरित कार्रवाई करें। न्यायालय ने स्पष्ट किया कि यद्यपि पूर्व का नोटिस त्रुटिपूर्ण था, परंतु नवीन नोटिस के बाद 30 दिनों की वैधानिक अवधि पूर्ण हो चुकी है और 3 महीने की अधिकतम सीमा अभी समाप्त नहीं हुई है, अतः विवाह संपन्न कराने और पंजीकरण के लिए अविलंब आवश्यक कदम उठाए जाएं।

“Secs.5 and 14 of the Special Marriage Act, 1954, read as follows: “Sec.5: Notice of intended marriage- When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given. xxx xxx xxx Sec.14: New notice when marriage not solemnized within three months.- Whenever a marriage is not solemnized within three calendar months from the date on which notice thereof has been given to the Marriage Officer as required by section 5, or where an appeal has been filed under sub-section (2) of section 8, within three months from the date of the decision of the district court on such appeal or, where the record of a case has been transmitted to the Central Government under section 10, within three months from the date of decision of the Central Government, the notice and all other proceedings arising therefrom shall be deemed to have lapsed, and no Marriage Officer shall solemnize the marriage until a new notice has been given in the manner laid down in this Act.” 7. It is now submitted by Smt.A.C.Vidhya, learned Govt. W.P.(C)37514/18 - : 7 :- Pleader appearing for the respondents that Sec. 5 notice of intended marriage referred to Ext.P-4 said to have been submitted on 3.10.2018 by the petitioners was a defective one and that a proper notice without defects was filed by them only 4.10.2018. Even if that be so, 30 days' period therefrom has elapsed long ago. Further the maximum outer limit of 3 months from the submission of Sec. 5 notice of intended marriage has not so far expired. Accordingly, it is ordered that the 2 nd respondent Marriage officer will expeditiously take steps to consider the request made by the petitioners pursuant to their Sec. 5 notice of intended marriage and will grant such request if it is otherwise in order, so as to effectuate solemnization and registration of the marriage of the petitioners in terms of the provisions contained in the Special Marriage Act, 1954, without any further delay. The petitioners will appear before the 2 nd respondent Marriage Officer on any day within two weeks from the date notified for receiving certified copy of this judgment and then may also produce necessary documents like Exts.P1 and P-2 certificates, identity cards and they may also submit separate affidavits giving the details that they have fulfilled all the eligibility conditions for solemnization of the marriage as per the abovesaid Act, etc. Necessary action should be finalised by the 2 nd respondent Marriage W.P.(C)37514/18 - : 8 :- Officer without much delay, preferably within a period of 3 weeks from the date of production of a certified copy of this judgment. With these observations and directions, the above Writ Petition (Civil) stands finally disposed of. Sd/- sdc+ ALEXANDER THOMAS, JUDGE W.P.”

HIGH COURT OF KERALA • 2018

स्रोत KLHC010867932018

02 T. Sasikala v. State of Andhra Pradesh

HIGH COURT OF ANDHRA PRADESH • 2022-03-15 • WP/29485/2021

यह याचिका विवाह प्रमाण पत्र में गलत तिथि दर्ज होने के सुधार हेतु दायर की गई थी। याचिकाकर्ता के पुत्र ने 09.10.2011 को विवाह किया था, लेकिन बाद में Special Marriage Act, 1954 के तहत पंजीकरण कराते समय, Marriage Officer ने गलती से पंजीकरण की तिथि (03.10.2015) को ही विवाह की तिथि के रूप में दर्ज कर दिया। न्यायालय ने पाया कि अधिकारी ने गलत Schedule (Fourth instead of Fifth) का उपयोग किया था। न्यायालय ने रिट याचिका को स्वीकार करते हुए संबंधित अधिकारियों को निर्देश दिया कि वे पुराना प्रमाण पत्र रद्द करें और Fifth Schedule के तहत एक नया प्रमाण पत्र जारी करें, जिसमें वास्तविक विवाह तिथि 09.10.2011 स्पष्ट रूप से अंकित हो।

निर्णय आंध्र प्रदेश उच्च न्यायालय ने स्पष्ट किया कि विशेष विवाह अधिनियम, 1954 के तहत दो प्रणालियां हैं: पहला, अधिनियम के अध्याय II (धारा 4 से 14) के तहत विवाह संपन्न कराना; और दूसरा, पहले से किसी अन्य रूप में संपन्न विवाह का अध्याय III (धारा 15 व 16) के तहत पंजीकरण कराना। दोनों के मध्य एक स्पष्ट कानूनी अंतर है, जिसका पालन किया जाना अनिवार्य है।

“Learned Assistant Government Pleader for Stamps and Registration submitted that suitable orders may be passed by the Court. (a) The object of the Special Marriage Act, 1954 (for short “the Act, 1954) is to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce. So far as the aspect of marriage is concerned, the Act, 1954 creates two methods. The first method is, solemnization of a marriage under the Act, 1954 and second method is though the marriage was solemnized in any other form, getting registration of such marriage under the provisions of the Act, 1954. Chapter-II of the Act, 1954 containing Sections-4 to 14 deals with the first method i.e., solemnization of special marriages and Chapter-III of the Act, 1954 under Sections 15 and 16 deals with second method i.e., the registration of marriages which were already celebrated in other forms. There is a subtle distinction between two methods. (b) The first method is concerned, if a couple prefers to solemnize their marriage under the provisions of the Act, 1954 and obtain a certificate of marriage, they have to follow the procedure prescribed under Section 4 to 14 of Chapter-II of the Act, 1954. (c) Firstly, as per Section 4 the parties to the special marriage shall fulfill certain conditions as envisaged in Section 4 for getting married. Upon such fulfillment, as per Section 5, the parties to the intended marriage shall give notice in writing in the prescribed form to the Marriage Officer of the District in which at least one of the parties to the marriage has resided for a period not less than 30 days immediately preceding issuance of notice. Then as per Section 6, Marriage Officer shall keep notice issued under Section 5 in a book called as “Marriage notice book” and then cause such notice published by affixing of such copy on some conspicuous places in his office. Then Sections 7 to 10 prescribe the procedure for dealing with the objections if any received against the proposed marriage under the Act, 1954. These provisions would say that if an objection is received the Marriage Officer shall enquire into the matter and decide whether to proceed with the solemnization of marriage or refuse solemnization. Against such refusal, the aggrieved party can prefer an appeal to the District Court within a period of 30 days from the date of refusal order. (d) Be that it may, if either no objections were received or the objections were enquired and over ruled, the parties can proceed with the solemnization of marriage in accordance with the provisions contained in Section 11 and 12. These provisions would say that before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Marriage Officer sign on a declaration in the form specified in the Third Schedule to the Act, 1954 and the said declaration shall be counter signed by the Marriage Officer. The marriage may be solemnized at the office of the Marriage Officer or at such other place as the parties may desire which is at a reasonable distance from his office. Most importantly, the marriage may be solemnized in any form which the parties may choose to adopt, provided that, it shall not be complete and binding on the parties unless each party pronounce to the other in the presence of Marriage Officer and three witnesses that each of them take other one as his/her wife/husband. Then the marriage can be said to be solemnized as per the provisions of the Act, 1954. As per Section 13, when the marriage has been solemnized, the Marriage Officer shall enter the solemnization of such marriage in a certificate in the form specified in the IV schedule and keep in a book called as “Marriage certificate book”. The certificate of marriage prescribed under IV schedule is in the following manner. THE FOURTH SCHEDULE (See Section 13) CERTIFICATE OF MARRIAGE I, E.F., hereby certify that on theday of.....20...A.B. and C.D appeared before me and that each of them, in my presence and in the presence of three witnesses who have signed hereunder, made the declarations required by Section 11 and that a marriage under this Act was solemnized between them in my presence. (Sd.)”

03 Pranav Kumar Mishra v. Govt. of NCT of Delhi

HIGH COURT OF DELHI • 2009-04-08 • W.P.(C)/748/2009

इस मामले में याचिकाकर्ताओं ने Special Marriage Act, 1954 के तहत विवाह के लिए आवेदन करने पर विवाह अधिकारी द्वारा उनके आवासीय पते पर 'Notice of Intended Marriage' भेजने और पुलिस द्वारा पते के सत्यापन की प्रक्रिया को चुनौती दी। न्यायालय ने पाया कि अधिनियम में ऐसी किसी प्रक्रिया का प्रावधान नहीं है और यह अभ्यास मनमाना और अधिकार क्षेत्र से बाहर है। न्यायालय ने माना कि इस तरह का नोटिस भेजना निजता के अधिकार का उल्लंघन हो सकता है और इससे विवाह के इच्छुक व्यक्तियों की सुरक्षा खतरे में पड़ सकती है। तदनुसार, उच्च न्यायालय ने अधिकारियों को निर्देश दिया कि वे विवाह के लिए आवेदकों के घर पर नोटिस न भेजें और केवल कार्यालय के नोटिस बोर्ड पर नोटिस प्रकाशित करने के कानूनी प्रावधान का पालन करें।

निर्णय दिल्ली उच्च न्यायालय ने स्पष्ट निर्देशित किया कि विवाह अधिकारियों द्वारा आवेदकों के पते पर नोटिस भेजना या पुलिस के माध्यम से जाँच कराना कानूनन अधिकार क्षेत्र से बाहर और मनमाना है। ऐसा करना निजता के अधिकार का उल्लंघन है और यह जोड़ों की सुरक्षा को खतरे में डाल सकता है।

“Conditions relating to solemnization of special marriages. - Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely: WP(C) No. 748/2009 Page 3 (a) neither party has a spouse living; (b) neither party is an idiot or a lunatic; (c) the male has completed the age of twenty-one years and the female the age of eighteen years; (d) the parties are not with the degree of prohibited relationship; and (e) where the marriage is solemnized outside the territories to which this Act extends, both parties are citizens of India domiciled in the said territories. 5. Notice of intended marriage. - When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given. 6. Marriage Notice Book and publication. - (1) The marriage Officer shall keep all notices given under Section 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same. (2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office. (3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under section 5, transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office.” 5. The criteria as stated on the website of Delhi Government (www.delhigovt.nic.in) under the FAQ section regarding the „registration of marriages which have already been solemnized’ is as under: “Q. What will be the criteria used while deciding my case? WP(C) No. 748/2009 Page 4 A) Hindu Marriage Act Verification of all the documents is carried out on the date of application and a day is fixed and communicated to the parties for registration. On the said day, both parties, along with a Gazetted Officer who attended their marriage, need to be present before the SDM. The Certificate is issued on the same day. B) Special Marriage Act Both parties are required to be present after submission of documents for issuance of public notice inviting objections. One copy of notice is pasted on the notice board of the office and copy of the notice is sent by registered post to both parties as per address given by them. Registration is done 30 days after the date of notice after deciding any objection that may have been received during that period by the SDM. Both parties along with three witnesses are required to be present on the date of registration.” 6. The criterion for ‘solemnization of marriage under Special marriage Act’ revealed is follows: “Q. What will be the criteria used while deciding my case? For solemnization of marriage, presence of both parties is required after submission of documents of issuance of notice of intended marriage. A copy of the notice is pasted on the office notice board by the SDM. Any person may within 30 days of issue of notice, file objection to the intended marriages. In such a case, the SDM shall not solemnise the marriage until he has decided the objection, within 30 days of its receipt. If the SDM refuses to solemnise the marriage, any of the parties may file an appeal within 30 days to the District Court. In case no objection is received, the SDM solemnises the marriage after 30 days of the notice. Both parties along with 3 witnesses are required to be present on the date of solemnisation of marriage. It is advisable to submit names of witnesses at least one day in advance. 7. Both parties along with 3 witnesses are required to be present on the date of solemnisation of marriage. It is advisable to submit names of witnesses at least one day in advance. 7. The petitioners contend that the authorities are following the criterion prescribed for the purpose of

„registration of marriages which have already been solemnized“ rather than the one enacted for „solemnization of marriage under Special Marriage Act“, which clearly does not provide for sending notices to the WP(C) No. 748/2009 Page 5 respective residential addresses of the parties to the intended marriage. It merely requires pasting of the notice at the office notice board by the S.D.M. 8. It becomes clear on a textual reading of the relevant provisions of the Act and the information procured from the website of the Govt. of Delhi that no requirement of posting of notice to applicants' addresses or service through the SHO, or visit by him is prescribed in either the Act or the website. The Petitioner's concerns and apprehensions are justified. Absent any legal compulsion – as is the position – for sending notices to residential addresses in case of solemnization of the marriage, in terms of Sections 4 and 5, their dispatch can well amount to breach of the right to privacy, which every individual is entitled to (Ref Govind Vs. State of MP, (1975) 2 SCC 148, R. Rajgopal Vs. State of T.N. (1994) 6 SCC 632, District Registrar and Collector Vs. Canara Bank (2005) 1 SCC 496. 9. It is to be kept in mind that the Special Marriage Act was enacted to enable a special form of marriage for any Indian national, professing different faiths, or desiring a civil form of marriage. The unwarranted disclosure of matrimonial plans by two adults entitled to solemnize it may, in certain situations, jeopardize the marriage itself. In certain instances, it may even endanger the life or limb of one at the other party due to parental interference. 10. In such circumstances if such a procedure is being adopted by the authorities, it is completely whimsical and without authority of law. The Writ Petition, therefore, deserves to succeed; the respondents are hereby directed to consider and process the petitioners' request for solemnization of marriage under WP(C) No. 748/2009 Page 6 the Special Marriage Act, 1954, without sending any notices to their residences. It is, however, open to the concerned Marriage Officer to display the notice on the office notice board in accordance with law. All Marriage Officers are hereby directed to follow the above procedures and not despatch notices to the residence of the applicants, who seeks solemnization of their marriage under Chapter II of the Act. The writ Petition is allowed in the above terms. Order Dasti. 8th April, 2009 (S.RAVINDRA BHAT) JUDGE”

HIGH COURT OF DELHI • 2009

स्रोत DLHC010064102009

04 Dolly Rani v. Manish Kumar Chanchal

SUPREME COURT OF INDIA • 2024-04-19 • 2024 INSC 355

यह मामला हिंदू विवाह के लिए आवश्यक औपचारिकताओं से संबंधित है। न्यायालय ने स्पष्ट किया कि Hindu Marriage Act, 1955 की Section 7 के तहत विवाह को वैध होने के लिए उचित रीति-रिवाजों और समारोहों का पालन करना अनिवार्य है। केवल किसी संस्था द्वारा जारी प्रमाण पत्र के आधार पर या Section 8 के तहत पंजीकरण (registration) कराने मात्र से विवाह कानूनी रूप से वैध नहीं हो जाता यदि विवाह के आवश्यक समारोह संपन्न नहीं किए गए हों। इस मामले में, पार्टियों ने स्वीकार किया कि उन्होंने कोई विवाह समारोह नहीं किया था। अतः, न्यायालय ने Article 142 के तहत अपनी विशेष शक्तियों का उपयोग करते हुए उस तथाकथित विवाह और संबंधित प्रमाण पत्रों को शून्य (null and void) घोषित कर दिया।

