

REGISTRATION OF MARRIAGES

– Simplification of Processes and Facilitation of Greater Access to Women’s Rights and Entitlements

The importance of creating a record of vital events such as births, deaths and marriages in a population is globally recognized. Creation of such a civil registry for citizens serves the purpose of creating a legal identity that could be used to protect and establish rights of individuals. Besides, these vital statistics and trends in a population help in policy, planning and governance.

UNFPA considers civil registration and vital statistics (CRVS) to be a cornerstone of gender equality. Often enough a disproportionate amount of data omissions on CRVS relate to women and girls from disadvantaged population groups.¹ This impedes women’s ability to access education or health care, to own and transfer assets, or in many instances to exercise their civil and political rights, including their right to vote. Women in vulnerable situations including those who are displaced by humanitarian emergencies can experience increased discrimination or exclusion while seeking support if they lack legal documentation. In this paper, we discuss the importance of marriage registration, the means for simplification of the process and how it contributes to improving women’s access to rights and entitlements.

Why is marriage registration critical?

Marriage registration can be crucial for upholding women’s rights on a range of aspects including spousal support, child custody, ownership of property, and inheritance. Effective registration of marriages enables governments to apply the law and prevent marriages that do not include full consent of the concerned parties and contribute to efforts for preventing child marriages.

Legal Framework governing marriage registration

Currently, several legal frameworks govern the registration of marriages in India – such as the *Hindu Marriage Act, 1955*; the *Special Marriage Act, 1954*; the *Foreign Marriage Act, 1969*; the *Indian Christian Marriages Act, 1872* and the *Parsi Marriage and Divorce Act, 1936*. States have enacted laws as well as rules and regulations requiring compulsory registration of marriages to ensure compliance with the Supreme Court directives – over seventeen states have exclusive marriage

¹ Buvinic, Mayra and Eleanor Carey. 2019. Leaving No One Behind: CRVS, Gender and the SDGs. [Knowledge Brief Series on Gender and CRVS](#). Centre of Excellence for Civil Registration and Vital Statistics Systems, International Development Research Centre, Ottawa, ON

registration laws (requiring compulsory registration); and over twelve states and UTs regulate the process through rules and regulations (*UNFPA undertook a comprehensive desk review of the marriage registration processes across India in 2019 - a comparative state-wise analysis is annexed to this note*). It should be noted that **while the framework is in place in all these states, it is the cumbersome nature of the process that hinders marriage registration.**

How can the process of marriage registration be eased?

Increasing vulnerabilities of women and children to discrimination, gender-based violence, child marriage, abandonment, and challenges in accessing legitimate rights and entitlements make it imperative to ensure existence of, and access to simplified marriage registration processes. To encourage registration of marriages, following measures may be incorporated in the relevant Acts/Rules to simplify processes and facilitate greater access:

- **Place of marriage registration:** It is important to have more options with respect to “the place of registration”, such that the place is closer, approachable and accessible to the parties entering into a marriage. While some states (like Odisha, Tamil Nadu, Karnataka) have the option of registration of marriage at the Sub Division, Corporations, Municipalities/NACs and Tehsil/ Block levels, states like Kerala, Bihar, Maharashtra, Madhya Pradesh and Puducherry have provision of marriage registration at Panchayat level, which will encourage registration of marriage particularly in rural areas.
- **Requirement of witnesses:** In states like Delhi, marriage registration needs just two witnesses - anyone who has a PAN Card (not necessarily immediate blood relation) who attended the wedding. Whereas in other states (like Odisha, Punjab), guardians of both parties need to be the witnesses for registration of marriage – measures like these should not be an absolute necessity. Convenience and flexibility should be afforded to parties for the purposes of producing witnesses who attended the wedding.
- **Documentation required:** The number (and nature) of documents required for registration significantly impacts how easy/cumbersome the process proves to be for the contracting parties. As evident from most of the states, the mandatory documents include: (i) Joint affidavit by both the parties (indicative of consent); (ii) documentation related to witnesses (PAN/Aadhar card etc.); (iii) proof of age (Matriculation certificate, birth certificate, PAN card); (iv) photo identity proof (PAN, Aadhar card, driving licence); and (v) proof of marital status at the time of registration (affidavit for unmarried, divorce decree of court for those who are divorced).

