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CASE COMMENT ON SEEMA VS ASHWINI KUMAR **AIR 2006 SC 1158.**

AUTHORED BY –
AKSHAY WAMAN FAND

Introduction

Since independence, numerous initiatives have been taken to address the issue of gender inequality. Reform initiatives taken so far have succeeded to a large extent, however, child marriages, bigamy and gender violence continue to persist in our society, despite legislation's prohibiting and penalizing such practices. Several disputes are pending before the courts regarding the matrimonial status of the parties. Women are often denied the status of wife due to the absence of a record proving a valid marriage. The courts have time and again emphasized making registration of marriage compulsory, to prevent denial of status to women and to children born out of wedlock. Instances of marriage fraud have also come to light in recent times. In the absence of compulsory registration, women are duped into marrying without the performance of the conditions of a valid marriage. This deprives women of societal recognition and legal security. Such fraudulent marriages are especially on the rise among nonresident Indians.

Compulsory registration can serve as a means to ensure that the conditions of a valid marriage have been performed. The Births, Deaths, and Marriages Registration Act, of 1886 provided for voluntary registration of births and deaths only for certain classes of people and also made a provision for effective registration of marriages under the Indian Christian Marriages Act, of 1872 and the Parsi Marriage and Divorce Act, 1936, While provisions for registration exist under various laws- such as the Hindu Marriages Act, 1955, the Special Marriages Act, 1954, the Parsi Marriages and Divorce Act, 1936 and the Indian Christian Marriages Act, 1872, however, there is no provision that provides for simply keeping a record of all marriages and is available to any and every individual in the country regardless of religion, region or customs.

The Special Marriage Act 1954, laid down a procedure for registration but the Act was primarily intended to enable couples to opt out of personal laws, this did not, however, imply that the couple has opted out of religion. It simply meant that religion has no relevance in the registration of a marriage under this Act. In 2006, the Supreme Court in *Seema v. Ashwani Kumar & ors.*⁶ observed that marriages of all persons who are citizens of India belonging to various religions should be registered compulsorily in their respective States, where the marriage is solemnized. Further, as and when the Central Government enacts a comprehensive Statute, the same shall be placed before the Court for scrutiny. The judgment also referred to the Bill produced by the National Commission of Women.

Background

The Case arises out of a Petition filed in Haryana District Court regarding the issue of the registration of marriage which was a matter of the States. Numerous harassment in matrimonial & maintenance cases due to consequences of non-registration of marriages in some states took place. The decision was taken by the court and directions were sent to the state to compulsorily register marriages and report back with the procedure for registration in 3 months. The Hindu Law empowers the State Government to draft rules for the registration of marriages. Under Section 8 (2) of the Hindu Marriage Act, 1955, if the State Government in its opinion that such registration should be compulsory. The National Commission for Women has specified that non-registration of marriages affects women. If the marriage is registered it will provide evidence of the marriage having taken place and would also provide a presumption of the marriage having taken place.

The compulsory Registration of Marriage can help in reducing the issue of Child Marriage which was prevalent at that time. It also provides evidence in the matters of custody of children, and the right of children born. The Supreme Court directs several states to make rules regarding the registration of marriage as per the following guidelines: "Procedure for registration should be reported by respective states within 3 months from the date of judgment.

The officer appointed under the said Rules of the States shall be duly authorized to register the marriages. The age and marital status shall be clearly stated and consequences of non-registration of marriages shall also be provided in the said Rules to fulfill the purpose of this court.

When the Central Government enacts a comprehensive statute, the same shall be placed before this Court for inspection. Authorized persons for various States and Union Territories shall ensure that the directions given herein are carried out immediately."

United Nations has recognized the importance of creating a record of vital events such as birth, death, and marriage. The creation of such a civil registry for citizens serves the purpose of creating a legal document that could be used to protect and establish the rights of individuals

ANALYSIS

In India, not recognizing unregistered marriage as valid would be highly unsuitable, as many marriages commonly take place informally in gatherings of relatives, with or without the presence of priests, or in any other customary manner which must also be recognized as valid. It was for this reason that, like various other countries, India also expressed its reservation even while ratifying the Convention of 1993. Customary practices are so prolific and personal law systems also prevail making it necessary for the law to accept cultural and regional diversity. Therefore the idea is to encourage legal education among the people so that these ceremonies can be preceded or succeeded by registration of the event.

An unregistered marriage is not to be treated as 'void' but simply in an attempt to encourage registration, there can be small penalties attached to non-registration. This would help in a circumstance when the spouse has been left destitute and a second marriage has been contracted by the other spouse, the proof of the first marriage will be indisputable and not permit a spouse to abandon his family and maintenance obligations, etc. It is worth noting that there are various laws governing marriage and divorce in India, the Bill seeking Compulsory Registration of Marriages is not intended to challenge or interfere with any of

these prevailing systems of personal laws but to simply ensure that marriages under all customs and religions can be registered.

The Supreme Court and the High Courts have time and again emphasized the need to make the registration of marriages compulsory. The most notable decision came in *Seema v. Ashwani Kumar*¹⁵ while dealing with the matter related to issue(s) of marriages observed as under: " 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." In view of the developments that have taken place in the States and Union territories with respect to the legislation on Compulsory Marriage Registration, the core question for consideration arises is as to whether there is a need for Central Legislation on the subject. And if so, then the next question arises as to whether to pursue amendments in the Registration of Births and Deaths Act, 1969 as per the Registration of Births and Deaths (Amendment) Bill, 2015 or to consider separate standalone legislation to provide for compulsory registration of marriages is required.

Before providing directions for the registration of marriages in *Seema v. Ashwani Kumar* the Supreme Court noted that such a law would be of critical importance to various issues such as (a) Prevention of child marriages and ensuring minimum age of marriage. (b) Prevention of marriages without the consent of the parties. (c) Check bigamy/polygamy (d) Enabling married women to claim their right to live in the matrimonial house, maintenance, etc. (e) Enabling widows to claim their inheritance rights, other benefits, and privileges which they are entitled to after the death of their husband. (f) Deterring men from deserting women after marriage. (g) Deterring parents/guardians from indulging in the trafficking of women to any person including a foreigner, under the garb of marriage.

Conclusion:

The above-stated case deals with the registration of marriages in India. Several states have no legal rules regarding the registration of marriages. Non-registration of marriages causes several consequences in the form of harassment of women and child marriage cases. Referring to these issues, the Apex court upheld the mandatory registration of marriages of all the religions in their respective States and issued certain guidelines for making rules for such Registration.

The Registrar who is responsible for the registration of births and deaths shall be responsible for the registration of marriages as well. Village Panchayats, local civil bodies, and municipalities should create awareness so as to get register all marriages with the local administration compulsorily.

Further, producing a marriage certificate should be made mandatory when anyone writes the name of a spouse in any application; for getting any benefit on behalf of husband or wife; for making an application to government departments; for getting benefits of any welfare schemes like the agricultural loan, education loan, etc. Also, a unified database that consists of birth, marriage, and death records would allow easy tracing of records.¹

¹ Seema vs Ashwini kumar 2006 case.

2.Law commission of India report on registration of marriage.