निर्णय सर्वोच्च न्यायालय ने स्पष्ट शब्दों में माना कि हिंदू विवाह एक संस्कार है। यदि धारा 7 के तहत विवाह का वास्तविक अनुष्ठान (जैसे सप्तपदी) संपन्न नहीं किया गया है, तो केवल धारा 8 के तहत किया गया पंजीकरण विवाह को विधिक वैधता या मान्यता प्रदान नहीं कर सकता।

“The registration of a marriage under Section 8 of the Act is only to confirm that the parties have undergone a valid marriage ceremony in accordance with Section 7 of the Act. In other words, a certificate of marriage is a proof of validity of Hindu marriage only when such a marriage has taken place and not in a case where there is no marriage ceremony performed at all. 18. We further observe that a Hindu marriage is a sacrament and has a sacred character. In the context of saptapadi in a Hindu marriage, according to Rig Veda, after completing the seventh step (saptapadi) the bridegroom says to his bride, “With seven steps we have become friends (sakha). May I attain to friendship with thee; may I not be separated from thy friendship”. A wife is considered to be half of oneself (ardhangini) but to be accepted with an identity of her own and to be a co-equal partner in the marriage. There is nothing like a “better-half” in a marriage but the spouses are equal halves in a marriage. In Hindu Law, as already noted, marriage is a sacrament or a samskara. It is the foundation for a new family. 19. With the passage of centuries and the enactment of the Act, monogamy is the only legally approved form of relationship between a husband and a wife. The Act has categorically discarded polyandry and polygamy and all other such types of relationships. The intent of the Parliament is also that there should be only one form of marriage having varied rites and customs and rituals. Thus, when the Act came into force on 18.05.1955, it has amended and codified the law relating to marriage among Hindus. The Act encompasses not only Hindus as such but Lingayats, Brahmos, Aryasamajists, Buddhists, Jains [2024] 5 S.C.R. 519 Dolly Rani v. Manish Kumar Chanchal and Sikhs also who can enter into a valid Hindu marriage coming within the expansive connotation of the word Hindu. 20. Section 4 of the Act is important and it gives an overriding effect to the Act and it repeals all existing laws whether in the shape of enactments, custom or usage inconsistent with the Act. Of course, the said Section also saves anything otherwise expressly provided under the Act. For immediate reference, Section 4 of the Act is extracted as under: “4. Overriding effect of the Act.- Save as otherwise expressly provided in this Act,- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act; (b) any other law in force immediately before the commencement of this Act shall cease to have effect insofar as it is inconsistent with any of the provisions contained in this Act.” 21. In effect a union of two persons under the provisions of the Act, by way of a Hindu marriage gives them the status and character of being a husband and wife in society. The said status is of significance inasmuch as a man and a woman cannot be treated as a husband and a wife unless a marriage is performed or celebrated with proper and due ceremonies and in the prescribed form. In the absence of any solemnisation of a marriage as per the provisions of the Act, a man and a woman cannot acquire the status of being a husband and a wife to each other. In the above context, we deprecate the practice of young men and women seeking to acquire the status of being a husband and a wife to each other and therefore purportedly being married, in the absence of a valid marriage ceremony under the provisions of the Act such as in the instant case where the marriage between the parties was to take place later. 22. No doubt, under the Special Marriage Act, 1954, a man and a woman can acquire the status of being a husband and a wife as per the provisions of the said Act. The Special Marriage Act, 1954 is not restricted to Hindus. Any man and woman irrespective of their 520 [2024] 5 S.C.R. [2024] 5 S.C.R. 510 : 2024 INSC 355 Dolly Rani v. Manish Kumar Chanchal (Transfer Petition (C) No. 2043 of 2023) 19 April 2024 [B.V. Nagarathna and Augustine George Masih, JJ.] Issue for Consideration When the marriage ceremony had not been performed in accordance with section 7 of the Hindu Marriage Act, 1955, whether registration of such a marriage under section 8 of the 1955 Act would confer any legitimacy to it. Headnotes Hindu Marriage Act, 1955 – ss. 7 and 8 – During the pendency of the transfer petition, parties decided to resolve

the dispute by filing a joint application u/Art.142 of the Constitution inter- alia seeking declaration that the marriage between the parties was not valid, consequently, the certificate issued by the Vadik Jankalyan Samiti and the marriage certificate issued under the Uttar Pradesh Registration Rule, 2017 were null and void: Held: For a valid marriage under the Act, the requisite ceremonies have to be performed and there must be proof of performance of the said ceremony when an issue/controversy arise – Unless the parties have undergone such ceremony, there would be no Hindu marriage according to Section 7 of the Act and a mere issuance of a certificate by an entity in the absence of the requisite ceremonies having been performed, would neither confirm any marital status to the parties nor establish a marriage under Hindu law – The certificate issued by Vadik Jankalyan Samiti (Regd.) in the absence of any indication as to the rites and customs that were performed and as to whether the requirements under Section 7 of the Act was complied with would not be a certificate evidencing a Hindu marriage in accordance with Section 7 of the Act – It is on the basis of the said certificate that the Marriage Registration Officer has issued certificate under the Uttar Pradesh Marriage Registration Rule, 2017 – It is only when the marriage is solemnised in accordance with Section 7, there can be a marriage registered under Section 8 – But if there has been no marriage in accordance with Section 7, the registration would not confer legitimacy to the marriage – In [2024] 5 S.C.R. 511 Dolly Rani v. Manish Kumar Chanchal the absence of there being a valid Hindu marriage, the Marriage Registration Officer cannot register such a marriage under the provisions of Section 8 of the Act – Therefore, if a certificate is issued stating that the couple had undergone marriage and if the marriage ceremony had not been performed in accordance with Section 7 of the Act, then the registration of such marriage under Section 8 would not confer any legitimacy to such a marriage. [Paras 15, 16, 17] Hindu Marriage Act, 1955 – Absence of a valid marriage ceremony – Practice Deprecated. [Para 21] Hindu Marriage Act, 1955 – Registration of a marriage in order to apply for Visa for emigration to foreign countries where either of the parties may be working “in order to save time” and pending formalising a marriage ceremony – Practice deprecated. [Para 23] Hindu Marriage Act, 1955 – Purpose of marriage: Held: A marriage is not a commercial transaction – It is a solemn foundational event celebrated so as to establish a relationship between a man and a woman who acquire the status of a husband and wife for an evolving family in future which is a basic unit of Indian society – A Hindu marriage facilitates procreation, consolidates the unit of family and solidifies the spirit of fraternity within various communities. [Para 24] Books and Periodicals Cited Harman, William “The Hindu Marriage As Soteriological Event”. International Journal of Sociology of the Family, vol. 17, no.2, 1987, pp.169-82. List of Acts Hindu Marriage Act, 1955; Code of Civil Procedure, 1908; Penal Code, 1860; Dowry Prohibition Act, 1961; Special Marriage Act, 1954; Uttar Pradesh Marriage Registration Rule, 2017. List of Keywords Section 7 of the Hindu Marriage Act, 1955; Section 8 of the Hindu Marriage Act, 1955; Marriage; Marriage ceremony; Valid marriage ceremony; Absence of valid marriage ceremony; Non-performance of marriage ceremony as per section 7 of the Hindu Marriage Act, 1955; Registration of marriage; Valid marriage. 512 [2024] 5 S.C.R.\n\nThe registration of a marriage under Section 8 of the Act is only to confirm that the parties have undergone a valid marriage ceremony in accordance with Section 7 of the Act. In other words, a certificate of marriage is a proof of validity of Hindu marriage only when such a marriage has taken place and not in a case where there is no marriage ceremony performed at all. 18. We further observe that a Hindu marriage is a sacrament and has a sacred character. In the context of saptapadi in a Hindu marriage, according to Rig Veda, after completing the seventh step (saptapadi) the bridegroom says to his bride, “With seven steps we have become friends (sakha). May I attain to friendship with thee; may I not be separated from thy friendship”. A wife is considered to be half of oneself (ardhangini) but to be accepted with an identity of her own and to be a co-equal partner in the marriage. There is nothing like a “better-half” in a marriage but the spouses are equal halves in a

marriage. In Hindu Law, as already noted, marriage is a sacrament or a *samskara*. It is the foundation for a new family. 19. With the passage of centuries and the enactment of the Act, monogamy is the only legally approved form of relationship between a husband and a wife. The Act has categorically discarded polyandry and polygamy and all other such types of relationships. The intent of the Parliament is also that there should be only one form of marriage having varied rites and customs and rituals. Thus, when the Act came into force on 18.05.1955, it has amended and codified the law relating to marriage among Hindus. The Act encompasses not only Hindus as such but Lingayats, Brahmos, Aryasamajists, Buddhists, Jains [2024] 5 S.C.R. 519 Dolly Rani v. Manish Kumar Chanchal and Sikhs also who can enter into a valid Hindu marriage coming within the expansive connotation of the word Hindu. 20. Section 4 of the Act is important and it gives an overriding effect to the Act and it repeals all existing laws whether in the shape of enactments, custom or usage inconsistent with the Act. Of course, the said Section also saves anything otherwise expressly provided under the Act. For immediate reference, Section 4 of the Act is extracted as under: "4. Overriding effect of the Act.- Save as otherwise expressly provided in this Act,- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act; (b) any other law in force immediately before the commencement of this Act shall cease to have effect insofar as it is inconsistent with any of the provisions contained in this Act." 21. In effect a union of two persons under the provisions of the Act, by way of a Hindu marriage gives them the status and character of being a husband and wife in society. The said status is of significance inasmuch as a man and a woman cannot be treated as a husband and a wife unless a marriage is performed or celebrated with proper and due ceremonies and in the prescribed form. In the absence of any solemnisation of a marriage as per the provisions of the Act, a man and a woman cannot acquire the status of being a husband and a wife to each other. In the above context, we deprecate the practice of young men and women seeking to acquire the status of being a husband and a wife to each other and therefore purportedly being married, in the absence of a valid marriage ceremony under the provisions of the Act such as in the instant case where the marriage between the parties was to take place later. 22. No doubt, under the Special Marriage Act, 1954, a man and a woman can acquire the status of being a husband and a wife as per the provisions of the said Act. The Special Marriage Act, 1954 is not restricted to Hindus. Any man and woman irrespective of their 520 [2024] 5 S.C.R. [2024] 5 S.C.R. 510 : 2024 INSC 355 Dolly Rani v. Manish Kumar Chanchal (Transfer Petition (C) No. 2043 of 2023) 19 April 2024 [B.V. Nagarathna and Augustine George Masih, JJ.] Issue for Consideration When the marriage ceremony had not been performed in accordance with section 7 of the Hindu Marriage Act, 1955, whether registration of such a marriage under section 8 of the 1955 Act would confer any legitimacy to it. Headnotes Hindu Marriage Act, 1955 – ss. 7 and 8 – During the pendency of the transfer petition, parties decided to resolve the dispute by filing a joint application u/Art.142 of the Constitution inter-alia seeking declaration that the marriage between the parties was not valid, consequently, the certificate issued by the Vadik Jankalyan Samiti and the marriage certificate issued under the Uttar Pradesh Registration Rule, 2017 were null and void: Held: For a valid marriage under the Act, the requisite ceremonies have to be performed and there must be proof of performance of the said ceremony when an issue/controversy arise – Unless the parties have undergone such ceremony, there would be no Hindu marriage according to Section 7 of the Act and a mere issuance of a certificate by an entity in the absence of the requisite ceremonies having been performed, would neither confirm any marital status to the parties nor establish a marriage under Hindu law – The certificate issued by Vadik Jankalyan Samiti (Regd.) in the absence of any indication as to the rites and customs that were performed and as to whether the requirements under Section 7 of the Act was complied with would not be a certificate evidencing a Hindu marriage in

accordance with Section 7 of the Act – It is on the basis of the said certificate that the Marriage Registration Officer has issued certificate under the Uttar Pradesh Marriage Registration Rule, 2017 – It is only when the marriage is solemnised in accordance with Section 7, there can be a marriage registered under Section 8 – But if there has been no marriage in accordance with Section 7, the registration would not confer legitimacy to the marriage – In [2024] 5 S.C.R. 511 Dolly Rani v. Manish Kumar Chanchal the absence of there being a valid Hindu marriage, the Marriage Registration Officer cannot register such a marriage under the provisions of Section 8 of the Act – Therefore, if a certificate is issued stating that the couple had undergone marriage and if the marriage ceremony had not been performed in accordance with Section 7 of the Act, then the registration of such marriage under Section 8 would not confer any legitimacy to such a marriage. [Paras 15, 16, 17] Hindu Marriage Act, 1955 – Absence of a valid marriage ceremony – Practice Deprecated. [Para 21] Hindu Marriage Act, 1955 – Registration of a marriage in order to apply for Visa for emigration to foreign countries where either of the parties may be working “in order to save time” and pending formalising a marriage ceremony – Practice deprecated. [Para 23] Hindu Marriage Act, 1955 – Purpose of marriage: Held: A marriage is not a commercial transaction – It is a solemn foundational event celebrated so as to establish a relationship between a man and a woman who acquire the status of a husband and wife for an evolving family in future which is a basic unit of Indian society – A Hindu marriage facilitates procreation, consolidates the unit of family and solidifies the spirit of fraternity within various communities. [Para 24] Books and Periodicals Cited Harman, William “The Hindu Marriage As Soteriological Event”. International Journal of Sociology of the Family, vol. 17, no.2, 1987, pp.169-82. List of Acts Hindu Marriage Act, 1955; Code of Civil Procedure, 1908; Penal Code, 1860; Dowry Prohibition Act, 1961; Special Marriage Act, 1954; Uttar Pradesh Marriage Registration Rule, 2017. List of Keywords Section 7 of the Hindu Marriage Act, 1955; Section 8 of the Hindu Marriage Act, 1955; Marriage; Marriage ceremony; Valid marriage ceremony; Absence of valid marriage ceremony; Non-performance of marriage ceremony as per section 7 of the Hindu Marriage Act, 1955; Registration of marriage; Valid marriage. 512 [2024] 5 S.C.R.”