However, some states impose additional requirements in the form of affidavit of consent of parents of both parties; presence of both parents/ guardians as witness while the petition is filed, joint photographs in specified format, certificate from religious institution where marriage was solemnized, self-declaration by other witnesses, affidavit from priest etc. – these should be simplified and made uniform such that only the absolutely mandatory documents are required from the parties.

- **Processing fees:** While making the registration of marriage compulsory, the objective is to encourage awareness among the people about the benefits of registration, such that marriages are recorded within the stipulated time period (say 30 days). For example, in Gujarat, the fees vary for application for registration made within 30 day (5/- INR) and beyond 30 days (15/- INR). However, in Odisha the fees for registration of marriage is 100/- INR in case the registration is made under Hindu Marriage Registration Act and 150/- INR if the marriage is registered under Special Marriage Act. To encourage registration of marriages, there can be incentives/fee waivers for registrations made within 30 days of solemnisation of marriage and a nominal penalty may be charged for non-registration or delayed registration.
- **Processing timeline and number of visits:** In states like Tamil Nadu, Haryana, Gujarat, Mizoram, Bihar and Punjab, the processing time of seven working days is required for registration of marriages. This time period is longer in other states – 15 days in Odisha and Delhi, 25 days in Maharashtra and 7-30 days in Punjab. With simplified procedures in place, the timelines for processing should also be reduced (3-7 days). The number of visits required from contracting parties also varies – many states require parties to visit for submission of application, for appearance and signature for registration, and then for receiving the certificate. This should also be streamlined.
- **Promoting the use of technology-based registration:** States like Gujarat, Rajasthan and Haryana have started using IT enabled services to facilitate application for registration online through Common Services Centre/ from personal devices. This reduces hassle of visiting the place of registration, standing in queue, waiting for facilitators and filing application during limited office hours only. Enabling such, and other systems online can offer a huge impetus to the marriage registration process²

² Digital services should also be accompanied by awareness and sensitization campaigns to ensure equal access for everyone.

Significance of Marriage Registration from a Rights Perspective: Judicial Pronouncements, and Recommendations from Legal Experts and Statutory Authorities

In 2006, the Supreme Court of India in *Smt. Seema v. Ashwani Kumar*³, noted that a law requiring compulsory registration of all marriages would be of critical importance to various issues such as:

- *Preventing child marriages and to ensure minimum legal age of marriage*
- *Preventing marriages without the consent of the parties*
- *Check bigamy/polygamy*
- *Enabling married women to claim rights arising from their marital status, viz. right to live in the matrimonial house, maintenance, etc.*
- *Enabling widows to claim their inheritance rights, other benefits and privileges which they are entitled to after the death of their husband*
- *Deterring men from deserting women after marriage*
- *Preventing instances of marriage fraud*
- *Deterring parents/guardians from indulging in trafficking of women to any person including a foreigner, under the garb of marriage*

Further, the Supreme Court observed that though registration itself cannot be a proof of valid marriage *per se*, and would not be the determinative factor regarding validity of a marriage, yet it has a great evidentiary value in the matters of custody of children, rights of children born from the wedlock of the persons whose marriage is registered and the age of parties to the marriage. Thus, it would be in the interest of society if registration of marriages is made compulsory.⁴

Prior to the directions of the Supreme Court on the subject, there have been several suggestions/demands to make registration of marriages and divorces compulsory in an official registry at international and national levels, including by the **National Human Rights Commission (NHRC)**; the **Steering Committee on Empowerment of Women and Development of Children** (erstwhile Planning Commission of India); the **Committee on Empowerment of Women**; the **National Commission for Women (NCW)**; the **Law Commission of India**; **Parliamentary Standing Committees**; and States and Union territories