SUPREME COURT OF INDIA • 2024

स्रोत ESCR010002612024

05 Purnima Vyas v. State of Rajasthan

HIGH COURT OF RAJASTHAN • 2024-07-08 • CRLW/1388/2024

यह मामला दो व्यस्क व्यक्तियों द्वारा अपनी अंतर-धार्मिक विवाह की इच्छा के कारण अपने परिवार के सदस्यों से मिलने वाली धमकियों के खिलाफ पुलिस सुरक्षा की मांग से संबंधित है। याचिकाकर्ताओं ने Special Marriage Act, 1954 के तहत विवाह के लिए आवेदन किया था, लेकिन उन्हें अपने परिवार से जान का खतरा महसूस हो रहा था। राजस्थान उच्च न्यायालय ने पाया कि पुलिस ने पहले ही याचिकाकर्ता संख्या 1 को 'Shakti Stambh' में सुरक्षित आवास प्रदान कर दिया है और उनकी सुरक्षा के लिए पर्याप्त पुलिस बल तैनात किया गया है। न्यायालय ने कहा कि चूंकि याचिकाकर्ताओं को पहले ही पर्याप्त सुरक्षा दी जा चुकी है और विवाह से संबंधित मामला सक्षम प्राधिकारी के समक्ष लंबित है, इसलिए किसी और निर्देश की आवश्यकता नहीं है और याचिका का निपटारा कर दिया गया।

निर्णय राजस्थान उच्च न्यायालय ने अंतर-धार्मिक विवाह के इच्छुक जोड़ों की सुरक्षा सुनिश्चित करने के लिए सुप्रीम कोर्ट के *Shakti Vahini v. Union of India* फैसले के आलोक में उन्हें 'Safe House' (जैसे शक्ति स्तम्भ) और पुलिस सुरक्षा प्रदान करने के प्रशासनिक कदम को सही ठहराया।

“It is also submitted that as per the scheme of Special Marriage Act of 1954, there is a procedure to file objection and consideration of the same by the Competent Authority and the respondent-private has already raised the objections against the said marriage. However, the process of inviting objections and considering them takes at least three months, and only after due consideration by the Competent Authority, the marriage can be solemnized. [2024:RJ-JP:28359] (3 of 5) [CRLW-1388/2024] 5. Learned counsel has further averred that under the said Act, the intention of legislature is very clear, whereby the only impediment, which can be imposed to put a barrier upon marriage between two persons is the provisions of Section 4 of the said Act. 6. In this regard, reliance is placed upon the ratio encapsulated in AIR 2023 SC 5283 titled as *Supriyo @ Supriya Chakraborty and Anr. Vs. Union of India, Sarika Sen & Anr. Vs. State of Madhya Pradesh & Ors.* decided on 27th May, 2024 in Writ Petition No.9589/2024 and upon the judgment of Hon’ble Apex Court in the case of *Shakti Vahini Vs. Union of India & Ors.* reported in (2018) 7 SCC 192. 7. Per contra, learned counsel for the State has submitted that considering the sensitivity of the matter, the Police Authorities have duly considered the representation filed by the petitioners. Resultantly, the petitioner no. 1 is currently residing in Shakti Stambh, Jaipur, where females who seek protection and security are generally residing. Additionally, adequate protection measures are taken and the certain Police Officers are deputed in/around the area of residence of the petitioner in civil as well as in uniform, to keep vigilance and provide protection, if need so arise. It is further submitted that prohibition orders are passed qua the brother and other family members as asked in para-1 of the petition. 8. Learned counsel representing the private respondents have vehemently objected to the present petition and have submitted that the marriage cannot be solemnized until conversion takes place. Hence, the same is not in accordance with the Muslim or Hindu Marriage Act. [2024:RJ-JP:28359] (4 of 5) [CRLW-1388/2024] 9. Heard and considered the rival arguments raised by learned counsel for both the parties, record of this writ petition and analyzed the judgments cited at Bar. 10. Before disposing of this matter, this Court deems it appropriate to reiterate prayers made in the present petition. “It is, therefore, most humbly and respectfully prayed that in view of the submission of the application/Notice of the Intended marriage between the petitioners, for the solemnization of their marriage U/Sec. 5 of Special Marriage Act, 1954, on 07/06/2024 (Annex.4), and of the other facts and circumstances stated in the Writ Petition, this Hon’ble Court may kindly be pleased to accept and allow this S.B. Criminal Writ Petition filed U/Art.226 of Constitution of India, of the humble petitioners and: A. the necessary directions may kindly be given to the Respondent No.3 and 4 to provide full protection to the Petitioners in all manners so that no harm may be caused to the said Petitioners at the hands of the brother of the Petitioner (i.e. Respondent No.5) and other society members and, B. the necessary directions may kindly be given to the Respondent No.2 to expedite the formation/establishment of the Safe House in compliance of the directions given by the Hon’ble Supreme Court given in the case titled as ‘Shakti Vahini Vs.’”

HIGH COURT OF RAJASTHAN • 2024

स्रोत RJHC020547722024

06 Shruti Agnihotri v. Anand Kumar Srivastava

ALLAHABAD HIGH COURT • 2024-07-05 • /239/2023

यह मामला Hindu Marriage Act, 1955 के तहत एक अपील से संबंधित है। अपीलकर्ता ने अपनी शादी को धोखाधड़ी और दबाव में किया गया बताते हुए इसे null and void घोषित करने के लिए वाद दायर किया था, जबकि प्रतिवादी ने विवाह की वैधता को सिद्ध करते हुए restoration of conjugal rights का वाद दायर किया था। निचली अदालत ने दस्तावेजी साक्ष्य और अपीलकर्ता की उपस्थिति को देखते हुए शादी को वैध माना और

अपीलकर्ता के दावे को खारिज कर दिया। उच्च न्यायालय ने इन पहलुओं पर विचार किया कि क्या शादी Hindu rites और customs के अनुसार हुई थी, क्या यह स्वतंत्र सहमति से हुई थी, और क्या वैवाहिक अधिकारों की बहाली के लिए वैधानिक आवश्यकताओं का पालन किया गया है।

निर्णय इलाहाबाद उच्च न्यायालय ने स्पष्ट किया कि हिंदू विवाह अधिनियम, 1955 की धारा 8 के तहत विवाह पंजीकरण केवल विवाह के तथ्य को साबित करने की सुविधा प्रदान करता है, परंतु विवाह की विधिक वैधता के लिए धारा 7 के तहत अनिवार्य अनुष्ठान का संपन्न होना अनिवार्य शर्त है।

“(5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.” Under Section 8 of the Act, it is open for two Hindus married under the provisions of the Act to have their marriage registered provided they fulfil the conditions laid down therein regarding performance of requisite ceremonies. It is only when the marriage is solemnised in accordance with Section 7, there can be a marriage registered under Section 8. The State Governments have the power to make rules relating to the registration of marriages between two Hindus solemnised by way of requisite ceremonies. The advantage of registration is that it facilitates proof of factum of marriage in a disputed case. But if there has been no marriage in accordance with Section 7, the registration would not confer legitimacy to the marriage. We find that the registration of Hindu marriages under the said provision is only to facilitate the proof of a Hindu marriage but for that, there has to be a Hindu marriage in accordance with Section 7 of the Act inasmuch as there must be a marriage ceremony which has taken place between the parties in accordance with the said Page No. 18 provision. Although the parties may have complied with the requisite conditions for a valid Hindu marriage as per Section 5 of the Act in the absence of there being a “Hindu marriage” in accordance with Section 7 of the Act, i.e., solemnization of such a marriage, there would be no Hindu marriage in the eye of law. In the absence of there being a valid Hindu marriage, the Marriage Registration Officer cannot register such a marriage under the provisions of Section 8 of the Act. Therefore, if a certificate is issued stating that the couple had undergone marriage and if the marriage ceremony had not been performed in accordance with Section 7 of the Act, then the registration of such marriage under Section 8 would not confer any legitimacy to such a marriage. The registration of a marriage under Section 8 of the Act is only to confirm that the parties have undergone a valid marriage ceremony in accordance with Section 7 of the Act. In other words, a certificate of marriage is a proof of validity of Hindu marriage only when such a marriage has taken place and not in a case where there is no marriage ceremony performed at all. We further observe that a Hindu marriage is a sacrament and has a sacred character. In the context of sapta padi in a Hindu marriage, according to Rig Veda, after completing the seventh step (sapta padi) the bridegroom says to his bride, “With seven steps we have become friends (sakha). May I attain to friendship with thee; may I not be separated from thy friendship”. A wife is considered to be half of oneself (ardhangini) but to be accepted with an identity of her own and to be a co-equal partner in the marriage. There is nothing like a “better- half” in a marriage but the spouses are equal halves in a marriage. In Hindu Law, as already noted, marriage is a Page No. 19 sacrament or a samskara. It is the foundation for a new family. With the passage of centuries and the enactment of the Act, monogamy is the only legally approved form of relationship between a husband and a wife. The Act has categorically discarded polyandry and polygamy and all other such types of relationships. The intent of the Parliament is also that there should be only one form of marriage having varied rites and customs and rituals. Thus, when the Act came into force on 18.05.1955, it has amended and codified the law relating to marriage among Hindus.”

07 Sarath C.P. v. State of Kerala

HIGH COURT OF KERALA • 2022-03-18 • WP(C)/8237/2022

यह मामला Special Marriage Act, 1954 के तहत विवाह पंजीकरण से संबंधित है। याचिकाकर्ता, जिसकी मंगेतर वर्तमान में इंग्लैंड में नौकरी के कारण भारत आने में असमर्थ थी, ने न्यायालय से वीडियो कॉन्फ्रेंसिंग के माध्यम से विवाह संपन्न कराने की अनुमति मांगी। न्यायालय ने पूर्व के निर्णयों का हवाला देते हुए याचिका स्वीकार कर ली और विवाह अधिकारी को निर्देश दिया कि वह वैधानिक नोटिस अवधि समाप्त होने के बाद ऑनलाइन मोड के माध्यम से विवाह संपन्न कराए। न्यायालय ने यह स्पष्ट किया कि पहचान के लिए पासपोर्ट जैसे सरकारी दस्तावेजों का उपयोग किया जाना चाहिए और गवाहों की उपस्थिति अनिवार्य है। साथ ही, हस्ताक्षर के लिए Power of Attorney या अन्य अधिकृत एजेंटों की व्यवस्था का पालन करने का निर्देश दिया गया है।

निर्णय केरल उच्च न्यायालय ने माना कि विवाह अधिकारी को असाधारण परिस्थितियों में, वैधानिक प्रतीक्षा अवधि पूर्ण होने के बाद, वीडियो कॉन्फ्रेंसिंग के माध्यम से ऑनलाइन विवाह संपन्न करने का निर्देश दिया जा सकता है, बशर्ते पहचान के पुख्ता दस्तावेज और भौतिक रूप से गवाह उपस्थित हों।

"If the petitioner satisfies all statutory and other requirements WP(C) No.8237/2022 5 for a marriage under the Special Marriage Act, 1954, solemnisation/registration can be done after the notice period. In similar circumstances, this Court had granted benefit of solemnisation/registration of marriage online. The petitioner can also be extended with the same benefit, after the expiry of the notice period. 6. I have heard the learned counsel for the petitioner and the learned Government Pleader representing the respondents. 7. The issue whether solemnisation of marriage under the Special Marriages Act can be conducted by virtual mode was considered by this Court in WP(C) No.15244/2021 and connected cases. In those writ petitions, this Court granted relief to the petitioners therein. In view of the directions given by this Court in the said cases, the petitioner also can be granted relief. WP(C) No.8237/2022 6 8. In the circumstances, the writ petition is disposed of with the following directions: (I) The Marriage Officer under the Special Marriage Act is directed to solemnise the marriage or register the marriage, as the case may be, after the notice period, through online subject to the conditions hereafter referred. (i) The witnesses required for solemnisation of marriage shall be present before the Marriage Officer. (ii) The witnesses shall identify the parties who are online. (iii) The copies of passport or any other public documents in respect of the parties who appear online shall be provided to the Marriage Officer for identification by the Marriage Officer. (iv) Wherever signature of parties are required, that shall be affixed by the authorised Power of Attorney of the parties or any agent who produce any other official WP(C) No.8237/2022 7 documents recognised under the Indian law on behalf of the parties who appear online. (II) All other necessary formalities as required by law shall be complied with before solemnisation of marriage. (III) The Marriage Officer shall fix the date and time and convey the same to the parties in advance. (IV) The Marriage Officer is free to fix the mode of online platform. (V) The Marriage Officer is directed to comply with the directions as expeditiously as possible on completion of the statutory formalities. (VI) On solemnisation of marriage, the certificate of marriage shall be issued in the manner as referred to in Section 13 of the Special Marriage Act. Sd/- N. NAGARESH JUDGE ncd/ 19.03.2022 WP(C) No.8237/2022 8 APPENDIX OF WP(C) 8237/2022 PETITIONER'S EXHIBITS Exhibit P1 TRUE COPY OF THE NOTICE OF INTENDED MARRIAGE DATED 02.03.2022. Exhibit P2 TRUE COPY OF THE RATION CARD. Exhibit P3 TRUE COPY OF THE RESIDENCE PERMIT. Exhibit P4 TRUE COPY OF THE JUDGMENT ANJALI ELIAS V.STATE OF KERALA AND ORS MANU/KE/0132/2022."

HIGH COURT OF KERALA • 2022

स्रोत KLHC010174302022

08 Seema v. Ashwani Kumar

SUPREME COURT OF INDIA • 2006-02-14 • 2006 INSC 83

यह मामला विवाह के पंजीकरण की अनिवार्यता से संबंधित है। न्यायालय ने पाया कि विवाह का कोई आधिकारिक रिकॉर्ड न होने के कारण अक्सर कुछ लोग विवाह के अस्तित्व से ही इनकार कर देते हैं, जिससे महिलाओं और बच्चों के अधिकारों पर प्रतिकूल प्रभाव पड़ता है। न्यायालय ने माना कि विवाह का पंजीकरण न केवल एक साक्ष्य के रूप में कार्य करता है, बल्कि बच्चों की कस्टडी, भरण-पोषण, विरासत और बाल विवाह की रोकथाम जैसे महत्वपूर्ण सामाजिक मुद्दों के समाधान में सहायक है।

निर्णय सर्वोच्च न्यायालय ने ऐतिहासिक निर्देश जारी किए कि भारत के सभी नागरिकों (चाहे वे किसी भी धर्म के हों) के विवाहों का पंजीकरण उनके संबंधित राज्यों में अनिवार्य रूप से कराया जाना चाहिए, और इसके लिए राज्यों को तीन महीने के भीतर नियम अधिसूचित करने चाहिए।

“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. D 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 E 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 F 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 G 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 lo'\\ of this Court. (iii) As and when the Central Government enacts a comprehensive H statute. the same shall be placed before this Court for scrutiny. SMT. SEEMAv. ASHWANI KUMAR [PASAYAT, J:] 227 (iv) Learned counsel for various States and Union Territories shall A 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. B G.E. Vahanvati, the Solicitor General and Mr. Ranjeet Kumar, senior advocate, who appeared as {Imicus curiae. D.G.”