³ 2006(2) SCC 578

⁴ This view has been propagated by various High Courts as well - In Kanagavalli v. Saroja (AIR 2002 Mad 73), the Madras High Court underlined the importance of registration in providing security to women. Similarly, in Baljit Kaur & Anr v. State of Punjab & Anr. ((2008) 151 PLR 326), the Punjab and Haryana High Court reiterated the SC ratio in Seema v. Ashwani Kumar and opined that making registration of marriage compulsory would reduce disputes related to solemnization of marriages

themselves.⁵ All of these institutions/bodies underscore the critical importance of registration as an important tool towards recognizing (and concomitantly preventing denial of) the legal status of married, divorced, separated and widowed women as well as enabling their access to their lawful rights and entitlements. In fact, in order to check the prevalence of fraud against women by Non-Resident Indians, *The Registration of Marriage of Non-Resident Indian Bill* was introduced in the Parliament in 2019 (introduced in Rajya Sabha, currently pending to be taken up for consideration and passing) requiring the registration of all marriages involving non-resident Indians within a period of 30 days from their solemnization.

NCW sought to address the number of issues arising out of non-registration of marriages by drafting the *Compulsory Registration of Marriages Bill, 2005*. In 2007, the Committee on Empowerment of Women, relying upon the NCW's Bill, observed that irrespective of religion, registration of marriages should be made compulsory.⁶ The report shed light on the plight of Indian women whose husbands, in a number of cases refused to acknowledge their marriage before contracting a second marriage or leaving their former wives altogether and refusing them maintenance, etc. The Committee, therefore, desired that the Government should make registration of all marriages mandatory, making the procedure simpler, affordable and accessible.

In 2008, the 18th **Law Commission of India**, in its 205th Report titled '*Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws*' recommended that registration of marriages (within a stipulated period) of all communities, viz. Hindu, Muslim, Christians, etc. should be made mandatory by the Central Government. Again, in its 211th Report on '*Laws on Registration of Marriage and Divorce*', the Commission proposed the enactment of a *Marriage and Divorce Registration Act* to be made applicable to the whole of India and to all citizens. This was reiterated in 2017 in its 270th Report titled '*Compulsory Registration of Marriages*' where the Law Commission stated that compulsory registration is a 'necessary reform'.

⁵ Law Commission of India, "211th Report on Laws on Registration of Marriage and Divorce – A proposal for Consolidation and Reform" (Oct., 2008)

⁶ Committee on Empowerment of Women (2006-2007), Ministry of Overseas Indian Affairs and Ministry of External Affairs (Fourteenth Lok Sabha) "Twelfth Report on the Plight of Indian Women deserted by NRI Husbands" (Aug. 2007)

The linkage between marriage registration and prevention of child marriage

Marriage registration by itself does not render a marriage legal or valid (*child marriages in India are voidable (an option that may be exercised by the parties to the marriage within 2 years of attaining the age of majority), and not void ab initio*). The **Supreme Court of India**, the **Parliamentary Standing Committee** (that reviewed the Prevention of Child Marriage Bill 2004), **NCW**, the (erstwhile) **Planning Commission of India** all noted that compulsory registration of marriages can help prevent and check the practice of child marriage. The same view is also espoused by the **United Nations Human Rights Council resolution on child, early and forced marriage**— adopted at the 41st session of the Human Rights Council in July 2019 – urging states to respect, protect and fulfil the human rights of women and girls, to promote equality in all aspects of marriage and its dissolution, and to ensure the timely registration of births and marriages. Similarly, the UN Human Rights Office’s **Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage** seeks commitment from all States that they shall take all appropriate measures in “establishing a civil or other register in which all marriages will be recorded.” Article 3 of the Convention states that, “*All marriages shall be registered in an appropriate official register by the competent authority,*” and makes no exceptions for child marriages. Thus, it is imperative to encourage and enable registration of marriages: child marriage often goes unregistered, undermining legislation against it, making it difficult to monitor and complicating access to those subjected to it. It should be noted, however, that while a policy for universalizing marriage registration can contribute to efforts to prevent child marriage, it cannot by itself have a substantive impact on preventing or reducing the prevalence of child marriage unless it is accompanied by larger efforts to end child marriage: this includes interventions with communities to change discriminatory norms and improving girls’ access to education, healthcare and decent work opportunities that expand their life options beyond marriage.