SUPREME COURT OF INDIA • 2006

स्रोत ESCR010000892006

09 Sharon Francis v. State of Kerala

HIGH COURT OF KERALA • 2022-10-26 • WP(C)/28964/2022

याचिकाकर्ता शादी करना चाहते थे और उन्होंने Marriage Officer के समक्ष नोटिस जमा किया था। चूंकि याचिकाकर्ताओं में से कोई भी उस क्षेत्र में 30 दिनों तक नहीं रहा था, जैसा कि Section 5 of the Special Marriage Act, 1954 के तहत अनिवार्य है, इसलिए Marriage Officer ने नोटिस को संसाधित करने से इनकार कर दिया। याचिकाकर्ताओं ने इस शर्त में छूट और virtual mode के माध्यम से विवाह संपन्न कराने की मांग की। न्यायालय ने यह माना कि कानून द्वारा निर्धारित 30 दिनों की आवासीय शर्त को समाप्त नहीं किया जा सकता, क्योंकि यह सार्वजनिक आपत्तियों के लिए आवश्यक

है। न्यायालय ने याचिकाकर्ताओं को संबंधित क्षेत्राधिकार वाले अधिकारी के पास सही प्रक्रिया का पालन करते हुए आवेदन करने की स्वतंत्रता दी और यह स्पष्ट किया कि ऐसी प्रक्रिया के बाद ही virtual mode पर विचार किया जा सकता है।

निर्णय केरल उच्च न्यायालय ने स्पष्ट किया कि विशेष विवाह अधिनियम की धारा 5 के तहत कम से कम एक पक्ष के लिए 30 दिनों की आवासीय अनिवार्यता को समाप्त या माफ नहीं किया जा सकता, क्योंकि यह स्थानीय आपत्तियों को आमंत्रित करने के लिए विधिक रूप से आवश्यक है।

“The question of solemnizing the marriage through virtual mode would arise only after 30 days of publication of the notice of intended marriage. 3. Learned Counsel for the petitioners contended that the purpose of giving notice of intended marriage is to provide an opportunity to raise objections in the event of the proposed marriage being in contravention of prohibitions enumerated in Section 4. It is submitted that, since Section 4 has no application to the instant case, the requirement of one of the parties residing within the jurisdiction of the Marriage Officer for 30 days can be waived. 4. In the nature of the contentions urged, it is essential to scrutinise the following relevant provisions of the Special Marriage Act. “4. Conditions relating to solemnization of special marriages.—Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:— (a) neither party has a spouse living; WP(C).28964/22 5 (b) neither party— (i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or (iii) has been subject to recurrent attacks of insanity 4 * * *;] (c) the male has completed the age of twenty-one years and the female the age of eighteen years; (d) the parties are not within the degrees of prohibited relationship: Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and (e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends. Explanation.—In this section, “custom”, in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family: Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied— WP(C).28964/22 6 (i) that such rule has been continuously and uniformly observed for a long time among those members; (ii) that such rule is certain and not unreasonable or opposed to public policy; and (iii) that such rule, if applicable only to a family, has not been discontinued by the family. 5. Notice of intended marriage.—When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given. 6. Marriage Notice Book and publication .—(1) The Marriage Officer shall keep all notices given under section 5 with the records of his office and also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same. (2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office.”

10 Sherin Suni Antony v. State of Kerala

HIGH COURT OF KERALA • 2021-12-08 • WP(C)/28090/2021

यह मामला Special Marriage Act, 1954 के तहत विवाह पंजीकरण से संबंधित है। याचिकाकर्ता, जो वर्तमान में विदेश में कार्यरत हैं, कोविड-19 महामारी के कारण उत्पन्न यात्रा प्रतिबंधों के चलते व्यक्तिगत रूप से उपस्थित होने में असमर्थ थे। याचिकाकर्ताओं ने न्यायालय से ऑनलाइन विवाह संपन्न कराने की अनुमति मांगी थी। केरल उच्च न्यायालय ने पूर्व के न्यायिक आदेशों का संदर्भ लेते हुए इस याचिका को स्वीकार किया। न्यायालय ने Marriage Officer को निर्देश दिया कि वे उचित पहचान और दस्तावेजी सत्यापन की शर्तों के साथ ऑनलाइन माध्यम से विवाह संपन्न कराएं।

निर्णय केरल उच्च न्यायालय ने माना कि कोविड-19 जनित यात्रा प्रतिबंधों के कारण, विदेशों में कार्यरत वयस्क पक्षों के लिए ऑनलाइन मोड के माध्यम से विवाह संपन्न कराने की राह दी जा सकती है, जिसके लिए गवाहों की विवाह अधिकारी के समक्ष व्यक्तिगत उपस्थिति आवश्यक होगी।

“The petitioners submit that this Court has permitted solemnisation of marriage online subject to conditions. The petitioners may also be given the benefit of solemnisation of marriage online. 4. The learned Government Pleader submitted that the mandatory notice period of 30 days stipulated in the Special Marriage Act, 1954 cannot be waived. This Court has permitted solemnisation of marriage online on stringent conditions as per order dated 09.09.2021 in WP(C) W.P.(C) No.28090/2021 : 4 : No.2072/2021 and connected cases. The petitioners also can be extended with similar relaxation. 5. I have heard the learned counsel for the petitioners and the learned Senior Government Pleader representing the respondents. 6. The petitioners are Christians and their marriage has been fixed with the blessings of their families. The 2 nd petitioner, who is employed in Australia, is not in a position to come to India, due to Covid-19 pandemic across the world and due to international travel restrictions. In similar circumstances, this Court has permitted the parties to get their marriage solemnised online. I find no reason to deny the said benefits to the petitioners. 7. In the circumstances, the writ petition is disposed of with the following directions: (I) The Marriage Officer under the Special Marriage Act is directed to solemnise marriage or register the marriage, as the case may be, through online subject to the conditions hereafter referred. W.P.(C) No.28090/2021 : 5 : (i) The witnesses required for solemnisation of marriage shall be present before the Marriage Officer. (ii) The witnesses shall identify the parties who are online. (iii) The copies of passport or any other public documents in respect of the parties who appear online shall be provided to the Marriage Officer for identification by the Marriage Officer. (iv) Wherever signature of parties are required, that shall be affixed by the authorised Power of Attorney of the parties or any agent who produce any other official documents recognised under the Indian law on behalf of the parties who appear online. (II) All other necessary formalities as required by law shall be complied with before solemnisation of marriage. (III) The Marriage Officer shall fix the date and time and convey the same to the parties in advance. (IV) The Marriage Officer is free to fix the mode of online platform. W.P. (C) No.28090/2021 : 6 : (V) The Marriage Officer is directed to comply with the directions as expeditiously as possible on completion of the statutory formalities. (VI) On solemnization of marriage, the certificate of marriage shall be issued in the manner as referred to in Section 13 of the Special Marriages Act.”

HIGH COURT OF KERALA • 2021

स्रोत KLHC010702502021

11 Shitha V.K. v. The District Registrar (General)

HIGH COURT OF KERALA • 2021-02-18 • WP(C)/3421/2021

याचिकाकर्ता ने 'Special Marriage Act, 1954' के तहत अपनी शादी को digital माध्यम से संपन्न और पंजीकृत कराने की अनुमति मांगी थी, क्योंकि उसे विदेश में अपनी उच्च शिक्षा के लिए जाना था। न्यायालय ने माना कि अधिनियम की धारा 11, 12 और 13 स्पष्ट रूप से विवाह अधिकारियों और गवाहों की उपस्थिति में पक्षों के भौतिक रूप से उपस्थित होने और घोषणा पर हस्ताक्षर करने की अनिवार्यता को निर्धारित करती है। न्यायालय ने यह भी कहा कि धारा 5 के तहत 30 दिनों की नोटिस अवधि अनिवार्य है और इसे कम नहीं किया जा सकता। चूंकि कानून में डिजिटल माध्यम या नोटिस अवधि में ढील का कोई प्रावधान नहीं है और अधिनियम में इसके उल्लंघन के लिए दंडात्मक प्रावधान (Section 45 और 46) हैं, इसलिए न्यायालय ने याचिका खारिज कर दी।

निर्णय केरल उच्च न्यायालय ने स्पष्ट किया कि अधिनियम की धारा 11, 12 और 13 में निर्धारित प्रक्रियाओं (गवाहों और विवाह अधिकारी के समक्ष भौतिक उपस्थिति और लिखित घोषणा) से कानून में किसी छूट का प्रावधान नहीं है। दंडात्मक परिणामों (धारा 45 और 46) के प्रकाश में, डिजिटल रूप में या 30 दिनों की नोटिस अवधि को छोटा करके विवाह संपन्न नहीं किया जा सकता।

“Section 8 to 10 provides for the procedure on receipt of objections. The procedure for solemnization and issuance of certificate of marriage are dealt with in Section 11 to 13 which read as WP(C).No.3421 OF 2021(C) 5 follows: “11. Declaration by parties and witnesses.— Before the marriage is solemnized the parties and three witnesses shall, in the presence of the Marriage Officer, sign a declaration in the form specified in the Third Schedule to this Act, and the declaration shall be countersigned by the Marriage Officer. 12. Place and form of solemnization .—(1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed. (2) The marriage may be solemnized in any form which the parties may choose to adopt: Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,— “I, (A), take thee (B), to be my lawful wife (or husband)” 13. Certificate of marriage.—(1) When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the WP(C).No.3421 OF 2021(C) 6 parties to the marriage and the three witnesses. (2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with.” 6. Therefore as per the proviso to Section 12, a marriage is complete and binding on both the parties only on the declaration of either party that they take each other as the lawful wife/husband and that too in presence of the Marriage Officer as well as the three witnesses. It also insists that the marriage if it is not in the office of the Marriage Officer, shall be solemnized within a reasonable distance from the office. It is also relevant to note that Section 13 mandates the Marriage Officer to enter a certificate in the prescribed form in the WP(C).No.3421 OF 2021(C) 7 Marriage Certificate Book and to get the said certificate signed by the parties to the marriage and the three witnesses. It would not be possible to observe these procedures online, in the absence of the physical presence of both the parties near the Registering Officer and the witnesses. 7. The expression “shall” employed in Section 13 i.e., “The Marriage Officer shall ----” would further show that there cannot be any relaxation for the procedures to be followed in the matter of solemnization as well as the period of notice preceding marriage prescribed under Section 5 of the Act. The consequences of non-compliance of the aforesaid provisions are given in Section 45 as far as witnesses are concerned and in 46 of the Act as far as Marriage Officer is concerned. WP(C).No.3421 OF 2021(C) 8 “45. Penalty for signing false declaration or certificate.—Every person making, signing or attesting any declaration or certificate required by or under this Act containing a statement which is false and which he either knows or believes to be false or does not believe to be true shall be guilty of the offence described in Section 199 of the Indian Penal Code, 1860 (45 of 1860). 46. Penalty for wrongful action of Marriage Officer.—Any Marriage Officer who knowingly and wilfully solemnizes a marriage under this Act,— (1) without publishing a notice regarding such marriage as required by Section 5, or (2) within thirty days of the publication of the notice of such marriage, or (3) in contravention of any other provision contained in this Act, shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.” 8. The aforesaid provisions would show that the period prescribed for each of the steps leading to the solemnization of marriage warrants strict interpretation and there cannot be any relaxation.\n\nThe aforesaid provisions would show that the period prescribed for each of the steps leading to the solemnization of marriage warrants strict interpretation and there cannot be any relaxation. The minimum WP(C).No.3421 OF

2021(C) 9 waiting period for a notice should therefore be 30 days. The contention of the petitioner that she does require the marriage to be solemnised only on completion of 30 days but only requires the solemnization on digital mode cannot also be permitted as there is no provision in the Act which permits the same and there is no provision which permits the procedure in digital platform. The judgment in W.P.(C) No.1839 of 2019 fortifies the above view. 9. I am of the view that unless the provisions contained in the Special Marriage Act are amended, it would not be possible either to relax the mandatory period of notice or to permit marriage in digital form, especially when penal consequences are provided in the Act. Therefore the relief prayed for by the petitioner cannot be WP(C).No.3421 OF 2021(C) 10 granted. In the judgment in W.P.(C) No. 2844 of 2021, I have already considered a similar case, where the petitioners therein wanted to get their marriage solemnized and registered before the expiry of the 30 days period or in the alternative to undergo digital marriage. After considering the relevant provisions in the Special Marriage Act, it was dismissed. Accordingly, the writ petition also is dismissed. Sd/- P.V.ASHA JUDGE ww WP(C).No.3421 OF 2021(C) 11 APPENDIX PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE ADMISSION AND ACCESS SERVICES VIDE APPLICATION NO.00661973 DATED 10.11.2020 OF THE QUEEN'S UNIVERSITY, BELFAST, NORTHERN IRELAND UNITED KINGDOM. EXHIBIT P2 TRUE COPY OF THE MEMORANDUM FOR REGISTRATION OF MARRIAGE SUBMITTED BEFORE THE TRITHALA GRAMA PANCHAYATH BY THE PETITIONER AND HER HUSBAND. EXHIBIT P3 TRUE COPY OF THE NOTICE OF INTENDED MARRIAGE GIVEN UNDER SECTION 5 OF THE SPECIAL MARRIAGE ACT, DATED 04.02.2021."

HIGH COURT OF KERALA • 2021

स्रोत KLHC010096462021

12 Digin Varghese v. The Marriage Officer

HIGH COURT OF KERALA • 2020-01-17 • WP(C)/410/2020

यह याचिका Special Marriage Act, 1954 के तहत विवाह के पंजीकरण के लिए अनिवार्य 30 दिनों की नोटिस अवधि को माफ करने के अनुरोध के साथ दायर की गई थी। याचिकाकर्ता ने तर्क दिया कि उसकी होने वाली पत्नी को जल्द ही विदेश जाना है, इसलिए इस अवधि में छूट दी होनी चाहिए। हालांकि, न्यायालय ने स्पष्ट किया कि Section 5 के तहत विवाह अनुष्ठान (solemnization) के लिए निर्धारित 30 दिनों की वैधानिक अवधि को माफ करने का कोई अधिकार Marriage Registrar के पास नहीं है। न्यायालय ने यह भी स्पष्ट किया कि पहले के न्यायिक निर्णय केवल Section 16 के तहत पहले से संपन्न विवाहों के पंजीकरण से संबंधित थे, और वर्तमान मामले में लागू नहीं होते हैं। नतीजतन, न्यायालय ने याचिका को खारिज कर दिया।

निर्णय केरल उच्च न्यायालय ने स्पष्ट किया कि विवाह अधिकारी या विभाग के किसी अन्य अधिकारी के पास अधिनियम की धारा 5 के तहत विवाह अनुष्ठान हेतु निर्धारित 30 दिनों की वैधानिक प्रतीक्षा अवधि को माफ करने की कोई शक्ति नहीं है।

“Referring to the provisions of Section 5, 6, 7, 9, 11 & 12 of the Act, it is submitted by the learned Government Pleader that in case of a marriage to be solemnized under the Act in terms of Section 12, the 30 days of notice is mandatory and that the solemnization has to be in accordance with the provisions of Section 12 of the Act. It is stated that, it is only in cases where marriages were solemnized under the customary of religious rites and were required to be registered under the Act that the courts have directed waiving of the period as provided under Section 16 and that the said decisions are not applicable in the instant case. After considering the contentions advanced on either side and after WP(C).No.410 OF 2020 4 hearing the arguments raised, I find that the notice required under Section 5 of the Act is for solemnization of the marriage and that there is no power vested in the Marriage Registrar or any Officer of the department to waive the statutory period of 30 days as provided for the solemnization of the marriage. In the above view of the matter, the prayers sought for in the writ petition cannot be granted and the same is accordingly dismissed. Sd/- ANU SIVARAMAN JUDGE np WP(C).No.410 OF 2020 5 APPENDIX PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE SAID NOTICE DATED 01/01/2020 SUBMITTED BEFORE THE MARRIAGE OFFICER FOR KOTTAYAM DISTRICT AND KANJIRAPPALLY SUB REGISTRAR OFFICE. EXHIBIT P2 TRUE COPY OF THE FLIGHT TICKET OF SHEENU E. JOSEPH AND HER PARENTS. RESPONDENT'S/S EXHIBITS: NIL”

HIGH COURT OF KERALA • 2020

स्रोत KLHC010013762020

13 Ashwani Sharad Pendese v. Registrar of Hindu Marriage

HIGH COURT OF RAJASTHAN • 2023-12-07 • CW/2657/2010

यह मामला एक ऐसे हिंदू विवाहित जोड़े से संबंधित है जिसमें पत्नी भारत की निवासी है और पति बेल्जियम का नागरिक है। याचिकाकर्ताओं ने राजस्थान में हिंदू रीति-रिवाजों के अनुसार विवाह किया था और वे विवाह प्रमाण पत्र के लिए विवाह रजिस्ट्रार के पास गए थे। रजिस्ट्रार ने इस आधार पर पंजीकरण करने से इनकार कर दिया कि पति भारतीय नागरिक नहीं है। न्यायालय ने निर्णय दिया कि Hindu Marriage Act, 1955 के तहत विवाह पंजीकरण के लिए दोनों पक्षों का भारतीय नागरिक होना अनिवार्य शर्त नहीं है। यदि विवाह भारत में हिंदू रीति-रिवाजों के अनुसार संपन्न हुआ है, तो उसे केवल एक पक्ष की विदेशी नागरिकता के आधार पर पंजीकरण से वंचित नहीं किया जा सकता।

निर्णय राजस्थान उच्च न्यायालय ने आदेश दिया कि हिंदू विवाह अधिनियम, 1955 के तहत पंजीकरण केवल इसलिए अस्वीकार नहीं किया जा सकता क्योंकि एक पक्ष विदेशी नागरिक है, बशर्ते भारत के राज्य क्षेत्र में धारा 5 और 7 की शर्तों के तहत वैध विवाह संपन्न हुआ हो।

“If the parties applying for registration of marriage proves that they have performed a valid marriage within the territory of India, as per the provisions contained under the Hindu Marriage Act, 1954 or the Special Marriage Act, 1955, they can apply for registration of their marriage and the Registrar of Marriage cannot refuse or deny to register their marriage and issue certificate of marriage. 30. In the present case, two objections have been raised by the respondents for denying registration of marriage of the petitioners. The first objection is that one of the petitioners i.e. the petitioner No.2 is not a citizen of India, this objection is not sustainable for the [2023:RJ-JP:38276] (24 of 25) [CW-2657/2010] reasons stated in the previous paragraphs. The respondents cannot refuse to register the marriage of the petitioners only because the petitioner No.2 is a foreigner and is not a citizen of India. The second objection is that no valid proof of marriage has been submitted by the respondents, as per the terms of Sections 5 and 7 of the Hindu Marriage Act, 1955. If the petitioners submit valid proof about their marriage, in terms of the provisions contained under the Act of 1954, the respondents are supposed to register their marriage with immediate effect without any further delay. 31. In such circumstances, this writ petition stands disposed of with directions to Marriage Registrar to register the marriage of the petitioners and issue them the certificate of registration of their marriage, subject to the satisfaction that the petitioners have solemnized valid marriage, in terms of Sections 5 and 7 of the Act of 1955. 32. Before parting with the order, a general mandamus is issued to the respondents and the Chief Secretary of the State of Rajasthan to amend their guidelines and the requisite format of application for registration of marriage. The above officials of the State and respondents are further directed to take steps for editing the requirement on the e-portal under the Hindu Marriage Act, 1955 as well as the Special Marriage Act, 1954 to ensure that the requirement of the parties being citizens of India is not insisted upon, if the parties concerned submit a valid proof of their marriage strictly in accordance with law. The Chief Secretary and the Principal Secretary, Department of Economics and Statistics, Government of Rajasthan are further directed to take steps for compliance of the [2023:RJ-JP:38276] (25 of 25) [CW-2657/2010] above directions within a period of three months from the date of receipt of this order. 33. Office/Registry of this Court is directed to forward a certified copy of this order to the Chief Secretary and the Principal Secretary, Department of Economics and Statistics, Government of Rajasthan as well as the petitioners for intimation, necessary action and compliance. 34. Before closing this matter, it is made clear that whatever has been observed by this Court in this order is confined to the right of petitioner No.2 to get the registration of his marriage solemnized in India, as per the mandate contained under the Act of 1954 and 1955. This Court has not expressed its opinion about any other rights of the non-citizens and foreign nationals, which are obviously subject to the restrictions provided under the Constitution of India and other laws applicable within the territory of India. 35. The parties are left free to bear their own costs. (ANOOP KUMAR DHAND),J Solanki DS, PS”

HIGH COURT OF RAJASTHAN • 2023

स्रोत RJHC020535642010

14 Surya Vetricondan v. State of Tamilnadu

MADRAS HIGH COURT • 2018-09-07 • WP/2839/2018

याचिकाकर्ता ने न्यायालय से आग्रह किया था कि वह राज्य को सभी विवाहों का अनिवार्य पंजीकरण करने और एक डेटाबेस तैयार करने का निर्देश दे। इसके अतिरिक्त, याचिकाकर्ता ने विवाह के लिए 'medical certificate of fitness' अनिवार्य करने की भी मांग की थी। न्यायालय ने स्पष्ट किया कि विभिन्न धर्मों के विवाह संबंधित कानूनों, जैसे Hindu Marriage Act, 1955, के तहत पंजीकरण वैकल्पिक है और विवाह की वैधता पंजीकरण पर

निर्भर नहीं करती। न्यायालय ने माना कि वह नीतिगत मामलों में हस्तक्षेप करते हुए स्वयं कानून नहीं बना सकता और न ही कार्यपालिका को नई विधायी योजनाएँ बनाने का निर्देश दे सकता है, क्योंकि यह अधिकार राज्य विधायिका के पास है। तदनुसार, न्यायालय ने याचिका को खारिज कर दिया।

निर्णय मद्रास उच्च न्यायालय ने माना कि हिंदू विवाह अधिनियम की धारा 8 और अन्य व्यक्तिगत विवाह विधियों के तहत विवाह का पंजीकरण केवल वैकल्पिक और साक्ष्य को सुगम बनाने वाला माध्यम है। पंजीकरण न होने से विवाह की वैधता पर कोई प्रतिकूल प्रभाव नहीं पड़ता।

"Section 8 of the Hindu Marriage Act, 1955, reads as under:- <https://hcservices.ecourts.gov.in/hcservices/> "8. Registration of Hindu Marriages.- (1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such condition as may be prescribed in a Hindu Marriage Register kept for the purpose. (2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified and where any such direction has been issued, and person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees. (3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made. (4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee. (5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry." 7. Section 8 of the Hindu Marriage Act, 1955, therefore makes registration of marriage only optional. 8. Sections 30, 31 and 33 of the Indian Christian Marriage Act, 1872, which deal with registration of marriage under the Christian Marriage Act, 1872 reads as under:- "30. Registration and returns of marriages solemnized by Clergymen of Church of Rome - Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized, <https://hcservices.ecourts.gov.in/hcservices/> and such person shall forward quarterly to the [Registrar General of Births, Deaths and Marriages] returns of the entries of all marriages registered by him during the three months next preceding. 31. Registration and returns of marriages solemnized by Clergymen of Church of Scotland- Every Clergyman of the Church of Scotland shall keep a register of marriages, and shall register therein, according to the tabular form set forth in the Third Schedule hereto annexed, every marriage which he solemnizes under this Act, and shall forward quarterly to the [Registrar General of Births, Deaths and Marriages], through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section 29, of all such marriages. 33. Entries of such marriages to be signed and attested- The entry of such marriage in both the certificate and marriage register-book shall be signed by the person solemnizing the marriage, and also by the persons married, and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization. Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage register- book." 9. There is no provision under the Indian Christian Marriage Act, 1872, which makes it obligatory that the party to such marriage, should have the particulars relating to the marriage entered into, in a register maintained by a authority specified in the Act. The Act does not give power to the State Government to make rules providing that the parties to such marriage should have the particulars / details of the marriage to be entered in the marriage register to be maintained by the State for that purpose. 10. Marriages of Parsis are governed by the Parsi Marriage and Divorce Act, 1936. Section 6 of the Parsi Marriage and Divorce Act, 1936, provides for registration of marriages under the Parsi Marriage Act. Section 6 of the Act, is extracted hereunder:- <https://hcservices.ecourts.gov.in/hcservices/> "6."

15 Mayra Alias Vaishnvi Vilas Shirshikar v. State of U.P.

ALLAHABAD HIGH COURT • 2021-11-18 • WRIC/14896/2021

यह मामला 17 विभिन्न रिट याचिकाओं का एक समूह है, जिनमें वयस्क याचिकाकर्ताओं ने अपनी इच्छा से अंतरधार्मिक विवाह (interfaith marriage) किया है। याचिकाकर्ताओं ने तर्क दिया कि उन्होंने अपनी स्वतंत्र इच्छा से धर्म परिवर्तन किया और विवाह किया, लेकिन उन्हें अपने परिवारों और राज्य तंत्र से जीवन और स्वतंत्रता के लिए खतरे का सामना करना पड़ रहा है। राज्य सरकार ने तर्क दिया कि विवाह के लिए धर्म परिवर्तन हेतु जिला मजिस्ट्रेट की पूर्व अनुमति अनिवार्य है।

निर्णय इलाहाबाद उच्च न्यायालय ने माना कि विशेष विवाह अधिनियम के तहत नोटिस और आपत्ति की सार्वजनिक प्रणाली निजता के अधिकार का हनन करती है। इस विलंबकारी प्रक्रिया से बचने के लिए कई बार जोड़ों को त्वरित व्यक्तिगत कानूनों या धर्मांतरण का आश्रय लेना पड़ता है।

“Multiplicity of Marriage Laws 45. One of the issues governing marriage and registration is multiplicity of marriage and registration laws. The muslim marriage is governed as per Muslim Personal Law (Shariyat) Application Act, 1937. 46. In the State of Uttar Pradesh, the government has framed the U.P. Marriage Registration Rules, 2017, pursuant to a Supreme Court decision rendered in 2006, requiring mandatory registration of all marriages performed in the State of Uttar Pradesh or where one of the parties to the marriage is a resident of the State. Under this Rule all marriages can be registered, including marriage with a foreigner. It is a secular law. 47. That apart the Arya Samajist are governed by the Arya Marriage Validation Act, 1937. It was enacted to recognize and remove doubts as to the validity of inter-marriages among Arya Samajist. It is a short Act of two sections. Section (2) provides, notwithstanding any provision of Hindu law, usage or custom to the contrary, no marriage contracted by two persons being at the time of marriage Arya Samajist shall be invalid or shall be deemed to have been invalid by reason only of the fact that the parties at the time belong to different castes or different sub-castes of hindus or that either or both of the parties at any time before the marriage belong to religion other than hindu. 16 of 40 The Arya Samajists fall within the ambit of ‘hindu’ defined under the Hindu Marriage Act, 1955. 48. The State further has enacted the U.P. Hindu Marriage Registration Act, 1973, in exercise of power conferred under Section 8 of the Hindu Marriage Act, 1955. Then we have Christian Marriage Act, 1872, and Parsi Marriage and Divorce Act, 1936. Both these Acts separately provide for registration of marriage. Under the Christian Marriage Act, a Christian can solemnize marriage with a non-christian. 49. The interfaith marriage generally are performed either under the Muslim Personal Law, (Shariyat) Application Act, and/or, under the Arya Marriage Validation Act. The services provided by the Qazi, and/or, the Arya Samajist is instant matrimonial service across the counter. The conversion of faith followed by marriage stands concluded within hours. Whereas, registration of the marriage, under the U.P. Marriage Registration Rules, 2017, the Special Marriage Act, or seeking approval of the district authority of interfaith conversion, is time consuming requiring mandatory notice and enquiry. In any case, the time for registration of marriage, from the date of application takes several weeks, which necessarily compels the couple to take recourse under the personal law by converting. 50. In the backdrop of multiplicity of marriage and registration laws, the State of Uttar Pradesh has enacted the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 29 . The Act provides for prohibition of unlawful conversion from one religion to another religion by 29. Unlawful Conversion Act, 2021 17 of 40 misrepresentation, force, undue influence, coercion or allurement or by any fraudulent means or by marriage and in the matters connected therewith or incidental thereto. 51. The Act, inter alia, defines ‘religion convertor’, ‘undue influence’, ‘unlawful conversion’, which reads thus: “ (i) “Religion Convertor” means person of any religion who performs any act of conversion from one religion to another religion and by whatever name he is called such as Father, Karmakandi, Maulvi or Mulla etc.; (j) “Undue influence” means the conscientious use by one person of his/her power or influence over another in order to persuade the other to act in accordance with the will of the person exercising such influence; (k) “Unlawful Conversion” means any conversion not in accordance with law of the land.” 52. On perusal of the definitions, any person of any religion who performs any act of conversion to another religion would fall within the ambit of ‘religion convertor’, and such conversion not performed in accordance with law would be ‘unlawful conversion’. Sub-section (1) of Section 3 mandates that no person shall convert or attempt to convert. The explanation to sub-section (1) categorically provides conversion by solemnization of marriage or relationship in the nature of marriage shall be deemed included in the sub-section.\n\nAll marriages, whether interfaith or contracted in any other form, including, under the personal law can be registered under the Special Marriage Act. The Act mandates

conditions relating to solemnization of special marriage²⁴. The Special Marriage Act further mandates that parties to the marriage shall give prior notice in writing to the Marriage Officer; the marriage ceremony is required to be performed within three months from the date of notice. The Act further requires domicile of one of the parties for a period of not less than 30 days immediately preceeding such notice. 39. The Marriage Officer, thereafter, shall call every such notice to be published and if any one of the parties is not permanently residing within the local limits of the district of the Marriage Officer, the provision mandates that the Marriage Officer shall call a copy of the notice to be transmitted to the 23. Special Marriage Act 24 Section 4 13 of 40 Marriage Officer of the district within whose limit such party is permanently residing. In other words domicile of one of the party at the place of notice is mandatory. 40. The Special Marriage Act provides that any person before expiry of thirty days period of notice can file objection to the marriage. The Act further provides that where marriage has been contracted in any other manner, the parties can seek registration of the marriage 25. The procedure thereunder again mandates publication of a notice inviting objections and domicility of a party. 41. On bare perusal of the provisions, the Special Marriage Act contemplates marriage and registration both at pre and post marriage stage. But what is compulsorily mandated is of providing notice and inviting objections in either case and in the event of an objection being received, the Marriage Officer will have to decide the objection. In other words, the Special Marriage Act, enacted in 1954, the legislature could not have contemplated the situation as it exists after 65 years of its enactment. The society since has transformed phenomenally and the Special Marriage Act does not subscribe, nor does it meet the changing attitudes, needs and expectation of the present day society. The principal object of law is to serve the society as per its requirements and it necessarily requires that the law also keeps evolving with the perceptible changes occurring in the society. The Special Marriage Act miserably falls short of its objective and is surely not responsive to the changed circumstances with the massive rise in interfaith marriage²⁶. 25 Section 15 26 Safiya Sultana and others vs. State of U.P. & others, 2021 (1) ADJ 466 14 of 40 42. The legislation, be it Special Marriage Act, that has been upheld earlier at the given point of time, the Court may strike down the same if in the changed circumstances become arbitrary, unreasonable and violative of principles enshrined in the Constitution. (Refer: Madhya Pradesh v. Bhopal Sugar Industries²⁷; and Satyawati Sharma v. Union of India²⁸). 43. There is merit in the objection raised by the learned counsel for the petitioner that the Special Marriage Act, in the changed circumstances, where society has progressed considerably, in the backdrop of expanding secular space and mobility of the citizen, the Special Marriage Act, mandating notice, declaration of all particulars and inviting objections thereupon, subjecting it to public scrutiny is violative of the fundamental right of liberty and privacy granted to the petitioners under the Constitution. 44. It is urged that Special Marriage Act requires to be scraped and re-enacted in response to the changed social scenario so as to make it reasonable and rational. A private and personal affair between two individual has been made mandatorily public . It is urged that the provisions of the Special Marriage Act is primarily responsible in compelling couples to take recourse to instant conversion under the personal laws to escape the rigours of the delayed and prolonged procedure mandated under the Special Marriage Act. In other words, it is submitted that the Special Marriage Act compels and encourages conversion. An unwilling person who intends to contract interfaith marriage, retaining his/her faith, has no option but to convert. The learned counsel for the 27 AIR 1964 SC1179 28 (2008) 5 SCC 287 15 of 40 the petitioner submits that there should be a single uniform secular family code for all the citizens irrespective of faith, as against multiple laws governing marriage so as to avoid the mischief of anti conversion laws. E. Multiplicity of Marriage Laws 45. One of the issues

governing marriage and registration is multiplicity of marriage and registration laws. The muslim marriage is governed as per Muslim Personal Law (Shariat) Application Act, 1937. 46.”

ALLAHABAD HIGH COURT • 2021

स्रोत UPHC010935362021

16 Rathnamma v. Sujathamma

SUPREME COURT OF INDIA • 2019-11-15 • 2019 INSC 1255

यह मामला एक कथित हिंदू विवाह की वैधता और उसके आधार पर संपत्ति के उत्तराधिकार से संबंधित है। वादी ने दावा किया कि उसने अपने चाचा (प्रतिवादी संख्या 1 के पुत्र) से विवाह किया था और इस आधार पर वह उनकी संपत्ति में हिस्सेदारी की हकदार थी। न्यायालय ने पाया कि विवाह का केवल पंजीकरण, जिसे वादी ने प्रस्तुत किया था, विवाह का प्रमाण नहीं है। हिंदू विवाह कानून के तहत, विवाह के लिए Section 7 के अनुसार अनिवार्य रीति-रिवाजों और Saptadi का पालन करना आवश्यक है, जिसे वादी साबित करने में विफल रही। इसके अलावा, वादी किसी ऐसी प्रथा को साबित नहीं कर सकी जो इस तरह के विवाह की अनुमति देती हो। परिणामस्वरूप, न्यायालय ने विवाह को सिद्ध न मानते हुए वादी के दावे को खारिज कर दिया और अपील को स्वीकार कर लिया।

निर्णय सर्वोच्च न्यायालय ने व्यवस्था दी कि विवाह का केवल पंजीकरण समझौता विवाह को वैध सिद्ध नहीं करता। जब तक हिंदू विवाह अधिनियम की धारा 7 के तहत सप्तपदी या अन्य रीति-रिवाज सिद्ध नहीं होते, तब तक विवाह कानूनी रूप से अस्तित्वहीन माना जाएगा।

“The High Court has committed illegality in holding that since the defendants have denied marriage, it cannot [2019] 14 S.C.R. 647 647 A B C D E F G H 648 SUPREME COURT REPORTS [2019] 14 S.C.R. be asserted by the defendants that the marriage of the plaintiff with ‘H’ was not a valid marriage. The plaintiff has led evidence to the effect that the marriage was solemnized in the office of Sub-Registrar vide Ex.P/1. Ex.P/1 has been rightly found to be not a certificate of registration of marriage under the Special Marriage Act, 1954 and that there is no evidence that any ceremony has taken place. In the agreement of marriage (Ex.P/ 1), it is only stated that both parties are of same caste and with the permission and consent of both of their fathers, they have entered into this agreement of marriage. This type of marriage is not recognized in law as Section 7 of the Act contemplates that the marriage can be solemnized in accordance with customary rites and ceremonies of either party thereto and where such rites and ceremonies include the Saptadi, the marriage becomes complete and binding when the seventh step is taken. [Para 13] [655-F-G; 656-A] 2. The plaintiff has not led any evidence of solemnization of marriage as provided under sub-clause (2) of Section 7 of the Act or by leading any evidence of customary rites and ceremonies. The burden to prove marriage was on the Plaintiff alone. The defendants have denied marriage of the Plaintiff, therefore, the burden to prove marriage was on the plaintiff alone. Apart from such fact, the marriage cannot be said to be taken place in terms of Section 5(v) of the Act which is to the effect that the parties are not sapindas to each other, unless the custom or usage governing each of them permits of a marriage between the two. Such marriage is a void marriage but, on a petition, preferred by either party thereto.”

SUPREME COURT OF INDIA • 2019

स्रोत ESCR010003102019

17 Ajmal Asharaf M. v. State of Kerala

HIGH COURT OF KERALA • 2021-02-04 • WP(C)/2844/2021

यह याचिका Special Marriage Act, 1954 के तहत विवाह के पंजीकरण से संबंधित है। याचिकाकर्ताओं ने तर्क दिया कि COVID-19 महामारी के कारण वे पूर्व में दिए गए नोटिस की अवधि के भीतर विवाह संपन्न नहीं कर सके, इसलिए उन्हें नोटिस की अनिवार्य प्रतीक्षा अवधि (mandatory notice period) में छूट दी जानी चाहिए। उन्होंने वीडियो कॉन्फ्रेंसिंग के माध्यम से विवाह संपन्न कराने की भी मांग की थी। न्यायालय ने इस तर्क को खारिज कर दिया और कहा कि Section 5, 12, 13 और 14 में निर्धारित प्रक्रियाएं अनिवार्य हैं। चूंकि Act में विवाह अधिकारी के लिए Penal consequences का प्रावधान है यदि वे नियमों का पालन नहीं करते, इसलिए न्यायालय नोटिस अवधि या भौतिक उपस्थिति (physical presence) में छूट देने के लिए बाध्य नहीं है। तदनुसार, याचिका खारिज कर दी गई।

निर्णय केरल उच्च न्यायालय ने निर्णय दिया कि विशेष विवाह अधिनियम के तहत नोटिस अवधि की बाध्यता और विवाह संपन्न कराने की प्रक्रियात्मक अनिवार्यताएं अक्षुण्ण हैं। विवाह अधिकारियों के खिलाफ दंडात्मक विधिक प्रावधानों के कारण इनमें कोई ढील या पूर्ण छूट नहीं दी जा सकती।

“P.(C).No.1838 of 2019 this Court has considered a similar issue where a direction was sought to the Sub Registrar to register the marriage before expiry of one month on the ground that one of the petitioners therein had to join duty immediately before the expiry of the notice period. That writ petition was dismissed rejecting the relaxation of the minimum period of notice as well as the request for conducting the marriage on WP(C).No.2844 OF 2021(E) 5 video conferencing. 4. Heard Sri. Gangesh the learned Counsel for the petitioners and Smt. B. Vinitha the learned Government Pleader. 5. Though the learned counsel for the petitioners have relied on Ext.P9 judgment in W.P. (C).No.12762 of 2020, in support of the claim, the said judgment was only in respect of the registration of a marriage which was already solemnized in accordance with the customary rites. The said judgment cannot have any application in the present case. 6. The provisions in the Special Marriage Act, 1954, under Section 5 mandates that the parties to the marriage which is intended to be solemnised under the Act shall give notice in writing to the Marriage Officer in the form specified in the Second Schedule. On receipt of the notice the Marriage Officer shall cause every such notice to be published WP(C).No.2844 OF 2021(E) 6 as provided in Section 6. Section 7(2) provides that on expiry of thirty days from the date of publication of the notice, the marriage may be solemnized, unless it has been previously objected to under sub-section (1). Sections 8 to 10 provide for the procedure on receipt of objections. The procedure for solemnisation and issuance of certificate of marriage are dealt with in Section 11 to 13 which read as follows: 11. Declaration by parties and witnesses.—Before the marriage is solemnized the parties and three witnesses shall, in the presence of the Marriage Officer, sign a declaration in the form specified in the Third Schedule to this Act, and the declaration shall be countersigned by the Marriage Officer. 12. Place and form of solemnization.—(1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed. (2) The marriage may be solemnized in any form which the parties may choose to adopt: Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,— “I, (A), take thee (B), to be my lawful wife (or husband)” 13. Certificate of marriage.—(1) When the marriage has WP(C).No.2844 OF 2021(E) 7 been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses. (2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with. 7. Therefore as per the proviso to Section 12, a marriage is complete and binding on both the parties only on the declaration of either party that they take each other as the lawful wife/husband and that too in presence of the marriage officer as well as the three witnesses. It also insists that the marriage if it is not in the office of the Marriage Officer, shall be solemnised within a reasonable distance from the office. It is also relevant to note that Section 13 mandates the Marriage Officer to enter a certificate in the prescribed form in the Marriage Certificate Book and to get the said certificate signed by the parties to the marriage and WP(C).No.2844 OF 2021(E) 8 the three witnesses. 8. Regarding the effect of a notice given under Section 5 it is specifically provided under Section 14 of the Act as follows: 14. New notice when marriage not solemnized within three months.”

18 Meera Gautam v. State of U.P.

ALLAHABAD HIGH COURT • 2023-08-11 • WRIC/20756/2023

यह याचिका दो वयस्कों द्वारा 'live-in relationship' के लिए सुरक्षा की मांग से संबंधित थी। याचिकाकर्ता महिला पहले से विवाहित थी और उसका तलाक नहीं हुआ था। न्यायालय ने माना कि जब तक सक्षम न्यायालय द्वारा तलाक की डिक्री पारित नहीं की जाती, तब तक पूर्व विवाह बना रहता है और किसी अन्य व्यक्ति के साथ विवाह या संबंध कानूनी रूप से वैध नहीं माना जा सकता। न्यायालय ने कहा कि ऐसी परिस्थितियों में, जहां संबंध कानूनी रूप से मान्य नहीं हैं, अधिकारियों को सुरक्षा प्रदान करने के लिए निर्देश (mandamus) जारी नहीं किए जा सकते। परिणामस्वरूप, न्यायालय ने सुरक्षा की मांग वाली इस याचिका को अस्वीकार करते हुए इसे निपटा दिया।

निर्णय इलाहाबाद उच्च न्यायालय ने स्पष्ट किया कि यद्यपि बालिगों के आपसी संबंधों को कानूनन संरक्षण प्राप्त है, परंतु यदि कोई पक्ष पहले से विवाहित है और विधिक तलाक के बिना दूसरे संबंध में रह रहा है, तो ऐसे अवैध द्विविवाह संबंधों को सुरक्षा हेतु सुरक्षात्मक परमादेश (Mandamus) जारी नहीं किया जा सकता।

“In paragraph 17, Hon’ble Apex Court observed that If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. Hon’ble Apex Court issued direction to administration/police authorities throughout the country to ensure that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law. Learned counsel further submitted that Hon’ble Apex Court in several other judgments also have recognized live-in relationship of two consenting adults and granted protection to them from any retaliating action by her relatives or some other persons, who are interfering in the peaceful relationship or hurling threats to them. 6. Per contra, learned Standing Counsel for State-respondents, Sri Hari Om Singh, placed reliance on judgment of Asha Devi Vs. State of U.P in Writ - C No. - 18743 of 2020, where Division Bench of this Court considered the dictum of Hon’ble Apex Court in Lata Singh Vs. State of U.P. Indra Sarma Vs. V. K.V. Sarma, wherein Hon’ble Supreme Court held that live-in relationship between two consenting adults of heterosexual sex does not amount to any offence even though it may be perceived as immoral. However, in paragraph 13 this Court observed that Till a decree of divorce is passed the marriage subsists. Any other marriage during the subsistence of the first marriage would constitute an offence under Section 494 I.P.C. read with Section 17 of the Hindu Marriage Act, 1955 and the person, in spite of his conversion to some other religion would be liable to be prosecuted for the offence of bigamy, vide Lily Thomas and another Vs. Union of India and others. The Division Bench of this Court in - Kiran Rawat And Another Vs. - State Of U.P. Thru. Secy. Home, Lko. And Others, in Criminal Misc. Writ Petition No. - 3310 of 2023, vide order dated 28.04.2023, refused to issue writ, order or direction in the nature of Mandamus to State for protection of inter-religious couple, who were stated to be living in live-in relationship and paragraph 21 of that judgment observed that in Muslim law no recognition can be given to sex outside marriage and in that judgment this Court, considered a number of judgments of Hon’ble Apex Court including Lata Singh Versus State of U.P. & another, AIR 2006 SC 2522, Indra Sarma versus V.K.V. Sarma 2013 (15) 755, D Velusamy versus D Patchaiammal 2010 (10) SCC 469 and also some other judgments of Hon’ble Apex Court. 7. From perusal of petition, it appears that petitioners are inter-religious couple and no divorce have been granted to petitioner No. 1 from her husband by orders of any competent Court, they are stated to be living in live-in relationship, therefore, their relationship cannot be held as legal on the facts and circumstances of the case. Considering the aforesaid judicial pronouncements, in the light of facts and circumstances of the case, I do not find this a fit case in which a writ, order or direction in the nature of Mandamus is liable to be issued for authorities to grant protection to the petitioners from private respondent and his associates. 8.”

ALLAHABAD HIGH COURT • 2023

स्रोत UPHC011374922023

19 Bestha Rajashekhar v. M. Uma Devi

HIGH COURT OF KARNATAKA • 2024-03-07 • MFA/8418/2017

यह मामला पति द्वारा दायर दो अपीलों से संबंधित है, जिसमें उसने Special Marriage Act, 1954 के तहत अपनी शादी को रद्द करने की मांग की थी। पति का तर्क था कि विवाह के समय उसकी सहमति बल प्रयोग और धोखाधड़ी (coercion/fraud) से प्राप्त की गई थी और Marriage Officer द्वारा उचित प्रक्रिया का पालन नहीं किया गया था। निचली अदालतों ने पति के इन दावों को खारिज कर दिया और पाया कि वह अपनी बात साबित करने में विफल रहा। तदनुसार, परिवार न्यायालय ने पत्नी के पक्ष में दांपत्य अधिकारों की बहाली (restitution of conjugal rights) का आदेश दिया। उच्च न्यायालय ने निचली अदालतों के निर्णय को सही ठहराते हुए पति की अपीलों को खारिज कर दिया और पाया कि विवाह वैध रूप से संपन्न हुआ था।

निर्णय कर्नाटक उच्च न्यायालय ने स्पष्ट किया कि विशेष विवाह अधिनियम के तहत विवाह संपन्न करने के लिए किसी विशिष्ट धार्मिक रीति-रिवाज या रस्म की आवश्यकता नहीं है। धारा 12(2) के तहत गवाहों और विवाह अधिकारी की उपस्थिति में विनिर्दिष्ट शब्दों के उच्चारण से विवाह विधिक रूप से पूर्ण हो जाता है।

“The conditions of marriage as envisaged under the Sections are: (a) neither party as spouse living; (b) capability of marriage (imports the soundness of mind, mental disorder of such a nature or kind or to such an extent as to be unfit fit for marriage, recurrent, insanity or epilepsy is another rider on the marriage under this Act); (c) prescribes age for marriage of the persons under this Act, age of male to be 21 years and 18 years in case of female; (d) degree of prohibited relationship, meaning if the parties to the marriage are in the degree of prohibited relationship, then the marriage cannot be solemnized; (e) marriage outside India; (f) neither party is an idiot or lunatic. 19. Section 5 lays down the procedure of an intended marriage. This Section envisages that when parties to the marriage intends to solemnize the marriage under this Act, - 18 - NC: 2024:KHC:10541-DB MFA No. 8418/2017 C/W MFA No. 2965/2021 they shall give a notice in the prescribed form to the marriage officer of the District in which atleast one of the parties of the marriage are resided for a period of not less than 30 days immediately preceding the date on which notice is given. The parties hereto submitted application as is evident at Ex.P-5 about the intention of marriage. The provisions are clear and exhaustive in nature while making it clear that the desirous parties to give their intention to marry. 20. Section 6 of the SM Act lays down that the marriage officer can cause any such notice to be published by affixing a copy thereof to some conspicuous place in his office and when either of the parties to an intended marriage is not permanently residing within a local limits of the district. Marriage officer to whom the notice has been given under Section 5 of the Act, the marriage officer can also cause a copy of such notice to be transmitted to the marriage officer of the district within whose limit such party is permanently residing. This Section provides a procedure to be followed by concerned marriage officer who has been given notice under Section 5 of the SM Act to the intending marriage of the parties. - 19 - NC: 2024:KHC:10541-DB MFA No. 8418/2017 C/W MFA No. 2965/2021 21. Section 7 of the said Act envisages that, any person before expiry of 30 days, notice can object to the marriage on the ground that it would contravene one or more of the conditions specified in Section 4 and not otherwise. There is no special form of marriage solemnization under the Act. Only certain formalities have to be undergone as per the Act. Neither any ritual nor any particular ceremony are to be performed, Section 12(2) of the Act specifically lays down that the marriage may be solemnized in any form which the party may choose to adopt. This clause has a proviso, but that is only a compulsory formality which the parties will perform by uttering certain words and solemnization of marriage becomes complete as soon as the formalities under the Act is complete, the marriage is complete in all aspects. PW.4 - the Sub- registrar has categorically spoken about the due completion of the formalities and issuance of the certificate of marriage on completion of the formalities as envisaged under Section 12 of the Act. 22. Section 13 of the SM Act envisages that when a marriage has been solemnized, the marriage officer shall enter a certificate thereof in the form specified and he shall enter in - 20 - NC: 2024:KHC:10541-DB MFA No. 8418/2017 C/W MFA No. 2965/2021 the book kept by him for the said purpose and would be called the marriage certificate book. On the certificate being entered in the marriage certificate book by the marriage officer, the certificate shall be deemed to be a conclusive evidence of the fact that the marriage under this Act has been solemnized and all the formalities respecting the signature of the witnesses has been complied with. (3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under section 5, the Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office. 7. Objection to marriage.— (1) Any person may, before the expiration of thirty days from the date on which any such notice has been published under sub-section

(2) of section 6, object to the marriage on the ground - 15 - NC: 2024:KHC:10541-DB MFA No. 8418/2017 C/W MFA No. 2965/2021 that it would contravene one or more of the conditions specified in section 4. (2) After the expiration of thirty days from the date on which notice of an intended marriage has been published under sub-section (2) of section 6, the marriage may be solemnized, unless it has been previously objected to under sub-section (1). (3) The nature of the objection shall be recorded in writing by the Marriage Officer in the Marriage Notice Book, be read over and explained if necessary, to the person making the objection and shall be signed by him or on his behalf. ***** 12. Place and form of solemnization.— (1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed. (2) The marriage may be solemnized in any form which the parties may choose to adopt: Provided that it shall not be complete and binding on the parties unless each party says to - 16 - NC: 2024:KHC:10541-DB MFA No. 8418/2017 C/W MFA No. 2965/2021 the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,—“ I, (A), take the (B), to be my lawful wife (or husband)”. 13. Certificate of marriage.— (1) When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses. (2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the Certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses has been complied with.” 18. Section 4 of SM Act lays down conditions relating to solemnization of special marriages. The Section says “any two persons” of any caste, creed, religion and faith, domicile or nationality could solemnize marriages with certain territorial or - 17 - NC: 2024:KHC:10541-DB MFA No. 8418/2017 C/W MFA No. 2965/2021 other limitations. marriage is to be performed between two persons in India under certain conditions as enumerated in clauses (a) to (e) of Section 4 of SM Act. The conditions of marriage as envisaged under the Sections are: (a) neither party as spouse living; (b) capability of marriage (imports the soundness of mind, mental disorder of such a nature or kind or to such an extent as to be unfit for marriage, recurrent, insanity or epilepsy is another rider on the marriage under this Act); (c) prescribes age for marriage of the persons under this Act, age of male to be 21 years and 18 years in case of female; (d) degree of prohibited relationship, meaning if the parties to the marriage are in the degree of prohibited relationship, then the marriage cannot be solemnized; (e) marriage outside India; (f) neither party is an idiot or lunatic. 19. (i) are Sections 4, 5, 6, 7, 12 and 13, which read as under: “4. Conditions relating to solemnization of special marriages.— Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:— (a) neither party has a spouse living; (b) neither party— (i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to - 12 - NC: 2024:KHC:10541-DB MFA No. 8418/2017 C/W MFA No. 2965/2021 such an extent as to be unfit for marriage and the procreation of children; or (iii) has been subject to recurrent attacks of insanity; (c) the male has completed the age of twenty- one years and the female the age of eighteen years; 5 (d) the parties are not within the degrees of prohibited relationship: Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and; (e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the

territories to which this Act extends. Explanation.—In this section, “custom”, in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable - 13 - NC: 2024:KHC:10541-DB MFA No. 8418/2017 C/W MFA No. 2965/2021 to members of that tribe, community, group or family: Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied— (i) that such rule has been continuously and uniformly observed for a long time among those members; (ii) that such rule is certain and not unreasonable or opposed to public policy; and (iii) that such rule, if applicable only to a family, has not been discontinued by the family. 5. Notice of intended marriage.— When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given. 6. Marriage Notice Book and publication.—(1) The Marriage Officer shall keep all notices given under section 5 with the records of - 14 - NC: 2024:KHC:10541-DB MFA No. 8418/2017 C/W MFA No. 2965/2021 his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same. (2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office. (3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under section 5, the Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office. 7.”

HIGH COURT OF KARNATAKA • 2024

स्रोत KAHC010505282017

20 B. Sahar Banu v. The Inspector General of Registration

MADRAS HIGH COURT • 2022-10-17 • WP(MD)/7288/2015

यह मामला एक महिला द्वारा दायर की गई रिट याचिका से संबंधित है, जिसमें उसने आरोप लगाया कि उसके चचेरे भाई ने उसे धोखे से एक सरकारी कार्यालय ले जाकर जबर्न विवाह पंजीकरण दस्तावेजों पर हस्ताक्षर करवाए थे। याचिकाकर्ता का तर्क था कि कोई विवाह समारोह संपन्न नहीं हुआ था, लेकिन फिर भी उसके नाम पर एक विवाह प्रमाण पत्र जारी कर दिया गया। न्यायालय ने यह स्पष्ट किया कि 'Tamil Nadu Registration of Marriages Act, 2009' के तहत विवाह का पंजीकरण केवल उस विवाह का प्रमाण है जो पहले से ही व्यक्तिगत कानूनों या रीति-रिवाजों के अनुसार संपन्न हो चुका हो। बिना विवाह समारोह के पंजीकरण करना अवैध है। तदनुसार, न्यायालय ने संबंधित पंजीकरण को रद्द करने का निर्देश दिया और कहा कि विवाह समारोह के बिना जारी किया गया प्रमाण पत्र कोई वैधानिक स्थिति प्रदान नहीं करता है।

निर्णय मद्रास उच्च न्यायालय ने स्पष्ट किया कि विवाह का पंजीकरण केवल पहले से संपन्न वैध विवाह का साक्ष्य मात्र है। बिना किसी विवाह अनुष्ठान के सीधे किया गया पंजीकरण पूर्णतः अमान्य है और विवाह की विधिक स्थिति प्रदान नहीं कर सकता।

“Rule 5 (1)(a) is extracted as follows: 5.Procedure for Registration of Marriage: (1)(a) Every memorandum for Registration of marriage shall be in Form-I or Form -IA (in case of persons whose marriage was solemnized under Muslims Personal Law) and it shall be delivered in person (***) to the Registrar along with an application in Form-II within ninety days from the date of marriage. Form-I and Form-IA shall be supplied free of cost to the parties to a marriage by the Registrar” 9.A perusal of Form-IA discloses that the name and address of the Jamath which conducted the marriage should be disclosed in the Form. As per Form-II, the couple has to submit a declaration to the registrar of marriage. In the said Form-II, the couple has to declare that a valid marriage was solemnised between them and the marriage is capable of being registered under Section 3 of the Act. The couple has to further declare that the conditions laid down in the respective personal law has been satisfied. 10.A perusal of the above said provisions and Rules will clearly point out that it is mandatory for the parties to undergo those ceremonies of the marriage which are applicable to their respective religion. Only after a 6/13 [https://www.mhc.tn.gov.in/judis W.P\(MD\).No7288 of 2015](https://www.mhc.tn.gov.in/judis W.P(MD).No7288 of 2015) marriage is conducted as per the respective personal laws, the said marriage could be registered under the Act. Without undergoing the marriage ceremony, the marriage cannot be registered under the Act. Mere registration of the marriage without undergoing any marriage ceremony as per their respective personal law, would not confer any marital status upon the couple. 11.The Registering Authority cannot simply rely upon the statutory forms and mechanically proceeded to register the marriage. The Registering Authority should satisfy himself that the parties have undergone the marriage ceremony as per their respective personal laws before registering the marriage. It is a statutory duty cast upon the Registering Authority. 12.The Hon'ble Division Bench of our High Court in a Judgement reported in 1995-2-L.W. Page 95 (Shaji Vs. Gopinath) while considering the Madras Hindu Marriage (Registration) Rules, 1967 has held in Paragraph Nos.8 and 11 as follows: “8. Section 8 of the Hindu Marriage Act provides for registration of Hindu Marriages for the purpose of facilitating the proof of such marriages. Under that section, the State Government is empowered to make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose. Thus the section contemplates registration only of marriages which had already taken place. The ceremonies for the marriage are prescribed by Section 7 of the Act. 7/13 [https://www.mhc.tn.gov.in/judis W.P\(MD\).No7288 of 2015](https://www.mhc.tn.gov.in/judis W.P(MD).No7288 of 2015) Now Section 7 of the Act is introduced by Madras Amendment Act 21/1967. A marriage has to be solemnised in the presence of relatives, friends or other persons in the manner prescribed in that Section. In a case where the provisions of Section 7 or Section 7-A are not complied with, there is no question of there being a Hindu Marriage between a man and a woman, as contemplated by the Act. Without such a marriage (sic)there as prescribed under Section 7 or as prescribed under Section 7-A , there cannot be registration of marriage between man and woman under the provisions of Section 8 of the Act. 11.”

MADRAS HIGH COURT • 2022

स्रोत HCMD010939602015

21 Simran Choudhary v. State of J&K

HIGH COURT OF JAMMU AND KASHMIR • 2019-05-01 • WP(C)/1595/2019

यह मामला दो बालिग व्यक्तियों द्वारा अपनी मर्जी से विवाह करने के बाद अपने परिवार से मिल रही धमकियों और उत्पीड़न से सुरक्षा के लिए दायर किया गया था। याचिकाकर्ताओं ने तर्क दिया कि वे बालिग हैं और उन्होंने अपनी सहमति से विवाह किया है, लेकिन लड़की के परिवार द्वारा उन्हें जान से मारने की धमकियां दी जा रही हैं। न्यायालय ने Lata Singh v. State of UP और Shafin Jahan v. Asokan K. M. जैसे महत्वपूर्ण निर्णयों का हवाला देते

हुए कहा कि बालिग व्यक्तियों को अपनी पसंद का जीवनसाथी चुनने का पूर्ण अधिकार है। न्यायालय ने प्रतिवादी अधिकारियों (पुलिस) को निर्देश दिया कि वे याचिकाकर्ताओं के जीवन और स्वतंत्रता की रक्षा सुनिश्चित करें और उनके साथ किसी भी प्रकार की हिंसा या उत्पीड़न को रोकने के लिए आवश्यक कदम उठाएं।

निर्णय जम्मू-कश्मीर उच्च न्यायालय ने माना कि जब दो बालिग व्यक्ति अपनी स्वतंत्र सहमति से विवाह करते हैं, तो उन्हें अपनी पसंद से जीवन जीने का पूर्ण अधिकार है। न्यायालय ने पुलिस को निर्देश दिया कि वे जोड़े को पूर्ण सुरक्षा प्रदान करें और पारिवारिक उत्पीड़न रोकने के लिए कानूनी कदम उठाएं।

“State of UP and anr, AIR 2006 SC 2522 has held as under: “14. This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petitioner, her husband or her husband’s relatives.....

..... 17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter caste or inter religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.” 9. In *Shafin Jahan Vs. Asokan K. M. & Ors.* reported in AIR 2018 SC 1933, it has also been held that:- “20. Article 16 of the Universal Declaration of Human Rights underscores the fundamental importance of marriage as an incident of human liberty: “Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” 21. The right to marry a person of one’s choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of happiness. Matters of belief and faith, including whether to believe are at the core of constitutional liberty. The Constitution exists for believers as well as for agnostics. The Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity. The law may regulate (subject to constitutional compliance) the conditions of a valid marriage, as it may regulate the situations in which a marital tie can be ended or annulled. These remedies are available to parties to a marriage for it is they who decide best on whether they should accept each other into a marital tie or continue in that relationship. Society has no role to play in determining our choice of partners. 22.”

22 Mohd. Pervaiz v. Union Territory of J&K

HIGH COURT OF JAMMU AND KASHMIR • 2020-02-11 • WP(C)/409/2020

यह मामला दो बालिग व्यक्तियों द्वारा अपनी मर्जी से निकाह करने के बाद अपने परिवार के सदस्यों से मिलने वाली जानलेवा धमकियों और उत्पीड़न से संबंधित है। याचिकाकर्ताओं ने दावा किया कि उन्होंने मुस्लिम कानून के अनुसार विवाह किया है और वे अपनी सुरक्षा के लिए चिंतित हैं। न्यायालय ने Lata Singh v. State of UP और Shafin Jahan v. Asokan K. M. जैसे महत्वपूर्ण फैसलों का उल्लेख करते हुए माना कि अपनी पसंद के व्यक्ति से विवाह करना Article 21 के तहत एक मौलिक अधिकार है। तदनुसार, न्यायालय ने पुलिस अधिकारियों को निर्देश दिया कि वे याचिकाकर्ताओं की जान और स्वतंत्रता की रक्षा सुनिश्चित करें और उत्पीड़न करने वालों के खिलाफ कानून के अनुसार आवश्यक कार्रवाई करें।

निर्णय जम्मू-कश्मीर उच्च न्यायालय ने स्पष्ट किया कि वयस्क होने के बाद अपनी पसंद के व्यक्ति से शादी करना संविधान के अनुच्छेद 21 का अभिन्न अंग है, और परिवार को उन्हें प्रताड़ित करने का कोई कानूनी अधिकार नहीं है।

“There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petitioner, her husband or her husband’s relatives..... 17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter caste or inter religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter- caste or inter religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.” 9. In *Shafin Jahan Vs. Asokan K. M. & Ors.* reported in AIR 2018 SC 1933, it has also been held that:- “20. Article 16 of the Universal Declaration of Human Rights underscores the fundamental importance of marriage as an incident of human liberty: “Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” 21. The right to marry a person of one’s choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of happiness. Matters of belief and faith, including whether to believe are at the core of constitutional liberty. The Constitution exists for believers as well as for agnostics. The Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity. The law may regulate (subject to constitutional compliance) the conditions of a valid marriage, as it may regulate the situations in which a marital tie can be ended or annulled. These remedies 4 WPC No.409/2020 are available to parties to a marriage for it is they who decide best on whether they should accept each other into a marital tie or continue in that relationship. Society has no role to play in determining our choice of partners. 22.”

HIGH COURT OF JAMMU AND KASHMIR • 2020

स्रोत JKHC020007252020

23 Gullipilli Sowria Raj v. Bandaru Pavani

SUPREME COURT OF INDIA • 2008-12-04 • 2008 INSC 1399

यह मामला हिंदू और ईसाई पक्षकारों के बीच हिंदू रीति-रिवाजों से संपन्न विवाह की वैधता से संबंधित है। न्यायालय ने निर्णय दिया कि हिंदू मैरिज एक्ट, 1955 के तहत विवाह केवल दो हिंदुओं के बीच ही हो सकता है। चूंकि अपीलकर्ता एक ईसाई था, इसलिए हिंदू और ईसाई के बीच किया गया विवाह इस अधिनियम के प्रावधानों के अंतर्गत मान्य नहीं है और यह शून्य (nullity) है। न्यायालय ने स्पष्ट किया कि विवाह का हिंदू मैरिज एक्ट के सेक्शन 8 के तहत पंजीकरण करने से भी वह विवाह कानूनी रूप से वैध नहीं हो जाता। अतः इस अधिनियम के तहत ऐसा विवाह अमान्य है।

निर्णय सर्वोच्च न्यायालय ने माना कि हिंदू विवाह अधिनियम, 1955 के तहत विवाह केवल दो हिंदुओं के मध्य ही संपन्न हो सकता है। एक हिंदू और ईसाई के बीच इस अधिनियम के तहत संपन्न विवाह प्रारंभ से ही शून्य (void ab initio) है, और इसे धारा 8 के तहत पंजीकृत कराने से भी वैधता प्राप्त नहीं होती।

"categories, the respondent had no option but to make an application under Section 12(1)(c) that the marriage was a nullity on the ground that the appellant had been beguiled into the marriage by the appellant on fraudulent considerations, one of which was that he was a Hindu at the time of marriage. Mr. Rao submitted that since a valid marriage under the Hindu Marriage Act, 1955, could only be performed between two Hindus the marriage had been rightly declared to be a nullity by the High Court and its decision did not warrant any judicial interference in this appeal. 16. Apart from the aforesaid question, another submission was advanced on behalf of the respondent to the effect that, "after the decree passed in her favour declaring the marriage to be a nullity, she had remarried on 23.1.2003 i.e. about 4 months after the decree declaring her marriage with the appellant to be nullity had been passed. 17: Various decisions were cited on behalf of both the parties with regard to this aspect of the matter which, in our view, is not really important for a decision on the legal question that has been raised in the appeal. 18. Although, an attempt has been made to establish that the Hindu Marriage Act, 1955, did not prohibit a valid Hindu marriage of a Hindu and another professing a different faith, we are unable to agree with such submission in view of the definite scheme of the 1955 Act. 19. In order to appreciate the same, we may first refer to the Preamble to the Hindu Marriage Act, 1955, which reads 'as follows: ' GULLIPILLI SOWRIA RAJ v. BANDARU PAVANI @ 43 GULLIPILLI PAVANI [AL TAMAS KABIR, J.] "An Act to amend and codify the law relating to marriage among Hindus". (Emphasis added) 20. As submitted by Mr. Rao, the Preamble itself indicates that the Act was enacted to codify the law relating to marriage amongst Hindus. Section 2 of the Act which deals with application of the Act, and has been reproduced hereinabove, reinforces the said proposition. 21. Section 5 of the Act thereafter also makes it clear that a marriage may be solemnized between any two Hindus if the conditions contained in the said Section were fulfilled. The usage of the expression 'may' in the opening line of the Section, in our view, does not make the provision of Section 5 optional. On the other hand, it in positive terms, indicates that a marriage can be solemnized between two Hindus if the conditions indicated were fulfilled. In other words, in the event the conditions remain unfulfilled, a marriage between two Hindus could not be solemnized. The expression 'may' used in the opening words of Section 5 is not directory, as has been sought to be argued, but mandatory and non-fulfilment thereof would not permit a marriage under the Act between two Hindus. Section 7 of the 1955 Act is to be read along with Section 5 in that a Hindu marriage, as understood under Section 5, could be solemnized according to the ceremonies indicated therein. 22. In the facts pleaded by the respondent in her application under Section 12(1)(c) of the 1955 Act and the admission of the appellant that he was and still is a Christian belonging to the Roman Catholic denomination, the marriage solemnized in accordance with Hindu customs was a nullity and its registration under Section 8 of the Act could not and/or did not validate the same. In our view, the High Court rightly allowed the appeal preferred by the respondent herein and the judgment of the High Court does not warrant any interference. 23. The other question raised regarding the subsequent marriage of the respondent is of little relevance once we have 144 SUPREME COURT REPORTS [2008] 17 S.C.R. A held that the marriage purported to have been performed between the appellant and the respondent on 24.10.1996 was a nullity. Hence, no decision is called for in that regard and we also make no observation in respect thereof. 24. The appeal is accordingly dismissed. 25. Ramesh, Y. Vismay and B.V. Niren, A for the Respondent. The Judgment of the Court was delivered by AL TAMAS KABIR, J. 1. The only question which falls for determination in this Civil Appeal by way of Special Leave is whether a marriage entered into by a Hindu with a Christian is valid under the provisions of the Hindu Marriage Act, 1955. 2. The appellant, who is a Roman Catholic Christian allegedly married the respondent, who is a Hindu, on 24.10.1996, in a temple only by

exchange of 'Thali' and in the absence of any representative from either side. Subsequently, the marriage was registered on 2.11.1996~under Section 8 of the Hindu Marriage Act, 1955, hereinafter referred to as the '1955 Ad'. D 3. Soon thereafter, on 13.3.1997, the respondent-wife filed ' a petition before the Family Court at Vishakapatnam, being O.P. No.84of1997, under Section 12(1)(c) of 1955 Act, for a decree of nullity of the marriage entered into between the E parties on 24.10.1996 on the grounds mentioned in the said petition. 4. The main ground for declaring the marriage to be a nullity was mainly misrepresentation by the appellant regarding his social status and that he was a Hindu by religion, although F it transpired after the marriage that the appellant and his family members all professed the Christian faith. The Family Court dismissed the said petition against which an appeal was preferred by the respondent before the High Court, which allowed the appeal by its judgment and order dated 12.9.2002 G upon holding that the marriage between a Hindu and a Christian under the 1955 Act is void ab initio and that the ' marriage was, therefore, a nullity . • ' 5. A few months thereafter o!l 23.1.2003 the respondent I H 38 SUPREME COURT REPORTS [2008] 17 S.C.R. A married one Dr. Praveen. Thereafter, on 23.4.2003 the appellant filed a Special Leave Petition out of which the present ~ appeal arises. ~ 6. There is no dispute that at the time of the purported B marriage between the appellant and the respondent the appellant was a Christian and continues to be so whereas the respondent was a Hindu and continues to be so. There is also no dispute that the marriage was alleged to have been performed under the Hindu Marriage Act, 1955, and was also + c registered under Section 8 thereof. As against the ab ove, a novel argument has been advanced on behalf of the appellant, the substance whereof is that the Hindu Marriage Act, 1955 does not preclude a Hindu from marrying a person of some other faith. In order to assist the Court in regard to such a D submission, the Court had requested Mr. U.U. Lalit, learned Senior Advocate, to assist the Court in the matter. 7. Mr. Lalit firstly took us through the provisions of Section 5 of the 1.955 Act which prescribes the conditions fof' a Hindu marriage. The opening words of Section 5 are as follows: E \"A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: ... \" 8. Mr. Lalit submitted that the use of the word 'may' in the opening words of Section 5 seems to indicate that the F conditions were not mandatory and that as a result, the said conditions would not be bind'ing on the marriage performed between the appellant a'nd the respondent. • 9. Mr. Lalit then took us through the provisions of Section G 11 of the 1955 Act, which deals with void marriages and indicates as follows : \"11. Void marriages :-Any marriage.solemnized after the -y commencement of this Act shall be null and void and may,) H on a petition preserltd by either party thereto, against the other party be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses A (i), (iv) and (v), Section 5.\" 10."

SUPREME COURT OF INDIA • 2008

स्रोत ESCR010006932008

24 Meena Kumari v. State of J&K

HIGH COURT OF JAMMU AND KASHMIR • 2019-04-02 • OWP/520/2019

यह मामला दो बालिक व्यक्तियों के विवाह से संबंधित है, जिन्होंने अपनी मर्जी से विवाह किया था, लेकिन लड़की के परिवार वालों से उन्हें जान से मारने की धमकी मिल रही थी। याचिकाकर्ताओं ने न्यायालय से सुरक्षा की गुहार लगाई थी। न्यायालय ने 'Lata Singh v. State of UP' और 'Shafin Jahan v. Asokan K. M.' जैसे सुप्रीम कोर्ट के निर्णयों का हवाला देते हुए कहा कि बालिक व्यक्तियों को अपनी पसंद का जीवन साथी चुनने का पूर्ण संवैधानिक अधिकार है। न्यायालय ने प्रतिवादियों को निर्देश दिया कि वे याचिकाकर्ताओं के जीवन और स्वतंत्रता की रक्षा सुनिश्चित करें और उन्हें किसी भी प्रकार की धमकी या उत्पीड़न से बचाएं।

निर्णय जम्मू-कश्मीर उच्च न्यायालय ने दोहराया कि वयस्क होने के बाद प्रत्येक व्यक्ति अपनी पसंद के जीवनसाथी के साथ विवाह करने या रहने के लिए स्वतंत्र है। न्यायालय ने पुलिस को याचिकाकर्ताओं की सुरक्षा सुनिश्चित करने का निर्देश दिया।

“State of UP and anr, AIR 2006 SC 2522 has held as under: “14. This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petitioner, her husband or her husband’s relatives.....

..... 17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter caste or inter religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.” 9. In *Shafin Jahan Vs. Asokan K. M. & Ors.* reported in AIR 2018 SC 1933, it has also been held that:- “20. Article 16 of the Universal Declaration of Human Rights underscores the fundamental importance of marriage as an incident of human liberty: OWP No.520/2019 Page 4 of 5 “Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” 21. The right to marry a person of one’s choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of happiness. Matters of belief and faith, including whether to believe are at the core of constitutional liberty. The Constitution exists for believers as well as for agnostics. The Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity. The law may regulate (subject to constitutional compliance) the conditions of a valid marriage, as it may regulate the situations in which a marital tie can be ended or annulled. These remedies are available to parties to a marriage for it is they who decide best on whether they should accept each other into a marital tie or continue in that relationship. Society has no role to play in determining our choice of partners. 22.”

25 Lehar Singh v. State

HIGH COURT OF JAMMU AND KASHMIR • 2018-07-11 • OWP/1300/2018

यह मामला एक वयस्क जोड़े द्वारा अपनी मर्जी से विवाह करने के बाद जीवन और स्वतंत्रता की सुरक्षा की मांग से संबंधित है। याचिकाकर्ताओं ने तर्क दिया कि उन्हें अपने परिवार के कुछ सदस्यों से खतरों का सामना करना पड़ रहा था। न्यायालय ने माना कि एक वयस्क के रूप में, याचिकाकर्ताओं को अपनी पसंद के व्यक्ति से विवाह करने का संवैधानिक अधिकार है। सर्वोच्च न्यायालय के पूर्व निर्णयों का हवाला देते हुए, न्यायालय ने आधिकारिक प्रतिवादियों को यह निर्देश दिया कि वे याचिकाकर्ताओं के जीवन and स्वतंत्रता की सुरक्षा सुनिश्चित करें और किसी भी प्रकार की हिंसा या उत्पीड़न को रोकने के लिए कानून के अनुसार उचित कदम उठाएं।

निर्णय जम्मू-कश्मीर उच्च न्यायालय ने माना कि प्रत्येक नागरिक को अपनी मानसिक अखंडता, निजता और व्यक्तिगत स्वायत्तता का पूर्ण संवैधानिक अधिकार प्राप्त है। यदि कोई वयस्क जोड़ा समाज या परिवार के विरुद्ध जाकर शादी करता है, तो राज्य और पुलिस का यह अनिवार्य कर्तव्य है कि वे उनके जीवन तथा स्वतंत्रता की रक्षा करें।

“Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter- caste or inter- religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.” 9. In *Shafin Jahan Vs. Asokan K. M. & Ors.* reported in AIR 2018 SC 1933, it has also been held that:- OWP No.1300/2018 & MP No.01/2018 Page 4 of 5 “20. Article 16 of the Universal Declaration of Human Rights underscores the fundamental importance of marriage as an incident of human liberty: “Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” 21. The right to marry a person of one’s choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of happiness. Matters of belief and faith, including whether to believe are at the core of constitutional liberty. The Constitution exists for believers as well as for agnostics. The Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity. The law may regulate (subject to constitutional compliance) the conditions of a valid marriage, as it may regulate the situations in which a marital tie can be ended or annulled. These remedies are available to parties to a marriage for it is they who decide best on whether they should accept each other into a marital tie or continue in that relationship. Society has no role to play in determining our choice of partners. 22. In *Justice K S Puttaswamy v Union of India*, 2017 (10) SCC 1, this Court in a decision of nine judges held that the ability to make decisions on matters close to one’s life is an inviolable aspect of the human personality: “The autonomy of the individual is the ability to make decisions on vital matters of concern to life... The intersection between one’s mental integrity and privacy entitles the individual to OWP No.1300/2018 & MP No.01/2018 Page 5 of 5 freedom of thought, the freedom to believe in what is right, and the freedom of self- determination... The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual.” A Constitution Bench of this Court, in *Common Cause (A Regd.*

अ स्वीक र ण

यह मेमो Vitark AI द्वारा सार्वजनिक रूप से उपलब्ध निर्णयों और उपयोगकर्ता के प्रश्न के आधार पर तैयार किया गया है। यह केवल रिसर्च सहायता के लिए है और कानूनी सलाह (legal advice) नहीं है। किसी भी filing, opinion, या correspondence में उपयोग करने से पहले सभी case citations, holdings और quotations को मूल निर्णय (source judgment) के विरुद्ध स्वतंत्र रूप से सत्यापित किया जाना चाहिए।